

71198-9

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NO. 71198-9-I
Consolidated w/ 71199-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

AVERY WILLIAMS,

Appellant.

REC'D
MAY 28 2014
KING County Superior
Appellate Unit

REC'D
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAY 28 P11 4: 12

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

The Honorable Patrick Oishi, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issue Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	4
THE JUDGMENT AND SENTENCE SHOULD BE REMANDED FOR CLARIFICATION OF WILLIAMS' CREDIT FOR TIME SERVED.....	4
D. <u>CONCLUSION</u>	7

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

In re Schaupp
66 Wn. App. 45, 831 P.2d 156 (1992)..... 6

In re Phelan
97 Wn.2d 590, 647 P.2d 1026 (1982)..... 5

State v. Broadaway
133 Wn.2d 118, 942 P.2d 363 (1997)..... 5

State v. Cook
37 Wn. App. 269, 679 P.2d 413 (1984)..... 5

State v. Phelan
100 Wn.2d 508, 671 P.2d 1212 (1983)..... 4

RULES, STATUTES AND OTHER AUTHORITIES

RCW 9.94A.505 4

RCW 9.94A.729 4, 5

RCW 9.95.062 4

A. ASSIGNMENTS OF ERROR

1. The judgment and sentence filed in King County Cause No. 10-1-08778-4 KNT fails to ensure appellant receives credit for all time served incarcerated for the offense in that matter. CP 53-60.

2. The judgment and sentence filed in King County Cause No. 10-1-05717-6 KNT fails to ensure appellant receives credit for all time served incarcerated for the offense in that matter. CP 130-37.

Issue Pertaining to Assignments of Error

At a single hearing the trial court imposed concurrent sentences in the two matters referenced above. Both judgment and sentences provide that appellant is entitled to credit for time served as “determined by the King County Jail.” CP 56, 133; Appendices A & B. They are silent, however, as to credit for time served by appellant in other detention facilities, such as the Department of Corrections (DOC) and the Thurston County Jail, and how such credits should be determined. Where a judgment and sentence fails to sufficiently specify the appellant is entitled to credit for all detention time served with respect to the crime of conviction, is remand necessary for clarification?

B. STATEMENT OF THE CASE

On June 21, 2010, the King County prosecutor charged appellant Avery Williams with theft of a firearm under cause number 10-1-05717-6

KNT. CP 94-98. According to information from the Thurston County Jail, Williams was "Booked" into the Thurston County Jail on that cause number on June 22, 2010, and not released until September 9, 2010, when he was "[r]eleased to WCC."¹ CP 225-26. Williams remained at WCC until September 24, 2010, when he was booked into King County Jail. Id.

On October 19, 2010, the King County Prosecutor charged Williams with theft of a motor vehicle and second degree identity theft under cause number 10-1-08778-4 KNT. CP 94-98.

On October 7, 2010, a competency evaluation was ordered for Williams in cause number 10-1-05717-6 KNT. CP 235-39. A similar order was entered in cause number 10-1-08778-4 KNT on November 1, 2010. CP 186-90. On June 29, 2011, orders were entered in both matters finding Williams incompetent to stand trial and committing him to Western State Hospital for up to 90 days to regain competence. CP 191-93, 240-42. In orders entered in both cause numbers on November 7, 2011, Williams was deemed competent to stand trial. CP 13-14, 99-100.

On June 4, 2012, Williams pleaded guilty to an amended charge of second degree unlawful possession of a firearm in cause no. 10-1-05717-6 KNT. CP 102-22. The same day, Williams pleaded guilty to the theft of a

¹ "WCC" presumably is a reference to the Washington Correction Center, a detention facility operated by DOC. See RP 8 (Williams' counsel, in explaining Williams' incarceration history notes Thurston County sent Williams to the Washington Correction Center in September 2010).

motor vehicle charge under cause number 10-1-08778-4 KNT, with the understanding that the second degree identity theft charge would be dismissed. CP 16-40. Williams was immediately released on both matters pending sentence. CP 194, 243.

On November 6, 2012, after Williams failed to appear for sentencing and orders for bench warrants were issued in both causes. CP 195, 244. Eighteen days later, Williams was booked into the Thurston County Jail on both warrants, but not released to King County until May 29, 2013, when he was booked into King County Jail. CP 201, 225-26.

On October 6, 2013, Williams was released after posting a \$5,000 bond in each matter. CP 196-97, 201, 245-46. Orders for bench warrants were issued on October 18, 2013, when Williams failed to appear for sentencing. CP 198, 247. Williams was booked back into the King County Jail on November 9, 2013. CP 201.

Sentencing in both matters occurred November 15, 2013. RP 3-21. At sentencing defense counsel urged the court to give Williams credit for all time served for both offenses regardless of whether it was served in the King County Jail, the Thurston County Jail, or in DOC. RP 8-14. In contrast, the prosecutor argued Williams should only get credit for time served in King County Jail, and nothing else. RP 16. The trial court stated it agreed "more" with the prosecutor's argument and gave Williams

credit for time served on both matters only for the time spent incarcerated in the King County Jail, apparently regardless of whether Williams was being held in the Thurston County Jail exclusively on the King County charges or not. CP 56, 133; RP 18.

Williams appeal. CP 61-69, 138-46.

C. ARGUMENT

THE JUDGMENT AND SENTENCE SHOULD BE REMANDED FOR CLARIFICATION OF WILLIAMS' CREDIT FOR TIME SERVED.

Pursuant to RCW 9.94A.505(6), “[t]he sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.” This requirement is not limited to time spent incarcerated in a specific detention facility, or to just pre-conviction jail time, but instead to all time spent incarcerated for the offense. Thus, for example, where a defendant has spent time in prison before winning his appeal, the State must give credit for that time against the sentence for any subsequent conviction that may result on remand. State v. Phelan, 100 Wn.2d 508, 515, 671 P.2d 1212 (1983), superseded by statute on other grounds by RCW 9.94A.729. See also RCW 9.95.062(3) (“[T]he time the defendant has been imprisoned pending the appeal shall be deducted from

the term for which the defendant was sentenced, if the judgment is affirmed.”)

If entitled to credit for time served, “the judgment must so state on its face[.]” In re Phelan, 97 Wn.2d 590, 596, 647 P.2d 1026 (1982). Failure to allow credit violates due process, denies equal protection, and offends the prohibition against multiple punishments. State v. Cook, 37 Wn. App. 269, 271, 679 P.2d 413 (1984). Where a sentence is insufficiently specific, remand for amendment of the judgment and sentence is the proper remedy. State v. Broadaway, 133 Wn.2d 118, 136, 942 P.2d 363 (1997).

Williams' judgment and sentences in cause numbers 10-1-08778-4 KNT & 10-1-05717-6 KNT, provide that he is entitled to credit for time spent in jail, as “determined by the King County Jail.” CP 56, 133. The judgment and sentences do not, however, mention Williams' right to credit for time served in the Thurston County Jail and the DOC pending resolution of these matters, or how that credit is to be determined. While the King County Jail can determine the amount of credit earned by Williams while in that facility, it cannot properly calculate Williams' Thurston County Jail and DOC earned release times. RCW 9.94A.729(1) (“The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time

in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined.”); In re Schaupp, 66 Wn. App. 45, 51, 831 P.2d 156 (1992) (“Each correctional agency having had jurisdiction of defendant must determine the amount of earned early release time in accordance with the procedures developed and promulgated by that agency.”)

Williams' judgment and sentences do not specify he is entitled to credit for time served in the Thurston County Jail or the DOC. Without clarification, DOC officials may mistakenly assume that because the judgment and sentence is silent on the issue, Williams is not entitled to any credit for time served in any facility besides the King County Jail.

The case should be remanded with an order directing the sentencing court to specify that Williams is entitled to credit for all time served in the Thurston County Jail and the DOC with respect to these convictions.

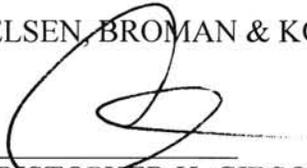
D. CONCLUSION

This Court should remand the judgment and sentence in both matters for clarification of Williams' credit for time served.

DATED this 28th day of May 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "C. Gibson", is written over a horizontal line.

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Attorneys for Appellant

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v.)	COA NO. 71198-9-I
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AVERY WILLIAMS,)	
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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF MAY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] AVERY WILLIAMS
 DOC NO. 761104
 MONROE CORRECTIONAL COMPLEX
 P.O. BOX 777
 MONROE, WA 98272

SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF MAY, 2014.

x *Patrick Mayovsky*