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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 44393-7-II (consolidated)
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Appellant

v.

ADAM CHIEF LEWIS, Respondent

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE DANIEL STAHNKE
CLARK COUNTY SUPERIOR COURT CAUSE
NO. 11-1-00815-1 AND 11-1-00816-9

BRIEF OF APPELLANT

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II. INTRODUCTION

The State of Washington appeals from an order of the trial court denying the state's Motion to Reconsider the credit for time served calculation.

The Defendant was afforded credit for time he had already served on a resolved matter. The defendant was given credit for time served as to two subsequent matters and received credit for time served retroactively as to these matters in contravention of settled case law and statutory authority.

III. ASSIGNMENTS OF ERROR

1. The trial Court erred in ordering credit for time served as to Clark County Cause Number 11-1-00815-1, and entering the order denying the State's motion to reconsider. (CP 237-238), (CP 168),
2. The trial Court erred in ordering credit for time served as to Clark County Cause Number 11-1-00816-9, and entering the order denying the State's motion to reconsider. (CP 237-238), (CP 218),

IV. ISSUES PRESENTED

1. Where a defendant is already serving a sentence on a resolved matter, should he be given credit for the time on the resolved matter, as to any other matters that are subsequently resolved?

V. STATEMENT OF THE CASE

The defendant was originally charged on three separate Clark County Cause numbers in 2011;

1. 11-1-00815-1 (Final Disposition at a Burglary in the First Degree);
2. 11-1-00816-9 (Final Disposition at a Assault in the First Degree);
3. 11-1-01336-7 (Final Disposition at a Failure to Register as a Sex Offender.)

The procedural history of these matters is set out below in table format:

As to Cause no. 11-101336-7, the defendant pleaded guilty and was sentenced on the 31st of August 2012, before Dept #2 of the Clark County Superior Court, the Hon. John P. Wulle, to Failure to Register as a Sex Offender. The defendant was informed in the written offer that pursuant to RCW 9.94A.505 (6) he would receive credit for time served solely for this cause number. (CP 142 to 156) The defendant was sentenced by the court and the court applied RCW 9.94A.505(6) giving the defendant credit solely for the time he

served on Clark County Cause #11-1-01336-7 and sentenced to 50 months with 387 days credit for time served. (CP 142 to 156, Pg. 49 Transcript of the Proceedings)

On the 26th of October 2012, the defendant pleaded guilty without the benefit of a plea agreement on Clark County Cause # 11-1-00815-1 before the Hon. Daniel Stahnke (CP 5, Pgs 2-9 Transcript of the Proceeding) The State requested that sentencing proceed at that time. The victim's were present. The court set over the matter, and it was set on for sentencing for the 5th of November 2012. (Pgs 2-9 Transcript of the Proceeding)

On the 5th of November 2012, the defendant entered a plea agreement, on the final pending matter, Clark County Cause # 11-100816-9 where the application of RCW 9.94A.505(6) was explained to him again. (Pgs 2-9 Transcript of the Proceeding)

He acknowledged that he understood he would be able to argue the interpretation of the same. The state acknowledged that it believed that under both Clark County Cause #11-1-00815-1 and Clark County Cause # 11-100816-9 the defendant had no credit for time served. Any time concurrency would be purely prospective as to all three cause numbers. (Pgs 15 Transcript of the Proceeding and C.P. 212) Sentencing on the # 11-1-00815-1 and # 11-

100816-9 was held on the 14th of December 2012 at 11:02 a.m.

(Pgs 15 Transcript of the Proceeding and C.P. 168-181)

On the 12th of December 2012 at 11:18 a.m. the defendant filed a pleading addressing the issue of Credit for time served. (C.P. 158-166) At the sentencing hearing the state requested an opportunity to respond to the pleading. (Pgs 58-59 Transcript of the Proceeding) The request was denied. (Pgs 62 Transcript of the Proceeding) The defendant was given credit for time served, retroactively, as to all three cause numbers (Pgs 69-71 Transcript of the Proceedings, C.P. 171, C.P. 221). There was argument on the defendant's memorandum. However, there is no record as to the authority upon which the court relied upon as to the decision to apply the credit for time calculation. (Pgs 69-71 Transcript of the Proceedings).

The State has created the table below to assist the reviewing court in tracking the credit for time calculation as compared to the dates of booking and sentencing on the following matters:

1. 11-1-00815-1 (Final Disposition at a Burglary in the First Degree);
2. 11-1-00816-9 (Final Disposition at a Assault in the First Degree);
3. 11-1-01336-7 (Final Disposition at a Failure to Register as a Sex Offender.)

Order of Sentencing	Cause	Date of Arrest and Charge	Date of Plea	Date of Sentence	Credit for time Served
01	11-101336-7 Failure to Register as a Sex Offender	8/10/2011	8/31/2012	8/31/2012	Credit for 387 days Serving Confined in the Clark County Jail pursuant to this Sentence from this date the 31 st of August 2012 (C.P. 144, 154)
02	11-1-00815-1 Burglary in the First Degree	5/13/2011-8/10/2011 CTS= 59 days	10/26/2012	12/14/2012	Prior to Booking on any other new matter the Defendant served 59 days. (5/13/2011 to 8/10/2011) (C.P. 159) (C.P. 144, 154)
02	11-100816-9 Assault in the First Degree	Arrest 5/13/2011-8/10/2011 CTS= 59 days	11/5/2012	12/14/2012	Prior to Booking on any other new matter the Defendant served 59 days. (5/13/2011 to 8/10/2011) (Pg. 159) (C.P. 144, 154)

On the 4th of January 2013, The State requested re-consideration as to the application of RCW 9.94A.505(6) and filed a written motion to that effect. (C.P. 182-186)

On the 4th of January 2013, the court heard argument. (Pgs 74-95 Transcript of the Proceedings.) The State argued and relied upon *State v. Schillereff*, 159 Wn.2d 649, 152 P.3d 345 (2007). (C.P. 187) (Pgs 82 Transcript of the Proceedings.) The motion was denied. (Pgs 93 Transcript of the Proceedings.)

LEGAL AUTHORITY IN SUPPORT

The question here relates to the application of RCW 9.94A.505(6) and the plain meaning of the same. There are no material facts in dispute. This is a simple question of the application of RCW 9.94A.505(6), which provides in pertinent part as follows "The 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."

Credit for confinement served before sentencing is limited to confinement solely in regard to offense for which offender is being sentenced; when concurrent sentences are imposed, defendant is not entitled to credit for time served on other sentences. *State v. Davis*, 69 Wn. App. 634, 849 P.2d 1283 (1993). (see also *State v. Watson*, 63 Wn. App. 854, 859-60, 822 P.2d 327 (1992). Finally, *State v. Roberts*, 117 Wn. 2d 576, 586(1991) held that the term “served concurrently” does not mean beginning and ending at the same time.

In re Pers. Restraint of Schillereff, 159 Wn.2d 649, 152 P.3d 345 (2007) considered the application of a comparable fact pattern. This defendant was originally arrested in Clark County on the 10th of February, 2003. *Id* at 651. The defendant posted bail on the 10th of February, 2003. *Id*. The defendant jumped bail, was charged with the same, and fled to the State of Texas. *Id*. On May 3, 2003, while in Texas, he was charged with a crime in that state. *Id*.

In June 2003, a bench warrant for bail jumping was issued on the Clark County matter and to extradite Schillereff back to Washington to answer his pending charges. *Id*. On September 16,

2004 the defendant made was booked into custody in Clark County. *Id.* On October 7, 2004 pleaded guilty to second degree assault and felony harassment. *Id.* The State of Washington as represented by the Clark County Prosecutors office, pursuant to the plea agreement, agreed to drop the bail jumping charge, and recommend a sentence to run concurrently with his felony sentence in the State of Texas. *Id.* The Superior Court Trial Judge, did not follow the recommendation, and imposed a standard range sentence to be served consecutively to Schillereff's Texas sentence. *Id.* The trial court awarded no credit for time served prior to the sentence. *Id.*

The Washington State Supreme Court reviewed the analysis of the trial court and the Commissioner of Division II of the Court of Appeals. *Id.* The court upheld the analysis of both of the lower courts. The court found that the defendant was entitled to credit solely in regard to the offense for which the offender is being sentenced and applied RCW 9.94A.505(6), strictly in compliance with the plain meaning of the statute. *Id.*

VI. AUTHORITIES AND ARGUMENT

A. **Argument in Support of Assignments of Error Nos. 1**

In the instant matter, this is the remedy sought by the state. The defendant as to Clark County 11-1-00815-1, is entitled to credit for time served of 59 days, only. The defendant as to Clark County 11-1-00816-9, is entitled to credit for time served of 59 days, only. The defendant was sentenced on a separate matter Clark County Cause number 11-1-01336-7 on 31 of August 2012. He was serving his confinement solely on this confinement until the date of his sentencing until his sentencing date of the 5th of December 2012 on both 11-1-00815-1, 11-1-00816-9. There was no statutory authority for the trial court to apply retro-actively, credit for time served as to these cause numbers. The state respectfully requests that the reviewing court find that the trial court incorrectly applied discretion where there was no authority available to exercise such discretion. Further, the state requests that the above matters be remanded for re-sentencing in compliance with the applicable law.

VII. CONCLUSION

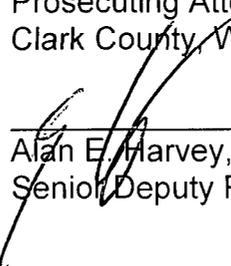
The trial court did not have the authority to attribute credit for time served as to Cause Numbers 11-1-00815-1 and 11-1-00816-9 that had been served solely on #11-1-01336-7. The defendant was only entitled to 59 days credit for time served as to Cause Numbers 11-1-00815-1 and 11-1-00816-9. The state respectfully requests that the defendant's matters be remanded for resentencing on both matters and to have the correct credit for time serve allowable by the existing case law and statutory authority.

DATED this 13 day of July, 2013.

Respectfully submitted:

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ADAM CHIEF LEWIS,
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Clark Co. (consolidated) NO. 11-
1-00815-1 AND 11-1-00816-9

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On July 15, 2013, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk Court Of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	ADAM CHIEF LEWIS c/o John A. Hays Attorney at Law 1402 Broadway St Longview, WA, 98632-3714
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DOCUMENTS: Appellants Brief

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: July 15, 2013.

Place: Vancouver, Washington.