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NO. 89147-8

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MARIO MEDINA,

Petitioner.

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

---

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 ORIGINAL

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
1. PROCEDURAL FACTS.....	1
2. SUBSTANTIVE FACTS.....	3
3. FACTS REGARDING CCAP.....	8
C. <u>ARGUMENT</u> .....	9
THE TRIAL COURT CORRECTLY RULED THAT MEDINA WAS NOT ENTITLED TO CREDIT FOR PARTICIPATING IN THE CCAP PROGRAM.....	9
D. <u>CONCLUSION</u> .....	20

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

North Carolina v. Pearce, 395 U.S. 711,  
89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)..... 18, 19

Washington State:

Amburn v. Daly, 81 Wn.2d 241,  
501 P.2d 178 (1972)..... 14, 15

Davis v. Dep't of Licensing, 137 Wn.2d 957,  
977 P.2d 554 (1999)..... 10, 15

In re Personal Restraint of Andress, 147 Wn.2d 602,  
56 P.3d 981 (2002)..... 1, 2

In re Personal Restraint of Bowman, 109 Wn. App. 869,  
38 P.3d 1017 (2001), rev. denied,  
146 Wn.2d 1001 (2002)..... 19

In re Personal Restraint of Sietz, 124 Wn.2d 645,  
880 P.2d 34 (1994)..... 11

Lakemont Ridge Homeowners Ass'n v.  
Lakemont Ridge Ltd. P'ship, 156 Wn.2d 696,  
131 P.3d 905 (2006)..... 10

Ravsten v. Dep't of Labor & Industries,  
108 Wn.2d 143, 736 P.2d 265 (1987)..... 14

State v. Anderson, 132 Wn.2d 203,  
937 P.2d 581 (1997)..... 17, 18

State v. Beaver, 148 Wn.2d 338,  
60 P.3d 586 (2002)..... 11

State v. Engel, 166 Wn.2d 572,  
210 P.3d 1007 (2009)..... 11

<u>State v. Gonzalez</u> , 168 Wn.2d 256, 226 P.3d 131 (2010).....	11
<u>State v. Ramos</u> , 124 Wn. App. 334, 101 P.3d 872 (2004).....	2
<u>State v. Ramos</u> , 163 Wn.2d 654, 184 P.3d 1256 (2008).....	1, 2
<u>State v. Ramos</u> , 174 Wn. App. 1072 (No. 67757-8-I, filed 5/13/13).....	3
<u>State v. Roggenkamp</u> , 153 Wn.2d 614, 106 P.3d 196 (2005).....	11
<u>State v. Swiger</u> , 159 Wn.2d 224, 14 P.3d 372 (2006).....	17, 18
<u>World Wide Video, Inc. v. City of Tukwila</u> , 117 Wn.2d 381, 816 P.2d 18 (1991).....	13

Statutes

Washington State:

KCC 5.12.010.....	13
Laws of 2009, ch. 227, § 1.....	10
Former RCW 9.94A.030.....	11, 12
Former RCW 9.94A.120.....	11
Former RCW 9.94A.180.....	12
RCW 9.94A.010.....	16
RCW 9.94A.345.....	10
RCW 9.94A.680.....	10, 13, 14, 15

Other Authorities

Sentencing Reform Act ..... 10-13, 15-17

WA. F. B. Rep., 2009 Reg. Sess.,  
H.B. 1361 (Final Bill Report, 6/10/2009) ..... 15

WA. H.R. B. Rep., 2009 Reg. Sess.,  
H.B. 1361 (House Bill Report, 4/16/2009) ..... 15

Webster's Third New International Dictionary  
(Unabridged) (1993) ..... 13

**A. ISSUE PRESENTED**

Whether a defendant who has been convicted of murder should receive credit against his prison sentence for participation in programs at the King County Community Center for Alternative Programs ("CCAP") when the plain language of the relevant statutes and all other evidence of legislative intent demonstrates that the legislature did not intend this absurd result.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

Co-defendants Felipe Ramos and Mario Medina were originally charged with first-degree premeditated murder for the September 13, 1997 killing of Joseph Collins. CP 1 (Ramos). At the end of their first trial in 1998, the jury convicted them of the inferior degree offense of second-degree murder. The jurors answered an interrogatory stating that they were not unanimous as to intentional murder, and that they were unanimous as to felony murder predicated on the crime of assault. State v. Ramos, 163 Wn.2d 654, 657-58, 184 P.3d 1256 (2008).

While the defendants' first appeals were pending, this Court decided In re Personal Restraint of Andress, 147 Wn.2d 602,

56 P.3d 981 (2002), holding that the crime of felony murder predicated on assault did not exist. Subsequently, during a period of substantial uncertainty regarding the implications of Andress, the Court of Appeals held that the defendants could be retried only for manslaughter due to "double jeopardy concerns."<sup>1</sup> Accordingly, the State charged the defendants with first-degree manslaughter on remand in January 2005. CP 38 (Ramos).

Upon remand, the defendants argued to the trial court that the manslaughter charge should be dismissed on grounds of joinder and double jeopardy. Ramos, 163 Wn.2d at 659. The trial court denied the defendants' motion to dismiss, and this Court granted review. Id. In June 2008, this Court held that jeopardy had never terminated for the crime of intentional second-degree murder. Id. at 659-62. Upon remand for the second time, the trial court granted the State's motion to charge both defendants with intentional second-degree murder on April 16, 2010. CP 83-84, 158-64 (Medina); RP (4/16/10) 24-28.

The defendants' second trial began more than a year later, on May 19, 2011. RP (5/19/11). At the conclusion of the second trial, the jurors convicted Medina of intentional second-degree

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<sup>1</sup> State v. Ramos, 124 Wn. App. 334, 341-43, 101 P.3d 872 (2004).

murder as charged, and they convicted Ramos of the lesser included offense of first-degree manslaughter. The jury found that both defendants were armed with a firearm during the commission of the crime. CP 174-75 (Medina); CP 125-27 (Ramos); RP (6/27/11) 2-6. The defendants again appealed. CP 149 (Ramos); CP 193 (Medina).

In an unpublished decision, the Court of Appeals reversed Ramos's manslaughter conviction on grounds of instructional error and ineffective assistance of counsel. State v. Ramos, 174 Wn. App. 1072 (No. 67757-8-I, filed 5/13/13) (hereinafter "Slip Op."), at 25-28. The court affirmed Medina's conviction for second-degree murder, and rejected the claim that Medina was entitled to credit against his prison sentence for his participation in the CCAP program prior to sentencing. Slip Op. at 5-22. This Court granted Medina's petition for review solely as to the issue of whether credit should be granted for CCAP.

## **2. SUBSTANTIVE FACTS**

Joseph Collins was the resident manager of a Motel 6 in south King County. RP (6/6/11) 28-29. Maria Ramos, who is Medina's sister and Ramos's ex-wife, was a front desk clerk.

RP (6/6/11) 30. On September 13, 1997, Maria was scheduled to work at 8:00 p.m., but she was over an hour late because she and both defendants were watching a boxing match at the home of Michael and Charmaine McKelpin. RP (6/6/11) 57-62. When Maria arrived to start her shift, Collins sent her home. RP (6/20/11) 45-46.

Maria drove back to the McKelpins' apartment and told the defendants what had happened. She was upset. RP (6/14/11) 64-65; RP (6/16/11) 57-58. Michael McKelpin tried to dissuade the defendants from going to Motel 6 to confront Collins, but the defendants ignored him and left. RP (6/16/11) 60-61. Before going to the motel, the defendants stopped by their apartment and obtained a gun, ammunition, and other supplies. RP (6/8/11) 99-119; Ex. 113. Ramos then drove to the motel with Medina in his Volkswagen Jetta. Ex. 113. Ramos parked in the far corner of the parking lot next to a dumpster. RP (6/8/11) 28-31; Ex. 113.

The defendants walked to the motel's laundry room where Medina asked the security guard, Jaime Flansburg, if he knew where Collins was. Flansburg told Medina that Collins was in his room. RP (6/14/11) 113-16. The defendants also knocked on the back door of the motel office. Medina asked the clerk, Christina

Piño, if she knew where Collins was. RP (6/6/11) 38-40. Piño saw the outline of what appeared to be a gun under Medina's shirt. RP (6/6/11) 42-43. Piño also told Medina that Collins was in his room, which was on the second floor of the motel. RP (6/6/11) 43.

Motel guest Eric Liljestrom then saw the defendants standing together outside the door to Collins's room. RP (6/9/11) 6-7. The defendants' behavior made Liljestrom uneasy, so he turned and walked in the other direction. RP (6/9/11) 7-8. Shortly thereafter, Liljestrom, Piño, and Flansburg all heard a single gunshot. RP (6/6/11) 47; RP (6/9/11) 8; RP (6/14/11) 116.

Joseph Collins was shot once in the head "almost exactly between his eyebrows." RP (6/14/11) 18. Gunpowder burns on Collins's forehead showed that he had been shot from very close range. RP (6/14/11) 18-23. Jaime Flansburg came to Collins's aid, but it was immediately apparent that nothing could be done for him, so Flansburg "just held him until he died." RP (6/14/11) 117.

The defendants left a great deal of evidence in their wake as they fled from the scene of the shooting. Ramos dropped the key to the Jetta on the second-floor walkway a short distance from Collins's body. RP (6/14/11) 118. Accordingly, the car was still in the parking lot by the dumpster when the police arrived.

RP (6/8/11) 27-31. A single 9 millimeter cartridge casing was found on the ground directly below where Collins's body lay on the second-floor walkway. RP (6/8/11) 84-85, 91; RP (6/14/11) 118. Although the murder weapon was never found, forensic analysis established that the cartridge casing could have been fired from a 9 millimeter Ruger pistol. RP (6/15/11) 59-60. In a grassy field between the motel parking lot and Military Road, the police found gun cleaning supplies, ear plugs, a trigger lock, boxes of ammunition, two empty Ruger magazines, and other gun-related items. RP (6/8/11) 97-119; RP (6/14/11) 142-52.

The box of 9 millimeter ammunition found in the field was consistent with the fired cartridge casing found below Collins's body. RP (6/15/11) 69. Several items recovered from the field had labels showing that they had been purchased from the Marine Corps Exchange ("MCX") at Camp Pendleton. RP (6/14/11) 149-52; Ex. 132. Military records established that Ramos bought a 9 millimeter Ruger pistol and a box of 9 millimeter ammunition at the MCX in 1996 when he was stationed at Camp Pendleton while serving in the Marine Corps. Ex. 132.

The defendants were arrested at their apartment a few hours after the shooting. RP (6/8/11) 8-11. They were interviewed

separately by detectives from the King County Sheriff's Office.

RP (6/8/11) 43. Ramos told Detective Earl Tripp that he watched the boxing match at the McKelpins's and then went home, and he claimed that he had not been at the Motel 6. After Tripp told Ramos that his car key was found next to Collins's body, Ramos was "taken aback" and "wide-eyed." RP (6/8/11) 45-46. After a long pause, however, Ramos shrugged. RP (6/8/11) 47.

Medina also initially told Detective Sue Peters that he had not been at the Motel 6. RP (6/16/11) 171. After Peters told Medina that witnesses had seen him at the motel and that there was videotape showing that he was there, Medina confessed that he had shot Collins. RP (6/16/11) 171-73. Medina gave a taped statement in which he admitted that he used Ramos's gun to shoot Collins. Ex. 113. When Peters asked Medina if he had intended to kill Collins, Medina initially said that he did. After a pause, however, Medina said that he had "just blanked out." Ex. 113. When Medina testified at trial, he claimed that his confession was false and that Ramos was the shooter. RP (6/21/11) 158; RP (6/22/11) 42.

### 3. FACTS REGARDING CCAP

While Ramos and Medina were awaiting their second trial, the trial judge released them from jail and ordered them to participate in the CCAP program as a condition of release.<sup>2</sup> As reflected in the forms Medina signed to enter the CCAP program, there are two types of CCAP – “CCAP Enhanced,” and “CCAP Basic.” Medina was enrolled in each of these programs at different times pending trial. See CP 179-94 (Medina).<sup>3</sup>

“CCAP Enhanced” requires an offender to report to the Community Center for Alternative Programs on weekdays. The Center is located in the Yesler Building in downtown Seattle. CP 179, 186, 191 (Medina). “CCAP Enhanced” requires an offender to remain sober, to submit to random testing once or twice a month to verify sobriety, to remain crime-free, to obtain evaluations as ordered by the court, and to participate in programs and/or treatment as directed. CP 179-81, 186-88, 191-93 (Medina). On the other hand, although “CCAP Basic” also requires the

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<sup>2</sup> Although the hearing when the defendants were initially enrolled in CCAP has not been transcribed, the record reflects that the State asked the trial court to remand Medina into custody when the information was amended to charge murder in the second degree, but the trial court denied the State’s request. RP (4/16/10) 30-31.

<sup>3</sup> Copies of these documents are attached for reference as Appendix A.

offender to remain crime-free and sober (with random testing to verify sobriety), it does not require participation in programs. Rather, it requires the offender to make a telephone call to a caseworker before 10 a.m. each day. CP 182-83.

The record does not reflect exactly how many weekdays Medina reported to the Community Center for Alternative Programs to participate in "CCAP Enhanced," nor does the record reflect how many hours Medina was at the Center on any given weekday while participating in "CCAP Enhanced."

C. ARGUMENT

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**THE TRIAL COURT CORRECTLY RULED THAT MEDINA WAS NOT ENTITLED TO CREDIT FOR PARTICIPATING IN THE CCAP PROGRAM.**

The sole issue before this Court is whether Medina is entitled to credit against his prison sentence for murder for participating in CCAP prior to sentencing. This Court should hold that Medina is not entitled to such credit because the legislature did not intend for violent offenders to receive credit for CCAP.

As a preliminary matter, it is worth noting that this Court's decision will apply only to defendants who committed violent crimes and sex crimes prior to 2009 and who were ordered to participate in

a program like CCAP prior to sentencing. This is because the Sentencing Reform Act ("SRA") was amended in 2009 to provide that only offenders who have been convicted of "nonviolent and nonsex offenses" may receive credit for participation "in an available county supervised community option" such as CCAP. Laws of 2009, ch. 227, § 1; RCW 9.94A.680(3). If this statute were directly applicable here, its plain language would categorically prohibit giving Medina credit for CCAP against his prison sentence for murder. But because Ramos and Medina killed Joseph Collins 12 years before the effective date of this statutory amendment, this Court must utilize statutory construction principles in order to discern legislative intent.<sup>4</sup>

Statutory interpretation is a question of law, which this Court reviews *de novo*. Lakemont Ridge Homeowners Ass'n v. Lakemont Ridge Ltd. P'ship, 156 Wn.2d 696, 698, 131 P.3d 905 (2006). The Court's primary duty in interpreting a statute is to "discern and implement the intent of the legislature." Id. Statutory language cannot be viewed in isolation; the goal is to ascertain the legislative intent behind the statute as a whole. Davis v. Dep't of Licensing, 137 Wn.2d 957, 970-71, 977 P.2d 554 (1999).

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<sup>4</sup> Courts are directed to apply the sentencing laws that were in effect when the offense was committed. See RCW 9.94A.345.

The first step in interpreting a statute is to examine its plain language. State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). A statute's plain meaning "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). All statutory language must be given effect, with no part of the statute rendered meaningless or superfluous. State v. Beaver, 148 Wn.2d 338, 343, 60 P.3d 586 (2002); State v. Roggenkamp, 153 Wn.2d 614, 624, 106 P.3d 196 (2005). Moreover, when the legislature uses "specific language in one instance and dissimilar language in another, a difference in legislative intent may be inferred." In re Personal Restraint of Sietz, 124 Wn.2d 645, 651, 880 P.2d 34 (1994).

In 1997, the SRA provided (as it still does today) that offenders should be given credit "for all confinement time served before the sentencing[.]" Former RCW 9.94A.120(16). "Confinement" was defined as "total or partial confinement[.]" Former RCW 9.94A.030(8). "Partial confinement" was then defined as follows:

"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, 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 as defined in this section.

Former RCW 9.94A.030(26) (emphasis supplied).

What constituted "confinement for no more than one year in a facility or institution" "for a substantial portion of each day" for purposes of "partial confinement" was not further defined in the 1997 SRA. However, in the statute that defined a "term of partial confinement" when imposed as part of an offender's sentence, the legislature specified that "[a]n offender sentenced to a term of partial confinement shall be *confined* in the *facility* for *at least eight hours per day*[".] Former RCW 9.94A.180(1) (emphasis supplied).

Given that statutory schemes are to be construed as a whole, this statute evidences a legislative intent in 1997 that "partial confinement" should *confine* the offender in a facility or institution for a minimum of eight hours per day for no more than one year. The ordinary meaning of "confine" in this context is "to keep within

narrow quarters: IMPRISON[.]” Webster's Third New International Dictionary (Unabridged) 476 (1993).

On the other hand, the King County Code provision that defines CCAP specifies that CCAP is “an *alternative to confinement program* in which an offender must *participate for a minimum of six hours per day*[.]” KCC 5.12.010 (emphasis supplied).<sup>5</sup> The ordinary meaning of “participate” in this context is “to take part in something (as an enterprise or activity)[.]” Webster's Third New International Dictionary (Unabridged) 1646 (1993).

Therefore, by definition, CCAP does not qualify as “partial confinement” under the 1997 SRA for the following reasons:

1) CCAP is specifically designated as an “*alternative to confinement program*” rather than “confinement,” whether partial or otherwise; and 2) CCAP requires the offender to “*participate*” in a “*program*” for a minimum of six hours per day rather than to be “confined” in a “facility or institution” for a minimum of eight hours per day. The plain language of these provisions<sup>6</sup> demonstrates that

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<sup>5</sup> The King County Code provision further states that CCAP is available only “for offenders convicted of nonviolent and non-sex offenses with sentences of one year or less as provided in RCW 9.94A.680[.]” KCC 5.12.010. Accordingly, by its very terms, this program is not designed or intended for offenders like Medina in the first instance.

<sup>6</sup> Rules of statutory construction apply to local ordinances as well. World Wide Video, Inc. v. City of Tukwila, 117 Wn.2d 381, 391-92, 816 P.2d 18 (1991).

Medina is not entitled to credit for CCAP, and thus, that granting Medina credit for CCAP would be contrary to legislative intent.

Although this Court's analysis need not go further, there is additional evidence that the legislature did not intend for murder defendants to receive credit for CCAP. For instance, another tenet of statutory construction provides that "the sequence of all statutes relating to the same subject matter should be considered" in determining legislative intent. Ravsten v. Dep't of Labor & Industries, 108 Wn.2d 143, 150, 736 P.2d 265 (1987). In accordance with this principle, "[a]n original act and an amendment to it should be read and construed as one law passed at the same time." Id. (citing Amburn v. Daly, 81 Wn.2d 241, 246, 501 P.2d 178 (1972)). Therefore, although the current version of RCW 9.94A.680(3) does not apply directly in this case, it is certainly strong evidence of the legislature's intent that credit for CCAP should be given only to defendants who have committed "nonviolent and nonsex offenses[.]" RCW 9.94A.680(3).

The legislative history of RCW 9.94A.680(3) reflects this intent as well. As a bill report for the legislation that became RCW 9.94A.680(3) states, offering credit to those convicted of "non-violent and non-sex offenses" for time spent in a rehabilitative

program like CCAP “resolves the disincentive to go into an alternative sentencing option rather than serving less time sitting in jail.” WA. H.R. B. Rep., 2009 Reg. Sess., H.B. 1361 (House Bill Report, 4/16/2009). This statement supports the common-sense notion that the legislature intended RCW 9.94A.680(3) to be an *expansion* of eligibility for credit for time served, not a *limitation* upon it. This is because, as demonstrated above, CCAP does not qualify as “confinement” under the SRA. *See also* WA. F. B. Rep., 2009 Reg. Sess., H.B. 1361 (Final Bill Report, 6/10/2009) (noting that an eligible offender “may accrue earned release time while participating in a county-supervised option *as if the defendant had served that time in total confinement or in partial confinement where earned early release credit is allowed*”) (emphasis supplied).<sup>7</sup>

In addition, there is a rule of statutory construction that “trumps every other rule”: the reviewing court must not construe the statutory language in a way that results in absurd consequences. Davis, 137 Wn.2d at 971. Put another way, “no construction should be given to a statute which leads to gross injustice or absurdity.” Amburn, 81 Wn.2d at 245-46. In this

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<sup>7</sup> Copies of the referenced bill reports are attached as Appendix B.

instance, it would be both unjust and absurd to give a murder defendant credit for a program like CCAP because it is not proportionate punishment for murder.<sup>8</sup> See RCW 9.94A.010 (establishing that the purposes of the SRA include ensuring “that the punishment for a criminal offense is proportionate to the seriousness of the offense,” and promoting “respect for the law by providing punishment which is just”).

In sum, the plain language of the relevant statutes and all other evidence of legislative intent demonstrates that Medina should not be given credit against his prison sentence for murder for participating in CCAP prior to sentencing. Accordingly, this Court should affirm.

Nonetheless, Medina will likely argue that denying him credit for CCAP violates both equal protection and double jeopardy. The cases he is likely to rely upon are readily distinguishable.

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<sup>8</sup> Furthermore, the record shows that Medina was in an even less demanding version of CCAP – “CCAP Basic” – for substantial periods of time. CP 182-85, 189 (Medina). CCAP Basic requires only that the participant call in once a day. CP 182-83 (Medina). No credible argument can be made that Medina is entitled to credit against his prison sentence for making a daily telephone call.

In support of an equal protection argument, Medina will likely cite State v. Anderson, 132 Wn.2d 203, 937 P.2d 581 (1997), and State v. Swiger, 159 Wn.2d 224, 14 P.3d 372 (2006), neither of which is on point. In Anderson, the defendant was placed on electronic home detention (“EHD”) while his appeal was pending, and he was denied credit for the time he served on EHD when that appeal proved unsuccessful. The relevant statutes in the SRA specifically awarded credit for pre-conviction EHD, but said nothing regarding post-conviction EHD. The Anderson court held that there was no rational basis to treat pre-conviction and post-conviction EHD differently, and that equal protection required giving the defendant credit for EHD served while his appeal was pending. Anderson, 132 Wn.2d at 206-13.<sup>9</sup> In Swiger, the situation was identical to Anderson, except insofar as the court required the defendant to be monitored via a global positioning system (“GPS”) rather than EHD pending appeal. Thus, the Swiger court awarded

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<sup>9</sup> The record shows that Medina was on EHD beginning July 19, 2011. CP 201-06 (Medina). Unlike CCAP, Medina is entitled to credit for EHD in accordance with Anderson.

credit for post-conviction GPS monitoring in accordance with Anderson. Swiger, 159 Wn.2d at 227-31.

But in this case, unlike in Anderson and Swiger, the issue is not whether pre-conviction and post-conviction CCAP are the same for equal protection purposes. Rather, the issue is whether CCAP qualifies as "confinement" at all (it does not), and whether the legislature intended for violent offenders to receive credit for CCAP under any circumstances (it did not).<sup>10</sup> Medina's equal protection claim is unavailing.

In addition, Medina will likely cite North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), in support of his argument that the failure to give credit for CCAP violates double jeopardy. But the issue in Pearce was whether a defendant who had successfully challenged his conviction on appeal was entitled to credit for the time he had already served *in prison* when he was ultimately convicted a second time. Pearce, 395 U.S. at 716-18.<sup>11</sup>

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<sup>10</sup> If any equal protection argument were to be made in this case, the issue would be whether the legislature had a rational basis for treating nonviolent and non-sex offenders differently from violent offenders and sex offenders for purposes of eligibility and credit for CCAP. It is self-evident that such a rational basis exists.

<sup>11</sup> Medina is also clearly entitled to credit for any time spent in prison following his original conviction in 1998.

CCAP is not remotely analogous to prison, and thus, Pearce is not on point.

Lastly, Medina is likely to argue that the rule of lenity requires that he be given credit for CCAP. But the rule of lenity applies only when statutes are ambiguous, meaning that they are subject to more than one *reasonable* interpretation and there is no discernible evidence of legislative intent. In re Personal Restraint of Bowman, 109 Wn. App. 869, 875-76, 38 P.3d 1017 (2001), rev. denied, 146 Wn.2d 1001 (2002). Put another way, the rule of lenity "cannot apply . . . where it would contravene the Legislature's intent." Id. As explained above, the statutes in effect in 1997 do not support Medina's argument that CCAP constitutes partial confinement, and the evidence of legislative intent demonstrates that the legislature did not intend that offenders charged with and convicted of murder receive credit for CCAP. Accordingly, the rule of lenity does not apply.

In sum, there is no basis upon which Medina should be granted credit against his prison sentence for murder for participation in the CCAP program.

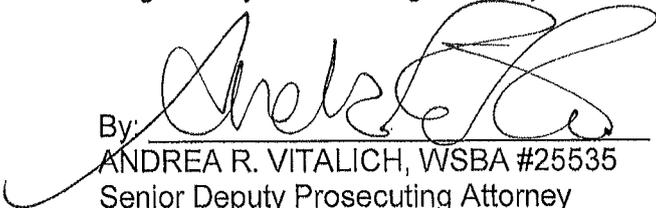
D. CONCLUSION

For the reasons stated in the Court of Appeals' opinion and as set forth above, the trial court's ruling denying credit for CCAP should be affirmed.

DATED this 6<sup>th</sup> day of January, 2014.

Respectfully submitted,

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## **Appendix A**

Forms for CCAP Enhanced  
and CCAP Basic

SCAN

FILED  
KING COUNTY, WASHINGTON

JAN 12 2007

SUPERIOR COURT CLERK  
BY: PAMELA ANZAI  
DEPUTY

CERTIFIED COPY TO COUNTY JAIL  
JAN 12 2007

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff

vs.

Mario Medina

Defendant

NO. 97-1-072839-A KNT  
BA NO.  
CCN NO.

Conditions of Conduct for Persons Ordered  
by the King County Superior Court into the  
Community Center for Alternative  
Programs, (CCAP) Enhanced

(ORDTLRA)

The following are court imposed conditions of conduct for participation in the King County Community Center for Alternative Programs (CCAP). Compliance with these conditions of conduct shall be monitored by the King County Department of Adult and Juvenile Detention (DAJD), Community Corrections Division, as specified herein by the court. Your continued participation in CCAP is subject to strict compliance with the following:

You have been ordered to CCAP, Enhanced

1. You shall report to the Community Center for Alternative Programs by 9:00 AM on *the day* ~~after the release~~ and report each weekday Monday through Friday thereafter. You shall remain on the premises until discharged by department staff. CCAP is located at 400 Yesler Way, Seattle. Enter the Yesler Building on Terrace Avenue which is the north side of the building. Failure to comply with this condition will result in your removal from CCAP and court ordered incarceration into secure confinement.
2. You shall commit no crimes. Department staff shall monitor bookings into the King County Correctional Facility (KCCF) and the Regional Justice Center (RJC) for violations of any local, state or federal law or court order. Any booking into the King County Correctional Facility or the Regional Justice Center will result in your removal from CCAP and court ordered incarceration into secure confinement.

CCAP Enhanced CONDITIONS OF CONDUCT  
Revised 1/2005  
White - Clerk's Office  
Green - King County Jail  
Canary - Prosecutor  
Pink - Defendant  
Goldcnrod - Defense Attorney

Page 1

3. **You shall not purchase, possess or use controlled substances without a valid prescription and shall not consume alcohol beginning from the date of this order.** Any use of controlled substances, other than as prescribed by a physician, will be considered a violation. You will submit to urinalysis testing as ordered, including a baseline urinalysis to determine the levels of THC within 5 days of beginning participation at CCAP and if the THC level does not decrease in your next urinalysis test, this will be considered a violation. You shall submit to random urinalysis and breathalyzer testing as directed by department staff  1 or  2 times every 30 days. Violation of this condition or failure to submit to testing on demand will result in removal from CCAP and court ordered incarceration into secure confinement.
4. **You shall perform 8 hours of community service, which may be in the form of work crew, on a schedule assigned by department staff.** Violation of this condition will result in your removal from CCAP and court ordered incarceration into secure confinement.
5. **You shall obtain the treatment evaluation(s) checked below. If you are determined as needing treatment, you shall enter at the next available opening and maintain reasonable progress in the recommended treatment program. You shall provide a Release of Information to department staff to verify your compliance.** Department staff shall contact the therapy and treatment providers  1 or  2 times every 30 days to verify compliance beginning 21 days from the date of this order. If you are ordered to enter an education program, you must begin immediately and make reasonable progress in such education program. Failure to comply with this condition will result in your removal from CCAP and court ordered incarceration into secure confinement.

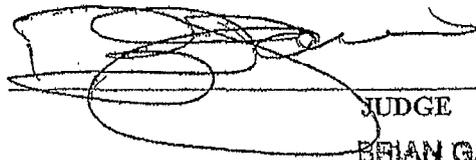
- Drug/Alcohol  
 CCAP Domestic Violence Education Program (Pre-trial)  
 Mental Health  
 All treatment as ordered in the Judgment and Sentence and any modification orders.  
 Other \_\_\_\_\_

6. **You shall attend all CCAP programs and all CCAP caseworker appointments.** You will be given a schedule on the first day of programming which specifies dates and times of your CCAP programs and CCAP caseworker contacts. In addition to the schedule, CCAP staff may set additional meetings that you are required to attend. Unexcused absences will result in removal from CCAP and court ordered incarceration into secure confinement. Three written warnings in a 30 day period for being less than 60 minutes late will result in your removal from CCAP and incarceration into secure confinement. One incident of being 60 minutes late or more will result in your removal from CCAP and court ordered incarceration into secure confinement.
7. **You shall not forge a document or provide false information to department staff.** Such activity, if actually known to department staff, will result in removal from CCAP and court ordered incarceration into secure confinement.
8. **You shall participate in CCAP programs as directed, complete program assignments and follow department staff directions while participating in CCAP. You shall not behave in a threatening, assaultive or harassing manner.** Failure to comply as directed by department staff will result in written notification to the Prosecuting Attorney and the Defense Attorney. Failure to comply also may result in your removal from CCAP and court ordered incarceration into secure confinement.

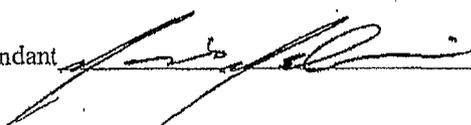
9. You shall notify department staff prior to making a change in your residence. You shall keep department staff notified at all times of your current telephone number.

If this order is entered as conditions of a sentence, this order is incorporated by reference into the Judgment and Sentence.

DONE IN OPEN COURT this 12<sup>th</sup> day of January 2007.

  
JUDGE  
BRIAN GAIN

I, Mario Medina have read, or have had read to me, the above court-ordered conditions of conduct for participation in the Community Center for Alternative Programs under the Department of Adult and Juvenile Detention, Community Corrections Division. I understand what is required of me for participation in this program and agree to abide by the conditions as stated herein. I also understand that it is my sole responsibility to comply with these conditions of conduct and that if I fail to comply, with any of these conditions, I may be immediately returned to incarceration in secure confinement. If I am placed in secure confinement as a result of violating this order, I may request a hearing before the court.

Signature of Defendant  Dated 1/12/07

**Interpreter's Declaration**

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands and I have translated the CCAP Conditions of Conduct Order for the defendant from English in that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter  
Signature \_\_\_\_\_ Dated \_\_\_\_\_

APR 09 2007  
CERTIFIED COPY TO COUNTY JAIL

SCAN

FILED  
KING COUNTY, WASHINGTON

APR 06 2007

SUPERIOR COURT CLERK  
BY JOSEPHINE MITCHELL  
DEPUTY

APR 06 2007

SUPERIOR COURT CLERK  
BY JOSEPHINE MITCHELL  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff

vs.

*Mario Medina*

Defendant

NO. *97-1-07283-9*  
BA NO.  
CCN NO.

Conditions of Conduct for Persons Ordered  
by the King County Superior Court into the  
Community Center for Alternative  
Programs  
(CCAP) Basic  
  
(ORDTLRA)

The following are court imposed conditions of conduct for participation in the King County Community Center for Alternative Programs (CCAP). Compliance with these conditions of conduct shall be monitored by the King County Department of Adult and Juvenile Detention (DAJD), Community Corrections Division, as specified herein by the court. Your continued participation in CCAP is subject to strict compliance with the following:

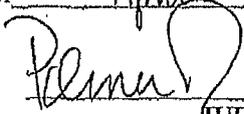
You have been ordered to CCAP, Basic

1. You shall report for CCAP orientation on *completed* at 9:00 AM. CCAP is located at 400 Yesler Way, Seattle. Enter the Yesler Building on Terrace Avenue which is on the north side of the building. Failure to report for orientation will result in your removal from CCAP and court-ordered incarceration into secure confinement.
2. You shall report thereafter by telephone by 10:00 AM daily beginning on the next day following your orientation. At your CCAP orientation appointment you will be assigned a caseworker and given their telephone number which you will be required to call daily. Failure to report by telephone will result in removal from CCAP and court-ordered incarceration into secure confinement.
3. You shall commit no crimes. Department staff shall monitor bookings into the King County Correctional Facility (KCCF) and the Regional Justice Center (RJC) for violations of any local, state or federal law or court order. Any booking into the King County Correctional Facility or the Regional Justice Center will result in your removal from CCAP and court-ordered incarceration into secure confinement.

POSTED

4. You shall not purchase, possess or use controlled substances without a valid prescription and shall not consume alcohol beginning from the date of this order. Any use of controlled substances, other than as prescribed by a physician, will be considered a violation. You will submit to urinalysis testing as ordered, including a baseline urinalysis to determine the levels of THC within 5 days of beginning participation at CCAP and if the THC level does not decrease in your next urinalysis test, this will be considered a violation. You shall submit to random urinalysis and breathalyzer testing as directed by department staff  1 or  2 times every 30 days. Violation of this condition or failure to submit to testing on demand will result in removal from CCAP and court-ordered incarceration into secure confinement.
5. You shall notify department staff prior to making a change in your residence. You shall keep department staff notified at all times of your current telephone number

If this order is entered as conditions of a sentence, this order is incorporated by reference into the Judgment and Sentence.

DONE IN OPEN COURT this 6 day of April, 2007.  
  
 JUDGE

I, \_\_\_\_\_ have read, or have had read to me, the above court-ordered conditions of conduct for participation in the Community Center for Alternative Programs under the Department of Adult and Juvenile Detention, Community Corrections Division. I understand what is required of me for participation in this program and agree to abide by the conditions as stated herein. I also understand that it is my sole responsibility to comply with these conditions of conduct and that if I fail to comply, with any of the conditions, I may be immediately returned to incarceration in secure confinement. If I am placed in secure confinement as a result of violating this order, I may request a hearing before the Court.

Signature of Defendant  Dated 4/6/07

**Interpreter's Declaration**

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands, and I have translated the CCAP Conditions of Conduct order for the defendant from English in that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter Signature \_\_\_\_\_ Dated \_\_\_\_\_

## **Appendix B**

Bill reports for 2009 Reg. Sess. H.B. 1361

WA H.R. B. Rep., 2009 Reg. Sess. H.B. 1361

Washington House Bill Report, 2009 Regular Session, House Bill 1361

April 16, 2009

Washington House of Representatives  
Sixty-first Legislature, First Regular Session, 2009

**As Passed Legislature**

**Title:** An act relating to county supervised community options.

**Brief Description:** Regarding county supervised community options.

**Sponsors:** Representatives Goodman, Rodne, Williams, Dickerson, Walsh, Kagi, Roberts, Pettigrew, O'Brien, Armstrong, Appleton, Eriks, Warnick, Haigh, Moeller, Rolfes, Carlyle, Wallace, Seaquist and Morrell.

**Brief History:**

**Committee Activity:**

Human Services: 1/26/09, 2/2/09 [DP].

**Floor Activity**

Passed House: 3/3/09, 96-0.

Passed Senate: 4/16/09, 47-0.

Passed Legislature.

**Brief Summary of Bill**

- Allows defendants convicted of non-violent and non-sex offenses to receive one-for-one credit for time served or time spent participating in a county supervised community option both prior to and after sentencing, the same as if the defendant had spent that time in jail confinement.
- Allows defendants convicted of non-violent and non-sex offenses to accrue earned release time while participating in a county supervised community option both prior to and after sentencing.

**HOUSE COMMITTEE ON HUMAN SERVICES**

**Majority Report:** Do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

**Staff:** Linda Merelle (786-7092)

**Background:**

Alternatives to Total Confinement.

The Sentencing Reform Act allows the court to impose alternatives to sentences of total confinement. These alternatives are available for offenders who have sentences of one year or less and they may be ordered by the court at the time of sentencing. One day of partial confinement, such as work release or home detention, may be substituted for one day of total confinement.

*Community Restitution:* For offenders who are convicted on non-violent offenses only, eight hours of community restitution (formerly called community service) may be substituted for one day of total confinement. The conversion is limited to 30 days. Thus, 30 days can be converted to 240 hours of community service.

*County Supervised Facility:* For offenders who are convicted of non-violent and non-sex offenses, time spent post sentencing in a county supervised facility for substance abuse treatment, for example, an in-patient facility, may be credited the same as total confinement. That is, one day spent in an in-patient facility may be credited the same as one day in jail.

Credit for Time Served/Earned Release Time.

If at the time of sentencing, an offender has been confined to jail before sentencing is imposed and the confinement was related to the offense that is before the court at the time of sentencing, the court must allow the defendant to receive credit for time served off the sentence imposed.

Offenders who are under total confinement may accrue "earned release time." This amount may vary from county to county. Generally, defendants accrue earned release time equal to one-third of their sentence. Earned release time may also accrue during time served in partial confinement if the form of partial confinement is work release or work crew. Earned release time does not accrue during time served on home detention.

**Summary of Bill:**

For offenders convicted of non-violent and non-sex offenses, the court may give the defendant credit for time served in a county-supervised community option for chemical dependency both prior to and after sentencing. The defendant may accrue earned release time while participating in a county-supervised option as if the defendant had served that time in total confinement or in partial confinement where earned early credit is allowed.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) There are a number of offenders for whom jail is traumatic. This option would offer the court the ability to credit time served for court-ordered treatment. It also resolves the disincentive to go into an alternative sentencing option rather than serving less time sitting in jail. These are good options because participating in treatment is more productive than sitting in the county jail.

(Opposed) None.

**Persons Testifying:** Representative Goodman, prime sponsor; Mike West, King County Department of Adult and Juvenile Detention; and Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

WA H.R. B. Rep., 2009 Reg. Sess. H.B. 1361

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WA F. B. Rep., 2009 Reg. Sess. H.B. 1361

Washington Final Bill Report, 2009 Regular Session, House Bill 1361

June 10, 2009

Washington Legislature

Sixty-first Legislature, First Regular Session, 2009

Synopsis as Enacted

**Brief Description:** Regarding county supervised community options.

**Sponsors:** Representatives Goodman, Rodne, Williams, Dickerson, Walsh, Kagi, Roberts, Pettigrew, O'Brien, Armstrong, Appleton, Ericks, Warnick, Haigh, Moeller, Rolfes, Carlyle, Wallace, Seaquist and Morrell.

**House Committee on Human Services**

**Senate Committee on Human Services & Corrections**

**Background:**

Alternatives to Total Confinement.

The Sentencing Reform Act allows the court to impose alternatives to sentences of total confinement. These alternatives are available for offenders who have sentences of one year or less, and they may be ordered by the court at the time of sentencing. One day of partial confinement, such as work release or home detention, may be substituted for one day of total confinement.

*Community Restitution:* For offenders who are convicted of non-violent offenses only, eight hours of community restitution (formerly called community service) may be substituted for one day of total confinement. The conversion is limited to 30 days. Thus, 30 days can be converted to 240 hours of community service.

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If at the time of sentencing, an offender has been confined to jail before sentencing is imposed and the confinement was related to the offense that is before the court at the time of sentencing, the court must allow the defendant to receive credit for time served against the sentence imposed.

Offenders who are under total confinement may accrue "earned release time." This amount may vary from county to county. Generally, defendants accrue earned release time equal to one-third of their sentence. Earned release time may also accrue during time served in partial confinement if the form of partial confinement is work release or work crew. Earned release time does not accrue during time served on home detention.

**Summary:**

For offenders convicted of non-violent and non-sex offenses, the court may give the defendant credit for time served in a county-supervised community option for chemical dependency both prior to and after sentencing. The defendant may accrue

earned release time while participating in a county-supervised option as if the defendant had served that time in total confinement or in partial confinement where earned early credit is allowed.

**Votes on Final Passage:**

House 96 0

Senate 47 0

**Effective:** July 26, 2009

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

WA F. B. Rep., 2009 Reg. Sess. H.B. 1361

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Cynthia Jones, the attorney for the petitioner, at 1425 Broadway #544, Seattle, WA 98122-3854, containing a copy of the Supplemental Brief of Respondent, in STATE V. MARIO MEDINA, Cause No. 89147-8, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame

Name

Done in Seattle, Washington

1/6/14

Date

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher Gibson, the attorney for the petitioner, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Supplemental Brief of Respondent, in STATE V. MARIO MEDINA, Cause No. 89147-8, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame

Name

Done in Seattle, Washington

1/6/14

Date

## OFFICE RECEPTIONIST, CLERK

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**From:** Vitalich, Andrea <Andrea.Vitalich@kingcounty.gov>  
**Sent:** Monday, January 06, 2014 3:05 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Christopher Gibson (gibsonc@nwattorney.net); Brame, Wynne  
**Subject:** State v. Mario Medina, No. 89147-8  
**Attachments:** 146.129.183.156\_Exchange\_01-06-2014\_08-52-46.pdf

Dear Supreme Court Clerk,

Please find attached for filing via email the Supplemental Brief of Respondent, with certificates of service, in State v. Mario Medina, No. 89147-8.

Thank you,

Andrea Vitalich  
WSBA #25535, Office WSBA #91002  
King County Prosecutor's Office, Appellate Unit  
W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-9655