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Supreme Court No.: 95012-1
Court of Appeals No. 49029-3-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WAYLON JAMES HUBBARD,

Petitioner.

PETITION FOR REVIEW

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I. IDENTITY OF THE PETITIONER

Petitioner, Waylon Hubbard, by and through his attorney, Sarah Glorian of the Northwest Justice Project, seeks discretionary review of the decision designated in Section II, below. Mr. Hubbard is 37 years old, living in rural Pacific County where the economy has yet to catch up with much of the rest of Washington State. When he was 24 years old, Mr. Hubbard was convicted of possession of stolen property in the second degree.

Mr. Hubbard completed his sentence requirements when he paid his legal financial obligations (LFOs) on February 25, 2013. He learned from his 2004 conviction and remained out of trouble. Based on the trial court's decision Mr. Hubbard requests be affirmed in its entirety, the effective date of February 25, 2013 of the Certificate and Order of Discharge makes him eligible to vacate his felony conviction in February 2018. In contrast, if this Court affirms the Court of Appeals' decision, Mr. Hubbard will have to wait until 2021 (17 years since his conviction).

Mr. Hubbard, and others similarly situated, has paid his debt to society. For consistency in the application of the statutory scheme of RCW 9.9A.637, lifting the barrier this conviction creates should reflect when Mr. Hubbard actually paid those debts.

II. DECISION BELOW

Pursuant to RAP 13.4(b)(3) and (4), Mr. Hubbard respectfully requests this Court grant discretionary review of the decision by the Washington State Court of Appeals, Division Two, *State v. Hubbard*, No. 49029-3-II (August 22, 2017). Appendix A.

On April 2, 2016, Mr. Hubbard filed a Petition for Certificate and Order of Discharge, requesting the effective date be set when he completed his sentence requirements. On May 4, 2016, the trial court signed the Certificate and Order of Discharge, dated effective February 25, 2013, and on July 13, 2016, entered Findings of Fact and Conclusions of Law.

The State appealed the trial court decision. In a published opinion, the Court of Appeals affirmed the trial court's findings were supported by substantial evidence in entering Mr. Hubbard's certificate and order of discharge, and that the trial court's order is not a nunc pro tunc order. *Id.* at 5-6. However, the Court of Appeals remanded the case to have the effective date entered based on when the trial court received notice and adequate verification Mr. Hubbard satisfied the conditions of his sentence. *Id.* at 9.

The Court of Appeals' decision improperly impacts constitutionally protected liberty interests. Certificates of discharge are necessary to vacate convictions that impact employment, housing, education, and volunteer opportunities. Further, this decision involves issues of substantial public

interest—namely the ability of formerly incarcerated individuals to move on from their convictions—that should be determined by the Supreme Court.

III. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals err in its statutory interpretation of RCW 9.94A.637 in its analysis of what is the proper effective date of Mr. Hubbard's Certificate and Order of Discharge?

IV. STATEMENT OF THE CASE

On October 29, 2004, Mr. Hubbard entered a guilty plea for possession of stolen property in the second degree. (CP 8). As part of the Judgment and Sentence (CP 8-20), Mr. Hubbard was ordered to pay LFOs and a five-year no contact order was entered. (CP 10-12). He was sentenced to 30 days of confinement, 15 of which were converted to 120 hours of community restitution under the supervision of the Department of Corrections (DOC). (CP 13). Mr. Hubbard was ordered to comply with other conditions set forth in Appendix H (CP 14), including, in part, 12 months of community custody, no firearms, no consumption of alcohol or controlled substances, submission to urinalysis and breathalyzer, and alcohol and drug evaluation (with treatment, if recommended). (CP 18).

On December 15, 2004, the Judgment and Sentence was amended to omit Section 4.6 (12 months of community custody) and all conditions

previously set forth in Appendix H. (CP 21). As a result, on or about February 24, 2005 (filed March 9, 2005), DOC terminated its supervision of Mr. Hubbard. (CP 3-5). As of that date, DOC confirmed Mr. Hubbard had completed 55 of the 120 community restitution hours. *Id.*

Mr. Hubbard completed his 120 community restitution hours at a non-profit organization, Pacific Aging Council Endeavor (PACE) Senior Center, located in Raymond, Washington. (CP 6-7). Shelley Steveson, Site Manager at PACE, coordinated and supervised the community restitution hours performed by PACE volunteers as part of her regular duties. *Id.* Ms. Steveson worked at PACE until May 2011. *Id.* PACE closed in August 2011. *Id.* Because PACE has been closed since 2011, Ms. Steveson attested under penalty of perjury that “[w]hile there are no [PACE] records, I distinctly remember Mr. Hubbard, because he was good at showing up and doing the work as expected. I am confident of my recollection that he completed his 120 hours as was required.” (CP 7:5-7).

In his Petition, Mr. Hubbard attests under penalty of perjury that on February 25, 2013, he completed all requirements of his Judgment and Sentence, including the payment of all LFOs; the final requirement of his Judgment and Sentence. (CP 1:19-2:6). *See also* Appendix, Exhibit A, Declaration, Virginia Leach, Pacific County Clerk (October 6, 2016).

On April 6, 2016, Mr. Hubbard filed a Petition for Certificate and Order of Discharge & Request Retroactively Dated to February 25, 2013. (CP 1-2). At a hearing on the merits on April 29, 2016, Superior Court Judge Michael J. Sullivan granted the discharge and took the petition under advisement to reread cases cited regarding the issue of the effective date. *See* Appendix, Exhibit B, Clerk's Note (April 29, 2016).

On May 4, 2016, Judge Sullivan signed the Certificate and Order of Discharge, dated effective February 25, 2013. (CP 26-27). On July 13, 2016, Judge Sullivan signed the Findings of Fact and Conclusions of Law of Defendant's Petition for Certificate and Order of Discharge entered on May 4, 2016. (CP 29-32). The State appealed. (CP 28).

V. ARGUMENT

A. Pursuant to RAP 13.4(b)(4), Mr. Hubbard's petition for discretionary review involves an issue of substantial public interest that should be determined by the Supreme Court

1. The plain language of RCW 9.94A.637(1)(c) must not be read in isolation, but rather, as part of the statutory scheme of RCW 9.94A.637; and as such, the language is ambiguous

RCW 9.94A.637(1)(c) applies, because Mr. Hubbard was released from DOC's supervision prior to completing his sentence requirements.

RCW 9.94A.637(1) states,

- (a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the

department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person

or by mailing the certificate to the offender's last known address.

The Court of Appeals held below,

[u]nder the plain language of RCW 9.94A.637(1)(c), the effective date of the certificate of discharge is the date the superior court receives *both* notice from the county clerk that the offender has satisfied the financial obligations of the sentence and adequate verification from the offender that the offender has satisfied all other conditions of his or her sentence.

State v. Hubbard, Appendix A, p. 8-9.

Cited in part by the Court of Appeals, this Court has stated,

Statutory interpretation is a question of law . . . review[ed] de novo. Courts should assume the Legislature means exactly what it says. Plain words do not require construction. The courts do not engage in statutory interpretation of a statute that is unambiguous. If a statute is plain and unambiguous, its meaning must be derived from the wording of the statute itself. *A statute is ambiguous if it can reasonably be interpreted in two or more ways*, but it is not ambiguous simply because different interpretations are conceivable. The courts are not “obliged to discern an ambiguity by imagining a variety of alternative interpretations.”

Berger v. Sonneland, 144 Wn.2d 91, 104, 26 P.3d 257 (2001) (emphasis added).

This court has also stated, “As a rule of statutory interpretation, courts construe statutes to avoid ‘absurd or strained consequences’.[sic] Moreover, courts should read the statute as a whole, considering all provisions in relation to each other and giving effect to each provision.”

Wright v. Engum, 124 Wn.2d 343, 351, 878 P.2d 1198 (1994), citing *In re Eaton*, 110 Wn.2d 892, 901, 757 P.2d 961 (1988) and *Nisqually Delta Ass'n v. DuPont*, 103 Wn.2d 720, 730, 696 P.2d 1222 (1985), respectively.

When reviewing RCW 9.94A.637(1)(c), as part of the statutory scheme of RCW 9.94A.637, as stated in *Wright*, the State and Court of Appeals' interpretation as to how it applies to Mr. Hubbard, and those similarly situated, results in "absurd or strained consequences." *Id.* at 351. Mr. Hubbard maintains the Court of Appeals erred in stopping its analysis at looking solely at the plain language of that isolated provision, instead of looking at it in context to the broader statutory scheme.

When read in this broader context, it becomes apparent RCW 9.94A.637(1)(c) is ambiguous. There are clearly two or more ways RCW 9.94A.637(1)(c) can be interpreted.

One interpretation is that of the Court of Appeals below. The Court looked to the plain language of RCW 9.94A.637(1)(c), in isolation of the rest of the statutory scheme, and held it is the offender's sole responsibility to provide the notice and verification of completion of his or her sentence requirements. *State v. Hubbard*, Appendix A, p. 11.

As proposed by Mr. Hubbard, a second, arguably more reasonable interpretation in light of the statutory scheme of RCW 9.94A.637 and the public policy behind it, is when reviewing RCW 9.94A.637(1)(c), one must

look at this subsection in the context of the broader statutory scheme of RCW 9.94A.637. In doing so, the ambiguity becomes apparent.

Specifically, an offender ordered to remain under DOC supervision pursuant to RCW 9.94A.637(1)(a) are those who have been convicted of more serious crimes. This (1)(a) offender receives his or her certificate of discharge *automatically* through the statutory process mandating DOC to notify the court on the offender's behalf "[w]hen an offender has completed all requirements of the sentence, including any and all legal financial obligations." RCW 9.94A.637(1)(a).

In contrast, pursuant RCW 9.94A.637(1)(c), the (1)(c) offender, like Mr. Hubbard, who is not under DOC supervision (as a result of being an offender convicted of less serious crimes), is required to navigate the issuance of the certificate of discharge on his own. In this case, it was not until 2015 Mr. Hubbard became aware a legal process existed to assist in cleaning up his conviction history to improve his employability options.

Mr. Hubbard's liberty interests should not be compromised by setting an arbitrary effective date some time in 2016 just because he was not under DOC supervision. Mr. Hubbard's effective date should be February 25 2013—the date he completed his sentence requirements.

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2. The Court of Appeals' decision is contrary to the Legislature's long-standing public policy regarding justice-involved individuals productively re-entering society; an issue of substantial public interest that should be determined by the Supreme Court

“The interpretation that is adopted should be the one that best advances the legislative purpose.” *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 E2d 24 (1991). The Court of Appeals dismissed Mr. Hubbard’s argument that a plain language reading of solely the subsection (1)(c) leads to “absurd” results, as defined in *Wright*, stating such an interpretation is “directly contrary to the plain language of the RCW 9.94A.637(1)(c).” *State v. Hubbard*, Appendix A, p. 10-11.

However, respectfully, the Court of Appeals’ plain language interpretation infers the Washington Legislature intended RCW 9.9A.637 provisions to be considerably easier for more serious offenders to receive the benefits from these provisions. And in contrast, a less serious offender, like Mr. Hubbard, is penalized for not having the benefit of the automated process completed on his or her behalf by DOC pursuant to RCW 9.94A.637(1)(a) and/or lacking timely knowledge of RCW 9.94A.637(1)(c).

Subsection (1)(c) was proposed, and then amended, during the 2004 legislative session. Laws of 2004, ch. 121, § 2. The impetus behind the addition of this subsection at the time was the responsibility for LFO

collections was being transferred to the county clerks. In a subsequent amendment to the bill, the Legislature eliminated DOC supervision of the two lowest risk categories of offenders. *Id.* This (1)(c) provision was added for unsupervised individuals, like Mr. Hubbard, to have access to the same mechanism of receiving a Certificate and Order of Discharge as the higher risk offenders receive while under DOC supervision.

There is nothing in the legislative history that reflects an intent to make the process different or more cumbersome for these (1)(c) unsupervised individuals. To the contrary, Mr. Hubbard's interpretation is consistent with the legislative intent consistently expressed by the Legislature regarding the importance of re-entry issues and removing barriers to successful re-entry.

For example, in 2002, discussing reinstating voting rights, the Legislature recognized:

. . . an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge.

Laws of 2002, ch. 16, § 1.

Similarly, in 2009, *State v. Miniken*, 100 Wn. App. 925, 999 P.2d 1289 (2000) was superseded by statute when the Legislature amended RCW 9.94A.637(2)(a) to clarify that a no-contact order is not part of an offender's sentence. The Legislature made a finding that a certificate and order of discharge should issue, and restoration of the right to vote and serving on a jury are appropriate when all other sentence requirements are completed other than a no-contact order.

The legislature finds that restoration of the right to vote and serve on a jury, for individuals who have satisfied every other obligation of their sentence, best serves to reintegrate them into society, even if a no-contact order exists. Therefore, the legislature further finds clarification of the existing statute is desirable to provide clarity to the courts that a certificate of discharge shall be issued, while the no-contact order remains in effect, once other obligations are completed.

Laws of 2009, ch. 288, § 1.

The clearest reflection of the consistency of legislative intent reflecting these issues of substantial public interest is how the interplay of the discharge and vacate statutes date back to the language of the original legislation in 1981, when the concepts, now enacted RCW 9.94A.637 (discharge) and RCW 9.94A.640 (vacate), were first promulgated. They read together:

NEW SECTION. Sec. 22. When an offender has completed the requirements of the offender's sentence, the sentencing court shall discharge the offender and provide the offender

with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. . . .

SECTION. Sec. 23. (1) *Every offender who has been discharged under section 22 of this act may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.*

Laws of 1981, ch. 137 (emphasis added).

There is no rationale why the consistency reflected above of the Legislature's long-standing public policy on re-entry and opportunity would have been altered to have different outcomes solely based on whether or not someone is under DOC supervision or not, or that a lesser offender would have more limited access to re-entry tools that improve opportunities for employment, credit, or housing than a more serious offender.

- B. Pursuant to RAP 13.4(b)(3), there is a significant question of law under the Constitution of the State of Washington or of the United States regarding the Court of Appeals erring in its interpretation of RCW 9.94A.637
1. Issuance of a Certificate and Order of Discharge informs society Mr. Hubbard has completed his sentence requirements and commences the five-year waiting period to be eligible to vacate his 2004 conviction

Mr. Hubbard completed his sentence requirements when he completed paying his LFOs on February 25, 2013. Based on the trial court's Certificate and Order of Discharge, dated effective February 25, 2013, Mr. Hubbard is eligible to vacate his 2004 conviction in February 2018.

Once his felony is vacated, Mr. Hubbard can truthfully answer applications, in particular those for employment, stating he has not been convicted of a crime. This impacts his ability to access employment, housing, credit, and other opportunities, improve his stability and contribution in re-entering society from incarceration.

RCW 9.94A.640(3) states:

Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

It is not entirely clear what date the trial court would enter upon remand as presently ordered by the Court of Appeals, i.e., the date of filing the petition, the date the Certificate and Order of Discharge were entered, or the date the Findings and Conclusions were entered. However, those acts

all occurred in 2016. If the Court of Appeals' decision regarding the effective date is upheld, Mr. Hubbard will not be eligible to vacate his 2004 conviction until 2021. His conviction will fester as a barrier to employment, credit, and housing.

2. Delaying the date of entry of the Certificate and Order of Discharge until 2016 violates Mr. Hubbard's protected liberty interest to pursue a chosen occupation

The delay in entering the Certificate and Order of Discharge until 2016, means delaying vacating Mr. Hubbard's conviction until 2021. As set forth in RCW 9.94A.640(3), a delay in vacating, delays his ability to access employment opportunities where he will be barred from applying in the first instance or his application will be denied based on his conviction.

The United States Supreme Court recognizes "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity" the United States Constitution intended to protect. *Truax v. Raich*, 239 U.S. 33, 41 (1915); *see also*, *Dittman v. California*, 191 F.3d 1020, 1029 (9th Cir. 1999) (pursuit of a profession or occupation is a protected liberty interest extending to a broad range of lawful occupations). Mr. Hubbard's right to pursue a chosen occupation is a protected liberty interest protected. The Court of Appeals' decision remanding the case to have the trial court enter an effective date in

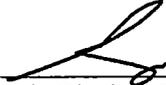
2016 violates Mr. Hubbard's constitutionally protected liberty interest to pursue a chosen occupation.

VI. CONCLUSION

For the reasons discussed herein, pursuant to RCW 9.94A.637, Mr. Hubbard satisfied the conditions of his sentence effective February 25, 2013. The Court of Appeals erred in its decision to remand the case to the trial court to enter a date effective when the trial court received notice and adequate verification Mr. Hubbard completed his sentence requirements. Mr. Hubbard respectfully requests this Court reverse that portion of the Court of Appeals' decision and affirm the trial court's decision in its entirety.

Dated this 20th day of September 2017.

Respectfully submitted,
NORTHWEST JUSTICE PROJECT



Sarah Glorian, WSBA No. 39914
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VII. APPENDIX A

State v. Hubbard, No. 49029-3-II (Div. II, August 22, 2017).

August 22, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

WAYLON JAMES HUBBARD,

Respondent.

No. 49029-3-II

PUBLISHED OPINION

SUTTON, J. — The State appeals the superior court’s order granting Waylon J. Hubbard’s certificate of discharge with an effective date reflecting the date Hubbard satisfied all conditions of his sentence rather than an effective date reflecting the date Hubbard petitioned for the certificate of discharge. We hold that, under RCW 9.94A.637(1)(c), the effective date of a certificate of discharge is the date the superior court receives notice from the county clerk and adequate verification from the offender that the petitioner has satisfied all conditions of his or her sentence. Accordingly, the superior court erred by entering a certificate of discharge with an effective date prior to the date that the superior court received notice and adequate verification that Hubbard satisfied all conditions of his sentence.

The State also argues that there was insufficient evidence to support the superior court’s findings of fact and conclusions of law. Because substantial evidence supports the superior court’s findings of fact and the findings support the superior court’s conclusions of law, we affirm the superior court’s conclusion that Hubbard was entitled to a certificate of discharge. Accordingly, we affirm the superior court’s certificate of discharge but remand to the superior court to enter a

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certificate of discharge with an effective date reflecting the date that the superior court received notice from the county clerk and adequate verification that Hubbard satisfied all conditions of his sentence.

FACTS

On October 29, 2004, Hubbard pleaded guilty to one count of possession of stolen property in the second degree. Hubbard was sentenced to 30 days confinement with 15 days converted to 120 hours of community restitution. The court also imposed legal financial obligations (LFOs).

On April 6, 2016, Hubbard filed a petition for certificate and order of discharge under RCW 9.94A.637(1)(c). RCW 9.94A.637(1)(c) states,

When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the [Department of Corrections] or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

Hubbard's petition included a notification from the Department of Corrections (Department), dated February 24, 2005, closing active supervision of Hubbard, and certifying that Hubbard had completed 55 hours of his required community restitution.

Hubbard also included a declaration from Shelley Steveson stating that Hubbard completed all 120 hours of his community restitution at Pacific Aging Council Endeavor (PACE) Senior Center. Steveson was the site manager for PACE and she coordinated all community restitution

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performed at PACE. Steveson declared that PACE closed in August 2011 and there were no longer any records of Hubbard's community restitution. However, Steveson "distinctly remember[ed] Mr. Hubbard, because he was good at showing up and doing the work as expected." Clerk's Papers (CP) at 7. Steveson stated that she was "confidant (sic) of my recollection that [Hubbard] completed his 120 hours as was required." CP at 7. And the court clerk certified that Hubbard had completed payment of all LFOs.

Hubbard requested that the certificate of discharge be issued with an effective date of February 25, 2013—the date he satisfied all conditions of his sentence. The State objected to Hubbard's petition for certificate of discharge. The State argued that Hubbard had presented insufficient proof to establish that he had completed all the required community restitution hours. The State also argued that, if the superior court found that Hubbard had satisfied all conditions of his sentence, the certificate of discharge should have an effective date reflecting when the superior court found that Hubbard had satisfied all conditions of his sentence.

The superior court considered the petition, all supporting materials, and relevant court records. The superior court entered the following, relevant findings of fact:

6. On April 6, 2016, Virginia Leach, the Pacific County Superior Court Clerk, signed a declaration confirming Mr. Hubbard has paid all legal financial obligations ordered.

7. The account receivable was closed February 25, 2013.

8. Exhibits A and B of the Petition for Certificate and Order of Discharge, combined, sets forth credible documentation Mr. Hubbard completed 120 hours of community restitution.

....

10. Pacific Aging Council Endeavor (PACE), the non-profit where Mr. Hubbard performed his community restitution, closed in August 2011. On March 23, 2016, Shelley Steveson, the individual who supervised the completion of Mr. Hubbard's community restitution at PACE, signed a declaration stating under

penalty of perjury that during her employment at PACE, she recalls Mr. Hubbard performing community restitution and is confident (sic) he completed the 120 hours (Exhibit B).

11. The court finds the statements made by Ms. Steveson to be credible.

12. As of February 25, 2013, Mr. Hubbard completed all sentencing requirements.

CP at 30. Based on RCW 9.94A.637(1)(c) and relevant case law, the superior court concluded that the effective date of a certificate of discharge is when the person satisfies his or her sentencing requirements. Based on its findings of fact, the superior court concluded that the effective date of Hubbard's certificate of discharge was February 25, 2013. The superior court entered the certificate of discharge with an effective date of February 25, 2013, the date Hubbard satisfied all conditions of his sentence. The State appeals.

ANALYSIS

I. SUFFICIENCY OF THE EVIDENCE

The State argues that there was insufficient evidence for the superior court to find that Hubbard had satisfied all the conditions of his sentence. Here, the superior court's findings of fact are supported by substantial evidence and the findings of fact support the superior court's conclusions of law. Therefore, sufficient evidence supports the superior court's order concluding that Hubbard is entitled to a certificate of discharge.

We review the superior court's findings of fact to determine whether they are supported by substantial evidence. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Evidence is substantial when it is enough to persuade a fair-minded person of the truth of the stated premise. *Garvin*, 166 Wn.2d at 249. Unchallenged findings of fact are verities on appeal. *State v. Valdez*, 167 Wn.2d 761, 767, 224 P.3d 751 (2009). We review the superior court's conclusions of law de

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novo to determine whether they are supported by the superior court's findings of fact. *Garvin*, 166 Wn.2d at 249.

The State assigns error to the superior court's findings of fact 7, 8, and 12,¹

7. The account receivable was closed February 25, 2013.

8. Exhibits A and B of the Petition for Certificate and Order of Discharge, combined, sets forth credible documentation Mr. Hubbard completed 120 hours of community restitution.

12. As of February 25, 2013, Mr. Hubbard completed all sentencing requirements.

CP at 30. However, the State does not assign error to the superior court's finding that Steveson's declaration was credible. Therefore, the credibility determination and declaration are considered verities on appeal.

Here, the superior court's finding that Hubbard completed his community restitution is supported by substantial evidence because Steveson's declaration states that she remembered Hubbard and was confident he completed all 120 hours of required community restitution. And the superior court's finding that Hubbard paid his LFOs is supported by substantial evidence because the county clerk certified that Hubbard completed the payment of all LFO obligations. Accordingly, there is substantial evidence to support the superior court's findings that, as of the date of Hubbard's petition, he had satisfied the conditions of his sentence. Because the findings of fact support the superior court's conclusion that Hubbard is entitled to a certificate of discharge,

¹ Hubbard argues that we are precluded from reviewing the sufficiency of the evidence supporting the superior court's findings of fact because the State failed to designate the verbatim report of proceedings as part of the record on appeal. However, the superior court's order clearly states that its findings of fact are based on the supporting documentation submitted with Hubbard's petition for a certificate and order of discharge. Accordingly, the record before us is sufficient for review of the superior court's findings of fact.

the trial court's order granting Hubbard's petition for a certificate of discharge was supported by sufficient evidence.

II. NUNC PRO TUNC ORDER

The State argues that the trial court improperly entered a nunc pro tunc order. A nunc pro tunc order “records judicial acts done at a former time which were not then carried into the record.” *State v. Hendrickson*, 165 Wn.2d 474, 478, 198 P.3d 1027 (2009) (quoting *State v. Petrich*, 94 Wn.2d 291, 296, 616 P.2d 1219 (1980)). A nunc pro tunc order is only appropriate to correct ministerial or clerical error, not judicial errors. *Hendrickson*, 165 Wn.2d at 479. Here, there was no prior judicial act that needed to be properly included in the record. And there was no ministerial or clerical error to correct. Therefore, it would have been inappropriate for the superior court to enter a nunc pro tunc order in this case. But the superior court did not enter a nunc pro tunc order in this case; the superior court entered an order with an effective date reflecting what it concluded was the correct effective date for a certificate of discharge based on its interpretation of the statute. Accordingly, we reject that State's contention that the superior court improperly entered a nunc pro tunc order.

III. EFFECTIVE DATE OF CERTIFICATE OF DISCHARGE

The State argues that the superior court erred by entering a certificate of discharge with an effective date reflecting the date that Hubbard actually satisfied all the conditions of his sentence. RCW 9.94A.637 provides the procedure for obtaining a certificate of discharge. The State argues that the effective date of a certificate of discharge is the date the trial court receives notice that all sentence requirements have been satisfied. Division One of this court has held that the effective date for petitions for a certificate of discharge under RCW 9.94A.637(1)(a) and .637(1)(b) is the

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date the court received notice that the offender has satisfied all conditions of his or her sentence. *State v. Porter*, 188 Wn. App. 735, 356 P.3d 207 (2015); *State v. Johnson*, 148 Wn. App. 33, 197 P.3d 1221 (2008).

However, Hubbard argues that we should decline to follow Division One's opinions in *Johnson* and *Porter* because he petitioned for a certificate of discharge under RCW 9.94A.637(1)(c) rather than under sections (1)(a) or (1)(b). Hubbard argues that (1) *Johnson* and *Porter* were wrongly decided and (2) regardless of *Johnson* and *Porter*, the effective date under RCW 9.94A.637(1)(c) is the date the offender satisfies all conditions of his or her sentence rather than the date the court is notified the offender has satisfied all conditions of his sentence. We disagree with Hubbard's reading of RCW 9.94A.637(1)(c) and hold that, under the plain language of RCW 9.94A.637(1)(c), the effective date of Hubbard's certificate of discharge is the date the court received notice and adequate verification that Hubbard satisfied all conditions of his sentence.

Statutory construction is a question of law that we review de novo. *Porter*, 188 Wn. App. at 739. When the plain language of a statute is unambiguous, the statute's meaning must be derived solely from its plain language and we do not engage in statutory construction. *Porter*, 188 Wn. App. at 739. "A statute is ambiguous if it can reasonably be interpreted in two or more ways, but it is not ambiguous simply because different interpretations are conceivable." *Porter*, 188 Wn. App. at 739 (quoting *Berger v. Sonneland*, 144 Wn.2d 91, 105, 26 P.3d 257 (2001)).

RCW 9.94A.637(1) states,

(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing

court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

Because the Department closed its supervision of Hubbard prior to Hubbard satisfying all the conditions of his sentence, RCW 9.94A.637(1)(c) applies.

Under the plain language of RCW 9.94A.637(1)(c), the effective date of the certificate of discharge is the date the superior court receives *both* notice from the county clerk that the offender has satisfied the financial obligations of the sentence and adequate verification from the offender

that the offender has satisfied all other conditions of his or her sentence. The relevant language in RCW 9.94A.637(1)(c) states,

When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(Emphasis added). The statute clearly designates the triggering event for issuing the certificate of discharge as the date the superior court receives both notice from the county clerk and adequate verification from the offender that the offender satisfied all the conditions of his or her sentence. By designating notice and adequate verification as the triggering event for a certificate of discharge, the plain language of the statute establishes that the superior court may not issue, and an offender is not entitled to, a certificate of discharge until the superior court receives notice and adequate verification that the offender has satisfied all the conditions of his or her sentence. Accordingly, we hold that the effective date of a certificate of discharge is when the superior court receives notice and adequate verification that the offender has satisfied all the conditions of his or her sentence.

Hubbard argues that this interpretation of the plain language of the statute is incorrect because it is in conflict with sections (1)(a) and (1)(b) of RCW 9.94A.637. Hubbard alleges that under RCW 9.94A.637(1)(a) and RCW 9.94A.637(1)(b) an offender is entitled to a certificate of discharge automatically upon satisfying the conditions of his or her sentence.² But this is incorrect.

² Division One of this court has decided two cases which clearly hold that the effective date of a certificate of discharge under RCW 9.94A.637(1)(a) and .637(1)(b) is the date the superior court is notified the offender has satisfied all the conditions of his or her sentence. *Porter*, 188 Wn. App. at 738; *Johnson*, 148 Wn. App. at 39. Because the plain language of RCW 9.94A.637(1)(c) is

RCW 9.94A.637(1)(a) applies to offenders who are under the Department's supervision when they have completed all requirements of their sentences, including the payment of their LFOs. RCW 9.94A.637(1)(b) applies to offenders at the end of their supervision by the Department and who have satisfied all requirements of their sentences, except for the payment of the LFOs. Because the offenders are under the supervision of the Department, the statute designates the Department as the party responsible for notifying the court when the offender has satisfied the conditions of his or her sentence. It is only upon notification by the Department (or the county clerk if the offender has outstanding LFOs after satisfying conditions supervised by the Department) that the superior court issues a certificate of discharge. The difference between the sections of the statute is not what the effective date the certificate of discharge should be, but rather whose responsibility it is to provide notice and verification to the court. Accordingly, under all three subsections of RCW 9.94A.637(1), an offender is not entitled to a certificate of discharge until the court receives both notice from the county clerk and adequate verification from the offender that the offender has satisfied all conditions of his or her sentence. Accordingly, there is no conflict between the sections.

Hubbard also argues that this plain language reading of the statute leads to absurd results because it results in making it more difficult for offenders who are not under the Department's supervision to obtain a certificate of discharge than offenders who are under the supervision of the

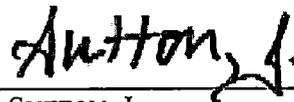
unambiguous, we do not rely on *Johnson* or *Porter* to hold that the effective date of a certificate of discharge is the date the superior court receives notice that the offender has satisfied the conditions of his or her sentence. However, we note that our holding here is consistent with the holdings in *Johnson* and *Porter* interpreting RCW 9.94A.637.

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Department. But this argument is directly contrary to the plain language of the RCW 9.94A-.637(1)(c).

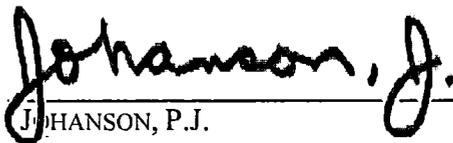
For offenders who are not under the Department's supervision, the legislature has explicitly made it "the offender's responsibility" to provide notice to the court when he or she has satisfied the nonfinancial conditions of his or her sentence. RCW 9.94A.637(1)(c). When the legislature includes explicit language in a statute, we must presume that the legislature means what it says. *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). Under the plain language of RCW 9.94A.637(1)(c), it is the offender's responsibility to provide adequate verification to the court. If the legislature determines that it is unfair, or even absurd as Hubbard suggests, it is up to the legislature, not this court, to amend the statute.

We affirm the superior court's certificate of discharge but remand to the superior court to enter a certificate of discharge with an effective date reflecting the date that the superior court received notice from the county clerk and adequate verification that Hubbard satisfied all conditions of his sentence.



SUTTON, J.

We concur:


JOHANSON, P.J.
MELNICK, J.

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE of WASHINGTON)	
Appellant,)	Trial Court Case No. 04-1-00153-4
)	Court of Appeals Case No. 49029-3-II
v.)	
)	Certificate of Service
WAYLON JAMES HUBBARD)	
Respondent.)	

On September 20, 2017, I sent by electronic mail a copy of this Petition for Review to:

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

Signed this 20th day of September 2017.


Sarah Glorian

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