

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DANIEL HERBERT PANNELL,

Appellant.

No. 39895-8-II

UNPUBLISHED OPINION

Worswick, J. — Daniel Pannell appeals the trial court’s denial of credit for time he spent in community custody under the Special Sex Offender Sentencing Alternative (SSOSA) against his re-imposed sentence. We affirm.¹

FACTS

On July 25, 2003, Pannell pleaded guilty to one count of first degree incest and four counts of second degree child molestation. On August 22, 2003, the trial court sentenced Pannell to 116 months of confinement, giving him credit for 348 days he had spent in Pierce County Jail, and suspending the remainder to be served as community custody under SSOSA.

On June 23, 2006, the court revoked Pannell’s suspended sentence after he was terminated from his sex offender treatment program for failure to make progress and for failure to pay for treatment. The court reimposed the 116 months of confinement and added three to four years of community placement.

On June 22, 2009, Pannell moved to vacate his sentence, arguing that the combination of his term of confinement and his term of community placement exceeds the 120-month statutory

¹ A commissioner of this court initially considered Pannell’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

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maximum sentence for his crimes. The State agreed and proposed language that the total time served would not exceed the statutory maximum and that Pannell would receive credit for times when he was in total confinement. However, Pannell also wanted the time he had served under community custody from 2003 to 2006 credited against his reimposed sentence.

On September 25, 2009, the court entered an order stating

The total time that Defendant can be under this sentence is 120 months. This includes time spent in the Pierce County Jail; [i]n the Department of Corrections & on community custody post release from the Department of Corrections.

CP 123.

Pannell argues that the trial court erred in denying him credit for time served in community custody from 2003 to 2006 under his SSOSA suspended sentence against his re-imposed sentence. But in *State v. Gartrell*, 138 Wn. App. 787, 791, 158 P.3d 636 (2007), we held otherwise. We held that time spent on community custody under a SSOSA suspended sentence is not “confinement,” so Gartrell was not entitled to credit for that time under RCW 9.94A.670(10).² 138 Wn. App. at 790. Thus, we held that the trial court “properly refused to credit community custody time against the reimposed sentence.” 138 Wn. App. at 791. Pannell’s argument fails.

Pannell also argues that denying him credit for time served in community custody under his SSOSA suspended sentence results in the possibility of him serving more than the statutory maximum sentence. When a sentence contains a term of confinement and a term of community custody that, when combined, may exceed the statutory maximum sentence for the crime, the

² RCW 9.94A.670(10) provides in pertinent part that “[a]ll confinement time served during the period of community custody [under a SSOSA suspended sentence] shall be credited to the offender if the suspended sentence is revoked.”

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court must include language specifying that the total time for the sentence cannot exceed the statutory maximum. *In re Pers. Restraint of Brooks*, 166 Wn.2d 664, 673, 211 P.3d 1023 (2009); *State v. Sloan*, 121 Wn. App. 220, 224, 87 P.3d 1214 (2004). Here, the court added the appropriate language, making the sentence consistent with *Brooks*. And as discussed above, time served on a suspended sentence in community custody under SSOSA is not credited against the reimposed sentence when the suspended sentence is revoked. *Gartrell*, 138 Wn. App. at 791. The trial court did not err when it entered the 2009 order.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

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Bridgewater, J.

Quinn-Brintnall, J.