



## In re Personal Restraint of Bennett

152 Wash.App. 1028 (2009) | Cited 0 times | Court of Appeals of Washington | September 28, 2009

### UNPUBLISHED OPINION

An offender sentenced to a term of confinement has both a constitutional and statutory right to receive credit for all confinement time served before sentencing. However, an offender serving multiple consecutive sentences is not entitled to have credit for a discrete period of confinement applied to each consecutive sentence, as doing so would result in a multiple award of credit. Petitioner Joseph Allen Bennett filed this personal restraint petition challenging the Department of Corrections' (DOC) refusal to apply credit to each of three sentences of confinement for the time he served in the Snohomish County jail from July 12 to December 4, 2007. One of these sentences was imposed after revocation of Bennett's probation under a 2004 sentence; the other two were imposed under two 2007 causes, to run concurrently with each other. Given that the relevant statute does not entitle Bennett to the credit and the sentencing court did not specify the 2007 sentences were to run concurrently with the 2004 sentence, Bennett's petition is denied.

#### I.

In November 2004, Bennett was sentenced in cause No. 04-1-02235-0 (the 2004 sentence) to 4 months of confinement and 12 months of community custody for committing assault in the second degree, and to 365 days of confinement, 245 of which were suspended, and 24 months of probation for violating a no-contact order, the terms of both sentences to run concurrently.

On April 12, 2007, Bennett was detained in the Snohomish County jail after being arrested for possession of stolen property in the second degree, cause No. 07-1-02252-4, and on a DOC warrant related to the 2004 sentence. On April 19, DOC imposed a 30-day sanction on Bennett for violating the conditions of community custody imposed under the 2004 sentence. Bennett was released from jail on May 2. DOC determined that the period of detention from April 12 to May 2 satisfied the sanction imposed for Bennett's violation of the terms of community custody, and this period of detention was credited exclusively to this sanction. Bennett does not seek presentence credit for this period of detention.

On July 12, 2007, Bennett was again detained in the Snohomish County jail, this time after being arrested for possession of a controlled substance, cause No. 07-1-02103-0, as well as on warrants related to the 2004 sentence. A bail order in relation to the possession of stolen property charges under cause No. 07-1-02252-4 was later added as an additional reason for detaining Bennett in the jail.



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On July 19, DOC imposed a sanction of 60 days of detention against Bennett for violating the terms of the 2004 sentence. Bennett received credit for time served since July 12. DOC later determined this sanction complete as of August 21.

Before Bennett completed this sanction, however, the superior court on July 23 revoked Bennett's 2004 sentence of probation and imposed a sentence of 215 days of confinement. This sentence began to run on July 23 and overlapped with the 60-day sanction imposed by DOC a few days earlier. The 2004 sentence of confinement was initially scheduled to be complete as of December 13. But after losing five days of earned time for committing a serious infraction while in custody, Bennett did not complete it until December 18.

On September 27, 2007, while in custody under the 2004 sentence, Bennett pleaded guilty to one count of possession of methamphetamine under cause No. 07-1-02103-0, and two counts of identity theft in the second degree and five counts of possession of stolen property in the second degree, under cause No. 07-1-02252-4. On November 19, the superior court sentenced Bennett to 9 months of confinement and 9 months of community custody, under cause No. 07-1-02103-0, and 25 months of confinement and 25 months of community custody, under cause No. 07-1-02252-4 (the 2007 sentences), the terms of each sentence to run concurrently with one another.<sup>1</sup> The judgment and sentence form for each cause states: "The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. [Fomer] RCW 9.94A.120<sup>2</sup> The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court." And in each form following this statement, the superior court entered the following notation by hand: "Credit for time served since booking."

After sentencing under the 2007 causes, Bennett remained confined in jail until December 4, 2007, when he was transferred to the custody of DOC. The jail did not credit any of the time that it had custody of Bennett toward the 2007 sentences. It determined that all of the time that Bennett had spent in its custody between July and December 2007 was in fulfillment of the 2004 sentence of confinement imposed after revocation of probation and the overlapping DOC sanction. For the same reasons, DOC did not give Bennett any credit for the time he spent in jail.

## II.

With respect to the 2007 sentences, Bennett contends that he is entitled to receive credit for the period of time he spent in jail from July 12 to December 4, 2007. We disagree.

To obtain state judicial review through a personal restraint proceeding, an inmate is required to demonstrate both that he or she is being restrained and that the restraint is unlawful. RAP 16.4(a); *In re Pers. Restraint of Dutcher*, 114 Wn. App. 755, 758, 60 P.3d 635 (2002) (citing *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 144, 866 P.2d 8 (1994)). The petitioner may obtain relief by demonstrating either a constitutional violation or a violation of state law. RAP 16.4(c)(2), (6); *Cashaw*, 123 Wn.2d at



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Pursuant to RCW 9.94A.505(6), "[t]he sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced." This statutory requirement reflects a constitutional mandate. *State v. Speaks*, 119 Wn.2d 204, 207, 829 P.2d 1096 (1992) (construing former RCW 9.94A.120(13) (1991), at which this identical statutory provision was previously codified). Failure to allow such credit violates due process, denies equal protection, and offends the prohibition against multiple punishments. *State v. Cook*, 37 Wn. App. 269, 271, 679 P.2d 413 (1984). In addition, an inmate has a constitutionally protected, though limited, liberty interest in good-time credits. *Dutcher*, 114 Wn. App. at 758. Thus, a DOC action that wrongfully denies an inmate credit for time served or good-time earned would result in the unlawful restraint of the inmate.

Bennett contends that DOC has wrongfully denied him credit for the time he served in jail from July to December 2007 because the superior court's notations on the forms for the 2007 sentences state that Bennett shall received "[c]redit for time served since booking." Although the judgment and sentence forms for the 2007 sentences expressly provide that the sentences are to run concurrently with each other, they do not expressly provide that the 2007 sentences are to run concurrently with the 2004 sentence. However, Bennett essentially reads the forms as doing so. He is mistaken.

Each judgment and sentence form expressly states that "[t]he defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. [Former] RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court." (Emphasis added.) Further, "[w]henver any person granted probation under RCW 9.95.210 or 9.92.060,<sup>3</sup> or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently." RCW 9.94A.589(4). It is undisputed that Bennett was in custody in the jail from July to December 2007 not only for the causes underlying the 2007 sentences but also in fulfillment of the 2004 sentence. Pursuant to the terms of the 2007 judgment and sentence forms and RCW 9.94A.589(4), the 2007 sentences were to run consecutively to the time of confinement imposed under the 2004 sentence, unless the sentencing court expressly ordered otherwise and specifically calculated the amount of credit for time served. The sentencing court did neither.

Bennett claims that the 2007 judgment and sentence forms are ambiguous because the superior court did not specify whether the 2007 sentences were to run concurrently with the 2004 sentence. However, Bennett overlooks the provision of RCW 9.94A.589(4) directing that sentences run consecutively unless the superior court expressly orders otherwise. The ambiguity that Bennett asserts is entirely the product of his own oversight. Further, the sentencing court's notation that Bennett was to receive credit for time served since booking cannot be interpreted as setting forth a specific amount of time credit to be applied against the 2007 sentence. The notation does not set



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forth a time credit that is any more specific than Bennett's pre-existing entitlement, explicitly recognized in RCW 9.94A.505(6), to "credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which" he was sentenced. The notation does nothing more than direct the jail to do what this statute requires. The 2007 sentencing orders do not have the meaning that Bennett assigns to them.

Nor could they have the meaning that Bennett erroneously ascribes. RCW 9.94A.505(1) provides that "the court shall impose punishment as provided in this chapter." In the context of interpreting an identical provision in the predecessor to this statute, we previously explained that "[t]he statute does not give the sentencing court authority to credit an offender for more pre-trial detention time than he or she is entitled to by law." *In re Pers. Restraint of Costello*, 131 Wn. App. 828, 833, 129 P.3d 827 (2006). As explained, RCW 9.94A.589(4) provides that a sentence of confinement imposed in place of a revoked probationary sentence shall run consecutively to any other sentence, unless the sentencing court expressly orders that the sentences shall run concurrently. The sentencing court did not so expressly order. Therefore, the 2007 sentences must run consecutively to the 2004 sentence.

In addition, RCW 9.94A.505(6) provides that credit for presentence confinement shall be given only if "that confinement was solely in regard to the offense for which the offender is being sentenced." Moreover, "Washington law requires that sentences be either fully consecutive to or fully concurrent with one another." *Costello*, 131 Wn. App. at 834 (citing *State v. Grayson*, 130 Wn. App. 782, 125 P.3d 169 (2005)). A sentencing order "can[not] be construed as authorizing a jail to credit an offender with more time than he or she is entitled to by law." *Costello*, 131 Wn. App. at 833--34. However, application of the time that Bennett served in the jail for the 2004 sentence as credit against the 2007 sentences would unlawfully render these sentences partially concurrent. Thus, the 2007 sentences must be viewed as running consecutively to the 2004 sentence.

Accordingly, the petition is denied.

1. Under cause No. 07-1-02252-4, for each count of possession of stolen property in the second degree Bennett was sentenced to 12.75 months of confinement and 12.75 months of community custody, and to 25 months of confinement and 25 months of community custody for each count of identity theft in the second degree. The judgment and sentence for these offenses specifies that the sentences for each of these offenses were to run concurrently with each other and with the sentence imposed under cause No. 07-1-02103-0.
2. As of the entry date for Bennett's 2007 sentence, the pertinent provision of RCW 9.94A.120 had been recodified at RCW 9.94A.505(6). The reference on the sentencing form to RCW 9.94A.120 appears to be an inconsequential scrivener's error, of which neither Bennett nor DOC complains.
3. Bennett was granted probation under RCW 9.92.060 as part of the 2004 sentence.

