

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,  
Respondent,

No. 42713-3-II

v.

UNPUBLISHED OPINION

MICHAEL DALE CUNNINGHAM,  
Appellant.

Van Deren, J. — In 2005, Michael Cunningham received a special sex offender sentencing alternative (SSOSA) sentence after his plea of guilty to three counts of first degree child molestation. In 2011, the trial court revoked the SSOSA sentence and, as part of that revocation, gave Cunningham credit for 511 days served in the county jail. He appeals from the order revoking his SSOSA sentence, contending that he is entitled to at least 604 days of credit for time served and that his counsel was ineffective because she erred in calculating his time served. Concluding that the record before this court is insufficient to evaluate his claims, we affirm.<sup>1</sup>

In his 2005 SSOSA sentence, the trial court sentenced Cunningham to 131.75 months of confinement, with all but 6 months suspended on compliance with the conditions of his SSOSA sentence. In 2007, Cunningham stipulated to a violation of those conditions and the trial court ordered that he be confined for 60 days for that violation. In 2008, Cunningham stipulated to

---

<sup>1</sup> A commissioner of this court initially considered Cunningham's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

No. 42713-3-II

additional violations of those conditions and the trial court ordered that he be confined for 94 days for those violations. In 2010, Cunningham stipulated to yet more violations of those conditions and the trial court ordered that he be confined for 9 months for those violations. Finally, after Cunningham committed further violations of his SSOSA conditions, including having been terminated from his treatment program, the trial court revoked his SSOSA sentence and re-imposed the 131.75 month sentence it imposed in 2005. During the revocation hearing, Cunningham's counsel stated that she had "tallied up what [she] believe[d] to be the time that he ha[d] served . . . since 2004, to be 511 days on this cause number." Report of Proceedings (Oct. 14, 2011) at 6-7. In the order revoking Cunningham's SSOSA sentence, the trial court gave him credit for 511 days served in jail.

Cunningham now contends that the trial court failed to give him credit for all the time he served in jail during his SSOSA sentence. *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 832, 129 P.3d 827 (2006); former RCW 9.94A.120(17) (1999); CrR 7.2. He asserts that he is entitled to at least 604 days of credit for time served (assuming 30 days in a month) as follows: 180 days in 2005, 60 days in 2007, 94 days in 2008, and 270 days in 2010. In the alternative, he contends that his trial counsel provided ineffective assistance of counsel in calculating his credit for time served as 511 days, deeming her calculation to be "unsubstantiated." Br. of Appellant at 6 (citing *Strickland v. Washington*, 466 U.S. 668, 688-89, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

But the record before this court is inadequate to determine whether either of Cunningham's arguments have merit. The record does not contain any jail certifications from which the correct number of days served can be determined. "A party seeking review has the

No. 42713-3-II

burden of perfecting the record so that the reviewing court has before it all of the relevant evidence.” *State v. Vazquez*, 66 Wn. App. 573, 583, 832 P.2d 883 (1992). Cunningham has not met that burden. If he obtains the jail certifications and if they show that he served more than 511 days in jail on this cause number, he can seek correction of the order revoking his SSOSA sentence through a personal restraint petition. RAP 16.4.

We affirm the order revoking Cunningham’s SSOSA sentence.

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 in accordance with RCW 2.06.040, it is so ordered.

---

Van Deren, J.

We concur:

---

Hunt, J.

---

Penoyar, J.