

NO. 93987-0

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON M. BIGSBY,

Petitioner.

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STATE'S RESPONSE TO  
BRIEF OF AMICI CURIAE

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## **I. ISSUE**

Did the 2008 amendments to the Sentencing Reform Act abolish the concurrent authority of sentencing courts to impose sanctions for violations of conditions of community custody??

## **II. STATEMENT OF THE CASE**

The facts are correctly set out in the Court of Appeals opinion.

## **III. ARGUMENT**

### **THE STATUTES CITED BY AMICI DO NOT ADDRESS THE AUTHORITY OF SENTENCING COURTS.**

The fundamental issue in this case is the legislative intent of the 2008 amendments to the Sentencing Reform Act, Laws of 2008, ch. 231. The nature and effect of those amendments was discussed in the State's Court of Appeals brief. Brief of Respondent at 4-7. Prior to those amendments, sentencing courts had concurrent authority to impose sanctions for violation of sentence conditions. State v. Gamble, 146 Wn. App. 813, 192 P.3d 399 (2008). The amendments were "not intended to either increase or decrease the authority of sentencing courts or the department [of corrections] relating to supervision." Laws of 2008, ch. 231, § 6. The amendments were therefore not intended to affect sentencing courts' pre-existing concurrent authority.

The brief of amici curiae says very little about the 2008 amendments. Instead, it focuses on two other statutes dealing with the authority of the Department of Corrections (DOC): a subsequent 2012 statute (Laws of 2012, 1<sup>st</sup> sp. sess., ch. 6) and a prior 1999 statute (the Offender Accountability Act (OAA), Laws of 1999, ch. 196). The 2012, statute, of course, says nothing about the Legislature's intention in 2008. Amici point to nothing in that statute that created any new restrictions on the power of sentencing courts.

The effect of the 1999 statute was considered by the Court of Appeals in Gamble. The court held that "the legislature did not, by authorizing DOC to punish community custody violations, divest the superior courts of the subject matter jurisdiction to do so." Gamble, 146 Wn. App. at 820 ¶ 17. The legislature has had ample opportunity to repudiate that statement, but it has not done so.

As contrary authority concerning the effect of the 1999 statute, amici cite the Final Bill Report on the 2008 statute. That report contained the statement that the OAA "gave the DOC the exclusive authority to sanction all violations." Final Bill Report on

HB 2719 at 2 (2008).<sup>1</sup> Not all the legislative reports on this point agree with that statement. A Senate committee report on an earlier version of the 2008 amendments says something significantly different:

The OAA attempted to simplify and streamline the supervision process by consolidating supervision into one term, community custody, and giving the Department of Corrections the authority to sanction offenders who violate their supervision. Previously, final authority for sanctions only existed with the courts.

Senate Bill Report on SB 6842 at 1-2 (2008).<sup>2</sup> This report indicates that the OAA gave sanctioning authority to DOC, but not *sole* authority.

Both of these bill reports were, of course, written years after the passage of the 1999 statute. The affidavit of a legislator is inadmissible to establish legislative intent. City of Spokane v. State, 198 Wash. 682, 687, 89 P.2d 826 (1939). By the same reasoning, the opinions of legislative staff members, written years after the fact, is not valid evidence of legislative intent. Contemporaneous bill reports on the 1999 statute do not say that the bill was intended to

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<sup>1</sup> This report can be viewed at <http://lawfilesextd.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/House/2719.FBR.pdf>.

<sup>2</sup> This report can be viewed at <http://lawfilesextd.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/Senate/6842.SBR.pdf>.

give DOC sole sanctioning authority. Senate Bill Report on E2SSB 5421 (1999);<sup>3</sup> House Bill Report on E2SSB 5421 (1999).<sup>4</sup>

Even with respect to interpretation of the 2008 statute, the Final Bill Report is of limited value. It was written after passage of the 2008 statute. It was not considered by any of the committees who acted on the bill, or the legislators who voted on it. The relevant amendments were inserted by the Senate Judiciary Committee, without ever being considered by a House committee. See Bill History at <http://app.leg.wa.gov/billsummary?BillNumber=2719&Year=2007>. The Bill Reports that were before the Senate Committee says the same thing as the formal intent statement: it was not intended to make any substantive change to the SRA. Senate Bill Report on SB 6842 at 2; Senate Bill Report on HB 2719 at 2 (2008) (summarizing testimony in favor of the amendments).<sup>5</sup> Statements in the Final Bill Report cannot overcome the Legislature's express statement of its intent not to alter the authority of sentencing courts. Laws of 2008, ch. 231, § 6.

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<sup>3</sup> This report can be viewed at <http://lawfilesexst.leg.wa.gov/biennium/1999-00/Pdf/Bill%20Reports/Senate/5421-S2.SBR.pdf>.

<sup>4</sup> This report can be viewed at <http://lawfilesexst.leg.wa.gov/biennium/1999-00/Pdf/Bill%20Reports/House/5421-S2.HBR.pdf>.

<sup>5</sup> This report can be viewed at <http://lawfilesexst.leg.wa.gov/biennium/2007-08/Pdf/Bill%20Reports/Senate/2719.SBR.pdf>.

Amici discuss the policies underlying the Legislature's limitations on DOC sanctioning authority. There are, however, countervailing policies. The 1999 statute was based in part on financial concerns. The testimony supporting the bill discussed the need to focus the workload of Community Corrections Officers on those offenders who pose the highest risk. Senate Bill Report on E2SSB 5421 at 3. The Legislature thus recognized that there were insufficient resources to fully supervise all offenders. Sentencing courts can fill this gap when they consider it to be necessary.

There is no reason to anticipate that courts will start conducting sanctions hearings for all offenders that they have sentenced. Even though Gamble recognized their authority to do so, few judges have exercised that authority. In many cases, judges consider DOC supervision to be adequate. Furthermore, judges as well lack the resources to supervise all offenders.

In isolated cases, however, judicial authority to impose sanctions can close the gaps in DOC supervision. If the Legislature wishes to abolish that authority, it can do so. Until that happens, this court should leave the authority of sentencing courts intact.

**IV. CONCLUSION**

The trial court's order should be affirmed.

Respectfully submitted on May 31, 2017.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
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IN THE SUPREME COURT  
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THE STATE OF WASHINGTON,

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The undersigned certifies that on the 31<sup>st</sup> day of May, 2017, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

STATE'S RESPONSE TO BRIEF OF AMICI CURIAE

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Rhona Taylor; [rhona.taylor@columbialegal.org](mailto:rhona.taylor@columbialegal.org); Nicholas Brian Allen; [nick.allen@columbialegal.org](mailto:nick.allen@columbialegal.org); Cindy Arends Elsberry; [cindy@defensenet.org](mailto:cindy@defensenet.org); Washington Appellate Project; [wapofficemail@washapp.org](mailto:wapofficemail@washapp.org); [greg@washapp.org](mailto:greg@washapp.org)

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

Dated this 31<sup>st</sup> day of May, 2017, at the Snohomish County Office.

  
\_\_\_\_\_  
Diane K. Kremenich  
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Snohomish County Prosecutor's Office

**SNOHOMISH COUNTY PROSECUTOR'S OFFICE**

**May 31, 2017 - 2:23 PM**

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