No. 940355
CoA No. 74319-8-I

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,
~~Respondent~~, Appellant

v.

WILLIAM JENSEN,
~~Appellant.~~
Respondent

PETITION FOR REVIEW

Jeffrey E. Ellis #17139
Attorney for Mr. Jensen
Law Office of Alsept & Ellis
621 SW Morrison St., Ste 1025
Portland, OR 97205
JeffreyErwinEllis@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

A. IDENTITY OF PETITIONER

William Jensen, Appellant/Defendant, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Mr. Jensen seeks review of the November 14, 2016, decision of the Court of Appeals reversing the trial court's order vacating the judgment. Mr. Jensen's motion to reconsider was denied on December 14, 2016. A copy of the opinion is attached as Appendix A. The order denying reconsideration is attached as Appendix B.

C. ISSUE PRESENTED FOR REVIEW

This case presents several issues related to the State's ability to seek restitution after the statutory time to do so expired. Those issues are:

> When a sentencing judge expressly finds that she did not order restitution at the time of a resentencing and where the state acknowledges this fact to the resentencing judge and then fails to assign error to this finding on appeal can a reviewing court reject that finding without explanation, substituting its own contradictory finding?
>
> On direct appeal, when this Court reversed two of Jensen's four counts of conviction and remanded for resentencing were the entire sentences reversed, as caselaw consistently states?

Was Jensen denied his federal constitutional rights to due process of law by the unprecedented departure from the requirements of the statute authorized by the Court of Appeals?

D. STATEMENT OF THE CASE

Mr. Jensen was originally convicted of four counts of solicitation to murder. During the first appeal in this case, this Court reversed and "remand[ed] for vacation of two convictions and for resentencing." *State v. Jensen*, 164 Wash.2d 943, 959, 195 P.3d 512 (2008). The remand order did not impose any restrictions on resentencing.

At resentencing, Jensen was given increased sentences on the two remaining counts. Judge Prochnau stated that she would not change other conditions of the sentence.

Shortly after that remark, the prosecutor stated:

> 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.
>
> 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 (emphasis added). The prosecutor was mistaken. A restitution amount had been set earlier. In any event, Jensen did not object to the setting of a date for a restitution hearing.

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 (emphasis added). 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. That appendix was not attached to the current judgement.

Not due to any fault of Jensen's, the State set the restitution hearing more than 180 days after sentencing. No victim objected. At the time of the hearing, Jensen objected that the hearing was untimely.

At that hearing, the prosecutor conceded that the restitution order from the first sentencing was not adopted at the resentencing hearing and no longer had any force or effect:

> 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 judge—the same judge who conducted the resentencing hearing—noted: in her oral ruling that "(t)here's no mention of restitution made in the presentencing memorandum," and there was no attachment to the Judgment and Sentence specifying a restitution amount. *Id.* at 10; 12. The resentencing judge orally ruled "I did not enter a restitution order, of course, in February of 2009," and that Judge Jones' restitution order "was not made a condition of the new sentence." *Id.* at 14. As a result, "the State waited too late to get this hearing set." *Id.* The resentencing court summarized its findings:

> 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 ...
>
> 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.

Six years later, the State sought to revisit the issue.

On August 3, 2015, the State filed a motion to supplement the original 2005 restitution order. CP 36-209. Jensen filed a motion on August 15, 2015 to strike the restitution hearing. CP 210-15. 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. CP 298-300. 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. CP 301-03. The court's findings include a finding that the original restitution order "was not made a condition of the new sentence." 2015 Order, Finding No. 6.

The state did not assign error to that finding.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

> [H]ard cases, it has often been said, almost always make bad law; and hence it is, in the end, far better that the established rules of law should be strictly applied, even though in particular instances serious loss may be thereby inflicted on some individuals...

Demuth v. Old Town Bank, 85 Md. 315, 319-20, 37 A.2d 266 (1897).

This Court should accept review of the decision of the Court of Appeals conflicts with the statute; prior decisions of this Court and the Court of Appeals; and violates Due Process. RAP 13.4.

The Resentencing Court Found that It Did Not Impose Restitution. The State Did Not Assign Error to that Finding. Nevertheless, the Court of Appeals Found Otherwise.

The decision of the Court of Appeals was premised on the conclusion that "the stricken restitution hearings involved the modification of an extant restitution order and were therefore not subject to the 180–day time limit." *Slip Opinion at* * 5. But, the resentencing court—the court that conducted the resentencing—found just the opposite. And, the State did not assign error to that finding. This Court should accept review because that should be the end of the matter.

In response to Jensen's argument that the State waived any claim that restitution had been reimposed at the resentencing, the Court of Appeals expressed unfamiliarity with any caselaw relating to a party changing their position on appeal or being bound by a concession below.

Such law exists. A party must object to trial or sentencing errors at a time that gives the trial court an opportunity to correct any mistake. Failure to timely object bars appellate review. *In re Lee*, 95

Wn.2d 357, 363, 623 P.2d 687 (1980); *State v. Loehner*, 42 Wn.App. 408, 410, 711 P.2d 377 (1985). Counsel may not remain silent before the trial court and later, if the verdict or sentence is adverse, urge objection for the first time in a post-trial motion or on appeal. *State v. Garibay*, 67 Wn.App. 773, 776-77, 841 P.2d 49 (1992).

Most importantly, the law has long required the State to assign error to any factual finding that it seeks to challenge on appeal. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). Because the State did not assign error to the finding that the original restitution order "was not made a condition of the new sentence," the appeal should have gone forward with that factual predicate in place. Instead, the Court of Appeals did just the opposite. This is the first reason this Court should accept review.[1]

> *Jensen's Case was Remanded for Resentencing. The Limitation on the Authority of the Scope of Resentencing Found by the Court of Appeals was Illusory—an Obvious Misreading of this Court's Remand.*

---

[1] Without citation to any authority, the Court of Appeals invoked the victim's rights amendment as constituting an independent reason to review the merits of the order striking the restitution hearing. But, no victim has ever appeared to challenge the State's concessions. No victim sought a hearing below. No victim filed an appeal. Instead, the prosecution sought to use its failure to inform the victims of the hearing as an opportunity for it to change its position. Even if the victim's rights amendment has some theoretical application here, it is not a device for a prosecutor to use to rewrite the history that it created.

This Court of Appeals further premised its decision on the conclusion that this Court restricted the authority of the resentencing court. The decision below contrasted cases remanded for resentencing and cases where only a portion of the sentence was reversed, but the remainder of the sentence was undisturbed. The lower court then seized on a single clause from this Court's remand order:

> By contrast, our Supreme Court in Jensen's appeal stated: "We reverse, *in part*, and remand for vacation of two convictions and resentencing." Jensen, 164 Wn.2d at 947 (emphasis added). This language did not reverse Jensen's sentences in their entirety. Nor did it affect the 2005 restitution order that Jensen had not appealed.

It would be hard to find a more glaring misreading of one of this Court's opinions.

In the "conclusion" of this Court's decision reversing two of the four counts of conviction, this Court stated: "We reverse and remand for vacation of two convictions and for resentencing." 164 Wash.2d at 959. The fact that this Court did not include the phrase "in part," should have signaled to the Court of Appeals that its conclusion was erroneous.

Moreover, the use of the words "in part" read in context is obvious. This Court reversed two counts and affirmed two counts of conviction. In other words, this Court reversed, in part.

Under the reasoning of the lower court, all previously imposed, unchallenged sentencing provisions remained in effect. If that were indeed a correct reading of this Court's remand order, then it was error for the sentencing court to impose increased sentences on counts I and II because those sentences had not been invalidated. Like the restitution order, no party appealed those sentences, which were within the standard range. But, the Court of Appeals affirmed increased sentences when they came before the Court for review. 152 Wash.App. 1063 (2009).

The decision below seriously disturbs decisions of this Court and the Court of Appeals regarding the scope of a resentencing hearing. *State v. Toney*, 149 Wash. App. 787, 792, 205 P.3d 944 (2009), *rev. denied*, 168 Wash.2d 1027 (2010) (drawing distinction between "remand for resentencing," which authorizes an entirely new sentencing proceeding, and a remand which authorizes "the trial court to enter only a ministerial correction of the original sentence"); *State v. Davenport*, 140 Wash. App. 925, 931-32, 167 P.3d 1221 (2007), *rev. denied*, 163 Wash.2d 1041 (2008) (distinguishing between a remand for resentencing and a remand to correct the judgment and sentence; "At the resentencing hearing, the trial court had the discretion to consider

issues Davenport did not raise at his initial sentencing or in his first appeal.").

In *State v. Harrison*, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003), the Washington Supreme Court held that when a case is "remanded for resentencing," it means that the "entire sentence was reversed, or vacated, since 'reverse' and 'vacate' have the same definition and effect in this context-the finality of the judgment is destroyed." *See also United States v. Stinson*, 97 F.3d 466, 469 (11th Cir. 1996) (per curiam), *cert. denied*, 519 U.S. 1137 (1997) (under "holistic approach," a vacated criminal sentence "becomes void in its entirety," having been "wholly nullified and the slate wiped clean."). As a result, when a case is remanded for resentencing, the "court is free to reconstruct the sentence utilizing any of the sentence components." *Id.*

The Court of Appeals Decision Denies Jensen Due Process

By enacting a law that places a limit on the right to seek restitution, the State can create an expectation that the law will be followed, and this expectation can rise to the level of a protected liberty interest. *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 463, (1989); *Hicks v. Oklahoma*, 447 U.S. 343, 346, (1980) (a state may create a liberty interest protected by the Due Process Clause of the Fourteenth Amendment if it provides a criminal defendant with a

"substantial and legitimate expectation" of certain procedural protections). *See also Campbell v. Blodgett*, 997 F.2d 512, 522 (9th Cir.1992), *cert. denied*, 510 U.S. 1215 (1992) (noting same and finding that state statute created a liberty interest in having the Washington Supreme Court review and make certain findings whether or not the defendant raised particular issues).

This Court should accept review because the lower court's application of the facts to the law so far departs from established norms as to constitute a violation of Due Process.

D. CONCLUSION

This Court should grant review.

DATED this day of 11th January, 2017.

Respectfully Submitted:

/s/Jeffrey E. Ellis
Jeffrey E. Ellis #17139
Attorney for Mr. Jensen
Law Office of Alsept & Ellis
621 SW Morrison St., Ste 1025
Portland, OR 97205
JeffreyErwinEllis@gmail.com

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. WILLIAM FREDERICK JENSEN, Respondent.	)	DIVISION ONE No. 74319-8-I UNPUBLISHED OPINION FILED: November 14, 2016

DWYER, J. – After a jury convicted William Jensen of four counts of solicitation to commit first degree murder, the court entered a judgment and sentence requiring restitution in an amount to be determined. The court later entered a separate agreed order of restitution that included future counseling costs. Jensen appealed the judgment and sentence but not the restitution order. The Washington Supreme Court reversed two of Jensen's convictions and remanded for vacation of those convictions and resentencing.

On remand, the court ordered restitution but, unaware of the prior order setting restitution, set a future hearing to determine the amount. Jensen later moved to strike that hearing on the ground that it was set more than 180 days after the resentencing hearing and was therefore untimely under RCW 9.94A.753(1). In September 2009, the superior court orally granted Jensen's motion, but entered no written ruling. The court ruled that the agreed order of

restitution entered in 2005 had expired when it was not reimposed on remand. The court concluded that the current restitution hearing was therefore a hearing to set restitution for the first time, not a hearing to modify the 2005 restitution order, and that the hearing was untimely because it was set more than 180 days after the resentencing hearing.

The State subsequently moved to supplement restitution, and the court entered two orders – one memorializing the 2009 oral ruling and another striking the State's motion. The State appeals these orders, arguing that the 2005 restitution order never expired and that the superior court erred by striking the restitution hearings. We reverse.

I

Based on allegations that Jensen tried to hire hit men to kill his wife, children, and sister-in-law, the State charged him with four counts of first degree solicitation to commit murder. A jury convicted him and the court entered a judgment and sentence ordering restitution in an amount to be determined at a later hearing.

On June 7, 2005, the court entered an agreed order of restitution in the amount of $2,304.50. The order also authorized restitution "for future additional costs as counseling may be required in the future for all victims."

Jensen appealed the judgment and sentence but did not appeal the order of restitution.[1] The Washington Supreme Court reversed two of Jensen's convictions and remanded "for vacation of two convictions and for resentencing." State v. Jensen, 164 Wn.2d 943, 959, 195 P.3d 512 (2008).

In February of 2009, the court held a resentencing hearing. In its oral ruling, the court noted that the original "sentence was reversed by the supreme court *with respect to the four unit of prosecutions [sic].*" (Emphasis added.) The court proceeded to impose a sentence at the top of the standard range. It then stated:

> The Court will reimpose all the other conditions of the [original] 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 [that] sentence.

Following the oral ruling, the prosecutor erroneously told the court that while the original judgment and sentence ordered restitution in an amount to be determined, no restitution order had ever been entered. Based on that misinformation, the court agreed to set a future restitution hearing. It then signed a new judgment and sentence that simultaneously required Jensen to pay restitution "as set forth . . . in the previously filed Appendix E," but ordered restitution "to be determined at future restitution hearing." It is undisputed that no appendix E had ever been filed with the court.

---

[1] Jensen filed his amended notice of appeal from the original judgment and sentence on January 26, 2005, long before the June 2005 order setting restitution.

In September of 2009, the court held a restitution hearing. Defense counsel moved to strike the hearing, arguing that the court lacked authority to award restitution because the hearing had not occurred within 180 days of sentencing as required by RCW 9.94A.753(1). Anticipating the State's argument, defense counsel further argued that the hearing was not a modification of the 2005 agreed order of restitution because the resentencing court had not reimposed that order. The prosecutor disagreed, arguing that the reference to the "previously filed Appendix E" in the resentencing court's judgment and sentence "was intended to adopt anything that had been previously filed" regarding restitution. Therefore, the prosecutor argued, the current hearing involved a proposed modification to the 2005 restitution order and was not subject to the 180-day time limit.

The court then asked the prosecutor the following question:

> [I]f, 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?
>
> . . .
>
> [It] [d]oesn't automatically continue, in other words.

The prosecutor agreed, adding "I think that would probably be accurate" and reiterating her contention that the resentencing court intended to adopt the prior order.

The court then granted the motion to strike, ruling in pertinent part as follows:

> The court agrees with [defense counsel], much reluctantly, because this is certainly not equitable to the victims of Mr. Jensen. . . . [I]t 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 . . . in February of 2009 . . . . 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 a restitution order, . . . the [original] 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.

(Emphasis added.) Although defense counsel told the court he would prepare a written order, no order was ever filed.

Six years later, in August of 2015, the State filed a motion to supplement the original 2005 restitution order with counseling costs incurred since 2009. Jensen moved to strike the hearing. The court granted the motion, stating in part:

> Because no written order was ever entered following [the] 9/30/15 ruling[ ], a separate order shall be entered at this time reflecting that ruling so that the State has an opportunity to appeal.
>
> The Court notes that, as a result of the sequence of events following remand, including an inadvertent reference in an Order on Judgment and Sentence to an Exhibit E that did not exist, a mistaken representation by the prosecutor that restitution had not previously been set, and a failure by the prosecutor to set a hearing for restitution within 180 days, the victims in this case have been deprived of restitution. . . . In light of [the court's] ruling in the 9/30/09 hearing, this Court does not have authority to conduct a restitution hearing or order further restitution. However, the Court urges both parties to consider the equities of the situation and to

consider addressing the situation voluntarily or by entry of an agreed order.

The court also entered an order reflecting the earlier September 30, 2009 oral ruling. That order states in part:

1. At the February 13, 2009 resentencing hearing the Court was not made aware of Judge Jones' prior restitution order dated 6/7/05.
2. Instead, the prosecutor represented to the Court (mistakenly) during the February 2009 resentencing hearing that there was no previous restitution order.
3. At the February 2009 resentencing hearing the Court indicated that restitution would be determined at a future hearing.
4. The order entered in February 2009 had a check in the box "Defendant shall pay restitution as set forth in the previously filed appendix E," but there was no appendix E and the court was not aware that there had been a previous restitution order.
5. The State waited too long to get a hearing set to determine restitution.
6. The Court believes it does not have any authority to set a restitution order, Judge Jones' order having expired when it was not made a condition of the new sentence.

The State appeals the 2015 orders.

II

The State contends that the superior court erred by striking the restitution hearings as untimely. It argues that the 2005 order setting the restitution amount was timely and unaffected by either the Washington Supreme Court's decision on appeal or Jensen's resentencing on remand. Therefore, the State reasons, the restitution hearings on remand were modifications of the 2005 restitution order, not original hearings to set restitution, and did not have to occur within 180

days of resentencing under RCW 9.94A.753(1). Jensen, on the other hand, contends the State cannot raise this issue because the prosecutor "conceded that the restitution order from the first sentencing was not adopted at the resentencing hearing and no longer had any force or effect" on remand. Br. of Resp't at 1. He concludes that "the State should not be heard to argue the opposite position now." Br. of Resp't at 4. Jensen's argument fails for several reasons.

First, the argument is not supported by pertinent authority. Although Jensen cites cases regarding preservation of errors, he cites nothing relating to a party changing their position on appeal or being bound by a concession below.

Second, to the extent that Jensen contends that the State needed to object to preserve its claim that the 180-day time limit in RCW 9.94A.753(1) did not apply to the stricken restitution hearings, the record shows that the State did object on those grounds at the hearings. And even in the absence of an objection and/or the occurrence of a concession, the issue may still be raised on appeal because it concerns an error of law in the court's sentence. See In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 877, 50 P.3d 618 (2002) (error of law in sentence cannot be waived by stipulation and is reviewable for the first time on appeal); RAP 2.5(a) (granting this court discretion to review unpreserved errors).

Finally, the State contends, and Jensen does not dispute, that the victims received no notice of the restitution hearing at which the State made its

concession. Because the victims had a constitutional right to notice of, and participation in, any restitution hearings,[2] we have discretion to review the court's striking of those hearings as a manifest error affecting a constitutional right. RAP 2.5(a).

Turning to the merits, RCW 9.94A.753(1) states, in pertinent part, that "[w]hen restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days . . . ." This time limit only applies to an initial hearing to set restitution; it does not apply to a hearing set to modify an earlier timely restitution order. See RCW 9.94A.753(4) (stating that restitution may be modified as to amount, terms, and conditions while the offender remains under the court's jurisdiction); State v. Gray, 174 Wn.2d 920, 927, 935, 280 P.3d 1110 (2012) (holding that courts may modify the total amount of restitution after 180 days). The central dispute in this case is whether the stricken restitution hearings were, in essence, hearings to modify a timely restitution order, or hearings to set restitution in the first instance. Resolution of this dispute turns on whether the 2005 restitution order survived the first appeal and resentencing. If it did, then the stricken restitution hearings were essentially modification proceedings and the 180-day time limit did not apply.

Citing State v. Harrison, 148 Wn.2d 550, 562, 61 P.3d 1104 (2003), Jensen argues that when, as here, a court remands a matter for "resentencing," the entire sentence is reversed or vacated. Jensen concludes that the 2005

---

[2] WASH. CONST. art. I, § 35.

restitution order was vacated when the Washington Supreme Court remanded his case for "resentencing." And because the resentencing court did not reimpose that order, Jensen maintains that the stricken hearings were not modification hearings and were therefore untimely. We disagree.

In Harrison, the appellate court "'*reverse[d] Harrison's sentences* and remand[ed] for resentencing.'" Harrison, 148 Wn.2d at 562 (emphasis added) (alterations in original) (quoting State v. Harrison, noted at 100 Wn. App. 1049 (2000)). The appellate court in Harrison thus clearly reversed the defendant's sentences *in toto*. By contrast, our Supreme Court in Jensen's appeal stated: "We reverse, *in part,* and remand for vacation of two convictions and resentencing." Jensen, 164 Wn.2d at 947 (emphasis added). This language did not reverse Jensen's sentences in their entirety. Nor did it affect the 2005 restitution order that Jensen had not appealed. State v. Rowland, 160 Wn. App. 316, 328, 249 P.3d 635 (2011) (noting that portions of an original judgment and sentence that were valid when pronounced are "'unaffected by the reversal of one or more counts'" (quoting State v. Kilgore, 167 Wn.2d 28, 37, 216 P.3d 393 (2009))), aff'd, 174 Wn.2d 150, 272 P.3d 242 (2012). Thus, contrary to Jensen's assertions, it was not necessary for the resentencing court to reimpose the 2005 restitution order for it to have force and effect on remand. Because the 2005 order remained in effect on remand, the stricken restitution hearings were hearings to modify restitution and were not subject to the 180-day statutory time limit.

And even if we were to conclude that the 2005 order had to be reimposed, the record indicates that it was. Interpretation of a court order or judgment is a question of law, and we interpret such orders to give effect to the issuing court's intent. In re Marriage of Thompson, 97 Wn. App. 873, 877, 988 P.2d 499 (1999); Hill v. Hill, 3 Wn. App. 783, 786, 477 P.2d 931 (1970), overruled on other grounds by Stokes v. Polley, 145 Wn.2d 341, 37 P.3d 1211 (2001). We may consider a trial court's oral decision when interpreting a court's findings and conclusions so long as there is no inconsistency. City of Lakewood v. Pierce County, 144 Wn.2d 118, 127, 30 P.3d 446 (2001) (quoting State v. Eppens, 30 Wn. App. 119, 126, 633 P.2d 92 (1981)). An ambiguity in a court's judgment or written decision may also be clarified by reference to the court's oral ruling. State v. Smith, 82 Wn. App. 153, 159, 916 P.2d 960 (1996); State v. Hescock, 98 Wn. App. 600, 606, 989 P.2d 1251 (1999). In addition, we have previously looked to a resentencing court's oral ruling to determine its intent regarding the original judgment and sentence. Rowland, 160 Wn. App. at 328.

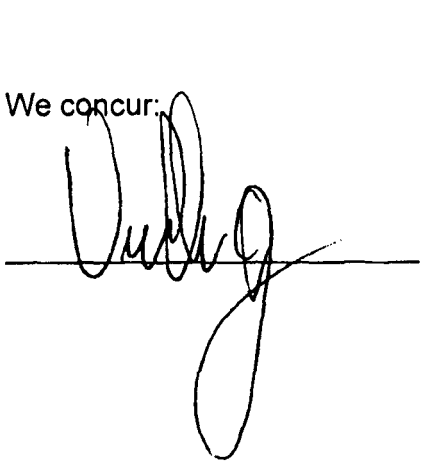
Here, the judgment and sentence entered on remand is ambiguous regarding restitution. It first states that Jensen "shall pay restitution . . . as set forth . . . in the previously filed Appendix E." But it also states that restitution is "to be determined at future restitution hearing" on a "[d]ate to be set." As noted above, there was no previously filed appendix E, but there was a previously filed order of restitution. In addition, the judgment purports to require payment of an amount previously set, but then states that restitution will be set in the future.

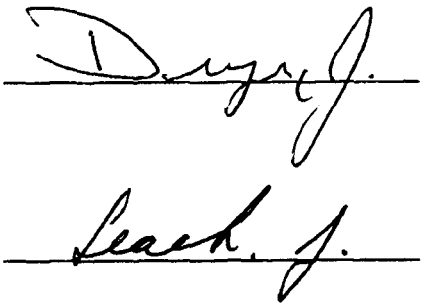
These ambiguities justify resort to the resentencing court's oral decision. In that decision, the court announced the length of Jensen's confinement and then expressly stated its intention to "reimpose all the other conditions of the sentence" including restitution. While the prosecutor later misinformed the court that no order setting restitution had previously been entered, the court's intent to reimpose any and all aspects of the prior sentence other than those mentioned in its ruling is clear.

For the reasons set forth above, we conclude the stricken restitution hearings involved the modification of an extant restitution order and were therefore not subject to the 180-day time limit in RCW 9.94A.753(1). The superior court erred in ruling otherwise and in striking the hearings.

Reversed and remanded for proceedings consistent with this opinion.

We concur:





IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

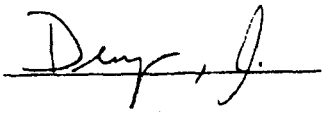
STATE OF WASHINGTON, Appellant, v. WILLIAM FREDERICK JENSEN, Respondent.	DIVISION ONE No. 74319-8-I ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

The respondent, William Jensen, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 14th day of December, 2016.

FOR THE COURT:



CERTIFICATE OF SERVICE

I, Jeffrey Ellis, certify that on today's date I efiled the attached Petition for Review, causing a copy to be sent electronically to:

paoappellateunitmail@kingcounty.gov

January 12, 2017//Portland, OR /s/Jeffrey Ellis