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SUPREME COURT NO. 89147-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARIO MEDINA,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Brian Gains, Judge

SUPPLEMENTAL BRIEF OF PETITIONER

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 ORIGINAL

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INTRODUCTION

As a condition of his pre-trial release, Petitioner Mario Medina was ordered to participate in a King County Community Center Alternative Program (CCAP) with several imposed conditions of conduct that restricted his liberty. Medina spent 1,505 days confined in the CCAP prior to his retrial. The question presented in this appeal is whether Medina is entitled to credit for time served confined in the CCAP program.

For three alternative reasons, this Court should find he is so entitled. First, Medina is entitled to credit under the terms of the Sentencing Reform Act (SRA). Second, to the extent the SRA is ambiguous on this point, the rule of lenity should apply such that Medina is entitled to “pre-trial confinement credit” for the time he spent in CCAP. And third, the constitution requires Medina be given credit.

Accordingly, this Court should reverse the Court of Appeals and remand to the trial court with direction that Medina be given credit for his pre-trial confinement in CCAP.

A. ISSUE ON REVIEW

Did the trial court err when it failed to credit Medina for time he was ordered to serve in CCAP:

(1) where the SRA requires the sentencing court to "give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced", a provision that reflects the requirements of the constitution, or alternatively;

(2) where the statutory scheme regarding credit for time spent in CCAP is ambiguous as applied to Medina, does the rule of lenity apply such that it must be interpreted in Medina's favor?

B. STATEMENT OF THE CASE

1. Introduction

This appeal concerns the sentencing of Medina following his 2011 retrial for murder. Medina, along with co-defendant Felipe Ramos, was originally charged and tried in 1998. Medina's original conviction was vacated and the new trial stayed several years pending decisions in several other cases. Only 18 years old when originally charged, Medina is now 35, resides in Spanaway, Washington, works two jobs and lives with his wife and son. CP 194-203; 14RP 117.

2. Procedural Facts

In 1998, Medina and Ramos were tried jointly for first degree intentional murder. CP 85. The jury acquitted both of first degree intentional murder, and instead found them guilty of second degree felony

murder based on the predicate offense of second degree assault. CP 20. Those convictions were subsequently vacated in light of In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), which held assault was not a predicate offense for felony murder. State v. Ramos, 124 Wn. App. 334, 101 P.3d 872 (2004).

On remand in 2005, Medina was arraigned on first degree manslaughter and advised by counsel that it was the maximum charge he could face. CP 21. Both Medina and Ramos moved to dismiss the manslaughter charges based on the mandatory joinder rule; Medina added double jeopardy as grounds for dismissal. State v. Ramos, 163 Wn.2d 654, 659, 184 P.3d 1256 (2008). The trial court denied the motions and certified the matter to this Court for direct review. Id. This Court held neither double jeopardy nor the mandatory joinder precluded retrial for first degree manslaughter. Id. at 654.

Pending his retrial, Medina sought release on bail; instead of releasing Medina pending trial, the court issued an order confining Medina to the CCAP program. 2CP 179-181.¹ Medina was confined to the CCAP

¹ It appears the Superior Court Clerk erred in assigning index numbers to the documents designated by the State from the Medina case file in June 2012, which run from 158-206. Rather than beginning with the next number in sequence for documents previously designated from Medina's file (the original designation runs from 1-209), it instead used the next number in sequence from the original Clerk's Paper index issued for

program for 1,505 days prior to his re-trial. 20RP 18-19. His bail order was subsequently changed to Electronic Home Detention (EHD). 2CP 195.

In 2010, five years after Medina's arraignment for manslaughter, the State, over defense objection, was allowed to add a charge of second degree intentional murder. CP 83-84; 1RP 28-30. A jury subsequently convicted Medina of that charge, and the Court of Appeals affirmed. CP 174; State v. Ramos, 2013 WL 1956640.

3. Substantive Facts

At sentencing on the second degree murder conviction, Medina requested credit for 1,505 days he had served in the CCAP program. 20RP 17, 19.

a. History of Medina's time spent in CCAP²

On January 12, 2007, Medina was ordered into the CCAP Enhanced program. 2CP 179-181. One of nine conditions of release

documents designated from co-defendant Felipe Ramos's case file, which ran from 1-157. For clarity, the index numbers for the erroneous designations will be cited as "2CP" followed by the assigned index number.

² King County established CCAP under the auspices of RCW 9.94A.680, authorizing counties to establish alternatives to confinement for certain offenders. King County Code (KCC) §§ 2.16.122, 5.12.010. All such programs in King County require the offender to participate in approved activities for a minimum of six hours each day. KCC 5.12.010.

required Medina to report every weekday to the CCAP facility by 9:00 a.m. and to remain on the premises until discharged by the department staff. Id. Failure to comply with the condition subjected Medina to removal from CCAP and into court-ordered incarceration at a secure facility. Id.

On April 6, 2007, Medina was ordered into the CCAP Basic program. 2CP 182-83. The conditions of release required him to bring proof to the court he was 1) enrolled in a school facility and 2) making reasonable progress to graduation. 2CP 185. Medina was also required to complete an orientation and report by telephone daily. 2CP 182-83. If Medina failed to report for orientation or report by telephone daily or prove progress in a school facility, he faced removal from CCAP and court-ordered incarceration at a secure facility. Id.

On October 31, 2007, Medina was ordered into CCAP Enhanced. 2CP 186-88. The conditions of release were the same in that he was required to report to the CCAP facility by 9:00 a.m. each weekday until discharged by department staff. Id. Again, if he failed to comply he faced incarceration at a secure facility. Id.

On April 23, 2008, Medina was again ordered into CCAP Basic until July 5, 2011 whereby he was ordered back into CCAP Enhanced

with the same weekday reporting requirements. 2CP 189, 191-93. On July 13, 2011 he was placed on EHD pending his appeal. 2CP 195.

b. Medina's sentencing on September 30, 2011

The trial court denied Medina's request to credit him for the 1,505 days he was confined in the CCAP program, but remarked, "I am and continue to be impressed with the behavior of Mr. Medina since I received this case after the reversal." 20RP 14. The court stated further "I'm satisfied that [the trial lawyer] should appeal on [the CCAP] issue and I'm certainly indicating to the Court of Appeals my feeling on it ... there are some legislative and policy questions ... I wanted the Court of Appeals to understand that if it is legal, I would give it." 20RP 17. Medina timely appealed. CP 193.

4. Court of Appeals 2013 Decision

The Court of Appeals affirmed Medina's conviction and sentence. 2013 WL 1956640. As relates to the issue here, the court held Medina was not entitled to credit for time served in CCAP, reasoning the statute that allows for such credit was not in effect at the time of Medina's crime, had no retroactive effect, and the applicable definition of "confinement" at the time of Medina's crime required at least eight hours per day in a facility, which the record, according to the court, failed to show was true for Medina. Id. at 6.

C. ARGUMENT

1. MEDINA IS ENTITLED TO CREDIT FOR TIME SERVED IN CCAP BECAUSE IT CONSTITUTES CONFINEMENT UNDER RCW 9.94A.505(6).

“The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.” RCW 9.94A.505(6). This statute reflects the constitutional requirement that the failure to accurately provide credit for time served violates due process, equal protection, and the double jeopardy prohibition against multiple punishments. In re Pers. Restraint of Costello, 131 Wn. App. 828, 832, 129 P.3d 827 (2006). Whether to award credit for time served is a question of law subject to de novo review. State v. Swiger, 159 Wn.2d 224, 227, 149 P.3d 372 (2006).

Confinement includes both total and partial confinement. RCW 9.94A.030(8). Confinement may also be converted to county supervised community alternative programs. RCW 9.94A.680. Medina's pre-trial confinement was just such an alternative, namely, King County's CCAP-Enhanced. 20RP 19. The failure to credit Medina for the time he served in this program violated his statutory and constitutional rights to credit for time served.

There is no dispute that at the time of Medina's offense he was entitled to credit for time served pre-trial, including credit for partial confinement for a substantial portion of each day. 2013 WL 1956640 at 5. The question here is does Medina's court ordered partial confinement in CCAP constitute partial confinement for a substantial portion of each day. The answer is yes and the Court of Appeals erred in holding otherwise.

Specifically, the Court of Appeal erred when it reasoned that credit was not appropriate because the statute promulgating CCAP was enacted after the date of Medina's crime and it looked different than the partial confinement programs in effect at the time of Medina's crime. 2013 WL 1956640 at 6. The Court's reasoning does not comport with appropriate rules of statutory interpretation.

"The court's duty in statutory interpretation is to discern and implement the legislature's intent." Lowy v. PeaceHealth, 174 Wn.2d 769, 779, 280 P.3d 1078 (2012). Here, the Court of Appeals and the parties agree that the version of the SRA in effect at the time of Medina's crime, RCW 9.94A.120(16) (1988),³ mandated that the court "shall give the offender credit for all confinement time served before the sentence. . . ." 2013 WL 1956640 at 12; Brief of Respondent (BOR) at 28. This requirement conforms to constitutional requirements as noted above.

³ Recodified as RCW 9.94A.505.

Moreover, the Court of Appeals and the parties agree that “confinement” was and is defined as “total or partial confinement.” 2013 WL 1956640 at 12, 15; BOR at 28. Partial confinement is defined as:

Confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community.

RCW 9.94A.030(35); see also former RCW 9.94A.030(26) 1991.

Again, this requirement conforms to constitutional requirements. The question here is whether Medina’s confinement in the CCAP program constitutes “partial confinement” for which the Court “shall” give credit.

The answer is yes and can be reached in either of two ways. First, applying rules of statutory interpretation, participation in the CCAP program fits within the meaning of “partial confinement.” And, it is clear that when the legislature adopted RCW 9.94A.680 under which the CCAP program was established, the legislature intended participation in the program to constitute confinement. “One day of partial confinement may be substituted for one day of total confinement.” RCW 9.94A.680(1). Second, participation in the CCAP Enhanced program requires mandatory participation in a minimum 6 hour per day program at a King County

facility each and every weekday.⁴ This requirement conforms to the SRA definition of “partial confinement” and provides in relevant part: “confinement . . . in a facility or institution operated by . . . any other unit of government . . . for a substantial portion of each day with the balance of the day spent in the community.” RCW 9.94A.030(35).⁵

The Court of Appeals and the State take the position that a different (and earlier) provision of the SRA, former RCW 9.94A.180 (now codified as RCW 9.94A.731) qualifies the substantial portion of each day requirement to mean at least eight hours per day. 2013 WL 1956640 at 16. That reasoning is wrong. First, while sentencing rules and guidelines are established by the legislature, pre-trial detention is a matter delegated to the courts applying the Criminal Rules of Procedure. State v. Smith, 84 Wn.2d 498, 501-02, 527 P.2d 674 (1974). That a particular form of confinement may or may not have been established for sentencing

⁴ The section of the King County Municipal Code enacting the general CCAP describes the program as follows: “an alternative to confinement program in which an offender must participate for a minimum of six hours per day of structured programs offered through, or approved by, the community corrections division. The structured programs may include, but are not limited to: life management skills development; substance abuse assessment and treatment services; mental health assessment and treatment services; counseling; basic adult education and related services; vocational training services; and job placement services.”

⁵ The Court of Appeals ignored the facility/institution language of the definition focusing wrongly on whether CCAP constituted a work release or home detention program. 2013 WL 1956640 at 17-18.

purposes as of the date of the commission of a crime is not a relevant consideration. Here, the court ordered Medina confined to the CCAP program. Medina was undisputedly confined within that program for 1,505 days. The Court did not order CCAP confinement pursuant to the SRA but pursuant to the Criminal Rules. That a court could not have ordered CCAP confinement as an alternative post-trial sentence does not alter the fact that the court did order CCAP confinement for Medina pre-trial. Indeed, former RCW 9.94A.180 (now codified as RCW 9.94A.731), specifically applies to the sentence of a person following conviction, not to partial confinement as a condition of pre-trial release. The SRA provides that an offender must be given credit for pre-trial detention. Medina thus must be given credit.

Second, if the legislature had meant “a substantial portion of each day” to mean “at least eight hours per day” for conditions of pre-trial release, it would have so provided. The Court of Appeals decision (and State’s argument) would improperly render the phrase “a substantial portion of each day” out of the statute. Davis v. State ex rel. Dep’t of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (statutes must be interpreted and construed so that all the language is given effect, with no portion rendered meaningless or superfluous).

The Court of Appeals’ reliance on former RCW 9.94A.380 (1988)

is similarly misplaced. 2013 WL 1956640 at 19-20. This statute addresses a sentence following conviction. To place it in context, that statute would ask whether Medina was qualified to serve in an alternative program like CCAP. But that is not the question before the Court. To the contrary, he was ordered into CCAP while awaiting his retrial. In sum, CCAP was not ordered post-trial as a sentence following conviction, rather it was a court-ordered condition of release pending Medina's trial. Therefore, the Court of Appeals' reliance is misplaced because RCW 9.94A.380 (1988) only served as guidance to the trial court when sentencing a defendant after conviction – it does not address what the court should do while an accused awaits trial or has already been ordered into an alternative program – which is the case here.

Medina's court-ordered participation in CCAP meets the statutory elements of the definition of partial confinement. He participated in the program for over four years or 1,505 days. 20RP 18-19. CCAP is an institution and facility operated by county government and Medina was confined to that program for a substantial portion of each day, and should received credit for that time against the sentence ultimately imposed. 20RP 18-19; KCC 5.12.010.

2. THE COURT OF APPEALS ERRED IN FAILING TO FIND THE SRA AMBIGUOUS SUCH THAT THE RULE OF LENITY APPLIES AND REQUIRES AWARDED MEDINA CREDIT AGAINST HIS SENTENCE FOR TIME SPENT IN CCAP

The Court of Appeals should have at least found that the SRA is ambiguous as to whether Medina is entitled to credit for time served in CCAP. To the extent the SRA is ambiguous in this regard, the rule of lenity requires reversal and remand so Medina can receive credit against his sentence for time served in CCAP.

A court's ultimate goal in reviewing a statute is to identify and give effect to the Legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). Intent is determined by first looking at the language of the statute. State v. Van Woerden, 93 Wn. App. 110, 116, 967 P.2d 14 (1998). Where a criminal statute is ambiguous, courts resolve the ambiguity in favor of the defendant. In re Pers. Restraint of Hopkins, 137 Wn.2d 897, 901, 976 P. 2d 616 (1999).

Assuming the SRA is ambiguous about whether Medina is entitled to the credits discussed above, this Court should apply the rule of lenity to conclude that he is so entitled. In City of Seattle v. Winebrenner, 167 Wn.2d 451, 462, 219 P.3d 686 (2009), this Court held that "[i]f after applying statutory construction we conclude that a statute is ambiguous, the rule of lenity requires us to interpret the statute in favor of the

defendant absent legislative intent to the contrary." (Internal quotations omitted.)

Therefore, to the extent RCW 9.94A.030(35)⁶, RCW 9.94A.680(1)⁷ and former RCW 9.94A.120(16) (1988)⁸ create an ambiguity, the rule of lenity requires that the ambiguity be resolved in Medina's favor and he must be given credit for the 1,505 days he was confined in the CCAP prior to his retrial in 2011. 20RP 18-19. _____

⁶ RCW 9.94A.030(35) provides:

Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

Emphasis added.

⁷ RCW 9.94A.680(1) provides: "One day of partial confinement may be substituted for one day of total confinement."

⁸ Recodified as RCW 9.94A.505(6). The statute provides: "The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced."

3. THE CONSTITUTION REQUIRES THAT MEDINA BE GIVEN CREDIT FOR TIME SERVED PRETRIAL IN CCAP

Regardless of the proper interpretation of the SRA, the failure to give Medina credit for time served in the CCAP program offends fundamental fairness and violates Medina's constitutional rights. In Reanier v. Smith, 83 Wn.2d 342, 346-347, 517 P.2d 949 (1974), this Court held that failure to give credit for post-arrest, pre-conviction confinement violates constitutional principles:

Fundamental fairness and the avoidance of discrimination and possible multiple punishment dictate that an accused person, unable to or precluded from posting bail or otherwise procuring his release from confinement prior to trial should, upon conviction and commitment to a state penal facility, be credited as against a maximum and a mandatory minimum term with all time served in detention prior to trial and sentence. Otherwise, such a person's total time in custody would exceed that of a defendant likewise sentenced but who had been able to obtain pretrial release. Thus, two sets of maximum and mandatory minimum terms would be erected, one for those unable to procure pretrial release from confinement and another for those fortunate enough to obtain such release. Aside from the potential implications of double jeopardy in such a situation, it is clear that the principles of due process and equal protection of the law are breached without rational reason.

The State argued below that because Medina was awaiting trial on a violent offense, he was not entitled to pretrial detention credit for his time served in CCAP. BOR at 29-31. However, participants in CCAP with a non-violent offender status do receive credit for time served in

CCAP. RCW 9.94A.680(1). Directly on point is this Court's decision in State v. Anderson, 132 Wn.2d 203, 213, 937 P.2d 581 (1997) where this Court said:

The State, citing RCW 9.94A.185, argues Defendant should not receive jail time credit for his home detention because electronic home detention is not statutorily authorized for persons convicted of violent offenses... Whether it was proper to place Defendant on home detention is an entirely separate issue not before this court. Defendant did spend three years on electronic home detention. Having spent the time in detention, Defendant is entitled to credit under the Equal Protection Clause.

Emphasis in the original.

As recognized in Anderson the issue here is not whether Medina statutorily should have been placed in the CCAP program, but whether his actual confinement in that program because of the nature of that confinement should be credited against his sentence. At this point, the question becomes what is the remedy for Medina now that he has already served time in the CCAP program. Either confinement in the CCAP qualifies or not. The question does not depend on either Medina's qualification to enter into the program or the nature of charges pending against him.

Failure to give Medina full credit violated both the Equal Protection Clause and Double Jeopardy Clause of the Constitution. Id. The constitutional question is whether court-ordered confinement in the

CCAP program as a mandatory condition of pre-trial release constitutes pretrial detention for which a person must constitutionally receive credit. The State has presented no argument for why court mandated commitment to a county facility for six hours per day does not constitute confinement for constitutional purposes.

D. CONCLUSION

Medina respectfully asks this Court to remand for the sentencing court to properly credit against his sentence the time he served in the CCAP program.

DATED this 10th day of January, 2014.

Respectfully Submitted,

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	SUPREME COURT NO. 89147-8
v.)	
)	
MARIO MEDINA,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 6TH DAY OF JANUARY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE SUPPLEMENTAL BRIEF OF PETITIONER TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MARIO MEDINA
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SIGNED IN SEATTLE WASHINGTON, THIS 6TH DAY OF JANUARY, 2014.

x *Patrick Mayovsky*

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Attached for filing today is a supplemental brief of petitioner for the case referenced below.

State v. Mario Medina

No. 89147-8

Supplemental Brief of Petitioner

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