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Division III
State of Washington
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No. 39857-9-III
IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

EARL PHILLIPS, III

Appellant.

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

The Honorable Judge Brandon L. Johnson

APPELLANT'S OPENING BRIEF

Brooke D. Hagara, WSBA #35566

Hagara Law, PLLC
1410 N. Mullan Rd. Ste. 207
Spokane Valley, WA 99206
Phone: (509) 290-6540
brooke@hagaralaw.com

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A. ASSIGNMENT OF ERROR

The trial court erred in finding RCW 10.77.025 and RCW 10.77.010 unambiguous and should have evaluated legislative purpose and the rule of lenity and credited Mr. Phillips for 151 days spent in the custody of Walla Walla County Corrections toward his maximum commitment date.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Issue: Whether RCW 10.77.025 and RCW 10.77.010 are ambiguous, requiring the court to evaluate legislative purpose and the rule of lenity and credit Mr. Phillips for 151 days spent in the custody of Walla Walla County Corrections toward his maximum commitment date.

C. STATEMENT OF THE CASE

Earl Phillips, a 34-year-old diagnosed schizophrenic who began suffering from auditory and visual hallucinations at six years old, stopped taking his medications seven years ago. (CP 3, 4). At that time, he believed he was in his own home when police officers kicked in the door and sent their dog in to bite him. (CP 3). Due to his mental illness, Mr. Phillips believed

“mobile command” had told him that he was in the United States military and his home was government property. (CP 3).

As a result of Mr. Phillips’s delusions, on March 11, 2017, law enforcement responded to reports of an individual trespassing in a vacant home in Walla Walla, Washington. (CP 17, 21). Upon entry to the first floor, officers encountered a vacant home gutted in preparation for cleaning and remodeling. (CP 17, 27-56). Garbage littered the floors of rooms devoid of furniture. (CP 31-60). Graffiti covered the walls. (CP 31-34). A steep staircase led to the second floor. (CP 47, 49-50).

Mr. Phillips, at the top of the staircase, yelled that the officers were trespassing on his place of command. (CP 21). Mr. Phillips ranted about being in charge of the universe and urinated over the stairs down toward the officers. (CP 21). Officers continued to try to engage Mr. Phillips but received only incomprehensible responses. (CP 21). Mr. Phillips never attempted to descend the stairs nor would he respond to officer’s commands. (CP 27).

Officers eventually arrested Mr. Phillips and transported him to Saint Mary Medical Center, where he had to be secured to the bed. (CP 21). In response to questions about his family, Mr. Phillips repeatedly replied, “I ate my family, I have no son.” (CP 21). No bed was available at the hospital, so Mr. Phillips was transported to jail. (CP 29). Officers submitted charges for residential burglary, second degree assault, and obstruction of a police officer. (CP 29). Mr. Phillips remained in the custody of Walla Walla County Corrections for 164 days. (CP 122).

On August 14, 2017, the trial court found Mr. Phillips Not Guilty by Reason of Insanity (“NGRI”) to Burglary in the Second Degree, a Class B felony; Assault in the Second Degree, a Class B Felony; and Obstructing a Law Enforcement Officer, a gross misdemeanor. (CP 81-84). The trial court ordered Mr. 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).

Four years later, on May 17, 2021, the trial court ordered Mr. Phillips partially conditionally released from Eastern State Hospital, finding he was not, “a substantial danger to other persons nor does he present a substantial likelihood of committing criminal acts jeopardizing public safety or security as long as the conditions of release are followed.” (CP 87-88). Mr. 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, Mr. Phillips moved the trial court to expand his partial conditional release to unescorted community day trips, overnights, and community living. (CP 91-97). Mr. Phillips reported stable mental health and taking 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).

Six months after Mr. Phillips made his motion to the trial court for conditional release, the trial court partially granted his request, allowing him unescorted community day trips but denying unescorted community overnights and requiring he continue to 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 Mr. Phillips’s maximum commitment date at August 22, 2027, ten years following the court’s NGRI finding. (CP 124-25).

Mr. Phillips then moved the court to order DSHS to credit the 164 days spent in the custody of Walla Walla County Corrections toward his maximum commitment date, thus moving his commitment date back to March 10, 2027. (CP 115-125). DSHS conceded that Mr. Phillips should receive 13 days of

credit for the time he was detained awaiting competency evaluation. (CP 127).

The court denied the motion to be credit for the full 164 days, 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).

Mr. Phillips timely appeals. (CP 160-61).

D. ARGUMENT

Issue: Whether RCW 10.77.025 and RCW 10.77.010 are ambiguous, requiring the court to evaluate legislative purpose and the rule of lenity and credit Mr. Phillips for 151 days spent in the custody of Walla Walla County Corrections toward his maximum commitment date.

RCW 10.77 does not address whether time served in jail should be credited toward an insanity acquittee's maximum commitment date. The rule of lenity and constitutional

prohibition on indeterminate sentences for the criminally insane warrant crediting the 151 days Mr. Phillips spent in the custody of Walla Walla County Corrections toward his maximum commitment date. This court must credit Mr. Phillips with the additional time and order his maximum release date be amended to March 10, 2027, the date of his arrest.

Standard of Review and Legislative Interpretation

Questions of statutory interpretation are reviewed de novo. *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013); *State v. Sunich*, 76 Wn. App. 202, 205, 884 P.2d 1 (1994). The primary duty of the court in interpreting a statute is to discern and implement the intent of the legislature. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)(citing *Nat'l Elec. Contractors Ass'n. v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). The starting point must always be “the statute’s plain and ordinary meaning.” *Id.* When the plain language is unambiguous or admits of only one meaning, the legislative intent is apparent and the statute should not be construed otherwise. *Id.* (citing *State v.*

Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)). Words or clauses must not be added to an unambiguous statute when the legislature has chosen not to include that language. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

The court will resort to other indicia of legislative intent, including legislative history and the principles of statutory construction, only if a statute is ambiguous. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). A statute is ambiguous if it is susceptible to more than one reasonable interpretation. *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

RCW 10.77.025 states:

- (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.

The court has determined that the language of RCW 10.77.025 includes credit for time for hospitalization incurred prior to acquittal. *State v. Lee*, 56 Wn. App. 880, 883-884, 785 P.2d 1156 (1990)(interpreting the language of then-RCW 10.77.020(3)). The court reasoned in *Lee*, “because RCW 10.77.020(3) refers to commitment “under any provision of this chapter,” it embraces pre-acquittal commitment. *Id.* at 884 (citing *State v. Harris*, 39 Wn. App. 460, 463, 693 P.2d 750 (1985)).

The court in this case must go further than the language of RCW 10.77.025 as it does not directly address the issue in Mr. Phillips’s case. 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.” The court in *Lee* already interpreted this to include the evaluation for competency proceedings while in the custody of a jail facility, and DSHS conceded this at the

trial court. Indeed, the trial court in Mr. Phillips's case credited him that time.

However, the time spent in competency evaluation proceedings is not the only time period a defendant is in pretrial custody that informs the court whether a person should be detained for evaluation and treatment pursuant to an insanity plea. A court would be reckless to accept an insanity plea in any case of this magnitude with only information obtained in a competency evaluation report or in thirteen days of pretrial custody. The determination of whether the court should accept an insanity plea is much more complex, involving input from the defense attorney and the State after the attorney reviews the evidence with his or her client, a process that occurs over the entire time a defendant is in pretrial custody, not just the short period of time when a competency evaluation is pending. Thus, allowance for credit for only time a defendant is pending competency evaluation proceedings does not follow the language of RCW 10.77.010(4).

Indeterminate Commitment

Both confinement in a jail or prison and a mental health facility involve a massive curtailment of liberty. *In the Matter of the Personal Restraint of Knapp*, 102 Wn.2d 466, 475, 687 P.2d 1145 (1984)(citing *State v. Rinaldo*, 98 Wn.2d 419, 425, 655 P.2d 1141 (1982)). An insanity acquittee is not free like an individual acquitted on another basis. An insanity acquittee is subject to restrictions up to full hospitalization. In this sense, they are more similar to a defendant convicted of a crime, who would get credit for any time they served.

Historically, those acquitted by reason of insanity were subject to indeterminate commitment. *See, e.g.*, former RCW 10.76.070. 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). *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). 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.

Denying credit for pretrial incarceration when an individual subsequently enters an insanity plea would be contrary to the legislature's recognition of the constitutional prohibition on indeterminate commitment. Defendants charged with crimes are held for various lengths of time pretrial, and sometimes not at all. A defendant entering a guilty plea must be credited with pretrial incarceration time. *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015). Not allowing for credit for pretrial incarceration for a defendant entering an insanity plea in effect gives that person two terms of incarceration – the first term while awaiting the entry of the plea, and the second up to the statutory maximum for the crime after entry of the insanity plea.

Failing to give a defendant credit for pretrial incarceration against the maximum term of commitment also disincentivizes the entry of insanity pleas for truly mentally ill individuals. A defendant entering an insanity plea is often facing a much longer

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. Under the trial court's interpretation of RCW 10.77.025 and 10.77.010(4), a mentally ill defendant would face both a longer period in the state hospital than if they elected to plead guilty, plus an indeterminate period of pretrial incarceration for which they did not receive any credit. This was not the intent of the Washington Legislature in allowing for pleas of Not Guilty by Reason of Insanity, or in allowing treatment of mentally ill individuals.

Rule of Lenity

Since RCW 10.77.025 and RCW 10.77.010(4) do not squarely address the facts of Mr. Phillips's case, in addition to evaluating legislative intent, the court must utilize the rule of lenity and resolve the ambiguity in the statute in Mr. Phillips's favor. Washington courts have used the rule of lenity to interpret the language of RCW 10.77.025 in several instances. *State v.*

Harris, 39 Wn. App. 460, 693 P.2d 750 (1985); *Reanier*, 157 Wn. App. at 204-205.

The defendant in *Harris* was acquitted by reason of insanity of possession of stolen property in the second degree and forgery, both Class C felonies with maximum statutory terms of five years. *Id.* at 462. The State asserted that the defendant was eligible for a maximum commitment of ten years, which would have been served if consecutive sentences had been imposed. *Id.* at 462-463. The court found that the plain language of then-RCW 10.77.020(3) did not contemplate a situation in which a defendant pled to multiple offenses, and the legislative history similarly failed inform the question. *Harris*, 39 Wn. App. at 463.

The court stated:

When legislative history fails to provide sufficient guidance, the court is forced to rely upon the only other rule applicable in these circumstances – the so-called rule of lenity. This rule provides that a statutory ambiguity in a criminal case should be resolved in favor of the defendant.

Id. at 464-465 (citing *State ex. rel. McDonald v. Whatcom County District Court*, 92 Wn.2d 35, 37-38, 593 P.2d 546 (1979)).

The court went further in *Reanier*, finding that an accused could not lawfully agree to a term of commitment for treatment following acquittal by reason of insanity where the term exceeded that authorized by law. 157 Wn. App. at 197. The defendant in *Reanier* entered insanity pleas to two counts of third-degree assault, with an agreement that an “exceptional term of commitment” would be imposed. 157 Wn. App. at 197. Specifically, the parties agreed to run the two five-year statutory maximums on the third-degree assault charges consecutively for a total commitment of 10 years. *Id.*

The court found that the trial court exceeded its statutory authority in imposing consecutive terms. *Id.* at 209. It relied upon the intent of the Washington Legislature when it tied the maximum penal term to the constitutional restrictions governing involuntary confinement. 157 Wn. App. at 304. The court also returned to the rule of lenity analysis used in *Harris*, noting that the court had decided *Harris* 25 years prior, and the legislature

had not made any statutory changes addressing that holding, thus *Harris* must be consistent with the legislature's intent. *Id.* at 208.

The court's use of the rule of lenity to interpret the language of RCW 10.77.025 in the *Harris* and *Reanier* cases support awarding Mr. Phillips credit for pretrial confinement against his maximum commitment term. In Mr. Phillips's case, this court is faced with a situation not squarely addressed in the language of the statute or in the legislative history. However, when the court assesses the legislative purpose and applies the rule of lenity to Mr. Phillips's facts, it must give him credit for his pretrial incarceration time.

E. CONCLUSION

RCW 10.77.025 and RCW 10.77.010 do not address the issue of credit for pretrial confinement toward an insanity acquittee's maximum commitment date. The court must effectuate the legislative purpose of limiting indefinite commitment, apply the rule of lenity and order DSHS to award

Mr. Phillips credit for his pretrial confinement of 151 days against his maximum commitment date.

I certify this document contains 3,382 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 16th day of February, 2024.

/S/ Brooke D. Hagara
Brooke D. Hagara, WSBA #35566

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STATE OF WASHINGTON) COA 39857-9-III
) Respondent
vs.)
)
EARL PHILLIPS, III,)
) Defendant/Appellant.) PROOF OF SERVICE
_____)

I, Brooke D. Hagara, counsel for the Appellant herein, do hereby certify under penalty of perjury that on February 16, 2024, with prior permission, I served the attached Appellant’s Opening Brief on the Respondent, Special Deputy Prosecutor, at kcpa@kitsap.gov, via email through the Washington Appellate Portal.

Dated this 16th day of February, 2024.

/s/ Brooke D. Hagara
Brooke D. Hagara, WSBA #35566
Hagara Law, PLLC
1410 N. Mullan Rd., Ste. 207
Spokane Valley, WA 99206
Phone: (509) 290-6540
brooke@hagaralaw.com