IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:	)	**No. 28227-9-III**
	)	**Division Three**
	)	
	)	**UNPUBLISHED OPINION**
JAMES BERNARD SCHLOSSER,	)	
	)	
Petitioner.	)	
	)	

Kulik, C.J. — James Bernard Schlosser seeks relief in a personal restraint petition from an order extending jurisdiction over his legal financial obligations and restitution imposed for his 1998 convictions for second degree theft and second degree possession of stolen property. Because we conclude that the 10-year limitation on extending jurisdiction on Mr. Schlosser's obligations ended in July 2008, we vacate the May 2009 order entered by the trial court.

FACTS

On June 24, 1998, Mr. Schlosser pleaded guilty to one count each of second degree theft and second degree possession of stolen property. Judgment was entered on the same day, imposing concurrent 30-day sentences. Mr. Schlosser was released from

total confinement for those convictions in July 1998.

On January 25, 2007, Mr. Schlosser failed to appear for a hearing regarding payment of the legal financial obligations. A bench warrant was issued.

Meanwhile, in a separate case number, Mr. Schlosser pleaded guilty on March 15, 2000, to one count of second degree burglary and one count of second degree theft and was sentenced to 20 months' confinement.

On May 21, 2009, Mr. Schlosser was detained per the 2007 bench warrant. On May 21, 2009, the court entered an ex parte order extending the court's jurisdiction over Mr. Schlosser's legal financial obligations and restitution on the 1998 judgment for an additional 10 years. Mr. Schlosser has made $400.06 in payments since his 1998 sentencing and, at the time of the order, owed a balance of $3,608.90.

Mr. Schlosser filed this personal restraint petition challenging the May 21, 2009 extension order. He claimed that the extension order was untimely and that due process required he receive notice of the ex parte order. After the State filed its response, and Mr. Schlosser filed his reply, the court requested supplemental written comment from the State regarding the applicability of *In re Personal Restraint of Spires*, 151 Wn. App. 236, 240, 211 P.3d 437 (2009).

ANALYSIS

A personal restraint petitioner, who has not had a previous opportunity for judicial review, need only show that he has been restrained and that the restraint is unlawful. *Spires*, 151 Wn. App. at 240. "Restraint" includes being "under some other disability resulting from a judgment or sentence in a criminal case." RAP 16.4(b). Such restraint is unlawful if "the sentence or other order entered in a criminal proceeding . . . was imposed or entered in violation of the . . . laws of the State of Washington." RAP 16.4(c)(2). Here, Mr. Schlosser is restrained under disability imposed by the 2009 extension order. This restraint is unlawful if it was imposed contrary to the time allowed under Washington statutory law.

"A court's authority to order restitution is purely statutory." *State v. Sappenfield*, 138 Wn.2d 588, 591, 980 P.2d 1271 (1999). Questions of statutory interpretation are reviewed de novo. *Spires*, 151 Wn. App. at 240. When a statute is plain and clear, we must apply the language as written. *Sappenfield*, 138 Wn.2d at 591; *Spires*, 151 Wn. App. at 240.

The portion of the statute at issue here reads:

> [L]egal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's *release from total confinement* or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime.

RCW 9.94A.760(4) (emphasis added).

The statute clearly distinguishes between offenses committed prior to July 1, 2000 (imposing a 10-year limit to order an extension) and offenses committed after July 1, 2000 (imposing no time limit in which the court may collect legal financial obligations). Here, the offenses took place on May 11, 1998. Mr. Schlosser was sentenced on June 24, 1998, and released in July 1998. This fact is uncontested and the State admits that normally the judgment and sentence entered June 1998 with 30 days' jail time would require the court to enter the extension prior to the end of July 2008. Here, the extension was not entered until May 2009—10 months later. Indisputably then, the 10-year limit is applicable to Mr. Schlosser.

The statute determines the date from which the 10-year term will begin. The 10-year limit on extensions runs from the later of two dates: the judgment and sentencing or release from total confinement. The date of Mr. Schlosser's judgment and sentence is uncontested; at issue here is the meaning of "total confinement." Mr. Schlosser argues that "total confinement" encompasses only the offense at hand—here, release from confinement in July 1998 for the June 24, 1998 judgment and sentence. The State argues that "total confinement" encompasses the offense at hand and subsequent offenses—here, the subsequent judgment and sentence rendered on March 15, 2000, with the corresponding release date 20 months later (approximately November 2001).

The law is well settled that "release from total confinement" means "'release from confinement for the crime for which restitution was ordered.'" *Sappenfield*, 138 Wn.2d at 593 (quoting *In re Pers. Restraint of Sappenfield*, 92 Wn. App. 729, 736, 964 P.2d 1204 (1998)); *see Spires*, 151 Wn. App. at 241 ("'[R]elease from total confinement' relates to the initial period of incarceration ordered in the judgment and sentence for the crime [and] does not include subsequent periods of incarceration for violations of conditions of community custody or payment of restitution related to the original crime.").

Thus, here, release from total confinement means the July 1998 release from

confinement for the crimes for which the legal financial obligations were ordered. Therefore, the 10-year limit on extension orders expired in July 2008, making the May 21, 2009 order improper.

Alternatively, the State argues that the tolling provisions expressed in former RCW 9.94A.625 (2000) regarding community custody should apply here. The pertinent portion of that provision states:

> (2) Any term of community custody, community placement, or community supervision shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.
>
> (3) Any period of community custody, community placement, or community supervision shall be tolled during any period of time the offender is in confinement for any reason.

Former RCW 9.94A.625.

The provision defining "community custody" reads:

> that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities *by the department*.

RCW 9.94A.030(5) (emphasis added).

The State further contends that the 10-year supervision period by the county clerk is part of, or analogous to, an offender's community custody supervision, by the

department and should, therefore, be tolled. However, the statute at issue, RCW 9.94A.760(4), continues:

> [t]he department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution . . . pursuant to a transfer agreement . . . . The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

Sappenfield directly addressed and dismissed the State's argument:

> The State's reliance upon [former] RCW 9.94A.170[recodified as RCW 9.94A.171] is misplaced. . . . [The statute] addresses the [department of correction's] "period of supervision," but the statute has no bearing on the more fundamental issue of the sentencing court's jurisdiction over restitution orders.

Sappenfield, 138 Wn.2d at 593-94. Furthermore, as the court in *State v. Olson* noted:

> When the legislature has intended to use a subsequent period of incarceration for tolling [a Sentencing Reform Act, chapter 9.94A RCW] time period, it has expressly stated so in the statute.

State v. Olson, 148 Wn. App. 238, 244, 198 P.3d 1061 (2009).

Here, Mr. Schlosser is not serving a portion of his sentence in lieu of earned release time, and the statute at issue, RCW 9.94A.760, is excluded from the enumerated list of applicable statutes under the definition of community custody.

RCW 9.94A.030(5).

The department's supervision is not part of, nor the same as, the clerk's supervision with regard to legal financial obligations; therefore, the tolling provisions in former RCW 9.94A.625 do not apply here.

Finally, the State argues that the extension should be allowed in the interest of justice. However, the legislature chose to extend the court's jurisdiction indefinitely only for crimes committed after July 1, 2000, and retained the 10-year limitation for crimes committed prior to July 1, 2000. *Spires*, 151 Wn. App. at 245-46 (quoting *State v. Gossage*, 165 Wn.2d 1, 8, 195 P.3d 525 (2008)). Therefore, if the court does not order an extension within the 10-year period after the offender's release, it loses jurisdiction to enforce legal financial obligations or restitution. *Gossage*, 165 Wn.2d at 8.

The court's 2009 order extending jurisdiction to collect legal financial obligations was improper; we vacate the order. Mr. Schlosser's remaining issues are moot and need not be addressed.

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

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Kulik, C.J.

WE CONCUR:

Sweeney, J.

Siddoway, J.