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STATE OF WASHINGTON
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No. 95012-1

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WAYLON JAMES HUBBARD,

Petitioner.

Respondent's Supplemental Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

 A. ISSUES PRESENTED.. 1

 B. STATEMENT OF THE CASE1

 C. ARGUMENT: The Decision Below Correctly Applied the
 Unambiguous Statute and Prior Precedent.....3

 D. CONCLUSION.....9

TABLE OF AUTHORITIES

Washington Cases

<i>Berger v. Sonneland</i> , 144 Wn.2d 91, 26 P.3d 257 (2001).....	5
<i>City of Bothell v. Gutschmidt</i> , 78 Wn.App. 654, 898 P.2d 864 (1995).....	7
<i>City of Seattle v. Winebrenner</i> , 167 Wn.2d 451, 219 P.3d 686 (2009).....	8
<i>Rozner v. City of Bellevue</i> , 116 Wn.2d 342, 804 P.2d 24 (1991)....	4
<i>State v. Gossage</i> , 165 Wn.2d 1, 195 P.3d 525 (2008).....	6, 7
<i>State v. James-Buhl</i> , ___ Wn.2d ___, 415 P.3d 234, ¶ 14 (2018).....	6
<i>State v. Hubbard</i> , 200 Wn.App. 246, 402 P.3d 362 (2017).....	3, 5
<i>State v. J.P.</i> , 149 Wn.2d 444, 69 P.3d 318 (2003).....	4
<i>State v. Jackson</i> , 137 Wn.2d 712, 976 P.2d 1229 (1999).....	6
<i>State v. Johnson</i> , 148 Wn. App. 33, 197 P.3d 1221 (2008).....	1, 5
<i>State v. Porter</i> , 188 Wn. App. 735, 356 P.3d 207 (2015).....	1, 5
<i>State v. Smissaert</i> , 103 Wash.2d 636, 694 P.2d 654 (1985).....	7
<i>State v. Swanson</i> , 116 Wash. App. 67, 65 P.3d 343 (2003).....	7
<i>State v. Taylor</i> , 97 Wn.2d 724, 729, 649 P.2d 633 (1982).....	7

Washington Statutes

RCW 9.94A.637.....	<i>passim</i>
RCW 9.94A.637(1)(c).....	<i>passim</i>
RCW 9.94A.704.....	3

A. ISSUES PRESENTED

Did the Court of Appeals correctly decide, consistent with RCW 9.94A.637(1)(c), *State v. Johnson*, 148 Wn. App. 33, 197 P.3d 1221 (2008), and *State v. Porter*, 188 Wn. App. 735, 356 P.3d 207 (2015) that the effective date of a certificate of discharge was the date the superior court made a factual determination that Hubbard had satisfied all of the conditions of his sentence?

B. STATEMENT OF THE CASE

The Court of Appeals accurately set forth the facts, as follows:

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).

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 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 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.

State v. Hubbard, 200 Wn.App. 246, 247-50, 402 P.3d 362 (2017).

The Court of Appeals reversed the trial court, directing the trial court to enter a Certificate of Discharge with an effective date

reflecting the date that the superior court received notice and adequate verification that Hubbard satisfied all sentence conditions. *Id.* at 257.

This Court granted Hubbard's petition for review.

C. ARGUMENT: The Decision Below Correctly Applied the Unambiguous Statute and Prior Precedent.

Hubbard contends that RCW 9.94A.637(1)(c) unambiguously provides that the effective date of a certificate of discharge is the date the offender satisfies all conditions of his or her sentence, rather than the date the superior court is notified that the offender has satisfied all conditions of his sentence, and makes such a finding. Hubbard's interpretation of the statute is flatly inconsistent with the plain language of the statute and clear precedent, and should be rejected.

RCW 9.94A.637 permits offenders to obtain a certificate of discharge (COD) when they have completed their sentence conditions. The procedure for obtaining a COD differs depending on whether the offender is under supervision by the Department of Corrections (DOC) when he or she completes the conditions of sentence. When offenders are under DOC supervision, the statute designates the Department as the party responsible for notifying the court when the offender has satisfied his or her sentence conditions.

RCW 9.94A.637(1)(a), (b). When the offender is not under DOC supervision, the Legislature places the responsibility of notifying the court on the offender:

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.

RCW 9.94A.637(c) (emphasis added).

Statutory construction is a question of law, reviewed *de novo*. *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003). Where the plain language of the statute is unambiguous, the statute's meaning must be derived solely from the plain language and courts do not engage in statutory construction. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). "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.” *Berger v. Sonneland*, 144 Wn.2d 91, 205, 26 P.3d 257 (2001).

As Division Two correctly concluded, RCW 9.94A.637(1)(c) is not ambiguous.¹ *Hubbard*, 200 Wn. App. at 255-56. By its plain language, the statute provides that the triggering event for issuing a certificate of discharge is the superior court’s receipt of “both notification from the clerk [that legal financial obligations have been satisfied] and adequate verification from the offender that the sentence requirements have been completed[.]” RCW 9.94A.637(1)(c). Because the statute does not permit more than one reading, this Court should apply it as written and avoid unnecessary statutory construction.

Hubbard and amicus curiae have argued that placing the burden of notifying the court that the offender has completed his or her sentence conditions on the offender is unfair and inconsistent with the policy of reducing barriers to reentry. However, as this Court

¹ As that court pointed out, this holding is consistent with Division One’s decisions in *State v. Porter*, 188 Wn. App. 735, 356 P.3d 207 (2015), *rev. denied*, 184 Wn.2d 1035 (2016) (regarding RCW 9.94A.637(2)) and *State v. Johnson* 148 Wn. App. 33, 197 P.3d 1221 (2008), *rev. denied*, 166 Wn.2d 1017 (2009) (regarding RCW 9.94A.637(1)(a)). *Hubbard*, 200 Wn. App. at 256 n.2. In both cases, Division One concluded that “the effective date of discharge is the date the trial court receives notice that all sentence requirements have been satisfied.” *Porter*, 188 Wn. App. at 738, 743; *Johnson*, 148 Wn. App. at 39.

recently noted, reviewing courts must “resist the temptation to rewrite an unambiguous statute to suit our notions of what is [or may be] good public policy.” *State v. James-Buhl*, ___ Wn.2d ___, 415 P.3d 234, ¶ 14 (2018) (quoting *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999)). Courts must effectuate the Legislature’s clear policy choices even when the court disagrees with that policy. *State v. Gossage*, 165 Wn.2d 1, 7, 195 P.3d 525 (2008).

For example, in *Gossage*, the trial court denied a certificate of discharge because the offender owed outstanding restitution. This Court pointed out that the applicable statute precluded enforcement of outstanding LFOs after ten years unless the superior court entered an order extending the judgment. *Id.* at 7. Since that did not occur, Gossage’s LFOs expired and, having completed all other conditions of his sentence, he was entitled to discharge. *Id.* at 8. The court noted that the Legislature corrected the LFO expiration problem for offenses committed after July 1, 2000, but not for offenses committed before that date. *Id.* Although the court acknowledged that this policy choice “might discourage payment and defeat the punitive and restorative purposes of the obligation,” the Legislature adopted that policy in clear statutory language. *Id.* at 8. Accordingly, “courts must

effectuate it, even if it evinces policy choices that we consider to be ill-advised.” *Id.* at 7.

While *Gossage* addressed another section of the statute, its principle applies with equal force here. Whether or not this Court agrees with the Legislature’s policy decision to make the superior court’s receipt of notice of completion of sentence requirements the trigger for a certificate of discharge, construing the statute any other way would be to improperly “arrogate ... the power to make legislative schemes more perfect, more comprehensive and more consistent.” *State v. Taylor*, 97 Wn.2d 724, 729, 649 P.2d 633 (1982).

In essence, Hubbard and amicus curiae seek a retroactive judgment. A retroactive judgement is appropriate only to correct ministerial or clerical errors. *State v. Smissaert*, 103 Wn.2d 636, 641, 694 P.2d 654 (1985) (“A retroactive entry is proper only to rectify the record as to acts which did occur, not as to acts which should have occurred.”).

A petition for a certificate of discharge is a ministerial function akin to firearm rights restoration. A trial court considering a petition to restore firearm rights has no discretion to deny a petition once the statutorily enumerated requirements are met; its function is “only a

ministerial duty.” *State v. Swanson*, 116 Wn. App. 67, 69, 65 P.3d 343 (2003). See also *City of Bothell v. Gutschmidt*, 78 Wn. App. 654, 662, 898 P.2d 864 (1995) (“Where the law prescribes and defines an official’s duty with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the performance of that duty is a ministerial act.”). Similarly, RCW 9.94A.637(1)(c) imposes a ministerial duty on the superior court to issue a certificate of discharge upon proof that the offender has completed the terms of his or her sentence. Since the statute affords the court no discretion whether to issue a certificate once the statutory requirements are met, the superior court’s function is limited to deciding the lone issue of whether the petitioner qualifies for the relief requested, and not the earliest date he or she became eligible for that relief. Had the legislature intended the court to make such a factual determination, such authority would have been contained in the statute.

Because the statute is plain and unambiguous, Hubbard’s argument fails, as does any assertion that the rule of lenity should be applied. The rule of lenity is only applied if the court finds the statute is ambiguous. *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 462, 219 P.3d 686 (2009). Since the statute unambiguously provides that

the trial court may act on a petition only when it receives notice, the rule of lenity does not apply.

It is equally clear that the Legislature intended that those who complete their sentence after DOC supervision is terminated must petition the court on their own. Hubbard argues that this is an absurd result. In fact, it is entirely consistent with the legislature's changes to DOC functions in light of the reduced involvement by the Department in the supervision of criminal matters. Just as the legislature dramatically limited the type and number of offenders subject to DOC supervision,² it also established in RCW 9.94A.637 how the resources of DOC will be utilized as it relates to offenders who do not complete their court obligations while under supervision. This is a policy decision, properly left to the legislature. As Division Two correctly observed, "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." *Hubbard*, 200 Wn. App. at 257.

D. CONCLUSION

The legislature established the procedure for an unsupervised offender to obtain a certificate of discharge in a clear

² See Laws of 2011, Ch. 40, sec. 2.

and unambiguous statute. The Court of Appeals correctly applied the statute here. The State respectfully asks this Court to affirm.

RESPECTFULLY submitted this 2nd day of May, 2018.



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