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WASHINGTON STATE
SUPREME COURT

SUPREME COURT NO. 93130-5
COA NO. 72933-1-I

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ELYAS KEROW,

Petitioner.

FILED
May 11, 2016
Court of Appeals
Division I
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Theresa B. Doyle, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Elyas Kerow asks this Court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Kerow requests review of the published decision in State v. Elyas Kerow, Court of Appeals No. 72933-1-I (slip op. filed February 29, 2016), attached as appendix A. The order denying reconsideration, filed April 11, 2016, is attached as appendix B.

C. ISSUE PRESENTED FOR REVIEW

Whether the State failed to prove Kerow intentionally waived his right to have restitution determined within 180 days of sentencing as required by statute, requiring reversal of the restitution order because it was entered outside of the statutory deadline without a finding of good cause?

D. STATEMENT OF THE CASE

Kerow pled guilty to one count of second degree vehicle prowling. CP 8-23. The factual basis for the plea was that he "unlawfully entered Brett Braaten's car intending to commit a crime against property therein."

CP 15. On May 16, 2014, the court imposed a deferred sentence, with restitution to be determined. CP 24-26; 1RP[1] 4-8.

The State sought $1000 in restitution for Braaten and $3,641.71 for the insurance company, USAA. CP 34. The State filed documentation for the upcoming restitution hearing. CP 33-64. The documentation included a victim loss statement signed by Ms. Braaten, in which she represented that the total amount of loss or damage consisted of a repair for $1428. CP 35. Braaten's loss statement further indicated the loss was submitted to her insurance company. CP 35. USAA insurance paid a total of $4058. CP 35. There was a $1000 deductible on the policy. CP 35.

The State's documentation from USAA named the policyholder as Austin Wolff and requested a check be made payable to USAA as subrogee of Wolff. CP 36. Wolff is named as the owner of the vehicle. CP 40, 46, 51. USAA paid $4,065.48 on the property damage claim. CP 36. USAA received $1000 from the salvage of the totaled vehicle, leaving $3,641.71 in costs. CP 36.

On October 29, 2014, the restitution hearing took place. 2RP 4-10. The court asked defense counsel if she had any argument. 2RP 5. Counsel noted Braaten was the victim and USAA provided a complete

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[1] The verbatim report of proceedings is referenced as follows: 1RP 5/16/14; 2RP - 10/29/14; 3RP - 11/18/14; 4RP - 12/3/14.

packet of information for payments to Wolff. 2RP 5. But counsel also pointed out Wolff was not mentioned anywhere in the police report and was not a victim in this case. 2RP 5. There was no indication in the documentation that Braaten was "out of $1000." 2RP 6. The USAA paperwork did not mention Braaten at all. 2RP 6. There was no showing of a connection between Wolff and Braaten.[2] 2RP 7.

The State interjected "I do have to ask how that's relevant when we have an order setting restitution[.]" 2RP 7. The court responded, "Well, I haven't signed it, though. That's the thing." 2RP 7.

The State argued the paperwork had the right claim number and the right date of loss involving the same vehicle.[3] 2RP 7-8. The court said it was clear that the insurance company information was correct in that it paid $3,641.71. 2RP 8. The court asked if counsel disputed this. 2RP 8. Counsel did not. 2RP 8. The question for the court was why Braaten was entitled to the $1000 deductible when "everything else shows Wolff" was the policyholder. 2RP 8.

The State suggested Braaten was likely insured under the policy. 2RP 8. Defense counsel represented that Braaten was the registered owner

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[2] Counsel further argued it was unclear where Braaten got the amount of $1,428 in repair costs, as the car was totaled. 2RP 6.

[3] Defense counsel pointed out the claim policy number on the victim loss statement has four additional digits compared to the number listed in the USAA paperwork. 2RP 7.

of the car according to police reports. 2RP 8. The court said it had not seen the police report. 2RP 8. The State reiterated its belief that Braaten was covered by the policy because the date of loss, the claim number, and the car were the same. 2RP 9.

The court wondered why money was going to Braaten if she did not own the car. 2RP 9.[4] The State said Braaten paid the deductible. 2RP 9. The court countered that Wolff was the owner of the car. 2RP 9-10. The State said, "Well, I believe Ms. Braaten was the registered owner of the vehicle." 2RP 10. The court responded, "the State needs to present something showing a connection between Braaten and Wolff." 2RP 10. The court continued: "I'm reviewing everything pretty carefully. The bar is fairly low on this, but there's got to be something. Okay. So go ahead and set it over to a date that you both agree on. And that's that." 2RP 10. The restitution hearing was continued to a future date, unspecified on the record. CP 65. The court did not enter a written order of continuance. Id.

The parties returned to court on November 18, 2014, at which time the State presented an email from Braaten explaining that Wolff is her father but that she was responsible for paying the deductible. 3RP 4-6; CP 75. The court noted Wolff is the policyholder. 3RP 6.

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[4] The transcript has the court referring to "him" and "he" at this point, but the context makes clear that the court was referring to Braaten.

Defense counsel interjected, arguing the court lacked jurisdiction to set restitution because more than 180 days had passed since sentencing. 3RP 6. November 12 was the 180th day. 3RP 6, 10. There was no previous finding of good cause to continue the case past the 180-day deadline. 3RP 8-9. The court requested to see the order continuing the case, and then figured out there was none. 3RP 9, 11. The court continued the case again so that the State could research the issue of whether the court lost jurisdiction because the matter, while originally scheduled within the 180-day period, was "continued beyond the 180 days without a finding of good cause." 3RP 11.

At a December 3, 2014 hearing, the parties argued the issue. 4RP 4-20. The State, citing an unpublished case from the Court of Appeals, claimed that there was sufficient information to establish a causal connection between the insurance claim and the damaged car at the October 29 restitution hearing, and that the court continued the case simply to clarify the relationship between Braaten and Wolff. 4RP 8-12. According to the State, the unpublished case it relied on distinguished between "clarification and needing additional evidence that the State didn't initially provide." 4RP 13.

The prosecutor also claimed defense counsel waived the objection when he "agreed" to the date, protesting that counsel should not be

allowed to "lay in the weeds" by objecting after the continuance, which the prosecutor described as "gamesmanship in its worst form." 4RP 11. The prosecutor alleged "the Defense knew that this was going to be beyond the 180 days." 4RP 13.

Defense counsel told the court "We set everything over to a date *that turned out to be* after the 180 days." 4RP 16 (emphasis added). Counsel continued: "I understand the -- the State's frustration that it picked a date that was beyond the 180 days. I would suggest that calling this gamesmanship by the Defense is inaccurate and indeed is contrary --" 4RP 16. The court jumped in with "I don't agree with that," thereby relieving counsel of defending himself further, and turned to the substantive legal issue before it. 4RP 16.

Defense counsel distinguished the unpublished case cited by the State, arguing there was insufficient information to "tie Braaten to this car" so as to establish why she was entitled to restitution at the original hearing. 4RP 15-16. Additionally, there was good cause to continue in the unpublished case, whereas the court in Kerow's case never found good cause to continue. 4RP 14.

Faced with the unpublished decision cited by the State, the court reframed the legal issue before it: "whether the Court had sufficient information in the record at the hearing that was within the 180 days to,

um, find that there was a causal connection with [Braaten] and the – the crime that Mr. Kerow committed." 4RP 16-17. The court commented that Kerow's case sounded like the unpublished case "where it's clarification." 4RP 17. The court said it would bone up on the case law and then enter an order on the matter. 4RP 19.

On December 13, 2014, the court entered an order setting restitution in the amount of $1000 for Braaten and $3,641.71 for USAA. CP 28-29. On that that same date, the court entered the following order on Kerow's motion: "the court continued the hearing from 10/29/14, within 180 days of sentencing, to 11/18/14, for clarification of the relationship between Mr. Braaten, the victim in the case, and Mr. Wolff, the claimant under the policy covering the damaged vehicle. The court sought clarification of their relationship and continued the hearing for that reason. The State's evidence was sufficient at the 10/29/14 hearing." CP 67.

On appeal, Kerow argued the trial court lacked authority to enter restitution after the statutory deadline passed without finding good cause for the continuance. Brief of Appellant at 7-14. The Court of Appeals held Kerow waived the error by agreeing to a continuance date beyond the 180-day time limit. Slip op. at 1. Kerow seeks review.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. THE FAILURE TO INSIST ON A DATE WITHIN THE STATUTORY TIME PERIOD DOES NOT CONSTITUTE WAIVER OF THE RIGHT TO HAVE RESTITUTION DETERMINED WITHIN THAT PERIOD UNLESS THE RECORD SHOWS THE DEFENDANT INTENTIONALLY RELINQUISHED THAT RIGHT.

Does a party waive a right when it is not insisted upon, regardless of whether the right is known and whether the right is intentionally relinquished? Review is appropriate under RAP 13.4(b)(4) to clarify how waiver operates in the restitution context under State v. Mollichi, 132 Wn.2d 80, 936 P.2d 408 (1997). The Court of Appeals decision, and arguably Mollichi itself, conflicts with black letter Supreme Court law requiring the intentional relinquishment of a known right before waiver of the right can be found. In that respect, review is also warranted under RAP 13.4(b)(1).

a. The State did not prove Kerow intentionally relinquished his statutory right to have restitution determined within 180 days of sentencing.

RCW 9.94A.753(1) provides in relevant part: "When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided

in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause."[5]

A defendant need not object to an untimely restitution order to preserve the issue for appeal. State v. Moen, 129 Wn.2d 535, 547-48, 919 P.2d 69 (1996); State v. Hennings, 129 Wn.2d 512, 519, 919 P.2d 580 (1996). But the Court of Appeals held Kerow's trial counsel agreed to a date outside of the 180-day statutory time period and so waived the right to have restitution decided within that time period: "defense counsel here could have insisted that the continued hearing be set no later than November 12, within 180 days after Kerow's judgment and sentence, but he did not do so." Slip op. at 5. The Court of Appeals relied on the Supreme Court's decision in Mollichi.

Mollichi is distinguishable. In that case, defense counsel "voluntarily accommodated" the State's request for a continuance. Mollichi, 132 Wn.2d at 92-93. That's what "agreement" meant in Mollichi. But Kerow did not voluntarily agree to a continuance. The trial court ordered a continuance after Kerow objected to the documentation provided by the State. 2RP 10. Waiver was found in Mollichi because the defendant could have compelled the State to seek a continuance but did

[5] Subsection (7) refers to mandatory restitution ordered after it has been determined the victim of a crime is entitled to benefits under the crime victims' compensation act. RCW 9.94A.753(7).

not do so. Mollichi, 132 Wn.2d at 92-93. In Kerow's case, the court ordered the continuance. Unlike Mollichi, Kerow's counsel acted in response to the trial court's directive rather than voluntarily accommodate the State's desire for more time.

To find waiver, the Court of Appeals seized on the fact that Kerow's counsel agreed to a date six days beyond the 180-day deadline. But there is more to waiver than simple agreement. "Waiver is the intentional relinquishment of a known right. It is necessary that the person against whom waiver is claimed have intended to relinquish the right, advantage, or benefit and his action must be inconsistent with any other intent than to waive it." Wagner v. Wagner, 95 Wn.2d 94, 102, 621 P.2d 1279 (1980). Further, the burden of proving a waiver is on the party asserting it. Jones v. Best, 134 Wn.2d 232, 241-42, 950 P.2d 1 (1998). The Court of Appeals decision does not take this black letter law into account.

The Supreme Court in Mollichi found waiver, but the defendant did not argue whether the standard for waiver enunciated in cases like Wagner was met. Mollichi, 132 Wn.2d at 92-93; see State v. Studd, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999) ("Because we are not in the business of inventing unbriefed arguments for parties sua sponte, there certainly was no significance in our not doing so."). Nor did the defendant

need to make that argument, because there was no agreement for holding the continued restitution hearing outside of the statutory time limit, which was dispositive of the waiver issue. Mollichi, 132 Wn.2d at 93. "In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised." Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. 1, 124 Wn.2d 816, 824, 881 P.2d 986 (1994).

In Kerow's case, the State did not prove waiver because the record does not show the intent to relinquish a known right. Wagner, 95 Wn.2d at 102. The trial court concurred that Kerow's counsel did not knowingly agree to an untimely date of continuance, in derogation of the 180-day limit set forth in RCW 9.94A.753(1). 4RP 16. Kerow's counsel did not realize the date was beyond the 180-day limit. Kerow did not intentionally relinquish the right to have restitution determined within the 180-day limit. The State failed to prove waiver.

The State, in its answer to Kerow's motion to reconsider, cited State v. Esquivel for the proposition that "[p]eople are presumed to know the law and are responsible for their voluntary acts and deeds." Answer at 7 (quoting State v. Esquivel, 132 Wn. App. 316, 327, 132 P.3d 751 (2006)). Esquivel involves an allegation of inadequate notice for violating a criminal law under the due process standard. Esquivel, 132 Wn. App. at

327 (citing State v. Sweeney, 125 Wn. App. 77, 83-84, 104 P.3d 46 (2005)). The point is that ignorance of the law is no defense to a criminal prosecution. Esquivel, 132 Wn. App. at 327; Sweeney, 125 Wn. App. at 83. Esquivel is not a waiver case. Whether a defendant has received due process of law in connection with notice has nothing to do with whether a defendant has intentionally relinquished a known right. Apples and oranges. If the proposition cited by the State were the standard for waiver, then every right would be waived as a matter of course. Waiver would be the categorical rule rather than the exception. That is not the law.

b. Without good cause for the continuance, the restitution order entered beyond the 180-day deadline is void.

The trial court's authority to impose restitution is statutory. State v. Johnson, 96 Wn. App. 813, 815, 981 P.2d 25 (1999). The court cannot exceed the authority granted under the controlling statute. Johnson, 96 Wn. App. at 815. A restitution order is void when statutory provisions are not followed. Id.

"Under RCW 9.94A.753(1), a court ordering restitution must issue its order within 180 days of sentencing." State v. Gray, 174 Wn.2d 920, 925, 280 P.3d 1110 (2012). "The time limit is mandatory unless extended for good cause." Gray, 174 Wn.2d at 925 (citing State v. Krall, 125 Wn.2d 146, 148-49, 881 P.2d 1040 (1994)).

To render restitution timely, a trial court must make an express finding of good cause for continuing a restitution hearing beyond the 180th day before the 180th day has passed. State v. Grantham, 174 Wn. App. 399, 405-06, 299 P.3d 21 (2013), review denied, 178 Wn.2d 1006, 308 P.3d 642 (2013). At the October 29 restitution hearing, which took place before the 180-day deadline, the trial court did not make a finding of good cause to continue the restitution hearing. 2RP 10; CP 65. The subsequent determination of restitution by order dated December 3 is invalid in the absence of that finding. CP 28-29; Grantham, 174 Wn. App. at 405-06.

180 days from sentencing was November 12. Under Gray and Krall, the restitution order must be entered before 180 days passes in the absence of good cause shown. Gray, 174 Wn.2d at 925; Krall, 125 Wn.2d at 148-49. Here, the trial court entered the restitution order well past the 180-day deadline. CP 28-29. The court's later explanation that it continued the hearing for "clarification" past the 180-day deadline does not change that fact. CP 67.

In ultimately ordering restitution, the trial court retroactively reasoned that it continued the hearing from October 29 to November 18 "for clarification of the relationship between Mr. [sic] Braaten, the victim in the case, and Mr. Wolff, the claimant under the policy covering the

damaged vehicle." CP 67. The court's belated reasoning does not change the fact that it did not find good cause for the continuance from October 29 to November 18. It did not make an express finding of good cause to continue on October 29, before the 180-day deadline passed. That failure by itself renders the restitution order untimely. Grantham, 174 Wn. App. at 405-06. Furthermore, the court did not even make a retroactive finding of good cause in its December 3rd order explaining why it continued the case. CP 67.

Even if the court's December 3rd order could somehow be read as finding good cause for the earlier continuance, there is in fact no good cause shown. "Good cause requires a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with statutory requirements." State v. Reed, 103 Wn. App. 261, 265 n.4, 12 P.3d 151 (2000). Inadvertence or attorney oversight does not establish good cause to extend the deadline. Johnson, 96 Wn. App. at 814, 817. The failure to obtain documentation in support of a restitution claim does not establish good cause for extension past the mandatory deadline. State v. Tetreault, 99 Wn. App. 435, 436-37, 998 P.2d 330, review denied, 141 Wn.2d 1015, 10 P.3d 1072 (2000). Further, the restitution statute "does not require that a defendant notify the State that he or she is challenging written documentation so that the State

can have the opportunity to summon a witness or to get additional documentation to address his or her concerns." State v. Dedonado, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000).

The trial court explained it continued the case for "clarification" of the relationship between Braaten and Wolff. CP 67. That is another way of saying the State did not provide evidence it needed to satisfy the court's concerns about whether the $1000 insurance deductible request for Braaten was justified at the October 29 hearing. According to the documentation that the court had before it on October 29, Wolff was the owner of the vehicle; he was the policyholder and the one who was insured, not Braaten. CP 36, 40, 46, 51.

Evidence to support the claim that Braaten should receive $1000 for an insurance deductible was insufficient at the October 29 hearing because there was no evidence that she paid the deductible. The insurance documentation showed Wolff was the owner of the car and the policyholder. CP 36, 40, 46, 51. The State's later presentation of the email in November 2014 establishes that Braaten paid the deductible. CP 75. That documentation should have been presented before the 180-day deadline passed. The restitution order is void because it is untimely.

F. CONCLUSION

For the reasons stated, Kerow requests that this Court grant review.

DATED this 11th day of May 2016.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. ELYAS MOHAMED KEROW, Appellant.	)	No. 72933-1-I PUBLISHED OPINION FILED: February 29, 2016

COURT OF APPEALS DIV I
STATE OF WASHINGTON
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VERELLEN, A.C.J. — RCW 9.94A.753(1) requires that restitution be determined within 180 days of sentencing. In this vehicle prowl conviction, the amount of damage to the car causally related to that crime was undisputed. The court continued the restitution hearing to gather more information on the relationship between the car's owner and the insured policyholder. Because Kerow "voluntarily accommodated the State's request" to continue the restitution hearing beyond the statutory deadline but "he was not obliged to do so," we conclude Kerow waived the statutory requirements of RCW 9.94A.753(1).[1]

We affirm the trial court's restitution order.

FACTS

Kerow pleaded guilty to one count of second degree vehicle prowl of a white Acura. As part of his guilty plea, Kerow stipulated to the facts set forth in the probable

[1] State v. Mollichi, 132 Wn.2d 80, 92, 936 P.2d 408 (1997).

cause certification. Brett Braaten was the victim and the car's registered owner. The probable cause certification identified the Acura's license plate number.

Kerow was sentenced on May 16, 2014. The trial court ordered restitution "to be determined" at a date "to be set" for a hearing.[2] The statutory 180-day deadline for the trial court to determine the amount of restitution was November 12, 2014.

The initial restitution hearing occurred on October 29, 2014. Defense counsel did not dispute the amount for damage to the car, but argued the State's documentation did not show a connection between Braaten, the registered owner of the Acura, and Austin Wolff, the USAA insurance policy holder. The trial court concluded the State "needs to present something showing a connection" between Braaten and Wolff and directed the parties to set the hearing "over to a date that *you both agree on*."[3]

The second restitution hearing occurred on November 18, 2014, 186 days after sentencing. The State provided the court an e-mail from Braaten in which she stated Wolff is her father and the policyholder, but that she paid the $1,000 deductible. Defense counsel argued the court lacked authority to order restitution because the statutory deadline had passed due to the court's failure to make a finding of good cause to continue beyond the 180-day deadline. Once again, the court continued the hearing to enable the State to research whether the court had authority to impose restitution.

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[2] Clerk's Papers (CP) at 25.

[3] Report of Proceedings (Oct. 29, 2014) at 10 (emphasis added).

At the third hearing on December 3, 2014, the court ordered $4,641.71 in restitution.[4] As to the defense argument regarding a finding of good cause, the court ruled:

> [T]he court continued the hearing from 10/29/14, within 180 days of sentencing, to 11/18/14, for clarification of the relationship between [Braaten], the victim in this case, and [Wolff], the claimant under the policy covering the [Acura]. The court sought clarification of their relationship and continued the hearing for that reason, sua sponte. The State's evidence was sufficient at the 10/29/14 hearing.[5]

Kerow appeals the restitution order.

ANALYSIS

Kerow contends the trial court lacked authority to order restitution beyond the statutory deadline without an express finding of good cause. We disagree.

We review a restitution order for abuse of discretion.[6] A trial court abuses its discretion if its restitution order is not authorized by statute.[7] A trial court's authority to impose restitution is statutory.[8] The failure to comply with statutory provisions authorizing restitution voids a restitution order.[9]

The critical issue here is whether, absent an express finding of good cause, the trial court had authority to enter a restitution order when (1) defense counsel agreed to a hearing beyond the statutory deadline, (2) the amount of damages causally related to

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[4] USAA was awarded $3,641.71 for damage to the Acura; Braaten was awarded $1,000 for the deductible.

[5] CP at 67.

[6] State v. Landrum, 66 Wn. App. 791, 795, 832 P.2d 1359 (1992).

[7] State v. Horner, 53 Wn. App. 806, 807, 770 P.2d 1056 (1989).

[8] State v. Deskins, 180 Wn.2d 68, 81, 322 P.3d 780 (2014).

[9] State v. Chipman, 176 Wn. App. 615, 618, 309 P.3d 669 (2013).

the crime was undisputed at the initial, timely restitution hearing, and (3) the sole purpose of the continued hearing was to clarify the relationship between the named insured and the Acura's registered owner.

At the October 29 hearing, Kerow questioned whether Braaten paid the $1,000 deductible, but he did not dispute that the $1,000 deductible was paid. The underlying amount of restitution was not in doubt, nor was there a dispute about a causal connection between Kerow's criminal conduct and the damages. The trial court sought only to clarify who was entitled to restitution. The court had before it documentation showing that USAA insured an Acura whose license plate number matched the license plate listed in the probable cause certification. The date of loss matched the date of the crime. The insurance policy number listed in the USAA documentation was the policy number listed in Braaten's victim loss statement.

The November 18 hearing was to clarify only the payee of the undisputed restitution amount. That relationship had nothing to do with whether the Acura's damages were causally connected to Kerow's criminal conduct. Even without specific information about the relationship between the named insured and the registered owner, the trial court could have entered a restitution award on October 29 for payment of the damages in the undisputed amount of $4,641.71.

The 180-day time limit is statutory and is not grounded in a constitutional right or a limit upon the trial court's jurisdiction.[10] The statutory time limit operates "as an ordinary statute of limitations" and "is subject to principles of waiver and estoppel,

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[10] Mollichi, 132 Wn.2d at 89; State v. Moen, 129 Wn.2d 535, 545, 919 P.2d 69 (1996).

including the doctrine of equitable tolling."[11] A party waives a statute of limitations defense "'by engaging in conduct that is inconsistent with that party's later assertion of the defense'" or "'by being dilatory in asserting the defense.'"[12]

State v. Mollichi illustrates the circumstances under which a party may waive the statutory time limit for imposing restitution.[13] There, a juvenile was entitled to have restitution set at the disposition hearing.[14] The Mollichi court concluded the restitution order was invalid because the amount of restitution was determined after the disposition hearing.[15] But the court recognized circumstances under which a defendant may waive the statutory time limit for setting restitution.[16] For example, if a defendant "voluntarily accommodated the State's request," but he or she "was not obliged to do so," the defendant waives the statutory requirements.[17]

Similarly, defense counsel here could have insisted that the continued hearing be set no later than November 12, within 180 days after Kerow's judgment and sentence, but he did not do so. Although the trial court ordered both counsel to agree to a hearing

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[11] State v. Duvall, 86 Wn. App. 871, 874-75, 940 P.2d 671 (1997).

[12] State v. Grantham, 174 Wn. App. 399, 404, 299 P.3d 21 (2013) (quoting Greenhalgh v. Dep't of Corr., 170 Wn. App. 137, 144, 282 P.3d 1175 (2012)).

[13] 132 Wn.2d 80, 936 P.2d 408 (1997).

[14] Id. at 85-88.

[15] Id. at 93-94.

[16] Id. at 90-94.

[17] Id. at 92. We note that waiver did not apply in Grantham. The Grantham court concluded defense counsel's agreement to a date beyond the 180-day time limit did not constitute a waiver because the defendant's initial counsel was replaced by a new attorney "unfamiliar with the case and the correct 180-day expiration date," and because the State misrepresented that the hearing was within the 180-day limit. Grantham, 174 Wn. App. at 405. But Grantham does not apply here. Kerow's counsel was not replaced by a new attorney, and the State did not misrepresent that the November 18 hearing was within the 180-day time limit.

date, the only reasonable inference from the record is that defense counsel agreed to the November 18 hearing date. As recognized in Mollichi, even if accommodating a request by the State for that specific date, Kerow's agreement to the November 18 hearing was a waiver of the 180-day time limit.

Therefore, we conclude the trial court had authority to enter the December 3 restitution order.

We affirm the trial court's restitution order.

WE CONCUR:

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. ELYAS MOHAMED KEROW, Appellant.	)	No. 72933-1-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant has filed a motion for reconsideration of the court's February 29, 2016 opinion. The panel, having considered the motion and Respondent's answer, has determined that the motion should be denied.

Now therefore, it is hereby

ORDERED that Appellant's motion for reconsideration is denied.

Done this 11th day of April, 2016.

FOR THE PANEL:

Verellen, ACJ

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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