Filed
Washington State
Court of Appeals
Division Two

September 29, 2026

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Postsentence Review of: KURTIS WILLIAM MONSCHKE, Respondent.	No. 61259-3-II PUBLISHED OPINION

MAXA, J. – The Department of Corrections (DOC) seeks postsentence review of Kurtis Monschke's sentence imposed following a resentencing hearing. In its postsentence petition, DOC challenges the amount of earned early release time (ERT) to which Monschke is entitled.

In 2004, a jury convicted Monschke of aggravated first degree murder for an offense committed in March 2003. At resentencing in 2025, the sentencing court amended his sentence from life without the possibility of parole (LWOP) to a 450 month sentence. The amended judgment and sentence authorized Monschke to receive ERT of up to one-third of his sentence.

RCW 9.94A.729(3)(b) states that an offender convicted of a "serious violent offense" committed on or after July 1, 1990 and before July 1, 2003 is eligible for a maximum ERT of 15 percent of the sentence. RCW 9.94A.030(47) defines "serious violent offense" to include first degree murder but not aggravated first degree murder.

DOC argues that the sentencing court erred because aggravated first degree murder is a serious violent offense that entitled Monschke to only a 15 percent ERT credit under RCW 9.94A.729(3)(b). DOC requests a remand for the sentencing court to change the amount of ERT authorized from one-third to 15 percent. Monschke argues that the sentencing court did not err because aggravated first degree murder is not within the statutory definition of a "serious violent offense" and therefore RCW 9.94A.729(3)(b) is inapplicable.

The State (the Pierce County prosecutor) agrees that the one-third ERT is incorrect, but argues that the sentencing court did not have the statutory authority to determine ERT because that power is reserved to DOC. Therefore, the State requests a remand for the sentencing court to strike the entire provision that includes Monschke's rate of ERT.

In *In re Personal Restraint of Benson*, this court recently held that aggravated first degree murder is a "serious violent offense" under RCW 9.94A.729(3)(b), meaning that offenders convicted of aggravated first degree murder are entitled only to 15 percent ERT. 37 Wn. App. 2d 43, 48-50, 588 P.3d 422 (2026). Under *Benson*, we hold that the sentencing court erred in authorizing up to one-third ERT for Monschke. In addition, we hold that the sentencing court lacked the statutory authority to determine ERT. Accordingly, we remand for the sentencing court to strike the entire unauthorized ERT provision.

FACTS

In 2004, Monschke was convicted in Pierce County of aggravated first degree murder for an offense that was committed in March 2003. He was 19 years old at the time. At the time of Monschke's conviction, an LWOP sentence was mandatory for any offender convicted of aggravated first degree murder. RCW 10.95.030 (1993). The trial court sentenced him to LWOP.

In 2021, the Supreme Court held in Monschke's case that mandatory LWOP sentences for offenders between the ages of 18 and 20 were unconstitutional because they violated the Eighth Amendment to the United States Constitution. *In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 329, 482 P.3d 276 (2021). The Supreme Court later held that a sentencing court can impose determinate sentences for people convicted of aggravated first degree murder whose LWOP sentences were invalidated by *Monschke*. *State v. Carter*, 3 Wn.3d 198, 548 P.3d 935 (2024).

In 2025, the sentencing court resentenced Monschke to 450 months of confinement. The court included the following handwritten notation on the judgment and sentence: "The Court authorizes up to 1/3 good time off the defendant's sentence to be calculated by the Dept of Corrections, under 9.94A.729." Post-Sentence Petition, Ex. 2 at 8.

DOC brings this petition to contest the one-third rate of ERT ordered by the sentencing court. DOC does not assign error to the sentencing court's determination of the rate of ERT, just the amount articulated.

ANALYSIS

A. POSTSENTENCE REVIEW PROCEDURE

DOC cannot independently correct an erroneous sentence. *State v. Broadaway*, 133 Wn.2d 118, 135, 942 P.2d 363 (1997). Instead, RCW 9.94A.585(7) authorizes DOC to petition for review of a sentence committing an offender to DOC's jurisdiction based on errors of law. RAP 16.18(a) contains a similar provision. A petition for postsentence review must be filed in this court no later than 90 days after DOC has actual knowledge of the sentencing terms. RCW 9.94A.585(7); *see also* RAP 16.18(b). DOC is required to serve a copy of the petition on the prosecuting attorney, who has the right to file a response. RAP 16.18(c).

We review for legal error a petition for postsentence review of a sentence. *In re Postsentence Rev. of Gardner*, 32 Wn. App. 2d 474, 477, 556 P.3d 743 (2024). The sentencing court can impose a sentence only if that sentence is authorized by statute. *Id.* Whether the sentencing court had authority to impose a particular sentence is a question of law that we review de novo. *Id.*

RAP 16.18(f) states, "The Court of Appeals will dispose of the matter in such manner as the ends of justice require."

B. APPLICABILITY OF RCW 9.94A.729(3)(b)

RCW 9.94A.729 states in part,

> (3) An offender may earn early release time as follows:
> . . . .
> (b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed 15 percent of the sentence.
> . . . .
> (e) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

The definition of "serious violent offense" in RCW 9.94A.030(47) lists several offenses, including first degree murder. The list does not include aggravated first degree murder.

The first issue here is whether RCW 9.94A.729(3)(b) or RCW 9.94A.729(3)(e) applies to Monschke's sentence. RCW 9.94A.729(3)(b) applies if aggravated first degree murder is a serious violent offense.

In *Benson*, this court acknowledged that aggravated murder is not listed as a serious violent offense in RCW 9.94A.030(47). 37 Wn. App. 2d at 48. However, the court rejected the assumption that aggravated first degree murder is distinct from first degree murder. *Id.* at 48-49. Instead, the court concluded that under the plain language of RCW 10.95.020 – the aggravated

murder statute – "aggravated first degree murder is a type of first degree murder." *Id.* at 49. As a result, the court held that aggravated first degree murder is a serious violent offense under RCW 9.94A.729(3)(b) and that a person convicted of aggravated first degree murder is only eligible for a maximum of 15 percent ERT. *Id.* at 45.

We follow the *Benson* analysis. Accordingly, we hold that the sentencing court erred by ordering one-third ERT.

C. REMEDY

DOC argues that we should remand for the sentencing court to impose a 15 percent rate of ERT. Conversely, the State argues that we should remand for the sentencing court to strike the entire ERT provision because the sentencing court did not have authority to address ERT. We agree with the State.

1. Legal Principles

The legislature delegated to DOC the responsibility for adopting procedures to award ERT. RCW 9.94A.729(1). Therefore, only DOC can grant ERT. *State v. Hale*, 94 Wn. App. 46, 56, 971 P.2d 88 (1999). " 'For offenders sentenced to incarceration in a state institution, the [ERT statute] gives the authority to grant good time *only* to the DOC.' " *In re Pers. Restraint of West*, 154 Wn.2d 204, 212, 110 P.3d 1122 (2005) (quoting *In re Pers. Restraint of Mota*, 114 Wn.2d 465, 477, 788 P.2d 538 (1990)).

The ERT statute "provides no authority for the superior court to grant early release time." *West*, 154 Wn.2d at 212 (addressing the previous ERT statute, former RCW 9.94A.150 (1996)); *see also Mota*, 114 Wn.2d at 478 ("The SRA[1] gives the trial court no authority to grant good-

[1] Sentencing Reform Act of 1981, chapter 9.94A RCW.

time credit."); *Hale*, 94 Wn. App. at 56 ("The SRA grants no authority to trial courts to give 'good time' credit.").

Trial courts cannot impose a sentence unauthorized by the legislature. *Gardner*, 32 Wn. App. 2d at 477. When a sentencing court exceeds its statutory authority, the unauthorized provisions are void. *State v. Paulson*, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). The remedy for a trial court exceeding its statutory authority is to remand to the sentencing court with instructions to strike the unauthorized provision. *See In re Postsentence Rev. of Milne*, 7 Wn. App. 2d 521, 526, 435 P.3d 311 (2019); *see also West*, 154 Wn.2d at 216.

2. Analysis

a. Considering the State's Requested Remedy

DOC argues that the State improperly raised the issue of the sentencing court's authority to determine ERT because DOC did not assign error to the sentencing court's lack of authority in its petition. But in addressing a postsentence petition, we "will dispose of the matter in such manner as the ends of justice require." RAP 16.18(f). And we liberally interpret the Rules of Appellate Procedure to "promote justice and facilitate the decision of cases on the merits." RAP 1.2(a). In addition, we may exercise our discretion to reach an issue presented to further clarify the law. *See State v. Grott*, 195 Wn.2d 256, 270, 458 P.3d 750 (2020) (addressing an issue raised for the first time on appeal).

Here, the issue is a purely legal question regarding the statutory authority of the sentencing court. Although DOC did not assign error to the sentencing court's authority to calculate the rate of ERT, RAP 16.18(c) gives the State the right to file a response. We exercise our discretion to consider the State's argument to fairly and fully decide this case on the merits.

b. Application of Appropriate Remedy

Addressing DOC's petition requires that we determine whether the sentencing court imposed an unlawful sentence outside of its statutory authority. *See Gardner*, 32 Wn. App. 2d at 477. Because there is no statutory authority authorizing the sentencing court to determine ERT, the court's setting of Monschke's ERT constituted an unlawful sentence. *See West*, 154 Wn.2d at 212; *Mota*, 114 Wn.2d at 478. That authority is given only to DOC. *Hale*, 94 Wn. App. at 56. Therefore, the sentencing court's calculation of ERT is an unauthorized provision and is void. *See Paulson*, 131 Wn. App. at 588.

Although DOC requests that we order the sentencing court to impose a 15 percent ERT, a modified ERT provision still would be void because it would exceed the sentencing court's statutory authority. Accordingly, we remand for the sentencing court to strike the entire ERT provision from the judgment and sentence.

CONCLUSION

We grant DOC's postsentence petition in part and remand to the sentencing court with instructions to strike the unauthorized ERT provision.

MAXA, J.

We concur:

VELJACIC, C.J.

CRUSER, J.