

No. 83738-4

Stephens, J. (dissenting)—I agree with the majority that Samuel Donaghe’s term of community placement began upon completion of his term of confinement. I disagree, however, that Donaghe’s detention under a civil commitment scheme triggered the tolling provision under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW.

At the time of Donaghe’s offense, the SRA’s tolling provision stated that “[a]ny period of supervision shall be tolled during any period of time the offender is in confinement for any reason.” Former RCW 9.94A.170(3) (1988). The majority says that Donaghe’s precommitment detention at the special commitment center was “confinement for any reason” that tolled his term of community placement.

The term “confinement for any reason” must be read in the context of the criminal scheme in which it appears. The tolling statute and the definition of “confinement” are contained in chapter 9.94A RCW and apply to provisions of the SRA, not an unrelated civil commitment scheme. There is no indication the legislature intended even its most broadly worded definitions under the SRA to

sweep outside the criminal context. If we were to extend these SRA concepts beyond the criminal sphere, then why stop at the sexually violent predator statute, chapter 71.09 RCW? Why not encompass any mental health detention? Why not include voluntary inpatient treatment at a clinic that contracts with the State? The majority's statutory analysis offers no principled basis to distinguish between offenders like Donaghe and any other civilly confined individual.

Because Donaghe served out his term of community placement upon completion of his sentence, notwithstanding his precommitment civil detention, I would grant his motion for a certificate of discharge.¹

I respectfully dissent.

¹ Because I would grant Donaghe's certificate of discharge, it is unnecessary to consider the State's argument that Donaghe's specific request for restoration of his voting rights is moot in light of the 2009 amendments to RCW 29A.08.520. I agree with Judge Armstrong's dissent below that Donaghe should be entitled to vote at least as of the effective date of these amendments. The majority does not foreclose this possibility. Majority at 16 n.15.

AUTHOR:

Justice Debra L. Stephens

WE CONCUR:

Chief Justice Barbara A. Madsen

Justice Gerry L. Alexander

Richard B. Sanders, Justice Pro
Tem.
