

NO. 93987-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON BIGSBY,

Petitioner.

---

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

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SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION

Before all else in statutory interpretation, the Court assumes the legislature means exactly what it says. In the statute addressing violations of sentence conditions, the legislature said: for individuals “being supervised by the department, any sanctions shall be imposed by the department.” It also said: if the individual “is not being supervised by the department, any sanctions shall be imposed by the court.” The Court should give effect to what the legislature plainly said: because Brandon Bigsby was under department supervision, the department had authority to sanction Mr. Bigsby for sentence violations, and the superior court did not.

B. ISSUE FOR WHICH REVIEW WAS GRANTED

A trial court can only exercise sentencing authority granted to it by statute. RCW 9.94A.6332(7) provides that individuals under supervision of the Department of Corrections (the department) shall be sanctioned by the department. Subsection (8) authorizes the trial court to impose sanctions only upon individuals not under department supervision. Where Mr. Bigsby was under department supervision and sanctioned by the department, did the trial court exceed its authority by sanctioning Mr. Bigsby to an additional 30 days of confinement?

### C. STATEMENT OF THE CASE

Brandon Bigsby pled guilty to possessing a controlled substance, and his sentence included 12 months of community custody with the condition to obtain a drug evaluation and comply with recommended treatment. CP 32. The court set a review hearing for August 5, 2015, at which time Mr. Bigsby was required to present an evaluation or other documentation of his involvement in treatment. CP 34.

Before the review hearing, however, the department determined Mr. Bigsby violated his sentence conditions by failing to obtain a treatment evaluation and sanctioned him to 18 days' confinement. CP 5-6. He therefore could not appear in court on August 5. *Id.*; 9/9/15 RP 1-3. The court issued an arrest warrant for his failure to appear. 9/9/15 RP 1-2.

At a hearing following his arrest, Mr. Bigsby argued RCW 9.94A.6332(7) vested the department, and not the court, with the authority to sanction him for community custody violations occurring while he is under department supervision. 9/14/15 RP 2-4. That subsection provides, "In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737." RCW 9.94A.6332(7). Subsection (8), on the other hand, provides the trial court with authority to sanction when the offender is not being supervised by the department. RCW 9.94A.6332(8). The trial court

concluded it had “inherent authority” to sanction Mr. Bigsby, imposed 30 days’ incarceration, and invited Mr. Bigsby to appeal. 9/14/15 RP 7-9.

D. SUPPLEMENTAL ARGUMENT

Reviewing issues of statutory interpretation de novo, “the court should assume that the legislature means exactly what it says. Plain words do not require construction.” *Davis v. State ex rel., Dep’t of Licensing*, 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999).

The plain language resolves the issue on review: whether the trial court could sanction Mr. Bigsby for community custody violations after the department sanctioned him. RCW 9.94A.6332 provides in full:

**Sanctions—Which entity imposes.**

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

- (1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.
- (2) If the offender was sentenced under the special sex offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.
- (3) If the offender was sentenced under the parenting sentencing alternative, any sanctions shall be imposed by the department or by the court pursuant to RCW 9.94A.655.

(4) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(5) If the offender was released pursuant to RCW 9.94A.730, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(6) If the offender was sentenced pursuant to RCW 10.95.030(3) or 10.95.035, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

**(7) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.** If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions. [emphasis added]

(8) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

**1. The plain language of the statute provides 'if the offender is being supervised by the department, any sanctions shall be imposed by the department' and only if 'the offender is not being supervised by the department, [then] any sanctions shall be imposed by the court.'**

The legislature directed that the department has sole authority to impose sanctions if an offender is being supervised by the department.

This Court determines the meaning of a statutory provision from the ordinary meaning of the words used, the context of the section in which the provision is found, and related provisions. *State v. Weatherwax*,

No. 93192-5, Slip Op. 10 (Apr. 6, 2017). If the language of a statute is unambiguous that language alone controls. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005); *Tommy P. v. Bd. of County Comm'rs*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982).

The legislature dictates a trial court's sentencing authority. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). RCW 9.94A.6332 authorizes the department, and not the trial court, to sanction individuals who violate sentence conditions while under the department's supervision. Specifically, subsection (7) provides, "if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737." Thus, subsection (7)'s plain language authorizes the department alone to sanction an individual while under department supervision. *In re Det. of Martin*, 163 Wn.2d 501, 508, 182 P.3d 951 (2008) (statutory language explicitly authorizing exclusive authority to a specific prosecutor "cannot be interpreted to mean anything but exactly what it says"); *In re Pers. Restraint of Hopkins*, 137 Wn.2d 897, 901, 976 P.2d 616 (1999) (the legislature's inclusion of certain things shows it intended omitted items to be excluded).

Although the plain language leaves no doubt, subsection (8) confirms the exclusivity of the department's authority. It provides, "If the offender is not being supervised by the department, any sanctions shall be

imposed by the court pursuant to RCW 9.94A.6333.” RCW 9.94A.6332(8). Subsection (8)’s plain language renders obvious that the trial court only has authority if the department does not: “If the offender is not being supervised by the department.” *Id.*

Brandon Bigsby was under the department’s supervision. The department had sole authority to sanction Mr. Bigsby until the community custody term expired. RCW 9.94A.6332(7).

2. **By providing concurrent authority in other subsections, the legislature’s intent to provide exclusive authority to the department in subsection (7) is clear.**

If the legislature intended the department and court to exercise concurrent authority over Mr. Bigsby, it would have repeated the language from subsections (1), (2) and (3). *Weatherwax*, Slip Op. 10. The legislature’s use of distinct language indicates it intended each word, phrase or provision to carry different meanings. *E.g.*, *State v. Conover*, 183 Wn.2d 706, 712-13, 355 P.3d 1093 (2015) (legislature’s use of different language shows it intended provisions to carry different meanings); *State v. Sweat*, 180 Wn.2d 156, 161-63, 322 P.3d 1213 (2014) (honoring use of distinct articles “a” and “the” because reading “statute otherwise would render statutory terms-albeit small ones-meaningless”).

The initial three subsections of .6332 explicitly provide for the department or court to have equal authority to sanction in alternative sentencing schemes, stating, “any sanctions shall be imposed by the department or the court.” RCW 9.94A.6332(1)-(3) (emphasis added). For these sentences, the legislature explicitly authorized both the department and the court to impose sanctions.

However, subsection (7) reads differently. It authorizes the department to sanction an individual only while under department supervision: “In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.” RCW 9.94A.6332(7).

By employing the phrase “the department or . . . the court” in subsections (1), (2) and (3), while employing different language in subsection (7) and (8), the legislature evidenced it did not authorize both the department and court to have authority to sanction when (7) or (8) applies. *State v. Jackson*, 137 Wn.2d 712, 723-24, 976 P.2d 1229 (1999).

**3. The remaining text of subsection (7) and the SRA sections cross-referenced in subsections (7) and (8) further reinforce that the department had exclusive authority to sanction Mr. Bigsby.**

The legislature also explicitly stated in subsection (7) that the court “retains” authority for indeterminate and suspended sentences not

applicable here. RCW 9.94A.6332(7). That clause provides, “If a probationer is being supervised by the department pursuant to [RCW provisions inapplicable here,] the court retains any authority that those statutes provide to respond to a probationer’s violation of conditions.” *Id.* Because the legislature explicitly retained authority for the court for these other sentences, it plainly did not intend courts to have concurrent authority in the other circumstances present here. *Jackson*, 137 Wn.2d at 723-24.

Subsections (7) and (8) also cross-reference provisions of the Sentencing Reform Act (SRA), which again confirm that only the department has authority to sanction while it supervises the individual and only the trial court has authority when the department’s supervision has concluded. *See Weatherwax*, Slip Op. 10 (recognizing cross-references within a provision provide important interpretive clues).

RCW 9.94A.737, cross-referenced in subsection (7), governs the department’s supervision of individuals on community custody, like Mr. Bigsby. *See* RCW 9.94A.6332(7) (authorizing the department to impose sanctions pursuant to .737 on individuals under department supervision). Consistent with subsection (7), the cross-referenced provision only discusses the department. Reading these provisions together, it is clear the legislature intended only the department to have authority to sanction

when the conditions of subsection (7) are satisfied (i.e., the individual is being supervised by the department and the special alternative sentencing schemes of subsections one through six do not apply).

On the other hand, the internally referenced provision in subsection (8), RCW 9.94A.6333, demonstrates trial courts possess authority to sanction only when the individual is not under department supervision. Section .6333 provides, “If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.” RCW 9.94A.6333 (emphasis added). Subsection (8) and section .6333 each provide the trial court with authority only when there is no department supervision. The provisions should be taken at face value.

**4. The plain language of subsection (7) is not altered by RCW 9.94B.040, an independent section in a different chapter that is not cross-referenced.**

Snohomish County contends the Court should ignore the plain language of .6332 and look to an unreferenced provision in an entirely separate chapter of the revised code (RCW 9.94B.040(1)) to read concurrent authority into subsection (7) and (8). This argument should be

rejected because it requires the Court to read out language actually included in the statute and to include language the legislature excluded.

Chapter 9.94B is entitled “SENTENCING—CRIMES COMMITTED PRIOR TO JULY 1, 2000.” The first subsection likewise states the chapter applies to sentences for crimes committed prior to July 1, 2000. RCW 9.94B.010(1). Section .040, on which Snohomish County relies, provides: “If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.”

For the following four reasons, this provision does not alter the plain meaning of RCW 9.94A.6332(7).

- a. Grafting RCW 9.94B.040 onto section .6332 cannot be correct because it requires the Court to render meaningless language in chapter 9.94B.

Snohomish County’s reading requires the Court to ignore the July 1, 2000 date limitation in the title of the chapter and explicitly enunciated in RCW 9.94B.010. This Court will not construe statutes so as to render language superfluous. *Martin*, 163 Wn.2d at 510.<sup>1</sup>

RCW 9.94B.010(1) provides the “chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior

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<sup>1</sup> *Accord State v. K.L.B.*, 180 Wn.2d 735, 742, 328 P.3d 886 (2014).

to July 1, 2000.” Under the County’s argument, “*may be applicable*” means the provisions may apply to *pre-July 1, 2000* sentences just as they may apply to *post-2000 sentences*. This reading renders the supplied date entirely meaningless: followed to its logical conclusion, chapter 9.94B must apply to all sentences. If the legislature had so intended, it would have used different language.<sup>2</sup>

Instead, the provision must mean that not all of chapter 9.94B is applicable to every pre-July 1, 2000 sentence. For pre-July 2000 sentences, some or all of the provisions in the chapter *may be applicable*. RCW 9.94B.010. This interpretation renders no words superfluous.

- b. If the legislature had intended .6332(7) to be usurped by chapter 9.94B it would have said so directly.

As this Court recently recognized in *Weatherwax*, the legislature knows how to cross-reference SRA provisions when it intends for provisions to be read together. Slip Op. 10. Although neither .6332 nor RCW 9.94B.040 references the other, Snohomish County asks this Court to read RCW 9.94B.040(1) into RCW 9.94A.6332(7).

Yet, where the legislature intends for provisions of chapter 9.94B to apply to chapter 9.94A, it has said so directly. For example, RCW

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<sup>2</sup> On the contrary, the provisions moved to chapter 9.94B along with RCW 9.94B.040 generally relate to pre-July 2000 sentencing. Laws of 2008, ch. 231, § 56 (recodifying former sections that relate to pre-July 1, 2000 sentences).

9.94A.501(8) explicitly incorporates RCW 9.94B.050 in relation to community custody terms for certain crimes preceding July 2000.<sup>3</sup> Additionally, when calculating an offender score under RCW 9.94A.525, the legislature provided that the score increases by one point if the current offense was committed while on community custody and then explicitly stated that terms of supervision imposed under provisions in chapter 9.94B are included.<sup>4</sup> And RCW 9.94B.040 is explicitly referenced in the section of chapter 9.94A that discusses legal financial obligations.<sup>5</sup>

The converse is also true: the provisions of chapter 9.94B explicitly reference provisions of chapter 9.94A where the two should be read together. *E.g.*, RCW 9.94B.050 (cross-referencing sections of chapter 9.94A that apply); RCW 9.94B.060 (same).

That RCW 9.94B.040 is not cross-referenced in subsection (7) or in any of the subsections of .6332 strongly indicates the legislature did not intend for 9.94B.040 to trump the plain language of subsection (7).

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<sup>3</sup> “The period of time the department is authorized to supervise an offender under this section may not exceed the duration of community custody specified under RCW 9.94B.050, 9.94A.701 (1) through (8), or 9.94A.702, except in cases where the court has imposed an exceptional term of community custody under RCW 9.94A.535.”

<sup>4</sup> “If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.”

<sup>5</sup> “The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.”

- c. Applying RCW 9.94B.040 to section .6332 also renders subsections (1), (2), (3) and (8) superfluous.

Reading RCW 9.94B.040 into .6332(7) cannot be correct because it would also render half the subsections of .6332 superfluous.

Subsections (1) through (3) authorize sanctioning by both the department and the court. RCW 9.94A.6332(1)-(3). Subsection (8) provides the court with authority to sanction in cases where the offender is not being supervised by the department. All four subsections would be superfluous if RCW 9.94B.040 authorizes the court to impose sanctions in all cases, as Snohomish County claims.<sup>6</sup> This Court cannot interpret the statute to render any portion superfluous. *Conover*, 183 Wn.2d at 718.

- d. Snohomish County's argument leads to absurd results.

Snohomish County's argument must also be rejected because it leads to absurd results. *See, e.g., Weatherwax*, Slip Op. 9, 15 (legislature presumed not to intend absurd results).

Under a plain language reading of the statute, it is clear which body has authority at any given time. When Mr. Bigsby is under

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<sup>6</sup> If RCW 9.94B.040 applies at all to post-July 1, 2000 sentences then it should be read in harmony with subsection (8) not subsection (7)—that is, as a supplement to the court's authority when applicable pursuant to .6332(8). *Anderson v. State, Dep't of Corr.*, 159 Wn.2d 849, 861, 154 P.3d 220 (2007) (statutes relating to the same subject matter must be read as a unified whole to create a harmonious statutory scheme that maintains the integrity of the respective statutes). But such a reading would still conflict with the legislative intent, as discussed in section 5a.

department supervision, the department has authority to sanction him for noncompliance. When his term of community custody expires, or if community custody is not imposed, the trial court has authority. The rule is direct and easy to follow.

The matter becomes complicated, to the point of absurdity, if both the department and court have authority to sanction individuals for the same violations. For example, Mr. Bigsby could not attend the court's review hearing because the department had already detained him for violating the terms of his supervision. CP 5-6; 9/9/15 RP 1-3. Yet, after he served his department sanction, he was detained again on the court's warrant and sanctioned to 30 more days' incarceration. 9/14/15 RP 7-9.

In continuing Mr. Bigsby's supervision, the court apparently sought to oversee his substance abuse recovery. But, Mr. Bigsby was given little opportunity to complete his evaluation and enter treatment as he was alternately held by the department and the court. The concurrent supervision stymied his reentry and rehabilitation.

- e. In *State v. Gamble*, the Court of Appeals did not address this statute and anticipated that language now appearing in the statute would alter its holding.

Snohomish County purports that *State v. Gamble*, 146 Wn. App. 813, 192 P.3d 399 (2008), supports its strained interpretation. However, that case did not address subsection (7). *Cf. Conover*, 183 Wn.2d at 715-

18 (finding case addressing different issue to be inapposite to question of statutory interpretation on review).

At the time of the sentence violation at issue in *Gamble*, RCW 9.94B.040 did not exist and instead former RCW 9.94A.634(1) expressly authorized the trial court to sanction an offender who violated the conditions of sentence. In 2008, former RCW 9.94A.634(1) was recodified as RCW 9.94B.040. Importantly, prior to its recodification former RCW 9.94A.634(1) did not limit the timeframe to which that statute applies. In contrast, RCW 9.94B.040 is limited to offenses committed prior to July 1, 2000. *See* RCW 9.94B.010 and chapter title.

Unlike the more recently enacted RCW 9.94A.6332(8), moreover, at the time of *Gamble*, no provision expressly mentioned when the trial court had authority to act and when it did not. *Compare Gamble*, 146 Wn. App. at 817 (noting no statute relied on by *Gamble* discusses authority of trial court) *with* RCW 9.94A.6332(8) (authorizing trial court to sanction if individual is not under department supervision).

*Gamble* also recognizes that amendments—like those enacted here—would affect its holding. *Gamble*, 146 Wn. App. at 820. For example, the holding could be different if an SRA provision granted the department sanctioning authority while divesting the court of authority. *Id.* RCW 9.94A.6332(7) and (8) now do that. The Court also found

significant that “in the absence of statutory language indicating otherwise, a sentencing court has jurisdiction to enforce the requirements of a sentence.” *Gamble*, 146 Wn. App. at 820 (emphasis added). RCW 9.94A.6332(7) and (8) now provide language indicating the sentencing court does not have authority. This provision was absent in *Gamble*.

Thus, *Gamble* simply interpreted the statute that then existed, which—unlike RCW 9.94A.6332 and chapter 9.94B—did not exclusively provide authority to the department, did not expressly divest the court of authority and did not contain any limitation as to the date of offense. Consequently, *Gamble* does not control the interpretation of .6332(7).

**5. If the Court nonetheless finds the statute ambiguous, legislative history, the later-in-time doctrine and the rule of lenity support the department’s exclusive authority.**

The plain meaning of RCW 9.94A.6332(7) unambiguously indicates that the department has exclusive sanctioning authority over those it supervises. However, even if the Court looks beyond the plain meaning of the statute, legislative history, the preference for the most recently enacted provisions, and the rule of lenity further support the department’s exclusive authority.

- a. Legislative history shows the department maintains sole authority during periods of supervision.

If the plain language is ambiguous, the Court looks to legislative history to effect the legislature’s intent. *State v. Komok*, 113 Wn.2d 810, 815, 783 P.2d 1061 (1989). Bill Reports for the 2008 amendments show the legislature intended to simplify and reorganize the supervision provisions while maintaining the department’s exclusive authority to sanction community custody violations. Final Bill Report on HB 2719 at 2 (2008) (recognizing “DOC [has] exclusive authority to sanction all violations” since 1999; bill merely simplifies and reorganizes supervision statutes).<sup>7</sup> The legislature further intended that the provisions in chapter 9.94A consolidate current community custody conditions, but the newly created chapter 9.94B contain “obsolete provisions” applicable to older sentences. Final Bill Report at 2; House Bill Report at 3 (“older forms of supervision are moved to a new chapter”); Senate Bill Report at 2 (same).

Accordingly, section .6332 of chapter 9.94A applies to Mr. Bigsby’s 2015 sentence. Section .040 of chapter 9.94B does not.

Further, in enacting RCW 9.94A.6332, the legislature sought to eliminate duplication and avoid confusion. Laws of 2008, ch. 231, § 6. A

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<sup>7</sup> Accord House Bill Report on HB 2719 at 3 (2008) (department has had sole authority to sanction since 1999 legislation and bill reorganizes and simplifies provisions); Senate Bill Report on HB 2719 at 2 (2008) (bill makes only technical, organizational changes and not substantive changes to SRA).

single provision, section .6332, accordingly, explicitly lists which body has authority to sanction. RCW 9.94A.6332. If the Court applies RCW 9.94B.040(1) on top of RCW 9.94A.6332, the Court will create duplication and confusion. Following the plain language of .6332(7) implements the simplicity and uniformity the legislature intended.

The legislature also stated the new sections of the SRA, including .6332, “are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision.” Laws of 2008, ch. 231, § 6. Snohomish County relies on this single sentence to argue that because the trial court had authority to act under *Gamble*, it must maintain that authority today. Answer to Petit. for Rev. at 1-2; Br. of Rep’t, Court of Appeals, at 6. The County is wrong for two reasons.

First, as noted, the legislature understood the department had exclusive sanctioning authority when it enacted the amendments at issue here. Final Bill Report at 2; House Bill Report at 3. The plain language of subsection (7) merely continues this exclusive authority.

Second, Snohomish County reads the “or” in this sentence in the disjunctive, as if it is a zero-sum game. But, there is a better reading that harmonizes the above-mentioned statements of intent and the provisions enacted. The “or” should be read in the conjunctive. *State v. Keller*, 98 Wn.2d 725, 728-29, 657 P.2d 1384 (1983) (the words “and” and “or” are

read interchangeably where consistent with legislative intent). In other words, the amendments were not intended to increase or decrease, overall, the collective authority of the department and the courts relating to supervision. Allocating authority between the department and the court, so that each has its own authority at a specified time, does not increase or decrease the total supervisory powers. However, it does simplify the provisions related to supervision, avoid duplication, and lessen confusion.

b. RCW 9.94A.6332 prevails; it is more recent and specific.

Interpreting RCW 9.94B.040 to provide trial courts with authority to act even when an individual is under department supervision creates a conflict with .6332(7). Where two provisions dealing with the same subject conflict, the more recent, specific statute prevails. *State v. Becker*, 59 Wn. App. 848, 852-53, 801 P.2d 1015, 1017 (1990) (citing *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 36, 785 P.2d 447 (1990)).

Enacted in 2008, section .6332 is more recent than RCW 9.94B.040, which was enacted in 1981. *Compare* Laws of 2008, ch. 231, § 18 (enacting RCW 9.94A.6332) *with* Laws of 1981, ch. 137 § 20 (enacting current RCW 9.94B.040); Laws of 2008, ch. 231, § 56 (recodifying to RCW 9.94B.040). Section .6332 is also more specific because it parses authority according to sentencing types. It therefore controls in the event of a conflict with RCW 9.94B.040.

- c. The rule of lenity requires reading section .6332 independently from 9.94B.040.

Where a statute could plausibly be interpreted different ways, the rule of lenity requires it be interpreted strictly in favor of the defendant. *Weatherwax*, Slip Op. 15-16, 18-19 (“The underlying rationale for the rule of lenity is to place the burden on the legislature to be clear and definite in criminalizing conduct and establishing criminal penalties.”); *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 462, 219 P.3d 686 (2009).

Read strictly, .6332(7) provides the department with exclusive authority to sanction Mr. Bigsby while under department supervision. If the legislature intends Mr. Bigsby to receive multiple penalties from multiple authorities, it must say so explicitly. *Weatherwax*, Slip Op. 19.

E. CONCLUSION

Under the plain language of RCW 9.94A.6332(7), the legislature vested the department with sole authority to sanction Mr. Bigsby. The trial court’s order sanctioning Mr. Bigsby should be reversed.

DATED this 28th day of April, 2017.

Respectfully submitted,

s/ Marla L. Zink  
Marla L. Zink – WSBA 39042  
Washington Appellate Project  
Attorney for Petitioner

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 ) NO. 93987-0  
 )  
 )  
 BRANDON BIGSBY, )  
 )  
 )  
 Petitioner. )

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 28<sup>TH</sup> DAY OF APRIL, 2017, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON, THIS 28<sup>TH</sup> DAY OF APRIL, 2017.



X \_\_\_\_\_

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# WASHINGTON APPELLATE PROJECT

April 28, 2017 - 3:50 PM

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**Appellate Court Case Title:** State of Washington v. Brandon Michael Bigsby  
**Superior Court Case Number:** 15-1-00532-9

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