

NO. 62983-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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IN RE: PERSONAL RESTRAINT OF

ANTHONY BOVAN,

Petitioner.

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PETITIONER'S SUPPLEMENTAL BRIEF

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FILED  
SUPERIOR COURT  
STATE OF WASHINGTON  
2009 JUL 31 PM 4:50

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A. ISSUE PRESENTED IN SUPPLEMENTAL BRIEFING

After initially releasing Anthony Bovan early from total confinement based on his good behavior, the Department of Corrections (DOC) revoked his community custody and ordered him to serve the remainder of his sentence in total confinement under RCW 9.94A.737(2). DOC refused to credit Bovan's sentence with time he spent in jail awaiting allegations he violated community custody. Because a substantial body of case law as well as the rights to due process, equal protection, and freedom from double jeopardy, mandate that the State credit an individual with all jail time spent serving a sentence in a single case, was Bovan unlawfully restrained due to DOC's refusal to credit his sentence with all time he spent in total confinement?

B. FACTS RELEVANT TO SUPPLEMENTAL ISSUES

Due to his good behavior while serving his 73.5-month sentence for several counts of first degree robbery, DOC released Anthony Bovan early from total confinement. See Appendix A (outlining confinement dates for instant case, also found in Response of DOC, Ex. 1, Attachment A, p. 10); Response of DOC, Ex. 2 (Judgment and Sentence). His release required him to obey

the terms of community custody, or face additional sanctions, including the possibility of revoking community custody.

DOC initially released Bovan to community custody on March 3, 2007, from the sentence imposed on June 30, 2003. According to DOC, he was released 722 days early, and thus needed to serve this release time on community custody. App. B (letter from DOC to Bovan).<sup>1</sup> DOC calculated Bovan as having completed 369 days successfully in community custody and credited his sentence with this time. Id.

Bovan violated some conditions of community custody. DOC scheduled three separate hearings for violations, on January 10, 2008; March 20, 2008; and August 18, 2008. App. C (also found in Response of DOC, Ex. 1, Att. C). After the August 18, 2008 hearing, DOC revoked his community release and ordered his return to total confinement for the remainder of his sentence.

The allegations underlying the violations were for issues such as failing to report an address or failing to pay legal and

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<sup>1</sup> Under RCW 9.94A.715(1), an inmate subject to community custody will serve the remainder of earned early release on community custody if that time period is longer than the standard community custody range imposed. DOC released Bovan 722 days early, which is longer than the 18-36 month community custody range imposed for his sentence. Response of DOC, Ex. 2 (Judgment and Sentence, p. 7).

financial obligations. App. D (list of violations). He was not alleged to have committed new offenses or engaged in other more serious behavioral incidents.

Before his final hearing, Bovan had served 34 days in jail because of his violations of the terms of his release to the community. Reply to State's Response, p. 7; Declaration attached to Response (13 days in jail awaiting first violation hearing and 21 days for second hearing). Upon his return to total confinement, Bovan discovered that DOC had not credited his sentence with this time he spent in jail for his two earlier violations of his community custody requirements. He petitioned DOC for credit for time he served stemming from the same sentence but DOC refused. App. B (DOC letter). Bovan filed a personal restraint petition (PRP). This Court found the issue of Bovan's entitlement to sentencing credit for time in detention under a single sentence to be non-frivolous and appointed counsel to provide further briefing.

C. ARGUMENT.

1. BOVAN IS ENTITLED TO RELIEF BECAUSE HE HAS BEEN UNLAWFULLY RESTRAINED

a. Bovan has been unlawfully restrained. A person is entitled to relief by way of a PRP where the person is unlawfully restrained as defined in RAP 16.4. A person is restrained where he “is confined.” RAP 16.4(b).

Bovan’s release date was set for July 25, 2009. Despite this release, it is unclear whether he faces continued restrictions on his behavior or is subject to continued supervision.

In Monohan v. Burdman, the Court concluded a person challenging the cancellation of an early release date is “restrained” even if by the time the petition is filed the person has been paroled, as he is subject to conditions on his release and faces reincarceration, and “thus, he is not a free man in the commonly accepted sense.” Monohan v. Burdman, 84 Wn.2d 922, 925, 530 P.2d 334 (1975). Further, Monohan looked to the potential future consequences of the release decision to conclude that because it might affect future decisions of the parole officer or a sentencing judge it constituted “restraint.” Id. Such potential consequences are sufficient “to retrieve his petition from the ‘limbo of mootness.’”

Id. DOC's policy establishes the present and future consequences of the finding of violation in this case, and this matter is not moot.

Moreover, courts routinely decide issues affecting credit for confinement time served because of their importance and ready evasion of review. As this Court ruled recently, "the application of good time credit to an extended confinement is likely to be a recurring issue that evades review." In re: Pers. Restraint of Erickson, 146 Wn.App. 576, 582, 191 P.3d 917 (2008). In Erickson, this Court reviewed a claim of accurate good time credit from a county jail even though the petitioner had served his sentence because,

a petition should be reviewed on the merits, despite its mootness, where the issue presented is one of continuing and substantial public interest and likely to evade review. The proper administration of earned early release credits awarded to inmates is such an issue.

Id. at 582; see also In re the Pers. Restraint of Mines, 146 Wn.2d 279, 282-83, 45 P.3d 535 (2002) (statute used in parole hearing procedure issue of public interest likely to recur and warranting an authoritative decision); In re the Pers. Restraint of Myers, 105 Wn.2d 257, 261, 714 P.2d 303 (1986) (corrections system benefits from guidance even if sentencing issue moot).

The issue in the case at bar presents a claim of continuing and substantial public interest. The application of RCW 9.94A.737(2), mandating the return to total confinement for offenders subject to three violation hearings while on community custody, is a recent legislative enactment. Order Appointing Counsel, p. 2 n.2 (noting section became effective on July 1, 2007). There is no published case law interpreting the sentencing credit required for people who have served time in jail before the third violation hearing. And because two prior violation hearings are required for RCW 9.94A.737(2) to apply, the issue of proper credit for jail time is likely to affect many people who face incarceration under RCW 9.94A.737(2). Thus, even if Bovan does not face continued restraint on his liberty, this Court should review the issue presented.

RAP 16.4(c)(6) provides restraint is unlawful where:

The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.

The Supreme Court has said confinement beyond that authorized by the Sentencing Reform Act results in a sentence that violates the laws of the State of Washington and may be remedied

by way of a PRP. In re the Personal Restraint of Greening, 141 Wn.2d 687, 692-93, 9 P.3d 206 (2000); In re the Personal Restraint of Johnson, 131 Wn.2d 558, 568-69, 933 P.2d 1019 (1997). As set forth in Part 2 below, Bovan's confinement is contrary to the provisions of the SRA and his restraint is, therefore, unlawful pursuant to RAP 16.4(c)(2).

b. Bovan is entitled to relief by way of a personal restraint petition. RAP 16.4(d) limits relief via a PRP to those situations where there are inadequate alternative remedies available to the petitioner. In the context of issues raised for the first time in a PRP, the Supreme Court has explained this rule as: (1) a petitioner raising a constitutional error must demonstrate actual prejudice; and (2) a petitioner raising a nonconstitutional issue must demonstrate the "error constitutes a fundamental defect which inherently results in a complete miscarriage of justice." In re the Personal Restraint of Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). "Confinement beyond that authorized by statute is exactly the kind of fundamental defect which the rule . . . . announced in [Cook] was aimed at remedying." Greening, 141 Wn.2d at 692-93 (citing In re the Pers. Restraint of Moore, 116 Wn.2d 30, 33, 803 P.2d 300 (1991)).

Bovan's confinement is contrary to the United States Constitution and laws of the State of Washington. Specifically, he claims DOC improperly refused to give him credit for jail time he served for the current conviction. He asserts DOC deprived him of due process and his right to be free from restraints on his liberty. Thus, Bovan is entitled to relief by way of a PRP. RAP 16.4(d); see also Greening, 141 Wn.2d at 692-93.

2. THE STATE FAILED TO PROPERLY CREDIT BOVAN FOR TIME HE SPENT IN JAIL PURSUANT TO THE INSTANT CASE AND THEREBY UNLAWFULLY RESTRAINS HIM

a. The denial of earned sentence credit is a loss of liberty protected by the constitution. The state and federal constitutions protect a person's liberty interest in receiving credits for time spent serving a sentence. Wolff v. McDonnell, 418 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); In re Personal Restraint of Gronquist, 138 Wn.2d 388, 397, 978 P.2d 1083, cert. denied, 528 U.S. 1009 (1999); U.S. Const. amend. 14; Wash. Const. art. I, §§ 3; 22. The right to receive earned credits for custodial detention may not be arbitrarily abrogated, or denied without minimum due process. Wolff, 418 U.S. at 557. The equal protection clause protects an inmate from being denied sentence

reduction credits that are given to other similarly situated inmates. In re Fogle, 128 Wn.2d 56, 61, 904 P.2d 722 (1995). And “the constitutional guaranty against double jeopardy requires that punishment already exacted must be fully credited toward a subsequent sentence.” State v. Phelan, 100 Wn.2d 508, 515, 671 P.2d 1212 (1983) (Phelan II); U.S. Const. amend. 5; Wash. Const. art. I, § 9.

A person serving a sentence must receive credit for all time spent in confinement or under confinement restrictions. In re Pers. Restraint of Phelan, 97 Wn.2d 590, 597, 647 P.2d 1026 (1982) (Phelan I). In Phelan I, the petitioner spent time in jail awaiting a probation revocation hearing, after serving the principal custodial part of his sentence. Id. The court ruled, as to “jail time while petitioner was awaiting the revocation hearing, we believe petitioner is entitled to credit only if the jail time served was exclusively on the principal underlying charge.” Id.

The Phelan I Court held that a person is not entitled to credit if serving time on a different case, but the person is entitled to such credit if the time in detention flows from the underlying conviction at issue. Id. In Phelan II, the court rejected any distinction between presentence and postsentence incarceration, ruling that a

defendant must receive credit for all time served “in connection with a conviction for which he or she is eventually sentenced” to jail or prison, and this credit applies to “all aspects of the prisoner’s sentence,” including postsentence probationary jail time. 100 Wn.2d at 516-17.

Because Bovan was serving jail time solely based on the underlying conviction, and not a different criminal prosecution, he is entitled to credit for all time served in connection with his sentence.

The principle discussed in Phelan I extends to credit for all early release time accumulated during a DOSA sentence. In re Pers. Restraint of Taylor, 122 Wn.App. 880, 883, 95 P.3d 790 (2004). It also applies to time spent in custody when held for verification of an address pending release on community custody for a DOSA sentence. In re Restraint of Reifschneider, 130 Wn.App. 498, 503, 123 P.3d 496 (2005). As further example, all persons confined in Washington are entitled to sentence credit for confinement, including early release credit, for electronic home monitoring while on bail pending appeal. In re Restraint of Swinger, 159 Wn.2d 224, 149 P.3d 373 (2006).**Error! Bookmark not defined.**

Sentencing credit extends to time spent successfully on community custody. In re Pers. Restraint of Albritton, 143 Wn.App. 584, 594, 180 P.3d 790 (2008). DOC gave Bovan such credit and does not dispute his entitlement to credit for time he spent successfully on community custody. App. B (letter from DOC).

Furthermore, when a person serving a DOSA sentence is re-incarcerated to serve the full term of the sentence, he or she “is entitled to credit for time served in jail on his underlying conviction while on probation or community custody.” Albritton, 143 Wn.App. at 595.

b. Bovan spent time in jail for violations of his sentencing conditions and yet DOC refused to credit his sentence for that time spent in detention. DOC released Bovan early from his sentence based on his good behavior and earned release credit. Upon his release from custodial detention, he began serving the community custody portion of his sentence. Due to Bovan’s failure to follow all conditions of his release from confinement, DOC ordered Bovan to serve additional detention time.

Bovan spent 34 days in jail while awaiting DOC sanctions because of allegations he failed to comply with all terms of his early

release. Reply to State's Response, p. 7; Declaration attached to Response (13 days in jail awaiting first violation hearing and 21 days for second hearing). Bovan's third violation hearing triggered the application of RCW 9.94A.737 (2008). RCW 9.94A.737(2) expressly mandates the return of an inmate from community custody back to total confinement if the offender is found to have violated conditions of community custody at a third violation hearing. Under RCW 9.94A.737(2), DOC revoked Bovan's community custody and directed him to serve the entire remainder of his sentence in total custodial detention.<sup>2</sup>

Although Bovan's violations of sentencing conditions resulted to two prior jail terms, DOC refused to credit his sentence with any time he spent in detention for these two earlier community custody violations. Response of DOC, at 14-15.

In response to Bovan's PRP, DOC agreed that RCW 9.94A.737 does not expressly deny sentencing credit for time spent

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<sup>2</sup> RCW 9.94A.737(2) provides:

in detention due to community custody violations. In fact, RCW

9.94A.737(1) provides,

If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, **less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation** and subject to the limitations of subsection (3) of this section.

(emphasis added). Bovan seeks credit for time he spent in custody awaiting an allegation he violated community custody but DOC refused to give him such credit.

Despite the statute's apparent directive to credit Bovan with the time he spent in custody, DOC claims that RCW 9.94A.737(2) would be rendered absurd if it permitted sentencing credits for time served in jail due to other community custody violations. It relies heavily on a declaration of Wendy Stigall, that purportedly distinguishes the length and frequency of DOSA community custody violations as compared with general community custody

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If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase

violations for non-DOSA sentences. Response of DOC, at 14-15. However, this declaration is not in fact attached to the DOC's Response. The distinction it purports to draw seems beside the point in any event.

The State's depiction of the legislative intent underlying RCW 9.94A.737(2) is short-sighted and unrealistic. The State speculates that the legislature enacted RCW 9.94A.737(2) because it wanted to exact additional punishment from "serious" community custody violators and the punishment would be not be as severe if the offender received credit for time spent in jail due to earlier violations of community custody. Response of DOC at 15. The State offers no evidence that exacting severe punishment was the goal of this legislation.

First, RCW 9.94A.737(2) contains no reference to the seriousness of the violations at issue. Bovan's violations do not appear serious. His violations involve claims he failed to report as required, but not that he was involved in any other nefarious activities. App. D (violations alleged at August 18, 2008, hearing); App. E (August 18, 2008 hearing notes, indicating three of four allegations admitted; poor quality photocopy in original attachment).

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the offender's likelihood of reoffending.

Because the statute orders the return to custody for any offender facing a third violation hearing without regard to its seriousness, it is just as likely as the goal of RCW 9.94A.737(2) was intended to ensure uniformity in the punishment resulting from the third violation. As such, it limits DOC discretion in individual cases and gives the public the satisfaction of knowing multiple violations of community custody would not be tolerated. Similarly, it is likely intended to serve the goal of deterrence by giving clear notice of the consequences of violating community custody.

The State's argument ignores the fact that the Legislature would have understood and anticipated that a person whose community custody is revoked because of two prior violations of community custody will have received sanctions for that earlier behavior. Crediting a sentence with time actually spent in jail because he or she violated the terms of release is not a special benefit, as the State implies, because the individual has suffered the onerous incarceration. Crediting the revoked offender with time actually spent in confinement is precisely the type of credit given routinely in a large variety of situations based on the deprivation of liberty at stake and the right to due process and equal protection of the laws. It is not a "credit bank" or an application for sentencing

credit for time served on another offense, but a request for credit for time actually served for a single sentence. Response of DOC at 16.

Furthermore, the State's depiction of legislative intent as one where prison time is the paramount goal ignores the recent restructuring of community custody that occurred in the 2009 legislative session. ESSB 5288; SSB 6163 (Summary of Community Custody Changes from Sentencing Guidelines Commission, attached as App. F). Presumably motivated by cost-saving, the Legislature altered the length of community custody terms for almost all offenders and removed a large swath of people from any DOC supervision. For example, a person convicted of a violent offense like Bovan would face 18 months of community supervision, not 18-36 months, and DOC would not actually supervise him unless he was in the highest risk category.<sup>3</sup> These changes are not only prospective, but also retroactive and reduce the community custody supervision for many sentenced offenders. App F, p. 1.

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<sup>3</sup> First degree robbery is a Class A felony and violent offense. RCW 9A.56.200(2); RCW 9.94A.030(54)(a)(i).

The sweeping changes to community custody in 2009 nullify the State's claim that it would be "absurd" to think the legislature intended anything other than pure incarceration for the longest amount of time possible without regard to the general application of credit-for-time-served rules. As evidence by the 2009 legislation, the Legislature balances effective punishment and rehabilitation with fiscal constraints. Its goal is not to exact undue or unnecessary punishment, in part because of the pure expense of such a scheme.

c. Bovan is entitled to credit for all the time he spent in jail under the terms of the instant sentence. DOC ordered Bovan to serve the entirety of his sentence in total confinement following his third community custody violation. He is entitled to receive credit for every day he spent in total confinement based on his sentence. DOC's refusal to give him credit for all time spent in detention is unreasonable and unlawful and must be corrected by this Court.

D. CONCLUSION.

For the foregoing reasons, Mr. Bovan respectfully requests this Court find he was unlawfully restrained and improperly denied credit for time he served in custody.

DATED this 31<sup>st</sup> day of July 2009.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy P. Collins", written over a horizontal line.

NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project (91052)  
Attorneys for Appellant

## **APPENDIX A**

Type:

CCJ 3Y, 1M, 16D

**Cause: AE - 021013591 - Snohomish**

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Anthony Bovan	08/27/2002	
Time Start Date:	Confinement Length:	Earned Release Date:	
	0Y, 0M, 0D		

**Count: 1 - RCW 46.61.024 - Attempting to Elude Pursuing Police Vehicle**

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
Attempt				0Y, 0M, 0D	%				No
Supervision Type:	Supervision Length:	Consecutive Count:						Hold To Stat Max Expiration:	
CCJ	1Y, 11M, 4D								

**Cause: AF - 031000871 - Snohomish**

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Anthony Bovan	06/30/2003	
Time Start Date:	Confinement Length:	Earned Release Date:	
07/08/2003	6Y, 1M, 15D	02/08/2009	

**Count: 1 - RCW 9A.56.210 - Robbery 2**

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				6Y, 1M, 15D	33.33%	03/01/2007	02/20/2009	05/21/2013	Yes
Supervision Type:	Supervision Length:	Consecutive Count:						Hold To Stat Max Expiration:	
CCP	3Y, 5M, 17D								

**Count: 2 - RCW 9A.56.210 - Robbery 2**

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				6Y, 1M, 15D	33.33%	03/01/2007	02/20/2009	05/21/2013	Yes
Supervision Type:	Supervision Length:	Consecutive Count:						Hold To Stat Max Expiration:	
CCP	3Y, 5M, 17D								

**Count: 3 - RCW 9A.56.210 - Robbery 2**

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				6Y, 1M, 15D	33.33%	03/01/2007	02/20/2009	05/21/2013	Yes
Supervision Type:	Supervision Length:	Consecutive Count:						Hold To Stat Max Expiration:	
CCP	3Y, 5M, 17D								

## **APPENDIX B**

Proof #8



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**

**Hearings Unit**

P.O. Box 41126, Olympia, WA 98504

Fax (360) 664-8754

April 30, 2009

Anthony Bovan DOC #791896  
Yakima County Jail  
YAC-C5  
1500 Pacific Avenue  
Yakima, WA 98901

Dear Mr. Bovan,

I received your letter dated 4/21/09 regarding the hearing held on 08-08-08, in which you were ordered returned to total confinement to serve the remainder of your sentence. Your issue is the entry in our Omni system and the AAG's response to you in your petition.

At the time of the hearing a "preliminary" calculation was done because OMNI had not yet been programmed to automatically do this. In order to enter the hearing information on the Field Discipline screen, the Hearing Officer had to go ahead and enter the 280 days to have our system show a return sanction was issued. Something like a "placeholder" until the system was updated. At the time of your hearing, a manual calculation was done by our records office and the accurate information was in a chrono's but could not be updated yet on the Field Discipline screen. The AAG who responded to your post sentence review petition was unaware of the Omni issue. He reviewed the screen and assumed the Field Discipline entry was correct.

Our Omni system was recently updated in March to allow for the full entry. Once these corrections were made, it matched our manual calculations. You were released 722 days early. You completed 369 days successfully in the community and therefore were returned for 353 days. A letter was sent to you on April 21, 2009 explaining other questions you had about your return sanction, it was returned to our office yesterday. Please see the other letter explaining further about your CCP Sanction and frequently asked questions of how this sanction is calculated. I do apologize if the estimated days led you to believe you were only returning for 280 days however I can assure you the calculations are correct and we have since your hearing set a release date at 7/25/2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura A. Dyer".

Laura A. Dyer  
Records Supervisor  
Hearings Program

cc: Hearings File

## **APPENDIX C**

Inmate: BOVAN, Anthony Bakari louis (791896)

[Legal Face Sheet](#) 

Gender: Male

DOB: 

Age: 30

Category:  
Sanctioned

Body Status: Active Inmate

RLC: RMA

Wrap-Around: No

Comm. Concern:  
No

Custody Level:

Location: Snohomish Co Violator Facility — No Bed  
Assigned

PRD: 07/25/2009

CC/CCO:

### View Violation Summary for Active Causes

#### Offender Violations

<u>Violation Group Number</u>	<u>Level of Response</u>	<u>Response Date</u>	<u>View Details</u>
1	Full Hearing	11/12/1999	<a href="#">View</a>
2	Full Hearing	03/30/2000	<a href="#">View</a>
3	Full Hearing	06/12/2000	<a href="#">View</a>
4	Full Hearing	03/12/2001	<a href="#">View</a>
5	Full Hearing	06/05/2001	<a href="#">View</a>
6	Full Hearing	06/06/2001	<a href="#">View</a>
7	Full Hearing	06/27/2001	<a href="#">View</a>
8	Full Hearing	07/10/2001	<a href="#">View</a>
9	Full Hearing	07/12/2001	<a href="#">View</a>
10	Full Hearing	07/20/2001	<a href="#">View</a>
11	Full Hearing	02/23/2002	<a href="#">View</a>
12	Full Hearing	03/13/2002	<a href="#">View</a>
13	Full Hearing	06/07/2002	<a href="#">View</a>
14	Full Hearing	06/26/2002	<a href="#">View</a>
15	Stipulated Agreement	01/10/2008	<a href="#">View</a>
16	Full Hearing	01/10/2008	<a href="#">View</a>
17	Full Hearing	03/20/2008	<a href="#">View</a>
18	Full Hearing	08/18/2008	<a href="#">View</a>

ATTACHMENT

 Print

## **APPENDIX D**

Proof #4

Inmate: BOVAN, Anthony Bakari louis (791896)

Legal Face Sheet

Gender: Male      DOB: ██████████      Age: 30      Category: Sanctioned      Body Status: Active Inmate

RLC: RMA      Wrap-Around: No      Comm. Concern: No      Custody Level:      Location: Snohomish Co Violator Facility — No Bed Assigned

PRD: 07/25/2009      CC/CCO:

**View Full Hearing**

Offender Violations

Level of Response: Full Hearing

Violation Group Number: 18

Response Date: 08/18/2008

Violation Description	Violation Date	Cause/Supervision Type	<a href="#">View Cause Detail</a>
Unapproved Employ/Reside Chge	On or About 05/25/2008	AF-031000871(CCP)	
Failure to Report	On or About 05/25/2008	AF-031000871(CCP)	
Failure to Pay LFO's	On or About 05/25/2008	AF-031000871(CCP)	
Abide UA/BA Monitoring	On or About 05/25/2008	AF-031000871(CCP)	

Hearing Information

Hearing Start Date	Hearing Completion Date	Hearing Officer Name	Presenting CCO	Assigned CCO	Hearing Location	Appeal Indicator
08/18/2008	08/18/2008	La Lanne, Robert F	Christoferson, Carol S	Morton, Donna J	Snohomish Jail A	

Offender Sanctions

Interstate Significant Violation:

Sanction Description	Sanction Start Date	Frequency	Duration Days	Community Restitution Hours	Narrative Information
██	██████████ 2008	██████████	██████████	██████████	<a href="#">View Narrative</a>

ATTACHMENT

D

## **APPENDIX E**



HEARING AND DECISION SUMMARY

RELEASE FROM DOC CUSTODY/CONFINEMENT:  YES  NO (See Confinement Order DOC 09-238)

OFFENDER NAME (LAST, FIRST) <i>BOVEN, Anthony</i>	DOC # <i>791996</i>	RM/LSI <i>A</i>	DATE OF BIRTH <i>8-22-77</i>
CAUSE NUMBER(S) <i>Case 03-1-00007-1</i>			
OFFENDER STATUS <input type="checkbox"/> CCI <input checked="" type="checkbox"/> CCP <input type="checkbox"/> CCJ <input type="checkbox"/> CCM <input type="checkbox"/> DOSA <input type="checkbox"/> W/R <input type="checkbox"/> FOS			

DATE OF HEARING *8-13-09* LOCATION OF HEARING *SCT*

CCO NAME *Carol Christensen* WAIVED APPEARANCE  YES  NO

OTHER PARTICIPANTS \_\_\_\_\_ COMPETENCY CONCERN  YES  NO

WAIVED 24 HOUR NOTICE  YES  NO

INTERPRETER/STAFF ASSISTANT  YES  NO

PRELIMINARY MATTERS: *note on 4/13/09 return report*

ALLEGATIONS	DATE	INITIALS	STATUS
<i>1. FTR since 5-25-09</i>		<i>G</i>	<i>G</i>
<i>2. FTR since "</i>		<i>G</i>	<i>G</i>
<i>3. address "</i>		<i>N/E</i>	<i>N/E</i>
<i>4. FTR since 2-22-09 5-25-09</i>		<i>G</i>	<i>G</i>

J&S   
 Notice of Allegation, Hearing, Rights and Waiver form   
 Report of Alleged Violations  
 Conditions, Requirements, and Instructions form   
 Chronological Reports   
 Other Listed Below:

## **APPENDIX F**



STATE OF WASHINGTON  
**SENTENCING GUIDELINES COMMISSION**  
PO Box 40927 • Olympia, Washington 98504-0927  
(360) 407-1050 • FAX (360) 407-1043

DATE: June 10, 2009  
FROM: Shannon Hinchcliffe, Sentencing Guidelines Commission (SGC) Staff  
TO: Judge Kathleen O'Connor, Superior Court Judge's Association  
SUBJECT: **SUMMARY OF COMMUNITY CUSTODY CHANGES AS A RESULT OF ESSB 5288 AND SSB 6162.**

Below is an updated version of the original table. It reflects the effect of the veto and other discussed changes.

<b>Determination for Community Custody Ranges prior to ESSB 5288/SSB 6162</b>	<b>Determination for Community Custody Terms Now<sup>1</sup></b>	<b>Summary of the Changes</b>
Sentencing Guidelines Commission had the duty to set community custody ranges. Ranges were as follows (in months): <ul style="list-style-type: none"><li>• Sex Offenses 36-48</li><li>• Serious Violent Offenses 24-48</li><li>• Violent Offenses 18-36</li><li>• Crimes Against a Person 9-18</li><li>• Drug Offenses: 9-12</li></ul>	Community custody terms are now set out in RCW 9.94A.501. Terms are as follows: <ul style="list-style-type: none"><li>• Sex offenses 36 months</li><li>• Serious Violent Offenses 36 months</li><li>• Violent Offenses 18 months</li><li>• Crimes Against A Person 12 months</li><li>• Drug Offenses 12 months</li></ul>	<ul style="list-style-type: none"><li>• SGC has been relieved of its duty to set ranges.</li><li>• Ranges have been converted to terms.</li><li>• Removes DOC's authority to alter the duration of the offender's community custody based on risk and performance of the offender.</li><li>• Non prison offenders have no change on supervision length, they will be supervised for 12 months, if eligible.</li><li>• These community custody terms are to be applied retrospectively and prospectively, DOC will have to recalculate all community custody terms.</li></ul>

<sup>1</sup> SHB 1791 allows the court to add a community custody term in addition to more than one year of confinement when a sentencing range has not been established for the current offense and the court finds reasons to justify an exceptional sentence under RCW 9.94A.535.

DOC previously supervised:	As of July 26, 2009 or August 1, 2009 DOC will supervise: <sup>2</sup>	Summary of the Changes
<p>Any felony offender sentenced to community custody and any misdemeanor or gross misdemeanor offender sentenced to probation in Superior Court whose:</p> <ul style="list-style-type: none"> <li>• Risk assessment places the offender in one of two highest categories or</li> <li>• Regardless of risk, they have a conviction for: <ul style="list-style-type: none"> <li>○ Sex offense;</li> <li>○ Violent offense;</li> <li>○ Crime against persons;</li> <li>○ Felony that is domestic violence;</li> <li>○ Residential burglary;</li> <li>○ Manufacture, delivery, or possession of Methamphetamine; or</li> <li>○ Delivery of a controlled substance to a minor;</li> <li>○ Offender has a prior conviction for any of the above.</li> <li>○ Conditions of supervision include chemical dependency treatment</li> <li>○ Offender was sentenced to a First Time Offender Waiver (FTOW) or Special Sex Offender Sentencing Alternative (SSOSA);</li> <li>○ Or supervision is required by Interstate Compact or Adult Offender Supervision.</li> </ul> </li> </ul> <p>Offenders who are given earned early release time (community custody in lieu of confinement) up to the statutory maximum, pursuant to RCW 9.94A.728(2).</p>	<p>Every felony offender whose risk assessment places the offender in the two highest risk categories from July 26, 2009 until August 1, 2009 and then the highest category after August 1, 2009<sup>3</sup> or regardless of risk if they:</p> <ul style="list-style-type: none"> <li>• Have a current conviction for a sex offense or serious violent offense;</li> <li>• Are a dangerous mentally ill offender pursuant to RCW 72.09.370;</li> <li>• Have an indeterminate sentence and are subject to parole;</li> <li>• Offender was sentenced to a First Time Offender Waiver (FTOW) or Special Sex Offender Sentencing Alternative (SSOSA) or Drug Offender Sentencing Alternative (DOSA);</li> <li>• Or supervision is required by Interstate Compact or Adult Offender Supervision.</li> </ul> <p>The following misdemeanor and gross misdemeanor offenders shall be sentenced to probation in Superior Court for the following convictions:</p> <p>(a) Assault 4<sup>th</sup> Degree or Violation of a Protection Order (VPO) <b>and</b> they have one or more convictions for the following:</p> <ul style="list-style-type: none"> <li>• Violent offense;</li> <li>• Sex offense;</li> <li>• Crime against persons;</li> <li>• Fourth Degree Assault;</li> <li>• VPO</li> </ul> <p><b>OR</b></p> <p>(b) offenders convicted of the following:</p> <p>(i) Sexual Misconduct with a Minor 2<sup>nd</sup> Degree; or</p> <p>(ii) Custodial Sexual</p>	<ul style="list-style-type: none"> <li>• Removes supervision of low to moderate risk offenders of: <ul style="list-style-type: none"> <li>• violent offenses,</li> <li>• crimes against persons,</li> <li>• felony domestic violence,</li> <li>• residential burglary,</li> <li>• convictions pursuant to RCW 69.50 and 69.52 and</li> <li>• those ordered to chemical dependency treatment (changes to offenders with DOSAs see note below.)</li> </ul> </li> <li>• Clarifies DOSA offenders to offenders who are supervised regardless of risk. (This is not a substantive change, this type of offender was included previously under those who had “conditions of supervision including dependency treatment.)</li> <li>• Removes the “highest risk” filter for misdemeanants and gross misdemeanants and replaces it with strictly offense-based criteria.</li> <li>• Adds gross misdemeanor and misdemeanants who commit Assault Fourth Degree and Violation of a Protection Order (with certain prior offenses) to offenders who are supervised regardless of risk.</li> <li>• The term of community custody shall be reduced by the court whenever an offender’s standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.</li> <li>• Removes the July 1, 2010</li> </ul>

<sup>2</sup> The Governor vetoed section 18 of ESSB 5288 which contained the specific effective dates of the respective sections. In effect, it makes all parts of the Act effective 90 days after the adjournment of the session, July 26, 2009 (See *Hallin v. Greco*, 94 Wash.2d 671, 676; Wa. St. Const. Art. II Sec. 41.)

<sup>3</sup> This change is reflective of the use of the risk-assessment tool approved by WSIPP. ESSB 5288.

	<p>Misconduct with a Minor 2<sup>nd</sup> Degree; or</p> <p>(iii) Communication with a Minor for Immoral Purposes; or</p> <p>(iv) Failure to Register as a Sex or Kidnapping Offender.</p> <p>Offenders who are given earned early release time (community custody in lieu of confinement) up to the statutory maximum, pursuant to Laws of 2009, ch. 455, § 3 (effective May 11, 2009.)</p>	<p>sunset clause from community custody (RCW 9.94A.501).</p> <ul style="list-style-type: none"><li>• No change in DOC supervising offenders who are given earned early release.</li></ul>
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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IN RE THE PERSONAL RESTRAINT PETITION OF )		
	)	
ANTHONY BOVAN,	)	NO. 62983-2-I
	)	
Petitioner.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31<sup>ST</sup> DAY OF JULY, 2009, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] ALEX KOSTIN, AAG OFFICE OF THE ATTORNEY GENERAL PO BOX 40116 OLYMPIA, WA 98504	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] ANTHONY BOVAN 11224M MERRIDIAN AVE N #1310 SEATTLE, WA 98133	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 31<sup>ST</sup> DAY OF JULY, 2009.

X \_\_\_\_\_ *grw*

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2009 JUL 31 PM 4:50

**Washington Appellate Project**  
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1511 Third Avenue  
Seattle, WA 98101  
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