

No. 944393

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

V.

ERIK PETERSON

SUPPLEMENTAL BRIEF OF APPELLANT

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

TABLE OF CONTENTS

A. Supplemental Argument of Petitioner	1
B. Conclusion	4

TABLE OF AUTHORITIES

Cases

<i>State v. Badger</i> , 64 Wash.App. 904, 827 P.2d 318 (1992)	3
<i>State v. Bahl</i> , 164 Wn.2d 739, 193 P.3d 678 (2008)	4
<i>State v. Valencia</i> , 169 Wn.2d 782, 239 P.3d 1059 (2010)	4

A. Supplemental Argument of Petitioner

This case ultimately asks the question: Who should decide? Should modifications to community custody be made by judges in an adversarial setting with input from all concerned parties or by community corrections officers without input from anyone? Should determinations of constitutional rights be made in an open courtroom subject to appellate review or in a proverbial smoke-filled room? Should decisions about SSOSA offenders be decided by judicial officers or quasi-judicial officers?

RCW 9.94A.670, the SSOSA statute, is unique in the SRA in almost every way. It is the only statute that authorizes suspended sentences for felonies. It is the only statute where the sentencing court retains jurisdiction for the period of community custody. It is the only statute that authorizes, indeed requires, annual reviews of the sentence. These provisions are essential to the proper functioning of the SSOSA statute, but have been seriously undercut by the analysis of the Court of Appeals.

The department complains that the March 30, 2008 order (as amended on August 9, 2013) eliminated the requirement that Mr. Petterson “comply with any conditions imposed by the department under

RCW 9.94A.703,” as set out in subsection (5)(b). The department’s complaint is not well taken for three reasons

First, the department was specifically asked in the weeks leading up to the 2008 order for input on the community custody conditions and it declined to provide input. Further, the trial court has always indicated a willingness to modify its orders as needed. In fact, that is exactly what happened in 2013 when the department raised an issue related to Mr. Petterson’s plans to move out of state. A hearing was held at the request of the department and the order was modified to reflect the changing circumstances. Should there be future community safety concerns with Mr. Petterson, there is no reason to believe the court is unwilling to hear an appropriate motion supported by facts.

Second, the statute specifically twice authorizes the court to “modify” the community custody conditions. See subsections (8)(b) and (9). It is unclear what the department thinks the court is supposed to be modifying. At the treatment termination hearing, the sentencing court may terminate treatment and modify the community custody conditions or the court may extend treatment. Implicit in the statute is that the offender is either doing well on the SSOSA, which should be rewarded, or not doing well, which should be sanctioned. If the offender is doing well, then the offender is removed from the treatment requirement and other

community custody conditions may be modified, presumably to be less stringent. If the offender is not doing well, then the court may extend treatment in two-year increments and other community custody conditions may be modified, presumably to address the issues that prevented him from graduating from treatment. Also implicit in the statute is that the offender will eventually graduate from the program or have his SSOSA revoked by the court. Only the sentencing court has jurisdiction to revoke a SSOSA sentence, although the department may make recommendations. Subsections (10) and (11). In the event a motion to revoke a SSOSA sentence is filed, the sentencing court may either grant the motion or impose up to sixty days per violation. RCW 9.94A.633(1); *State v Badger*, 64 Wash.App. 904, 827 P.2d 318 (1992).

Third, the statutory scheme contemplates that the department and the court may on occasion disagree on proposed community custody conditions. In that instance, the court prevails. RCW 9.94A.704(6) states, “The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.” It makes sense that the court performing its judicial function would trump the department performing its “quasi-judicial function” RCW 9.94A.704(11). If the department’s interpretation of the statute, as adopted by the Court of Appeals below, is not reversed, it creates the

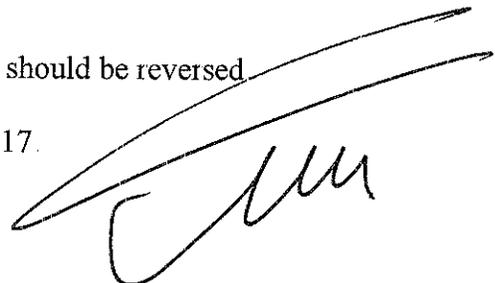
situation that the department is able to supersede the express wishes of the court.

This case reflects a war between the courts, i.e. judicial officers, and the department, i.e. quasi-judicial officers. So far, the department is winning. If the Court of Appeals opinion is allowed to stand, not only is the authority of the trial court undercut, but ultimately the authority of this Court is undercut. If the department is allowed to impose conditions that “contravene” the conditions imposed by the court, then even the orders of this Court may be ignored. This Court has never been shy about striking down community custody conditions when appropriate. *State v Valencia*, 169 Wn.2d 782, 239 P.3d 1059 (2010); *State v. Bahl*, 164 Wn.2d 739, 193 P.3d 678 (2008). But if the department is allowed to simply disregard court orders, then this Court should be prepared to abandon its community custody jurisprudence.

B. Conclusion

The opinion of the Court of Appeals should be reversed.

Dated this 25th day of September, 2017.



Thomas E. Weaver
WSBA #22488
Attorney for Appellant

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

3 DATED: September 25, 2017, at Bremerton, Washington.

4 

5 _____
6 Alisha Freeman
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE LAW OFFICE OF THOMAS E. WEAVER

September 25, 2017 - 2:13 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94439-3
Appellate Court Case Title: State of Washington v. Erik G. Petterson
Superior Court Case Number: 01-1-01509-3

The following documents have been uploaded:

- 944393_Briefs_20170925141116SC326771_2929.pdf
This File Contains:
Briefs - Appellants Supplemental
The Original File Name was Petterson Supplemental Brief.pdf

A copy of the uploaded files will be sent to:

- amy@amymuthlaw.com
- griff1984@comcast.net
- ian@amymuthlaw.com
- kcpa@co.kitsap.wa.us
- mandyr@atg.wa.gov

Comments:

Sender Name: Alisha Freeman - Email: admin@tomweaverlaw.com

Filing on Behalf of: Thomas E. WeaverJr. - Email: tweaver@tomweaverlaw.com (Alternate Email:)

Address:
PO Box 1056
Bremerton, WA, 98337
Phone: (360) 792-9345

Note: The Filing Id is 20170925141116SC326771