IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. SHANNON J. CASERI, Respondent.	No. 40044-8-II UNPUBLISHED OPINION

Armstrong, J. — Shannon Caseri pleaded guilty to possession of a controlled substance, methamphetamine. The Clark County Superior Court sentenced her to 181 days of confinement, but granted credit for 28 days spent in inpatient treatment and 105 days spent in outpatient treatment. The State appeals, arguing the sentencing court improperly modified Caseri's sentence and lacks the authority to substitute outpatient treatment for confinement. Because the State acquiesced to the court's ruling allowing Caseri to remain in outpatient treatment and did not object to credit until after Caseri had successfully completed the remainder of her sentence, we affirm.

FACTS

On August 20, 2008, Caseri pleaded guilty to possession of a controlled substance, methamphetamine. The State recommended 181 days of confinement and Caseri asked to spend the last 28 days of her sentence in an inpatient drug treatment facility. Caseri explained that she was currently participating in the Clark County Substance Abuse Court and that court had already assigned her to a treatment facility. The sentencing court imposed the recommended 181 days of confinement and ruled:

> I will permit [Caseri] to be furloughed to a treatment program but I will not give credit until I know she's successfully completed it. . . . I will furlough her immediately because that's the higher priority for me. And I will evaluate her performance when she gets back for purposes of credit for time.

Report of Proceedings (RP) at 6. The court also explained that if Caseri completed the program before the end of her sentence, then she would be returned to jail to complete the sentence.

Caseri was released from the inpatient facility on October 1, 2008, and continued her drug treatment program in an outpatient facility supervised by the Clark County Substance Abuse Court. As part of her treatment, Caseri was required to attend three substance abuse treatment groups per week, submit to random drug and alcohol tests, attend community support groups, and appear in court for weekly reviews. She was also supervised by the Department of Corrections.

At a sentence review hearing on November 4, 2008, the State asked the court to order Caseri to return to jail to serve the remaining 103 days of her sentence in confinement. Defense counsel asked the court to allow Caseri to serve the remainder of her sentence in the outpatient facility. The sentencing court allowed Caseri to remain in outpatient treatment and agreed to give her credit for that time if she successfully completed the program. The court set another hearing for the conclusion of the remaining 103 days to review Caseri's progress and determine whether she would receive credit. The State did not object at that time.

Caseri successfully completed outpatient treatment on January 28, 2009. At the follow-up hearing on February 20, 2009, the State argued for the first time that the sentencing court did not have authority to modify Caseri's original sentence by granting credit for outpatient treatment. The sentencing court commented that its goal is generally to encourage defendants to successfully

complete every phase of their treatment program, but the court agreed to review a transcript of the sentencing hearing to determine whether granting credit for outpatient treatment would be a modification of Caseri's original sentence. After reviewing the transcript, the court found that such credit fell within the scope of the original sentence:

> I was thinking of a program and programs come in various phases. And as long as [Caseri] was completing the program—whether it be inpatient—outpatient—Oxford House—whatever it may be, that . . . would all be contemplated because what I was reaching for was the goal of encouraging her to successfully complete the program while holding jail over her head.

RP at 24.[1] The trial court ordered that Caseri receive credit for 28 days of inpatient treatment and 105 days of outpatient treatment. Combined with the 48 days that she had already served in jail, the credited time fulfilled Caseri's 181-day sentence.

ANALYSIS

The State appeals, arguing the sentencing court improperly modified Caseri's sentence and lacks the authority to substitute outpatient treatment for confinement. But our Supreme Court refused to consider a similar argument in *State v. Anderson*, 132 Wn.2d 203, 937 P.2d 581 (1997), where the State acquiesced to home detention and then argued that the defendant should not receive credit for that time because home detention was not statutorily authorized in his case:

> The State, citing RCW 9.94A.185, argues Defendant should not receive jail time credit for his home detention because electronic home detention is not statutorily authorized for persons convicted of violent offenses. Despite this, the State apparently acquiesced in the trial court's releasing Defendant to home detention pending his appeal. Whether it was proper to place Defendant on home detention is an entirely separate issue not before this court. Defendant *did* spend three years on electronic home detention. Having spent the time in detention, Defendant is entitled to credit under the Equal Protection Clause.

[1] Oxford House is the facility where Caseri was participating in outpatient treatment.

Anderson, 132 Wn.2d at 213.[2] Here, the sentencing court allowed Caseri to remain in outpatient treatment and agreed to credit that time if she successfully completed the program. The State acquiesced to the sentencing court's initial ruling and failed to object to the credit until after Caseri had successfully completed outpatient treatment and fulfilled the remainder of her sentence.[3] Regardless of whether it was proper to allow Caseri to remain in outpatient treatment, Caseri *did* remain in outpatient treatment and fulfilled her end of the agreement by successfully completing the program. Accordingly, Caseri is entitled to credit. *See Anderson*, 132 Wn.2d at 213.

Additionally, a defendant acquires a legitimate expectation of finality in a sentence substantially or fully served, unless the defendant was on notice that the sentence might be modified due to a pending appeal or the defendant's own fraud in obtaining an erroneous sentence. *State v. Hardesty*, 129 Wn.2d 303, 312, 915 P.2d 1080 (1996). Again, the State did not object to credit until after Caseri had successfully completed the remainder of her sentence in

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[2] The defendant in *Anderson* was released on home detention pending the appeal of his attempted murder conviction, which was ultimately unsuccessful. Because defendants are entitled to credit for pretrial home detention under the Sentencing Reform Act, chapter 9.94A RCW, the *Anderson* court held that this defendant was also entitled to credit for post-trial home detention under the Equal Protection Clause. *Anderson*, 132 Wn.2d at 205, 208-12.

[3] Although the State claims it objected at the November 4, 2008 hearing when the sentencing court initially agreed to grant credit for outpatient treatment if Caseri successfully completed the program, the record does not reveal any objection from the State until the February 20, 2009 hearing. And although the sentencing court's findings of fact state that the State objected at the November 4, 2008 hearing, findings of fact must be supported by substantial evidence in the record. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). Nothing in the transcript of the November 4, 2008 hearing supports this finding.

outpatient treatment. Because she did not use fraud to obtain the credit and had no notice that the State would object to until after she had already completed her sentence, Caseri has acquired an expectation of finality in her sentence. *See Hardesty*, 129 Wn.2d at 312.

Affirmed.

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.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.