



COMMUNITY CORRECTIONS CASE LAW

Colorado Association of Community Corrections Boards
Case Law Committee
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The following are the major cases decided by the Colorado Supreme Court regarding community corrections in the last five years.
Read together, they clarified some statutory ambiguities. Updated 5/27/2005.

REJECTION

Benz v. People. When an offender is rejected after acceptance by community corrections, CRS 17-27-103(7) provides for the sentencing court, as the referring agency, to conduct an administrative review process if the community corrections board or program has not done so. Here, Benz received actual notice of his rejection from community corrections and the reasons for such rejection. In addition, the sentencing court provided the review contemplated by the statute when it conducted an informal review of the facts underlying Benz's rejection. Accordingly, the Supreme Court affirms the judgment of the Court of Appeals and upholds Benz's sentence to the Department of Corrections for imprisonment.

People v. Rogers. When an offender is rejected after acceptance by community corrections, CRS 17-27-103(7) provides for the sentencing court, as the referring agency, to conduct an administrative review process if the community corrections board or program has not done so. Here, Rogers received actual notice of his rejection from community corrections and the reasons for such rejection. In addition, the sentencing court provided the informal review contemplated by the statute for it as the referring agency. Accordingly, the Supreme Court, relying on its opinion in *Benz v. People*, 5 P.3d 311 (2000), reverses the judgment of the Court of Appeals and remands this case to that court with instructions to reinstate the trial court's order denying Crim.P. 35(c) relief.

People v. Holt 874 P.2d 410 (Colo. App. 1993) continuing the reasoning in *People v. Wilhite*, 817 P.2d 1017 (Colo. 1991) held that a Community Corrections facility may reject a defendant before or after acceptance for any reason or no reason at all.

People v. Abdul 935 P.2d 4 (Colo. 1997) continues the *Wilhite* rationale and draws no distinction between an evidentiary and a re-sentencing hearing, and holds that a defendant has neither a constitutional nor statutory right to such a hearing.

People v. James 940 P.2d 1092 (Colo. App. 1996).

REFERRAL

People v. Santisteven 868 P.2d 415(Colo.App. 1993) held that if a defendant is serving a violent and non-violent crime sentence, the sentence will be construed as a violent crime conviction for purposes of Community Corrections referral.

People v. Lanzieri 1999 WL 144223 (Colo. App. 1999), *cert. granted*, held that a Parole Officer may not refer a defendant to Community Corrections.

RESTITUTION

People v. Randolph 852 P.2d 1282 (Colo. App. 1992) and People v. Strock 931 P.2d 538 (Colo. App. 1996) make it clear that, although the amount of restitution is set by the Judge at the time of sentencing, the Community Corrections facility or the Parole Board fix the terms and conditions for collection of restitution after sentencing.

PRESENTENCE CONFINEMENT

People v. Hoecher 822 P.2d 8 (Colo. 1991) held that the defendant was not entitled to presentence confinement credit for non-residential time.

People v. Mortensen 856 P.2d 45 (Colo. App. 1993).

Beecroft v. People 874 P.2d 1041 (Colo. 1994).

SENTENCING

Downing v. People 895 P.2d 1046 (Colo. 1995) held an eight year Community Corrections sentence was an increase from a six year Department of Corrections sentence and, therefore, could not be imposed at a Motion to Reconsider.

People v. Seals 899 P.2d 359 (Colo. App. 1995) held that a defendant sentenced to two years Community Corrections as a condition of a four year suspended Department of Corrections sentence would be required to serve the four year Department of Corrections sentence after a Community Corrections rejection.

People v. Arnold 907 P.2d 686 (Colo. App. 1995) held that a Department of Corrections sentence following a Community Corrections violation was a new sentence for calculating time for filing motions.

People v. Johnson 987 P.2d 928 (Colo. App. 1999), *cert. granted*, the Court of Appeals began a series of cases dealing with the relation of parole to a total sentence. The court held that a defendant who is re-sentenced after a violation of Community Corrections is entitled to credit for the period of mandatory parole against the sentence. The basis of this decision is the holding that parole is a service of the sentence outside prison walls. As a result of this case, the total Department of

Corrections sentence, including parole, may not exceed the original Community Corrections sentence. This case is currently pending in the Colorado Supreme Court.

People v. Snare 1999 WL 976626 (Colo. App. 1999) another division of the Court of Appeals ruled that parole is not part of the total sentence.

Benavidez v. People 986 P.2d 943 (Colo. 1999) and Craig v. People, 986 P.2d 951 (Colo. 1999) were decided by the Colorado Supreme Court and concern the relationship between plea agreements, advisement, and mandatory parole. These two cases hold that a Department of Corrections sentence and parole are separate and distinct. They hold that the defendant must be advised of the Department of Corrections sentence and the legal parole period. They also stated that if the advisement is deficient, the error is harmless if the Department of Corrections sentence and the parole period combined do not exceed the possible Department of Corrections sentence the defendant faced. These cases may indicate the Supreme Court disagrees with the Johnson definition of a sentence. The court should rule later this year.

People v. Sharp 979 P.2d 33 (Colo. App. 1998) held that, if a Community Corrections sentence contains a mandatory period of parole, supervision is to be performed by the Probation Department.

GOOD TIME

People v. McCreadie 938 P.2d 528 (Colo. 1997) requires the administration of a Community Corrections program to provide the court a summary of good-time eligibility before any resentencing hearing.

People v. Lopez 961 P.2d 602 (Colo. App. 1998).

Beecroft v. People 874 P.2d 1041 (Colo. 1994).

CIVIL LIABILITY

Davenport v. Community Corrections of Pikes Peak Region, Inc. 962 P.2d 963 (Colo. 1998) concerns the liability of a program for actions of a resident defendant on a pass. The court held that a program had no legal duty to protect citizens from a resident that was intoxicated while driving on a weekend pass.