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Supreme Court No. \_\_\_\_\_ Case #: 1039166  
(COA No. 39857-9-III)

THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

EARL PHILLIPS, III,

Petitioner.

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

---

PETITION FOR REVIEW

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### A. IDENTITY OF PETITIONER

Earl Phillips, III, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review. RAP 13.3, RAP 13.4.

### B. COURT OF APPEALS DECISION

Earl Phillips, III, seeks review of the Court of Appeals decision dated January 30, 2025, attached as an appendix.

### C. ISSUES PRESENTED FOR REVIEW

Issue 1: Whether review should be granted under RAP 13.4(b)(3) when the Court of Appeals ruling violates state and federal constitutional prohibition on indeterminate commitment.

Issue 2: Whether review should be granted under RAP 13.4(b)(4) when disincentivizing entry of insanity pleas jeopardizes treatment for mentally ill individuals and threatens public safety.

#### D. STATEMENT OF THE CASE

A trial judge, when calculating Earl Phillips's maximum commitment date on a Not Guilty by Reason of Insanity (hereinafter "NGRI") plea, denied him credit for 164 days spent in jail prior to entry of the plea. (RP 70-74, CP 122, 157-59). Phillips timely appealed. (CP 160-61). The Court of Appeals, Division III, affirmed the trial court's ruling. APP 1. Phillips now requests this Court accept review.

Phillips, a diagnosed schizophrenic, began suffering from auditory hallucinations at six years old. (CP 3, 4). In 2017, Phillips stopped taking his

medications. (CP 3, 4). He believed his home was government property and “mobile command” had advised him he was in the United States military. (CP 3).

Phillips’s “home” was actually a vacant residence in Walla Walla, Washington. (CP 3, 4, 17, 21). Law enforcement responded to reports of a trespass on the property. (CP 17, 21). When entering the first floor, officers found a home gutted in preparation for cleaning and remodeling. (CP 17, 27-56). Garbage littered the floors of rooms with no furniture. (CP 31-60). Graffiti covered the walls. (CP 31-34). A steep staircase led to the second floor. (CP 47, 49-50).

Phillips, from the top of the staircase, yelled at the officers they were trespassing on his place of command. (CP 21). Phillips told them he was in charge of the universe. (CP 21). He urinated down toward the officers.



(CP 21). Officers continued to try to engage Phillips but received only incomprehensible responses. (CP 21). Phillips never attempted to descend the stairs nor responded to officer's commands. (CP 27).

The officers eventually arrested Phillips and transported him to Saint Mary Medical Center, where he had to be secured to the bed. (CP 21). When asked about his family, Phillips repeatedly replied, "I ate my family, I have no son." (CP 21). No bed was available at the hospital, so Phillips was transported to jail. (CP 29).

Officers requested charges for residential burglary, second degree assault, and obstruction of a police officer. (CP 29). Phillips remained in the custody of Walla Walla County Corrections for 164 days. (CP 122).

● On August 14, 2017, the trial court found Phillips NGRI to second degree burglary, a Class B felony; second degree assault, a Class B Felony; and obstructing a law enforcement officer, a gross misdemeanor. (CP 81-84). The trial court ordered Phillips committed to the state hospital or such other facility as designated by the Secretary pursuant to RCW 10.77 subject only to further proceedings of the court for conditional and/or final discharge. (CP 84).

● On May 17, 2021, the trial court ordered Phillips partially conditionally released from Eastern State Hospital. (CP 87-88). Phillips continued to reside at Eastern State Hospital but was allowed to move about within the hospital campus and participate in supervised community outings in Spokane County for the purposes of socialization, recreation, training, alcohol and drug education, and treatment. (CP 88).

In June of 2022, Phillips requested expansion of this partial conditional release. (CP 91-97). Phillips reported stable mental health and took all of his medication as prescribed. (RP 23, CP 92). He reported attending treatment and submitted a certificate of completion of outpatient treatment with Pioneer Counseling Services. (RP 25-26, CP 92, 97). He hoped to settle in Spokane, begin college and work toward a two-year degree and a career as an electrician. (RP 33, CP 93).

The trial court allowed Phillips unescorted community day trips but denied unescorted community overnights and required he reside at Eastern State Hospital. (RP 35-37, CP 110-114). In a letter to the court dated March 10, 2023, the Department of Social and Health Services (“DSHS”) calculated Phillips’s

maximum commitment date at August 22, 2027, ten years from the court's NGRI finding. (CP 124-25).

Phillips then moved the trial court to order DSHS to credit the 164 days spent in jail prior to entry of his NGRI plea toward his maximum commitment date, thus moving the maximum commitment date up to March 10, 2027. (CP 115-125). DSHS conceded Phillips should receive 13 days of credit for the time he was detained awaiting competency evaluation. (CP 127).

The trial court denied Phillips's motion, finding, in pertinent part:

1. A plea of NGRI is not a finding of guilty and, therefore, does not subject the defendant to punishment.
2. The purpose of RCW 10.77 is to provide mentally ill offenders with treatment, not to punish them.
3. RCW 10.77.025 is controlling in the instant case. Section (1) of that statute, which states in part: "(1) Whenever any person has been: (a) committed to a correctional facility or inpatient

treatment under any provision of this chapter, or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.” RCW 10.77.025(1)

4. The court also relies on RCW 10.77.010, which states, “(3) ‘Commitment’ means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.” RCW 10.77.010(3).
5. Therefore, the court concludes that the defendant is not eligible for credit for the 164 days he was in county jail, while not under an order for evaluation or treatment.
6. The Court concludes that the text of 10.77 is plain on its face and that it agrees with the State’s view: Mr. Phillips should only be credited for his evaluation or when he became committed under Chapter 10.77.

...

8. Being detained in county jail and in a less restrictive setting, like inpatient treatment are very comparable settings in that the both impose substantial constraints on liberty.
9. The NGRI plea renders the defendant in the same position as an offender who has been

acquitted of charges, or had those charges dismissed by the court or State.

10. Therefore, as a matter of law, the defendant is only entitled to 13 days of credit, not the 164 days requested by the defendant.

(RP 70-74, CP 157-59). The Washington Court of Appeals, Division III, affirmed the trial court's ruling.

(APP 1). Phillips now timely petitions for this Court to accept review.

## E. ARGUMENT

Issue 1: Whether review should be granted under RAP 13.4(b)(3) when the Court of Appeals ruling violates state and federal constitutional prohibitions on indeterminate commitment.

The Supreme Court may accept review when “a significant question of law under the Constitution of the State of Washington or of the United States is involved.” RAP 13.4(b)(3). Denying credit for pretrial incarceration against an insanity acquittee’s maximum commitment term is contrary to the constitutional prohibition on indeterminate commitment.

Indeterminate commitment for those acquitted by reason of insanity is unconstitutional under the United States and Washington Constitutions. *See, e.g., Baxstrom v. Herold*, 383 U.S. 107, 86 S.Ct. 760, 15 L. Ed.2d 620 (1966)(denying a criminally insane person the right to a jury review of his commitment at the

expiration of the underlying penal term, while providing that procedure to those civilly committed, violates equal protection); *Humphrey v. Cady*, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972)(procedures for continued confinement pursuant to Wisconsin's Sex Crime Act not justified by State's allegation that commitment under this act was triggered by a criminal conviction); *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972)(due process prohibits the indefinite commitment (without civil commitment) of one incompetent to stand trial).

Under former RCW 10.76.070, those acquitted by reason of insanity were subject to indeterminate commitment. Following several decisions of the United States Supreme Court suggesting such sentences were unconstitutional, the Washington Legislature repealed RCW 10.76.070 and replaced it with RCW 10.77.020(3).



The Washington Supreme Court in *Matter of Big Cy Kolocontronis* concluded that the legislature's primary intent in tying confinement to the maximum penal term was to give recognition to the constitutional doctrine enunciated in those cases. 99 Wn.2d 147, 149, 153 660 P.2d 731 (1983)(interpreting former RCW 10.77.020(3)); see also *State v. Reanier*, 157 Wn. App. 194, 237 P.3d 299 (2010). Thus, RCW 10.77.025 ties an individual's commitment under an insanity plea to the maximum penal term. *Id.*

The trial court's ruling in Phillips's case allows an insanity acquittee to serve an indeterminate term of confinement by adding pre-confinement time on the same case later receiving an NGRI acquittal to the acquittee's maximum term of confinement. The acquittee never receives any credit for the highly variable amount of time they may spend in custody

while a determination is being made to enter an NGRI plea. This violates constitutional prohibition on indeterminate commitment.

Issue 2: Whether review should be granted under RAP 13.4(b)(4) when disincentivizing entry of insanity pleas jeopardizes treatment for mentally ill individuals and threatens public safety.

RAP 13.4(b)(4) allows the Supreme Court to accept review when the petition “involves an issue of substantial public interest that should be determined by the Supreme Court.” Here, the Court of Appeals ruling disincentivizes treatment via insanity plea for mentally ill individuals by lengthening confinement time. Promoting treatment of mentally ill individuals who commit crimes protects the public. Both treatment of mentally ill offenders and protection of the public are matters of substantial public interest.

An offender acquitted by reason of insanity enters a plea under the provisions of RCW 10.77. Like individuals civilly committed under RCW 71.05, these individuals have a mental illness and have not been convicted of crime(s). The legislature spoke to its purpose in treating mental illness under the provisions of RCW 71.05:

- (a) ...protect the health and safety of persons suffering from behavioral health disorders and to protect public safety through use of the parens patriae and police powers of the state;
- (b) to prevent inappropriate, indefinite commitment of persons living with behavioral health disorders and to eliminate legal disabilities that arise from such commitment;

...

RCW 71.05.010.

*The Court of Appeals ruling threatens public safety and discourages treatment of individuals suffering from mental illness when entry of an NGRI plea will result in a longer sentence than if the individual had pled guilty.*

An offender entering an insanity plea often faces a much lengthier period in the state mental hospital than if sentenced to a standard range sentence calculated under RCW 9.94A. See RCW 9.94A.525, RCW 9.94A.530. For example, Phillips entered NGRI pleas to second-degree burglary and second-degree assault. If Phillips had pled guilty to second-degree burglary, he would have faced sentence of incarceration in one of the below ranges:<sup>1</sup>

FOR ATTEMPT, SOLICITATION, OR CONSPIRACY (RCW 9.94A.595, see page 54), THE SENTENCE RANGE IS 75% OF THE COMPLETED RANGE LISTED BELOW

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL III		2m	5m	8m	11m	14m	19.5m	25.5m	38m	50m	59.5m
		1 - 3	3 - 8	4 - 12	9 - 12	12+ - 16	17 - 22	22 - 29	33 - 43	43 - 57	51 - 68

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<sup>1</sup> RCW 9.94A.515 classifies second degree burglary at seriousness level III. The sentencing grid in RCW

Even if Phillips had nine criminal history points, he would have faced a prison sentence of 51-68 months.<sup>2</sup>

Conversely, by entering an NGRI plea on the burglary charge, he faced a ten-year commitment, subject to release only by further court order. RCW 10.77.025; 10.77.120, RCW 9A.52.030. A court could only release him if he showed by a preponderance of evidence he no longer presented a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, as a result of his mental disease or defect. See RCW 10.77.200.

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9.94A.510 sets the standard ranges for seriousness level III.

<sup>2</sup> The sentence is calculated by adding countable points from prior convictions and matching with the corresponding range on the grid for the seriousness level of the crime. RCW 9.94A.510, .525.

Similarly, Phillips faced less than a ten-year commitment if he had pled guilty and received a standard range sentence on second-degree assault.<sup>3</sup>

Offender Score										
	0	1	2	3	4	5	6	7	8	9+
LEVEL IV	6m	9m	13m	15m	17.5m	25.5m	38m	50m	61.5m	73.5m
	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 70	63 - 84

Thus, even before the Court of Appeals ruling, Phillips faced greater commitment time than if he had been incarcerated on a guilty plea. Now, with the Court of Appeals ruling, Phillips will serve up to a ten-year commitment *in addition to* the time he spent in jail prior to entering his NGRI plea.

Maximum commitment time exceeding a potential standard-range prison sentence is not a situation unique to Phillips’s case. The 2024 Washington

<sup>3</sup> RCW 9.94A.515 classifies second degree assault at seriousness level IV. The sentencing grid in RCW 9.94A.510 sets the standard ranges for crimes at respective seriousness levels.

Sentencing Guidelines Manual contains scoring sheets for 233 felony crimes. Over half of those crimes have statutory maximums – corresponding with maximum commitment time for an NGRI plea – higher than the standard range for an offender who pled guilty with nine criminal history points.<sup>4</sup>

This discrepancy already provides significant disincentive for mentally ill individuals to obtain treatment through an NGRI plea, especially when the court considers that defendants who plead guilty are also entitled to credit for pretrial incarceration time. A defendant entering a guilty plea must be credited with

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<sup>4</sup> The 2024 Washington Sentencing Guidelines Manual contains 233 scoring sheets. For those crime where the standard-range sentence at an offender score of nine corresponds with the statutory maximum, the scoring sheet is marked with an \*. Only 83 of the 233 scoring sheets are so marked.

pretrial incarceration time. *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015).

With the ruling in Phillips's case, mentally ill individuals are even less like to take advantage of a NGRI plea option. Promoting treatment of these individuals, which protects public safety, are both matters of substantial public interest.

#### F. CONCLUSION

The Court of Appeals ruling in Phillips's case violates the federal and state constitutional bars on indeterminate commitment, making it appropriate for this court to accept review under RAP 13.4(b)(3).

The Court of Appeals ruling disincentivizes entry of insanity pleas for mentally ill individuals, thereby jeopardizing their treatment and threatening public



safety. Both are substantial public interests; this case should be reviewed under RAP 13.4(b)(4).

Based on the preceding, Mr. Phillips requests review be granted. RAP 13.4 (b).

This petition is 2,614 words long and complies with RAP 18.7.

DATED this 28th day of February, 2025.

Respectfully submitted,

/s/ Brooke Diane Hagara  
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Attorney for Appellant

## APPENDIX

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**FILED**  
**JANUARY 30, 2025**  
**In the Office of the Clerk of Court**  
**WA State Court of Appeals, Division III**

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

STATE OF WASHINGTON,	)	
	)	No. 39857-9-III
Respondent,	)	
	)	
v.	)	
	)	PUBLISHED OPINION
EARL PHILLIPS, III,	)	
	)	
Appellant.	)	

FEARING, J. — Appellant Earl Phillips resided in a county jail for 164 days between the time of his arrest for burglary and assault and the superior court’s entry of a finding of not guilty by reason of insanity. For thirteen of those days, a court order detained Phillips for a competency evaluation pursuant to RCW 10.77. This appeal raises

the unique question about the number of days for which Phillips should receive credit, under RCW 10.77.025, toward the maximum time allowed for his detainment for treatment. Phillips argues he should receive credit for all 164 days in jail. The State contends Phillips should receive credit only for the thirteen days of detainment specifically for the competency evaluation. The superior court agreed with the State. We do too.

#### FACTS

Appellant Earl Phillips, III, has suffered from mental illness, including hearing voices, since six years of age. As of March 11, 2017, Phillips had failed to take his medications for years.

On March 11, 2017, Earl Phillips entered an empty Walla Walla home undergoing a remodel. Phillips then believed the government owned the house and “mobile command” had told him that he was in the United States military. Phillips bore on his person two large knives, respectively ten and eighteen inches in length.

Law enforcement journeyed to the residence as a result of reports of an individual trespassing into the house. As the officers entered the home, Earl Phillips stood at the top of a steep staircase leading from the first floor to the second floor.

Earl Phillips yelled to the officers that they were trespassing on his command nest. Phillips raved about being in charge of the universe as he urinated over the stairs in the direction of the officers. Phillips expressed an interest in killing the officers. The

officers sought to reason with Phillips but received incomprehensible replies. Phillips refused to discard his knives.

The police officers arrested Earl Phillips and transported him to Saint Mary's Medical Center. In response to questions, at the hospital, about his family, Phillips answered: " 'I ate my family. I have no son.' " Clerk's Papers (CP) at 21. Saint Mary's lacked a bed for Phillips, so officers transferred him to the Walla Walla County jail. Phillips remained in the jail for 164 days or until August 14, 2017.

When speaking in March 2017, with Dr. Philip G. Barnard, a clinical psychologist, Earl Phillips reported that "everything seemed like a dream at the time." CP at 4. Phillips denied resisting the officers. Phillips did not recall having a weapon and claimed he only sought to protect himself and his property.

The State of Washington charged Earl Phillips with one count of second degree assault, one count of second degree burglary, and one count of obstructing a law enforcement officer. On May 3, 2017, the superior court ordered a competency evaluation of Phillips. The evaluator filed a report with the court on May 16.

On August 9, 2017, Earl Phillips moved for judgment of acquittal by reason of insanity. On August 14, 2017, the trial court found Phillips not guilty of all three crimes by reason of insanity and ordered his commitment to the State Department of Social and Health Services (DSHS) for treatment. DSHS admitted Phillips to Eastern State Hospital on August 22.

On May 17, 2021, the trial court ordered that Earl Phillips be partially and conditionally released from Eastern State Hospital, but only to the extent of hospital staff-escorted community outings and unescorted ground privileges. On June 13, 2022, Phillips petitioned the court for full conditional release. On December 14, 2022, the trial court granted the petition, in part.

On March 10, 2023, DSHS sent its semi-annual progress report about Earl Phillips' treatment to the Walla Walla County Superior Court. As will be discussed later, the State may hold an individual found not guilty by reason of insanity (NGRI) a maximum length of time commensurate with the maximum sentence attended to the charged crime. Because the court could impose a maximum sentence of ten years on Phillips for his alleged crimes, DSHS, in its March 10 report, informed the superior court that he had a maximum commitment date of ten years, or until August 14, 2027. DSHS gained custody of Phillips on August 14, 2017. The August 14, 2027 date did not give Phillips any credit for time he spent in the Walla Walla County jail before the court's entry of the NGRI verdict. Phillips disagreed with DSHS' calculation of the maximum commitment time. He contended his maximum commitment date should be March 11, 2027, ten years from his jailing.

#### PROCEDURE

Earl Phillips moved the superior court for an order to credit him time toward his maximum commitment date. Phillips requested that he be credited for the entire 164

days he spent in the county jail before entering his NGRI plea and before his custody transfer to DSHS. DSHS resisted the motion.

By the time of the superior court hearing on Earl Phillips' motion, DSHS conceded that Phillips should be credited with thirteen days from the time he spent in the Walla Walla County jail. Those thirteen days represented the length of time between May 3, 2017, when the superior court ordered a competency evaluation of Phillips, and May 16, when the evaluator filed a report to the court. At the end of the motion hearing, the superior court accepted DSHS' position and granted Phillips a thirteen-day credit, not a 164-day credit. The court established the new maximum date of commitment to be August 1, 2027.

#### LAW AND ANALYSIS

Earl Phillips challenges the superior court's decision on appeal. He repeats his request for a 164-day credit. He contends the governing statute, RCW 10.77.025(1), affords him a credit for the entire time spent in the Walla Walla County jail awaiting disposition of his prosecution. In addition to relying on language in RCW 10.77.025(1) and a related statute, Phillips forwards the policy disfavoring indeterminate stays in mental health treatment facilities. According to Phillips, a contrary reading of the statute also disincentives the State from timely agreeing to entry of an insanity plea.

Insanity acquittees constitute a special class treated differently from other candidates for commitment. *Jones v. United States*, 463 U.S. 354, 370, 103 S. Ct. 3043,

77 L. Ed. 2d 694 (1983). When a criminal defendant establishes by a preponderance of the evidence that he is not guilty of a crime by reason of insanity, the United States Constitution permits the State to confine him to a mental health institution until such time as he regains his sanity or no longer endangers himself or society. *Jones v. United States*, 463 U.S. 354, 370 (1983).

The order of commitment following a NGRI plea generally imposes an indefinite length of commitment because neither the judge nor the State can predict the timespan needed for recovery. RCW 10.77.200. Still, a Washington statute, RCW 10.77.025, restricts commitment to the maximum sentence for the crime charged. The statute recognizes that confinement in a mental health facility entails a massive curtailment of liberty. *In re Personal Restraint of Knapp*, 102 Wn.2d 466, 475, 687 P.2d 1145 (1984). The acquittee may earlier petition for good cause for an earlier release. RCW 10.77.200(5).

This appeal requires an exegesis of RCW 10.77.025(1) and its companion definitional statute, RCW 10.77.010(4). The former statute declares:

Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.



RCW 10.77.010(4) defines “commitment,” for purposes of RCW 10.77.025(1) as:

the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

Earl Phillips contends RCW 10.77.025(1) and RCW 10.77.010(4) are ambiguous.

This contention focuses on the term “commitment” as defined in the latter statute. He requests that this court appraise the legislative purpose behind the statutes, consider the constitutional prohibition on indeterminate sentences for the criminally insane, and apply the rule of lenity in order to credit him for the 151 days spent in the custody of Walla Walla County jail before the finding of NGRI toward his maximum commitment date in addition to the thirteen days spent detained for the competency evaluation. We discern no ambiguity. We conclude, as did the superior court, that Phillips may only receive credit for thirteen days.

This court lacks a copy of the May 3, 2017 superior court order for a competency evaluation of Earl Phillips and the May 16, 2017 evaluator’s report. We do not know whether Phillips remained in the Walla Walla County jail from May 3 until the evaluator completed the assessment or if the jail transported him to another location for purposes of the evaluation. Regardless, both parties agree that the order for the competency ran from May 3 until the filing of the evaluator’s report on May 16.

Earl Phillips argues RCW 10.77.025 and RCW 10.77.010, specifically the term “commitment” as used and defined in the statutes, are ambiguous as they do not render

clear whether time served in jail before a defendant is found not guilty by reason of insanity should be credited toward the acquitted defendant's maximum commitment date. He argues that, because the statutes are ambiguous, this court must look to the rule of lenity and the constitutional prohibition on indeterminate sentences for the criminally insane to interpret the statutes.

We apply fundamental and familiar rules of statutory interpretation. In construing statutes, we ascertain and effectuate the legislature's intent. *State v. Keller*, 2 Wn.3d 887, 910, 545 P.3d 790 (2024). If the statute's meaning is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. *Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 910, 43 P.3d 4 (2002). We glean the plain meaning of a statute by considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole. *Association of Washington Spirits & Wine Distributors v. Washington State Liquor Control Board*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015). If a statute is open to more than one interpretation, we may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent. *State v. Keller*, 2 Wn.3d 887, 910 (2024).

Earl Phillips highlights that RCW 10.77.025 and RCW 10.77.010 do not explicitly deny an accused credit for the time spent in court-ordered treatment or evaluation. Phillips asserts that the time spent in court-ordered competency evaluation proceedings

includes any time in pretrial custody that informs the court whether a person should be detained for evaluation and treatment pursuant to an insanity plea. Relatedly, according to Phillips, time spent by the court and the State's and defense counsel evaluating the prosecution between the jailing and before trial should also be considered commitment for purposes of RCW 10.77.025(1) and RCW 10.77.010(4). In essence, according to Phillips, any time spent detained, regardless of whether the location is the county jail, a state prison, or a state mental hospital, must be credited against the maximum time the State may hold him for commitment or treatment as a result of the finding of insanity. In response, the State argues that the statutes at issue, without equivocation, only allow a credit for time detained by court order for evaluation or treatment.

To repeat, RCW 10.77.010(4) defines "commitment" as "the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting." RCW 10.77.010(4). This definition limits the time of commitment to the time detained by a court order for treatment or evaluation. No court order detained Earl Phillips for evaluation or treatment between his arrest and the superior court's finding of insanity other than the order that detained Phillips for thirteen days for the competency evaluation. During the remaining 151 days, counsel for the State and the defense may have ruminated and discussed the case and the ramifications of the competency evaluation report. The court may have even reviewed

the superior court file, including the report. But no court order directed the court, defense counsel, or the State's attorney to perform these tasks.

Earl Phillips argues that the ambiguities in RCW 10.77.025 and RCW 10.77.010(4) in light of this appeal's facts encourage, if not compel, employment of the rule of lenity. Because we perceive no ambiguity in the language that answers the question on review, we decline to apply the rule. The rule of lenity applies only if the plain language of the statute is ambiguous and traditional statutory interpretation rules do not help clarify the ambiguity. *State v. McDaniel*, 185 Wn. App. 932, 936, 344 P.3d 1241 (2015).

Earl Phillips argues that denying credit for pretrial incarceration when an individual subsequently enters an insanity plea conflicts with the legislature's recognition of the constitutional prohibition on indeterminate commitment and disincentivizes the State to timely consent to an insanity plea for a mentally ill individual. We recognize these potential harms, but must be guided by the statutes' language.

We mention some cases cited by Earl Phillips in support of his appeal. These cases favor the acquittee, but entail different circumstances, if not a different statute.

In *Jong Choon Lee v. Hamilton*, 56 Wn. App. 880, 785 P.2d 1156 (1990), this court interpreted language then found in RCW 10.77.020(3) similar to today's RCW 10.77.025. The court determined that the language demands credit for time for hospitalization incurred before acquittal. The court reasoned, in *Jong Choon Lee*, that,

because RCW 10.77.020(3) refers to commitment “under any provision of this chapter,” it embraces pre-acquittal commitment. *Jong Choon Lee v. Hamilton*, 56 Wn. App. 880, 884 (1990). The legislature has not extended this credit to time spent in jail not related to a competency evaluation.

In *State v. Lewis*, 184 Wn.2d 201, 205, 355 P.3d 1148 (2015), the Washington State Supreme Court concluded that a defendant was entitled to credit for the 387 days he served awaiting trial on multiple charges, but not constitutionally entitled to credit for time served on his burglary and assault sentences after he began serving his sentence for failure to register as a sex offender.


We recognize, as acknowledged by *State v. Lewis*, that, because a defendant entering a guilty plea must be credited with pretrial incarceration time toward the imposed sentence, an acquittee might reasonably expect to also receive credit for time spent in pretrial detention toward the maximum time spent in a mental health facility. The legislature might someday agree with this expectation. In the meantime, the legislature may distinguish between a criminal sentence after conviction and a commitment to a mental health hospital for treatment after an NGRI because the legislature wishes to insure sufficient treatment before release to the community. The acquittee also retains the right to petition early for release.

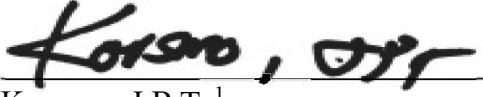
CONCLUSION

We affirm the superior court's credit to Earl Phillips of only the thirteen days he spent under the order for an RCW 10.77 competency evaluation.

  
Fearing, J.

WE CONCUR:

  
Cooney, J.

  
Korsmo, J.P.T.<sup>1</sup>

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<sup>1</sup> Kevin M. Korsmo, a retired judge of the Washington State Court of Appeals, is serving as a judge pro tempore of this court pursuant to RCW 2.06.150(1).

# HAGARA LAW PLLC

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