Supreme Court No.: 92731-6
Court of Appeals No.: 45883-7-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CANDACE RALSTON,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Ms. Ralston requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division Two, in State v. Candace Ralston, No. 45883-7-II, filed December 15, 2015. A copy of the opinion is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals declined to remand Ms. Ralston's case for consideration of whether she could afford the $39,211.35 in discretionary legal financial obligations imposed against her at sentencing despite acknowledging the trial court gave no consideration as to whether Ms. Ralston had the ability to pay these substantial LFOs. Should this Court grant review in the substantial public interest and consistent with this Court's decision in State v. Blazina because the trial court failed to make an individualized inquiry as to Ms. Ralston's current and future ability to pay?[1] RAP 13.4(b)(4).

2. Under RCW 9.94A.585(4)(b), a sentence should be reversed when it is clearly excessive. Ms. Ralston was convicted of one count of first degree theft and one count of forgery for allegedly stealing from the resort where she was employed. Her standard sentencing range was 2-6

[1] 182 Wn.2d 827, 344 P.3d 680 (2015).

months and 0-90 days, respectively. The Court of Appeals affirmed the trial court's imposition of a sentence of 96 months incarceration, a significantly longer sentence than typically given for property crimes involving greater losses. Should this Court grant review in the substantial public interest where this sentence shocks the conscience?

3. Under the Due Process Clause of the Fourteenth Amendment and Article I, section 3, an award of restitution must be supported by substantial credible evidence, which requires that the trial court not rely on speculation or conjecture. The State presented evidence that the accounting firm guessed at how much of its time involved analyzing transactions irrelevant to the charges against Ms. Ralston and Ms. Ralston's employer failed to keep track of the actual amount of time its employees lost in productivity as a result of the case. Where the trial court relied on the speculative estimates by the accounting firm and Ms. Ralston's employer to impose the restitution amount, should this Court grant review in the substantial public interest?

C. STATEMENT OF THE CASE

Candace Ralston was employed at Alderbrook Resort & Spa ("Alderbrook") for several years. 2 RP 206[2]; CP 21. From November 2009 to April 2011, Ms. Ralston worked in Alderbrook's accounting department, first as an assistant and later as the accounting program manager. 2 RP 206; CP 21. The State alleged Ms. Ralston stole $213,581.15 from the resort while working in the accounting department. 2 RP 251. It claimed she took over $190,000 in cash and the remaining amount in forged checks.

The State amended the information against Ms. Ralston five times. 1 RP 67. The fourth amended information charged Ms. Ralston with one count of first degree theft and three counts of forgery. CP 118. Ms. Ralston submitted an Alford plea, denying she committed the crimes alleged but agreeing there was sufficient evidence for a jury to convict her.[3] 2 RP 204; CP 64. She also stipulated that there was sufficient evidence to support the aggravating factor that her actions constituted a major economic offense.[4] 2 RP 205; CP 65. In exchange for her change

[2] The three verbatim reports of proceedings in this case encompass a significant number of dates. The first two, which pertain to Ms. Ralston's pre-trial hearings and sentencing, are numbered by volume, and will be referred to herein accordingly. For ease of reference, the third unlabeled volume, which pertains to the subsequent order of restitution, will be referred to as the third volume, or 3.

[3] North Carolina v. Alford, 500 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

[4] RCW 9.94A.535(3)(d).

of plea, the State dropped two of the forgery charges against her in a fifth amended information, leaving one count of first degree theft and one count of forgery. 2 RP 205; CP 64, 67.

Given Ms. Ralston's offender score of 1, the standard range for the theft charge was 2 to 6 months, and the standard range for the forgery charge was 0 to 90 days. CP 58. No agreement was reached between the parties regarding the State's recommendation. The State merely indicated it would ask for an exceptional sentence. CP 60.

At sentencing, the court allowed the State's witnesses to speak at length, but denied Ms. Ralston's request to have her mother address the court. 2 RP 259. When defense counsel objected to this inequity, the trial court simply responded that Ms. Ralston had failed to object to the State's witnesses. 2 RP 259. However, the State had offered no objection to Ms. Ralston's mother addressing the court, but the trial court nonetheless denied the defense's request to have her speak. Id.

The State recommended nine years on the theft charge and four years on the forgery charge, deferring to the court as to whether they should run concurrently or consecutively. 2 RP 258. The trial court imposed a concurrent sentence of 96 months on the theft charge and 36 months on the forgery charge. 2 RP 272. Without inquiring as to whether Ms. Ralston had the current or future ability to pay legal financial

obligations (LFOs), it imposed $39,211.85 in discretionary costs and fees. CP 766. After determining such LFOs would be imposed, it found Ms. Ralston only had the ability to pay the LFOs at a rate of $25 per month, which it acknowledged would not even cover the accruing interest. 2 RP 273.

In addition, the court required Ms. Ralston to pay restitution, with the specific amount to be set after a hearing. 2 RP 272. At the subsequent restitution hearing, Ms. Ralston contested the amount requested by the State. 3 RP 5. At issue, in part, was the amount for the services performed by the accounting firm hired by Alderbrook, Moss Adams, LLP ("Moss Adams"), and the amount requested by Alderbrook for time its employees allegedly spent on issues related to the charges against Ms. Ralston.

Moss Adams charged $73,807.84 for its services, but the State admitted that a portion of the billed hours were spent analyzing gift card transactions unrelated to the charges against Ms. Ralston. 3 RP 10. The State requested that Ms. Ralston pay 90 percent of the Moss Adams bill because Moss Adams had estimated less than ten percent of its time had been spent on irrelevant analysis. 3 RP 10. The State also asked for reimbursement to Alderbrook in the amount of $8,607.54 for the time its employees spent working on issues related to the case, despite the fact

Alderbrook's employees had not actually kept track of the hours they expended. 3 RP 28-29.

Over Ms. Ralston's objection, the court imposed restitution in the amount of $294,115.73, which included the full amount requested by the State for Moss Adams' services and the Alderbrook employees' time. CP 832; 3 RP 37.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

1. **This Court should grant review in the substantial public interest and remand to the trial court for consideration of Ms. Ralston's ability to pay her LFOs consistent with State v. Blazina.**

The trial court did not consider Ms. Ralston's financial circumstances before imposing discretionary LFOs. Instead, it stated at sentencing:

> The court costs will include the filing fee of $200.00; sheriff's return on service, which at this point, I believe, totals $4,878.50. The Court will also require that you reimburse the County for the cost of court-appointed counsel as well as the cost of defense experts. Additionally, $500.00 to the crime victims compensation fund; 100.00 to the DNA fund.

2 RP 272.

Only *after* imposing the LFOs did the court ask Ms. Ralston's counsel, "what type of employment and monthly income do you anticipate

your client would be having after her release, which is when the payments are required to start?"[5] 2 RP 273. To which defense counsel responded:

> Given her background, Your Honor, and the conviction, I don't have any idea. I mean, she's probably not going to get any type of employment that she's previously had, so my guess is that if she gets employment it's going to be on the low end somewhere.

2 RP 273. Accepting this representation, the court set Ms. Ralston's minimum monthly payments at $25 per month, but noted, "[o]bviously, that isn't going to be enough to even cover the interest that accrues at twelve percent per annum." 2 RP 273. The court later imposed an additional $34,133.85 in defense costs, for a total of $39,211.85 in discretionary LFOs. CP 766.

The court also noted Ms. Ralston would be required to pay restitution. 2 RP 272. Any payments made by Ms. Ralston would be applied to the order of restitution first. RCW 9.94A.760(1). At a rate of $25 per month, and without accounting for interest, it would take more than 980 years for Ms. Ralston to pay the $294,115.73 figure imposed by the court. That Ms. Ralston will have the future ability to pay an additional $39,211.85 in discretionary fines and costs is inconceivable.

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[5] The judgment and sentence also contained boilerplate findings about Ms. Ralston's ability to pay, but this is insufficient under State v. Blazina, 182 Wn.2d 827, 685, 344 P.3d 680 (2015).

On appeal, the Court of Appeals declined to strike the LFOs and require the trial court to consider Ms. Ralston's ability to pay any financial obligations, relying on State v. Blazina, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). Slip Op. at 8-9. While in Blazina, this Court found unpreserved LFO errors are not entitled to review as a matter of right, this Court also emphasized the fact that LFOs have significant consequences for defendants. 182 Wn.2d at 835. Unpaid costs from a criminal conviction increase recidivism for indigent offenders because they "accrue interest at a rate of 12 percent and may also accumulate collection fees when they are not paid on time"; an impoverished person is far more likely to accumulate astronomical interest than a wealthy person who can pay the costs in a timely manner; and "legal or background checks will show an active record in superior court for individuals who have not fully paid their LFOs," which may "have serious negative consequences on employment, on housing, and on finances." *Id.* at 836 (internal citations omitted). "LFO debt also impacts credit ratings, making it more difficult to find secure housing." Id. at 837 (citing Katherine A. Beckett, Alexes M. Harris & Heather Evans, Wash. State Minority & Justice Comm'n, The Assessment and Consequences of Legal Financial Obligations in Washington State (2008), at 43).

In apparent recognition of the serious negative consequences for defendants who are burdened with LFOs they will likely never have the ability to pay, this Court has granted a number of petitions for review only on the issue of the imposition of discretionary legal financial obligations, and remanded to the trial court with instructions to conduct an individualized inquiry of the defendant's current and future ability to pay. See e.g., State v. Youell, 184 Wn.2d 1018, 361 P.3d 744 (2015); State v. Thomas, 184 Wn.2d 1018, 361 P.3d 745 (2015); State v. Licon, 184 Wn.2d 1010, 359 P.3d 791 (2015).

As this Court noted in its orders, remanding these cases to the trial court is consistent with its holding in Blazina, which requires a trial court to consider a defendant's ability to pay before imposing LFOs. Id. This Court should accept review and require the trial court to conduct an individualized inquiry into Ms. Ralston's current and future ability to pay any LFOs.

2. Review should be granted in the substantial public interest because the trial court imposed an excessive sentence on Ms. Ralston.

Appellate review of a defendant's sentence is dictated by statute. State v. Ritchie, 126 Wn.2d 388, 392, 894 P.2d 1308 (1995). When the trial court orders an exceptional sentence, that sentence must be reversed if the reasons are not supported by the record or if they do not justify the

sentence. Id.; RCW 9.94A.585(4)(a). If support can be found in the record, then the sentence must be reversed if it "was clearly too excessive or clearly too lenient." Ritchie, 126 Wn.2d at 392; RCW 9.94A.585(4)(b).

The trial court's imposition of an exceptional sentence is reviewed for an abuse of discretion. Ritchie, 126 Wn.2d at 392. The trial court abuses its discretion when the sentence is based on untenable grounds or imposed for untenable reasons, or the court takes action that no reasonable person would have taken. Id. at 393. When the length of the sentence is so long that it "shocks the conscience of the reviewing court," the trial court has acted in a way that no reasonable person would, and has therefore abused its discretion. Ritchie, 126 Wn.2d at 396 (quoting State v. Ross, 71 Wn. App. 556, 573, 861 P.2d 473 (1993)).

Property crimes are, of course, subject to exceptional sentences. The legislature's intent that property crimes involving multiple acts or victims, resulting in a loss substantially greater than typical for the offense, occurring over a long period of time, or committed while in a position of trust, be punished more severely is evident from the plain language of RCW 9.94A.535(3)(d). However, where the trial court properly acted within its authority to impose an exceptional sentence, that sentence may still be unlawfully excessive. Prior cases involving the imposition of exceptional sentences for property crimes, in which the

courts did not find the defendant's sentence was excessive, demonstrate that Ms. Ralston's sentence was harsher than the typical exceptional sentence.

In State v. Oxborrow, the defendant created an elaborate pyramid scheme, in which he defrauded investors of over $58 million. 106 Wn.2d 525, 526-27, 723 P.2d 1123 (1986). Of the amount stolen, $13 million was never returned. Id. at 527. Losses to individuals were as high as $2.4 million and over 500 of the investors lost everything. Id. at 527. Given that the theft occurred in the early 1980s, these numbers are even more striking if one accounts for inflation. The court upheld the defendant's exceptional sentence, finding that 180 months, or 15 times the top of the standard range, was not clearly excessive given the enormity of the amount stolen. Id. at 534. In comparison, Ms. Ralston allegedly stole $213,581.15 approximately 30 years later, and received a sentence 16 times the top of her standard range.

In State v. Knutz, the defendant preyed on an elderly man living in an assisted living home, convincing him to give her $347,000 over the course of three years. 161 Wn. App. 395, 399, 253 P.3d 436 (2011). The trial court imposed an exceptional sentence of five years, which was only ten times the top of the standard range. In State v. Branch, the defendant stole from his own company. 129 Wn.2d 635, 639, 919 P.2d 1228 (1996).

Although the defendant's sentence was 16 times the top of the standard range, it resulted in a sentence of only 48 months for a theft of nearly $400,000, committed in 1996. Id. at 650. Again, the comparison is striking. The State alleged Ms. Ralston stole considerably less money but she was sentenced to a far longer period of incarceration. The facts of Ms. Ralston's offense and the severity of the sentence imposed are easily distinguished from those cases in which this Court has found a sentence was not clearly excessive.

The Court of Appeals found any comparison to other cases was improper, relying on Ritchie, and found Ms. Ralston's sentence did not "shock the conscience" in light of the record. Slip Op. at 6. However, the record raises concerns about what the trial court chose to consider when imposing the sentence against Ms. Ralston. The court refused to hear from Ms. Ralston's only sentencing witness despite hearing from multiple State witnesses, including one who was clearly confused about the basis for the charges against Ms. Ralston and discussed issues the court later determined were improper considerations at sentencing. 2 RP 247, 271. Although the court pointed to the fact Ms. Ralston failed to object to these witnesses, the State also had made no objection. 2 RP 259. Thus, the court's decision appeared arbitrary and biased against Ms. Ralston.

The court's subsequent imposition of a 96-month sentence was shocking in light of the facts of the case and Ms. Ralston's offender score. The sentence was clearly excessive and an abuse of discretion and this Court should accept review.

3. This Court should grant review in the substantial public interest because the restitution award was based on insufficient evidence.

Evidence presented at restitution hearings must meet due process requirements. State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993); U.S. Const. amend. XIV; Const. art. I, § 3. In order to comport with due process, the amount of restitution imposed must be based on "easily ascertainable damages." RCW 9.94A.753(3); State v. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). "While the claimed loss 'need not be established with specific accuracy,' it must be supported by 'substantial credible evidence.'" State v. Deskins, 180 Wn.2d 68, 82, 322 P.3d 780 (2014). Evidence is only sufficient if it provides the trier of fact with a reasonable basis for estimating the loss and requires no speculation or conjecture. Id. at 82-83.

When the amount of restitution is in dispute, the State has the burden of proving the award by a preponderance of the evidence. State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). If the restitution

order is authorized by statute, this Court reviews the order for an abuse of discretion. Deskins, 180 Wn.2d at 77. The trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Id.

A portion of the restitution imposed against Ms. Ralston was based on speculation and conjecture. Alderbrook retained Moss Adams to "identify and quantify the extent of the suspected misappropriation" of cash receipts, cash disbursements, and assets at Alderbrook during a discrete period of time. CP 842. Moss Adams charged Alderbrook $73,807.84 for its services, which Alderbrook's insurer paid. CP 838. However, the State acknowledged that some of the work performed by Moss Adams involved the examination of gift card transactions unrelated to the charged offenses. 3 RP 10. The deputy prosecutor represented to the court that Moss Adams estimated less than ten percent of its time was expended on an analysis of these irrelevant gift card transactions. 3 RP 10. Based on this estimate, the State agreed to reduce its request by ten percent, to $66,427.56, and the court adopted the State's recommendation. 3 RP 11; CP 832.

This estimate from Moss Adams, relayed to the trial court by the deputy prosecutor, was not supported by substantial credible evidence. See Deskins, 180 Wn.2d at 82. Moss Adams' invoices were not itemized,

and the State's representation indicated that Moss Adams had not taken the time to calculate exactly how much of its time was devoted to examining the unrelated gift card transactions. 3 RP 10. The State's report to the court that Moss Adams had spent less than ten percent of its time on the irrelevant gift card transactions was nothing more than a guess. Thus, the court improperly relied on speculation and conjecture when it ordered that Ms. Ralston pay $66,427.56 of the fees claimed by Moss Adams.

Similarly, Alderbrook estimated three of its employees neglected their regular duties for 80 hours each to attend to "various issues surrounding the Candace Ralston case." CP 888. Alderbrook calculated the loss of its employees' time at $8,607.54, and the court granted this request. CP 832, 888. However, the State conceded the Alderbrook employees had not kept track of the hours they spent on issues related to the alleged theft, and there was no suggestion the employees had been forced to work overtime. 3 RP 28-29. The court found that the estimate for Ms. Delgado, the staff accountant who assisted Ms. Ralston, was reasonable given the number of bank deposits at issue. 3 CP 38. It made no similar findings about the hours of lost productivity claimed by Alderbrook's general manager and director of human resources.

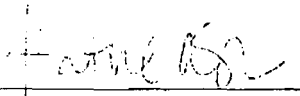
The State presented no evidence that any of these employees, much less all three, had lost a full two weeks of work to assist in issues related to the alleged theft. Indeed, the State's admission that none of the Alderbrook employees kept track of their hours demonstrates that Alderbrook did not know how much time their employees had devoted to the case against Ms. Ralston, and therefore had to speculate. Such speculation is not permissible, and this Court should accept review. Deskins, 180 Wn.2d at 82-83.

E. CONCLUSION

On each of these bases, the Court should grant review of the Court of Appeals opinion affirming Ms. Ralston's convictions and order of restitution.

DATED this 14th day of January, 2016.

Respectfully submitted,



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APPENDIX A

COURT OF APPEALS, DIVISION II OPINION

December 15, 2015

Filed
Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CANDACE LYNN RALSTON, Appellant.	No. 45883-7-II Consolidated with No. 46546-9-II UNPUBLISHED OPINION

WORSWICK, P.J. — Candace Ralston appeals her exceptional sentence following an Alford plea.[1] Ralston pleaded guilty to first degree theft[2] and forgery,[3] and stipulated to an aggravating factor of major economic offense[4] for both counts. The sentencing court imposed a concurrent sentence of 96 months on the theft charge and 36 months on the forgery charge. The court ordered restitution totaling $294,115.73, including $66,427.56 to CHUBB Insurance Company for investigative fees, and $8,607.54 to CHUBB for employee expenses. The court also imposed a total of $39,211.35 in legal financial obligations (LFOs). Ralston argues (1) the court imposed a clearly excessive exceptional sentence, (2) the court improperly awarded restitution for the investigative fees and employee expenses based on speculation and conjecture,

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[1] *North Carolina v. Alford*, 500 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

[2] RCW 9A.56.030.

[3] RCW 9A.60.020.

[4] RCW 9.94A.535(3)(d).

and (3) the court improperly imposed LFOs without finding Ralston could or would be able to pay them. We affirm.

FACTS

I. THEFT AND FORGERY

Candace Ralston worked at Alderbrook Resort & Spa (Alderbrook)[5] in Mason County for eight years. Between November 2009 and April 2011, Ralston misappropriated $213,581.15 from Alderbrook. On January 6, 2014, in exchange for the prosecutor's agreement to drop two charges, Ralston entered an Alford plea of guilty to one count of first degree theft and one count of forgery. Ralston stipulated to the aggravating factor of major economic offense for both counts. The court found that there were sufficient facts to support the plea and found the aggravating factor for both counts.

II. SENTENCING

The sentencing court imposed an exceptional sentence of 96 months for first degree theft and 36 months for forgery, to run concurrently, based on the aggravating factor of major economic offense.[6] The court noted there were multiple incidents, the actual monetary loss of the thefts were "far greater than the typical First Degree Theft," the theft took a high degree of sophistication and planning and went over an extended period of time, and Ralston abused her position of trust with respect to her employer. 2 Verbatim Report of Proceedings (VRP) at 272.

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[5] The sentencing court and briefs often refer to "North Forty." North Forty Lodging, LLC is the lodging company that owns Alderbrook Resorts and for ease of reference we use the term Alderbrook.

[6] The standard ranges for first degree theft and forgery are two to six months and zero to ninety days, respectively. RCW 9.94A.510.

The sentencing court ordered Ralston to pay $5,678.50 in court costs, which included discretionary fees of $200.00 and $4,878.50 for filing and sheriff service, respectively. The court also ordered Ralston to reimburse the county $34,133.85 for the cost of court appointed counsel and defense experts. This resulted in a total legal financial obligation of $39,211.35.

After the sentencing court imposed the LFOs, it asked defense counsel what type of employment and monthly income Ralston would likely have after her release from prison. Counsel responded that given her background and conviction, "she's probably not going to get any type of employment that she's previously had," and any employment she would be able to obtain upon release would be "on the low end somewhere." 2 VRP at 273. The sentencing court then set minimum monthly payments at $25.00 per month, noting, "Obviously, that isn't going to be enough to even cover the interest that accrues at twelve percent per annum." 2 VRP at 273. Ralston made no objections at sentencing.

III. RESTITUTION

At the restitution hearing, the prosecutor itemized the restitution requests to the court. The sentencing court ordered a total of $294,115.73 in restitution payments to CHUBB, Alderbrook, and Key Bank.[7] Of the restitution ordered to CHUBB, the court ordered $8,607.54 for employee expenses and $66,427.56 for accounting services performed by Moss Adams, LLP (Moss Adams).

[7] Alderbrook maintained an insurance policy with CHUBB that covered employee theft. Under this policy, CHUBB compensated Alderbrook's total loss. Key Bank reimbursed Alderbrook for two fraudulent checks forged by Ralston.

Alderbrook hired Moss Adams to investigate the theft. The $66,427.56 represented a 10 percent reduction of the full fee for Moss Adams' services because the State admitted that a portion of the hours billed by Moss Adams were spent analyzing Ralston's alleged fraudulent gift card transactions unrelated to the charges ultimately filed. The sentencing court found the investigative fees were appropriate items of restitution because the work done by the accounting firm was the result of the theft by Ralston.

Additionally, the court ordered $8,607.54 in restitution to compensate for costs incurred for employee salaries devoted to dealing with Ralston's thefts. In making its oral restitution ruling, the sentencing court stated it looked to the restitution estimate signed by the president of North Forty Lodging, LLC, Brian McGinnis, an excerpt from an e-mail from Alderbrook employee Sarah Delgado that she had estimated the time spent over the course of the investigation, and the efforts of employees who went through receipts, ledgers, and journal entries in investigating the theft to determine the amount of restitution requested for employee expense was reasonable.

The restitution estimate submitted by McGinnis listed the three Alderbrook employees who dealt with Ralston's thefts, outlined the number of hours each employee spent on the case, and calculated the employee expense Alderbrook incurred for each worker.

ANALYSIS

I. EXCESSIVE SENTENCE

Ralston argues that the sentencing court abused its discretion when it imposed a clearly excessive sentence against her. We disagree.

Under RCW 9.94A.585(4)(b), we may reverse an exceptional sentence if it is clearly excessive. We review whether an exceptional sentence is clearly excessive for abuse of discretion. *State v. Knutz*, 161 Wn. App. 395, 410, 253 P.3d 437 (2011). When an exceptional sentence is based on proper reasons, we will hold it clearly excessive only "if its length, in light of the record, 'shocks the conscience.'" *Knutz*, 161 Wn. App. at 410-11 (quoting *State v. Kolesnik*, 146 Wn. App. 790, 805, 192 P.3d 937 (2008)). A sentence shocks the conscience if it is one that "no reasonable person would adopt." *Knutz*, 161 Wn. App. at 411 (quoting *State v. Halsey*, 140 Wn. App. 313, 324-25, 165 P.3d 409 (2007)). The sentencing court has "all but unbridled discretion in setting the length of the sentence." *Halsey*, 140 Wn. App. at325 (quoting *State v. Creekmore*, 55 Wn. App. 852, 864, 783 P.2d 1068 (1989)).

As part of her Alford plea, Ralston stipulated that there was sufficient evidence to support the aggravating factor of her crime being a major economic offense. The sentencing court found the theft to be a major economic offense in a variety of ways.[8] Ralston does not challenge the fact that the sentencing court imposed an exceptional sentence. Rather, she contends that her exceptional sentence is clearly excessive. We disagree.

Ralston attempts to bolster her argument that her exceptional sentence is clearly excessive by comparing her sentence to sentences in other cases. In *State v. Ritchie*, our

[8] The sentencing court found Ralston's crimes to constitute a major economic offense based on the following: (1) the offenses involved actual monetary loss substantially greater than typical for the offense of first degree theft and/or forgery; (2) the offenses involved a high degree of sophistication and planning; (3) the offenses occurred over a lengthy period of time; and (4) Ralston used her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime. RCW 9.94A.535(3)(d).

Supreme Court rejected the notion that the length of an exceptional sentence must be proportionate to sentences in similar cases. 126 Wn.2d 388, 396, 894 P.2d 1308 (1995). *Ritchie* rejected any "mechanical approach" of comparing the sentence at issue with the average sentence for the same crime, or the average sentence for more serious crimes, or comparisons to the midpoint of the standard ranges for the crime at issue. 126 Wn.2d at 397. Rather, the salient inquiry regarding the length of the exceptional sentence is whether the sentencing court abused its discretion in imposing that sentence. 126 Wn.2d at 392.

This sentence, in light of the record, does not shock the conscience. Ralston stole over $200,000 from her employer over a period of one and a half years. The sentencing court found this amount to be substantially greater than typical for the offense of first degree theft and/or forgery. Ralston accomplished her theft using a high degree of sophistication and planning over a lengthy period of time, and she misappropriated more than fifty cash deposits, falsified accounting records, and forged checks. The sentencing court found that Ralston used her position of trust, confidence, and fiduciary responsibility to facilitate her crime. At sentencing, Alderbrook's owners' representative and Ralston's assistant each spoke to the financial and emotional toll her actions took. We hold that Ralston's sentence is not excessive.

II. RESTITUTION ORDER

Ralston argues that the sentencing court improperly relied on speculation and conjecture in setting her restitution order, and requests that we vacate the order and remand for a new restitution hearing. Ralston specifically disputes the sentencing court's restitution award for investigative fees and employee expenses. We affirm the sentencing court's restitution order.

A sentencing court's order of restitution will not be disturbed on appeal absent abuse of discretion. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). A sentencing court abuses its discretion when its decision is manifestly unreasonable, or exercised on untenable grounds, or imposed for untenable reasons. *State v. Hahn*, 100 Wn. App. 391, 398, 996 P.2d 1125 (2000). It is the State's burden to prove the amount of restitution by a preponderance of the evidence. 100 Wn. App. at 399. Although the State need not prove the amount with specific accuracy, the restitution award must be based on easily ascertainable damages and the evidence must be sufficient to allow the sentencing court to estimate the damages without having to engage in speculation or conjecture. 100 Wn. App. at 398-99. The legislature intended "to grant broad powers of restitution" to the sentencing court. *Tobin*, 161 Wn.2d at 524. We do not engage in overly technical construction that would permit the defendant to escape from just punishment. 161 Wn.2d at 524.

Ralston argues the award of investigative fees was improper because Moss Adams' invoices were not itemized, and the deduction of 10 percent from Adams' total fees was mere speculation. Ralston contends that the 10 percent reduction of Moss Adams' total invoice was "nothing more than a guess." Br. of Appellant at 16. However, the 10 percent reduction was determined after asking a representative of Moss Adams how much time was spent on the gift card investigation. In ruling on this portion of the restitution order, the sentencing court found that the work done by Moss Adams was a result of the theft by Ms. Ralston and that it was necessary. It is clear that all of the Moss Adams expenses were incurred as a direct result of Ralston's thefts. In conducting its investigation, Moss Adams did not itemize each portion of their investigation according to what specific charges would eventually be brought by the

prosecutor. But Moss Adams was able to give a reasonable estimate that was more than speculation or conjecture.

Ralston also argues that the restitution award for employee expenses was an abuse of discretion because Alderbrook had not kept track of the hours they devoted to the theft. However, the number of hours each employee spent on the investigation of Ralston's thefts was sufficiently estimated and outlined by McGinnis and Delgado. In ruling on this portion of the restitution order, the sentencing court also considered the extensive receipts, ledgers, and journal entries the employees sifted through in investigating the theft to determine the amount of restitution requested for employee expenses was reasonable. While it is true this evidence is based on estimation, given the totality of the circumstances, the estimates were reasonable and went beyond mere speculation or conjecture.

We recognize that the restitution statutes were intended to require the defendant to face the consequences of her criminal record. *Tobin*, 161 Wn.2d at 524. We hold that the sentencing court relied on sufficient evidence in determining the amount of restitution to award for employee expenses.

III. DISCRETIONARY LEGAL FEES

Finally, Ralston argues that the sentencing court improperly imposed LFOs without considering her ability to pay. Ralston did not challenge this finding during sentencing and, thus, she cannot do so as a matter of right for the first time on appeal. *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013), *remanded*, 182 Wn.2d 827, 344 P.3d 680 (2015). Our decision in *Blazina*, over a year before Ralston's July 2014 sentencing hearing, provided notice that the failure to object to LFOs imposed at sentencing waived the issue on appeal. 174 Wn. App. at

911. As our Supreme Court noted in reviewing our decision in *Blazina*, an appellate court may in its discretion decline to reach such unpreserved claims of error. *Blazina*, 182 Wn.2d at 830. Because Ralston had sufficient notice of her obligation to object to LFOs imposed at sentencing to preserve the issue for appeal, we exercise our discretion and decline addressing Ralston's contention with her LFOs for the first time on appeal.

CONCLUSION

We affirm.

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.

Worswick, P.J.

We concur:

Lee, J.

Sutton, J.

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 45883-7-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Timothy Higgs [timh@co.mason.wa.us]
Mason County Prosecuting Attorney

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

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