74319-8

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Court of Appeals
Division I
State of Washington

NO. 74319-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

WILLIAM FREDERICK JENSEN,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JANET M. HELSON
THE HONORABLE KIMBERLEY D. PROCHNAU

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The resentencing court (Judge Prochnau) erred by finding that the 2005 restitution order "expired" when it was not explicitly reissued at resentencing.

2. The resentencing court (Judge Prochnau) erred by finding that the June 7, 2005 restitution order needed to be expressly incorporated into the judgment for the February 13, 2009 resentencing.

3. The resentencing court (Judge Prochnau) erred by finding that the court was without authority to modify the 2005 restitution order.

4. The superior court (Judge Helson) erred by failing to decide whether to impose restitution where there were not "extraordinary circumstances" to deny restitution.

B. ISSUE PRESENTED

Correcting an illegal portion of a sentence does not affect the finality of the valid portion. Jensen solicited the murders of his family, including his two children. A restitution order entered in 2005 expressly allowed for future counseling costs incurred by his children. Meanwhile, the case was appealed and remanded for

resentencing on another matter; restitution was unaffected. One child incurred substantial counseling costs long after sentencing. The resentencing judge forbade restitution as to that child because the original order was not expressly incorporated into the new judgment, and because restitution was not sought within 180 days of the resentencing. Does the restitution order originally entered in 2005 remain valid after the resentencing on an unrelated matter such that it was unnecessary to formally adopt it or submit supplemental restitution within 180 days?

C. STATEMENT OF THE CASE

This appeal involves restitution for continued counseling costs that were ordered in 2005 and then revisited in 2009 and in 2015. The hearings were held before three different judges due to the passage of time. Those proceedings are described below.

1. TRIAL, SENTENCING, RESTITUTION – THE HONORABLE RICHARD JONES PRESIDING.

Former King County Deputy Sheriff William Jensen was convicted by a jury of four counts of solicitation to commit murder. Jensen's victims were his ex-wife, his daughter Ms. Jensen, his

son, and his sister-in-law. On December 10, 2004, the Honorable Richard Jones sentenced Jensen to a standard range term of 720 months and authorized restitution that would be determined at a later hearing. CP 107-08. On June 7, 2005, Judge Jones entered an agreed restitution order as to costs already incurred, and that also directed: "Please allow for future additional costs as counseling may be required in the future for all victims." CP 114.

Jensen appealed, and the Court of Appeals affirmed in an unpublished opinion. State v. Jensen, 135 Wn. App. 1001 (2006). The Washington Supreme Court subsequently granted review and reversed, holding that under double jeopardy principles, the "unit of prosecution" for solicitation to commit murder was per-solicitation rather than per-victim. State v. Jensen, 164 Wn.2d 943, 958, 195 P.3d 512 (2008). The court found two independent solicitations, so the case was remanded for the limited purpose of vacating two convictions and resentencing. Id. at 959. Restitution was not challenged on appeal. Id.

2. RESENTENCING – THE HONORABLE KIMBERLEY PROCHNAU PRESIDING.

Jensen was resentenced on February 13, 2009 by the Honorable Kimberley Prochnau.[1] Judge Prochnau vacated two counts as required by the supreme court decision, and she then imposed a sentence at the top of the standard range, 480 months.[2] Judge Prochnau then stated on the record that she would not change Judge Jones' ruling in other respects:

> The Court does impose that sentence. The court will reimpose all the other conditions of the sentence including no contact with the victims. Restitution, I believe Judge Jones waived certain costs and financial circumstances. The court is not going to make other changes to Judge Jones's sentence.

CP 134. The prosecutor broached the subject of additional restitution based on continued counseling costs:

> MS. BRENNEMAN: I will just raise the issue of restitution. Although it was originally ordered by Judge Jones, there was never any order actually entered. It was to be determined at a future date.[3] There's been continuing counseling costs. As the Court heard, Mr. Jensen is benefitting from a pension

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[1] Judge Jones had been appointed to the federal district court.

[2] Jensen appealed this sentence and the Court of Appeals affirmed. State v. Jensen, 152 Wn. App. 1063 (2009), review denied, 168 Wn.2d 1038 (2010). Jensen later filed a personal restraint petition (PRP) that was ultimately dismissed by the Court of Appeals. Discretionary review of that dismissal order was denied in March, 2015. Neither the appeal nor the PRP concerned restitution.

[3] This statement was incorrect, as the court had entered an agreed restitution order on June 7, 2005. CP 114.

> that comes in regularly despite his being incarcerated. All the costs associated with his incarceration were waived by the Court, I think, intending that any monies be available for the family counseling, [which] has been excessively necessary because of Mr. Jensen's actions.
>
> Would it be possible for us to get that material together for the Court and now enter a restitution order consistent with this resentencing that encompasses the monies that they've had to spend out for counseling?
>
> COURT: Are you asking to enter a specific restitution order today, or are you just asking to set a hearing?
>
> MS. BRENNEMAN: Set a hearing....

CP 138-39. The court agreed to set a restitution hearing after noting that Jensen was not waiving his presence. CP 140. The court then noted that it "has signed the judgment and sentence in the matter to provide for mandatory victim penalties plus restitution, if any ..." CP 141. Section 4.1 of the judgment and sentence provides that "Defendant shall pay restitution to the Clerk of this Court as set forth in attached (sic) in the previously filed Appendix E." CP 147.[4]

In the months leading up to the hearing, the State provided defense counsel Jeffrey Ellis with documentation showing that Sue

[4] When restitution is imposed by a sentencing court the details of the order are generally provided in an "Appendix E." Although there was no "Appendix E" previously filed in the case, there certainly was a previous restitution order, as described above. CP 192-93.

Harms had incurred family counseling expenses in the amount of $5,610.00. CP 157.[5] Mr. Ellis responded that he was unable to agree to restitution. CP 154. A notice of restitution hearing was subsequently provided to counsel indicating that a hearing would be held on September 22, 2009. CP 154. Counsel then submitted a Motion to Strike Restitution Hearing, arguing that the court lacked authority to impose restitution because 180 days had elapsed since the second sentencing hearing. CP 210. The State submitted a response. CP 216.[6] Due to confusion over when the defendant was going to be transported from the Department of Corrections, the hearing was first continued to October 5, 2009, but then the date was moved up one week to September 30, 2009.

The victims did not receive notice of the twice-changed hearing date so they did not know there was a hearing on September 30, 2009. Also, it is clear from the report of proceedings that the court had not received the State's pleadings. CP 186. Defense counsel argued that any additional restitution would be a new restitution order, that a new restitution order must

[5] These materials were not filed with the clerk of the court but were contained in the prosecutor's file. See CP 172-73 (Decl. of Whisman).

[6] Neither the motion nor the response was filed with the superior court clerk but copies were in the prosecutor's file. See CP 171-73 (Decl. of Whisman).

be filed within 180 days of sentencing, and that the court lacked authority to enter an order because more than 180 days had elapsed since the resentencing on February 13, 2009. CP 187-89.

The prosecutor responded that she was seeking "an amended order or a supplemental order of the original restitution" and she pointed to Judge Jones' order allowing for additional counseling costs. CP 190. Not only was the court misadvised at the February 13, 2009 resentencing hearing that a restitution order had never been entered, it also appears that the court still had not seen Judge Jones' June 7, 2005 order, even as of the start of the September 30, 2009 hearing. CP 196. During the September 30, 2009 hearing, the court and prosecutor had the following exchange:

> COURT: Okay. And what's the legal effect if, upon resentencing, the -- you would agree that if, upon resentencing, the court never reissued the prior restitution order and never made reference to it, you would agree that then there would be no restitution order?
>
> MS. BRENNEMAN: Yes. And we --
>
> COURT: Doesn't automatically continue, in other words.
>
> MS. BRENNEMAN: I think that would probably be accurate.

CP 193. The court ultimately made an oral ruling:

> COURT: The court agrees with [defense counsel], much reluctantly, because this is certainly not equitable to the victims of Mr. Jensen. But I can't see a way from le-, reviewing that transcript, it appears clear that I was not aware, or made aware, that there was a previous restitution order. The prosecutor certainly represented that there had not been one. Mistakenly, of course. And so I did not enter a restitution order at the – and I did not enter a restitution order, of course, in February of 2009 as the prosecutor requested additional time to get the materials available, so I indicated that restitution would be determined at a future hearing, the date to be set. It's true we checked the box "Defendant shall pay restitution as set forth in the previous filed appendix E," but there was no appendix E and the court was not aware that there had been a previous restitution order.
>
> So unfortunately, the State waited too late to get this hearing set, and the court believes it does not have any authority under the case law and the statute to set restitution order, this not being the, Judge Jones' order having expired when it was not made a condition of the new sentence. So the court grants the defendant's motion to dismiss the motion for restitution.

CP 197-98. The hearing concluded with defense counsel saying: "I think, with the court's permission, I'll prepare a written order, circulate it to Ms. Brenneman, and then we can present it to the court." CP 198. No written order was ever circulated or filed.

3. MOTION TO SUPPLEMENT RESTITUTION WITH ADDITIONAL COUNSELING COSTS – THE HONORABLE JANET HELSON PRESIDING.

On August 3, 2015, the State filed a motion to supplement the original 2005 restitution order for victim counseling costs that had been incurred since 2009. CP 36-209.[7] The request included counseling costs incurred since 2009, not the costs incurred before the resentencing hearing. CP 43-44. Jensen filed a motion on August 15, 2015 to strike the restitution hearing. CP 210-15. The State filed a response. CP 216-21. Jensen filed a memorandum in support of defense motion to strike the restitution hearing. CP 222. The State filed a reply. CP 274-97.

The trial court issued a pair of orders on November 9, 2015. In an Order Striking Restitution Hearing, Judge Helson ruled that she did not believe she had authority to consider restitution anew in light of Judge Prochnau's oral ruling in 2009 that Judge Jones' restitution order had "expired" when the State did not seek further restitution within 180 days of resentencing. CP 298-300. However, at defense counsel's suggestion, the court filed an order entitled, "Order Reflecting Judge Prochnau's 9/30/09 Ruling," in which Judge Helson reduced Judge Prochnau's oral ruling to a final order

[7] This motion came before Judge Helson because Judge Prochnau had retired.

so the State could appeal the propriety of Judge Prochnau's decision. CP 301-03. The State subsequently filed a notice of appeal as to both orders. CP 304-11.

D. ARGUMENT

Victims in felony cases have a statutory right to restitution for injury or damages as a result of the crime. Victims also have a constitutional right to be informed of and attend court proceedings. Ms. Jenny Jensen is a victim of two counts of solicitation to commit murder and is entitled to restitution from Jensen. Ms. Jensen's right to restitution was effectuated in a 2005 agreed order for restitution that authorized continuing costs for counseling. This order was never challenged on appeal, and it was not affected by the supreme court's decision remanding the case for imposition of sentence on two counts instead of four. Thus, the 2005 restitution order remained in effect and Ms. Jensen was entitled to seek to modify the order to reflect additional counseling expenses caused by William Jensen's crime. The order did not "expire" after the resentencing hearing in 2009.

1. STANDARD OF REVIEW.

Whether a restitution order authorizing continued counseling costs survives a judgment and sentence is a pure question of law. Questions of law are reviewed de novo. In re Marriage of Herridge, 169 Wn. App. 290, 297, 279 P.3d 956 (2012).

2. MS. JENSEN'S RIGHT TO RESTITUTION WAS PRESERVED IN JUDGE JONES' ORIGINAL ORDER ISSUED IN 2005.

Crime victims have a statutory right to restitution: "With respect to victims and survivors of victims, [the right] to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment." RCW 7.69.030(15). Restitution under the Sentencing Reform Act "means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages." RCW 9.94A.030(42). "Restitution *shall* be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property [...] unless extraordinary circumstances exist which make restitution inappropriate in the

court's judgment and the court sets forth such circumstances in the record. [...]" RCW 9.94A.753(5) (italics added).

The legislative intent was plainly to reimburse victims for their losses caused by the defendant:

> When the legislature enacted the restitution statute, it clearly stated its intent that victims be afforded legal protections at least as strong as those given criminal defendants. That is, victims of crime were to be "honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants."

State v. Gonzalez, 168 Wn.2d 256, 265, 226 P.3d 131 (2010) (Quoting LAWS OF 1981, ch. 145, § 1). The right to restitution should be "protected by law enforcement agencies, prosecutors, and judges *in a manner no less vigorous than the protections afforded criminal defendants.*" State v. Gonzalez, 168 Wn.2d at 265 (emphasis added).

> When interpreting Washington's restitution statutes, we recognize that they were intended to require the defendant to face the consequences of his or her criminal conduct. State v. Davison, 116 Wn.2d 917, 922, 809 P.2d 1374 (1991). We do not engage in overly technical construction that would permit the defendant to escape from just punishment.

State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007).

In 1989, the Legislature unanimously passed Senate Joint Resolution No. 8200, a proposed amendment to the Washington

Constitution to grant additional rights to crime victims. Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* 47 (2002); 1989 Wash. Sess. Laws page no. 2999. Washingtonians approved the proposal that same year as Amendment 84, with a 78.11% vote in favor.[8] Washington Constitution, Article I, section 35 provides as follows:

> Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.
>
> Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend....

Here, Ms. Jensen was a victim of both solicitations affirmed by the supreme court. The supreme court's opinion makes clear that the first solicitation was for the murder of Sue Harms, Jenny, and Linda Harms, and the second solicitation included those three, plus Scott. State v. Jensen, 164 Wn.2d 943, 948, 959, 195 P.3d 512 (2008) ("Jensen's jailhouse solicitation of Carpenter involved a single enticement, supporting a single conviction, although it

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[8] http://www.sos.wa.gov/elections/results_report.aspx?e=2&c=&c2=&t=&t2=5&p=&p2=&y=.

encompassed three potential victims," "[t]he second conversation with the undercover detective supports a separate conviction because it constitutes a fresh enticement to solicit the murder of Jensen's son."). Ms. Jensen is plainly a person injured by Jensen's crime and she has a statutory right to restitution. She had a right to attend the resentencing hearing and any restitution hearing that was to follow.[9]

Judge Jones fulfilled the legislative directive in 2005 when he signed the agreed restitution order. The face of Judge Jones' order expressly "allow[ed] for future additional costs as counseling may be required in the future for all victims." CP 114. The order was never challenged on appeal nor affected by appellate decisions. See Jensen, 164 Wn.2d 943 (2008). Thus, Ms. Jensen had a right, as of August, 2005, to petition the superior court for restitution for future counseling costs.

[9] Unfortunately, the hearing was to be held on September 22, 2009, but due to confusion over when the defendant was going to be transported from the Department of Corrections, the hearing was first continued to October 5, 2009, and then the date was moved up one week to September 30, 2009. Ms. Jensen did not receive notice of the twice-changed hearing date to September 30, 2009, so her rights under Article I, section 35 were not realized.

3. THE 2005 RESTITUTION ORDER WAS UNAFFECTED BY RESENTENCING SO THE 180-DAY RULE WAS IRRELEVANT.

Judge Prochnau erred by ruling that Judge Jones' restitution order "expired" 180 days after resentencing. The request for additional restitution did not stem from or depend upon the resentencing. The right flowed from Judge Jones' restitution order. Once the superior court authorized restitution for continuing counseling costs, such costs should have been ordered unless extraordinary reasons required denial. Thus, the State need not have established restitution within 180 days of resentencing. Such restitution could have been sought at any time.

In the hearing before Judge Prochnau, Jensen did not challenge either Judge Jones' order or the State's right to seek supplemental restitution. Rather, he simply argued that the State was required to seek restitution within 180 days of resentencing. Judge Prochnau appears to have accepted that argument, to the extent she ruled that Judge Jones' order "expired" 180 days after resentencing. This ruling was erroneous.

When an appellate court vacates a sentence and remands for resentencing, portions of the original judgment and sentence not affected by the appellate court's actions remain undisturbed.

In re Personal Restraint of Carle, 93 Wn.2d 31, 32, 604 P.2d 1293 (1980); State v. Williams, 51 Wn.2d 182, 185, 316 P.2d 913 (1957). An illegal portion of a sentence, if separable, "may be vacated without disturbing the lawful part." State v. Sims, 171 Wn.2d 436, 448-49, 256 P.3d 285 (2011) (citing Gossett v. Smith, 34 Wn.2d 220, 208 P.2d 870 (1949)). "Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed." In re Personal Restraint of Goodwin, 146 Wn.2d 861, 877, 50 P.3d 618 (2002).

In Williams, a prosecutor's error resulted in a sentence greater than allowed by statute. State v. Williams, 51 Wn.2d at 183-84. The trial court vacated the judgment and ordered resentencing. Id. at 184. Williams filed, and the trial court denied, a motion to change his plea from guilty to not guilty. Id. The Washington Supreme Court held that,

> [i]t is true that the judgment had been vacated for the purpose of correcting the sentence, but it was vacated for this purpose alone. When a sentence has been imposed for which there is no statutory authority, the trial court has the power and duty to correct the erroneous sentence when the error is discovered. The opening of a judgment for this limited purpose, however, does not render [the rest of the judgment] a nullity, as the defendant seems to suppose.

Id. at 185. The court reaffirmed this rule in In re Carle:

> Petitioner's entire sentence is not erroneous, however. *Our holding does not affect the finality of that portion of the judgment and sentence that was correct and valid at the time it was pronounced.* We declare only that the trial court must correct the erroneous portion of petitioner's sentence by properly resentencing him without regard for RCW 9.41.025 and its attendant consequences.

In re Carle, 93 Wn.2d at 34 (emphasis added).

Here, the supreme court determined that under the appropriate unit of prosecution, four counts of solicitation exceeded the statute's authority. State v. Jensen, 164 Wn.2d at 958-59. The supreme court remanded for a limited purpose—to vacate two convictions and to resentence accordingly. State v. Jensen, 164 Wn.2d at 959. Judge Jones' 2005 restitution was never challenged on appeal and was not affected by the decision. See State v. Jensen, 164 Wn.2d 943 (2008). Thus, the order remained valid on remand.

Jensen clearly recognized the limited nature of the remand. CP 285. In his presentence memorandum dated February 9, 2009, counsel said, "[t]his Court should not alter Mr. Jensen's judgment of convictions, except to strike two of the four convictions. This Court should also not alter Jensen's sentence, except [to adjust the

confinement time]. In short, every condition of the original sentence should stay the same—only the vacated sentences should be subtracted." CP at 285-86. He repeated this statement on the next page: "All other conditions of the sentence should remain unchanged." CP 287.

Judge Prochnau appeared to follow that portion of Jensen's recommendation at the February 13, 2009 hearing:

> The Court does impose that sentence. The Court will reimpose all the other conditions of the sentence including no contact with the victims. Restitution, I believe Judge Jones waived certain costs and financial circumstances. The Court is not going to make other changes to Judge Jones' sentence.

CP 134. As detailed above, the prosecutor took the opportunity, however, to ask the court to allow Ms. Jensen to be reimbursed for recent counseling costs. Although neither the prosecutor nor the court knew about Judge Jones' restitution order, and nothing that Judge Prochnau did or said amounted to the exercise of independent discretion to deny restitution. CP 134 ("This Court is not going to make other changes to Judge Jones's sentence."); CP 227 (Checked box "Defendant shall pay restitution to the Clerk of this Court as set forth in attached in the previously filed Appendix E."); CP 227 (Checked box "Restitution to be determined at future

restitution hearing on [...] date to be set."); CP 141 ("The Court has signed the judgment and sentence in the matter to provide for the mandatory victim penalties plus restitution, if any..."); CP 139 ("THE COURT: Are you asking to enter a specific restitution order today, or are you just asking to set a hearing? MS. BRENNEMAN: Set a hearing..."); CP 198 ("And so I did not enter a restitution order at the – and I did not enter a restitution order, of course, in February of 2009 as the prosecutor requested additional time to get the materials available, so I indicated that restitution would be determined at a future hearing, the date to be set.").

Clearly, the record establishes Judge Prochnau believed that restitution was appropriate in this case, attempted to preserve the "status quo" established by Judge Jones, and reserved the issue of supplemental restitution for later date. None of the trial court's actions voided the 2005 restitution order.

At the September 30, 2009 hearing, Judge Prochnau erred in granting Jensen's motion to dismiss the motion for restitution based on an erroneous view of the law. In its oral ruling, the court stated:

> COURT: The court agrees with [defense counsel], much reluctantly, because this is certainly not equitable to the victims of Mr. Jensen. But I can't see

> a way from le-, reviewing that transcript, it appears clear that I was not aware, or made aware, that there was a previous restitution order. The prosecutor certainly represented that there had not been one. Mistakenly, of course. And so I did not enter a restitution order at the – and I did not enter a restitution order, of course, in February of 2009 as the prosecutor requested additional time to get the materials available, so I indicated that restitution would be determined at a future hearing, the date to be set. It's true we checked the box "Defendant shall pay restitution as set forth in the previous filed appendix E," but there was no appendix E and the court was not aware that there had been a previous restitution order.
>
> So unfortunately, **the State waited too late** to get this hearing set, and the court believes it does not have any authority under the case law and the statute to set restitution order, ***this not being the, Judge Jones' order having expired when it was not made a condition of the new sentence.*** So the court grants the defendant's motion to dismiss the motion for restitution.

CP 197-98 (emphasis added). It appears that there are two related but logically distinct errors in Judge Prochnau's reasoning.

First, the court erred in believing that Judge Jones' order had somehow "expired." Judge Prochnau expressly ruled at the resentencing hearing – at defense counsel's urging – that she was modifying the original sentence to satisfy the supreme court's directive, and in no other way. The judge expressly said she was not changing Judge Jones' sentence in any other respect. She ruled that restitution was ordered. It matters not that Judge

Prochnau did not fully understand the scope of Judge Jones' order; she clearly did not void that order.

Moreover, Judge Jones' restitution order did not depend on anything Judge Prochnau did. It did not need to be extended or expressly reincorporated into the judgment. It was a valid order that had not been rescinded, overturned, or otherwise vacated. Ms. Jensen was entitled to seek supplemental restitution under Judge Jones' order for as long as she incurred counseling costs caused by the crime. Thus, Judge Jones' order did not expire after the resentencing hearing.

Second, the court erred in believing that the State "waited too late" to obtain a supplemental order and that the 180-day rule applied. The obligation to reimburse victims for their loss continues past the date of the original order. Courts have authority to modify restitution "as to the amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction." RCW 9.94A.753(4). Although, restitution must *initially* be determined within 180 days of sentencing, that time limit does not, and cannot, apply to an order for *supplemental* restitution costs because it is impossible to know when such costs will be incurred. Such a rule would defeat the legislative intent to allow supplemental

restitution. State v. Gonzalez, 168 Wn.2d at 266 ("Disallowing amendments after 180 days would fundamentally undermine the purpose of the restitution statute where the victim is burdened with an ongoing serious injury"); State v. Gray, 174 Wn.2d 920, 926, 280 P.3d 1110 (2012). Not only would such a ruling thwart the legislative directive, and Judge Jones' order as to counseling costs incurred before 2009, but the ruling also bars restitution in the future. Such a ruling is wholly inconsistent with the statutory intent.

In sum, Judge Jones' order remained valid regardless of whether Judge Prochnau expressly incorporated that order into the 2009 resentencing, there was no requirement that the State seek supplemental restitution within 180 days of the February, 2009 resentencing, and Judge Helson should have entertained the motion for supplemental restitution because there were no "extraordinary circumstances" that justified denial of restitution.

E. CONCLUSION

For these reasons, the State respectfully asks this Court to reverse Judge Prochnau's ruling that the State could not seek supplemental restitution. The State asks that this matter be

remanded to Judge Helson for a determination as to the amount of supplemental restitution that Ms. Jensen is entitled to receive.

DATED this 9th day of February, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jeffrey Ellis, the attorney for the respondent, at jeffreyerwinellis@gmail.com, containing a copy of the Brief of Respondent, in State v. William Frederick Jensen, Cause No. 74319-8, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 9th day of February, 2016.

U Brame

Name:
Done in Seattle, Washington