Supreme Court No. 99226-6
(COA No. 80030-2-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DONALD W. MORGAN,

Appellant.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Donald Morgan, petitioner here and appellant below, asks this Court to accept review of a Court of Appeals decision, issued on October 12, 2020, affirming his order of restitution. Mr. Morgan has attached a copy of this opinion to this petition.

B. ISSUES PRESENTED FOR REVIEW

1. The extent of due process protections that apply in a particular proceeding depends on the individual right at stake and the government's interest in restricting that right. An order of restitution bears the potential of depriving a person of significant sums of money, and it also bears the potential of depriving a person of his civil liberties and constitutional rights. Here, the court relied on hearsay evidence when it deprived Mr. Morgan of close to $80,000. Did the court violate Mr. Morgan's right to due process when it did not afford him the opportunity to confront and cross-examine adverse witnesses? RAP 13.4(b)(3); RAP 13.4(b)(4).

2. The Sixth Amendment guarantees that a jury will find every fact essential to punishment. This does not merely include facts that increase the length of a prison's term; it also includes the right to have a jury find facts that increase a defendant's financial punishment. Here, the court ordered Mr. Morgan to pay close to $80,000 in restitution, but a jury did

not make this determination. Does the order of restitution violate the Sixth Amendment? RAP 13.4(b)(3).

3. Article I, section 21, of our constitution guarantees the right to have a jury determine financial damages. Did the court violate Mr. Morgan's right to a jury trial when the court itself determined financial damages? RAP 13.4(b)(3).

C. STATEMENT OF THE CASE

Since 1996, Donald Morgan was a licensed insurance producer. CP 132. Mr. Morgan dedicated himself to his career without incident until 2014 and 2015, when allegations of fraud caused the State to remove his license. CP 104, 132. The State charged Mr. Morgan with two counts of theft in the first degree and two counts of theft in the second degree. CP 138-141. The State later dropped three of the charges, and Mr. Morgan pleaded guilty to only one count of theft in the first degree. CP 106-110. However, as part of his plea agreement, Mr. Morgan agreed to pay restitution based on the dismissed charges. CP 126.

Both the State and Mr. Morgan agreed to the sum of restitution for dismissed counts three and four, but they disputed the sum of restitution for counts one and two. 5/23/19RP 4. The State sought to recoup over $40,000 for count one and over $50,000 for count two. CP 65. To support this claim, the State presented several documents: an order granting

summary judgment against Mr. Morgan, a couple of affidavits from the director of litigation recovery for the aggrieved party, copies of the finance agreements, and account status statements. CP 69-85. The events underlying the charges involved Mr. Morgan making transactions among numerous insurance companies to obtain insurance plans for his clients. CP 14-16. In regards to count one, Mr. Morgan contended he was entitled to a commission for this insurance transaction, and he also contended that he already paid over $17,000 as a down payment, and so he was owed the difference. CP 14-15. Mr. Morgan presented a bank statement indicating he made the $17,000+ payment in April of 2015. CP 22-24.

In regards to the second count, Mr. Morgan argued he did not owe any money because he was overcharged and because he already made payments. CP 15; 5/23/19RP 14. Mr. Morgan also presented a bank statement and an email indicating he sent the aggrieved party over $22,000. CP 29-34.

The court ultimately ordered Mr. Morgan to pay over $40,000 for count one and over $30,000 for count two. CP 2. The court agreed that Mr. Morgan appeared to have made a payment for the benefit of the aggrieved party for count one, but it seemed the money actually went to a different insurance entity, and the aggrieved party did not receive it. 5/23/19RP 17-19. Mr. Morgan asked the court what he could do in order to figure out

what the different entity did with the money he sent on behalf of the aggrieved party; the court directed Mr. Morgan to talk to counsel. 5/23/19RP 19-22. For count two, the court merely relied on the account balance provided by the aggrieved party. 5/23/19RP 16. In total, Mr. Morgan owes close to $80,000 in restitution. CP 12.

D. ARGUMENT

1. This Court should accept review to hold that in a restitution proceeding, due process demands that individuals who contest the State's evidence be afforded the opportunity to confront and cross-examine adverse witnesses unless good cause exists to forego live testimony.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner."' *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, L. Ed. 2d 18 (1976). The extent of the protections depends on the individual right at stake and the government's interest in restricting that right. *See Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L. Ed. 2d 484 (1972).

Applying this balancing test to a parole revocation hearing, *Morrissey* required the hearing to include:

> (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) *the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)*; (e) a "neutral and detached" hearing body; and (f)

> a written statement by the factfinder as to the evidence relied upon and the reasons for revoking parole.

408 U.S. at 482-84 (emphasis added).

These minimum requirements serve to "assure that the finding of a parole violation will be based on *verified facts* and that the exercise of discretion will be informed by an *accurate knowledge* of the parolee's behavior." *Id.* at 484 (emphases added). The Court also extended these minimal requirements to probation hearings. *See e.g., Gagnon v. Scarpelli*, 411 U.S. 778, 93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973).

This Court has required these same minimal protections be afforded at a variety of post-sentencing hearings. *See, e.g., State v. Dang*, 178 Wn.2d 868, 883, 312 P.3d 30 (2013) (applying *Morrissey* requirements to hearing to revoke conditional release of insanity acquittee); *State v. Abd-Rahmaan*, 154 Wn.2d 280, 291, 111 P.3d 1157 (2005) (concluding *Morrissey* requirements apply at sentence modification hearing); *State v. Dahl*, 139 Wn.2d 678, 990 P.2d 396 (1999) (applying *Morrissey* to revocation of Special Sex Offender Sentencing Alternative); *State v. Nelson*, 103 Wn.2d 760, 697 P.2d 579 (1985) (applying *Morrissey* to revocation of suspended sentence).

In each of these cases, this Court began with the notion that the hearings involved were not a part of a criminal prosecution and thus did

not demand "the 'full panoply of rights' due in that setting." *Abd-Rahmaan,* 154 Wn.2d at 285 (citing *Morrissey*, 408 U.S. at 480). Despite this, this Court recognized that confrontation remained an integral part of the process due.

Thus, in *Dang*, this Court reiterated that even under the limited due process analysis applicable to such proceedings, "hearsay evidence should be considered *only* if there is good cause to forgo live testimony."' *Dang*, 178 Wn.2d at 884 (quoting *Dahl*, 138 Wn.2d at 686) (emphasis added). "Good cause is defined in terms of difficulty and expense of procuring witnesses in combination with demonstrably reliable or clearly reliable evidence." *Id*. In *Dang*, this Court held the State failed to establish good cause not to produce live witnesses where the hearsay statements in question were those of local county-designated medical providers. *Id.*

For even more compelling reasons, defendants have the right to confront and cross-examine adverse witnesses in restitution proceedings. The Due Process Clause "protects persons against the deprivations of life, liberty, or property…those who seek to invoke its procedural protection must establish that one of these interests is at stake" *Wilkinson v. Austin*, 545 U.S. 209, 221, 25 S. Ct. 2384, 162 L. Ed. 2d 174 (2005).

Unlike a parole revocation proceeding, restitution is actually part of sentencing, and so it is a criminal proceeding. *See State v. Ewing*, 102

Wn. App. 349, 353, 7 P.3d 835 (2000); *see also Paroline v. U.S.*, 572 U.S. 434, 456, 134 S. Ct. 1710, 188 L. Ed. 2d 714 (2014). In this particular phase of the criminal proceeding, the defendant is faced with a potentially significant deprivation of property. The court assesses the monetary amount due to an aggrieved party. *See generally* RCW 9.94A.753. No monetary cap exists on the sum of money the court may order the defendant to pay. *See id.* As a result of the initial order of restitution, the defendant may face an even greater loss of liberty in the years to follow, as restitution bears interest from the date of judgment. RCW 10.82.090(1). No means exist for the debtor to relieve himself of this debt until he at least pays off the principal, as this debt cannot be discharged in bankruptcy. *See Kelly v. Robinson*, 479 U.S. 36, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986) (ruling that restitution obligations, as a criminal sanction, are not subject to discharge in a bankruptcy proceeding).

Not only is the defendant subject to a deprivation of his property interests, but he may also be subject to a deprivation of his constitutional rights as a consequence of the court's initial order of restitution. This is because individuals cannot vacate their records until they have paid off the court's order of restitution. RCW 9.94A.637(1); *see also* RCW 9.94A.030(31); RCW 9.94A.640.

An order vacating a person's sentence restores many of the debtor's civil rights and ability to participate in civic functions. For example, vacation of a criminal record ensures a person's constitutional right to vote is permanently restored. RCW 29A.08.520; U.S. CONST. amend. IX. It also allows the debtor to once again be able to exercise his constitutional right to bear arms. U.S. CONST. amend. II; RCW 9.41.040(4)(a); RCW 9.95.240(1). Additionally, the vacation of a criminal record allows the debtor to participate in jury service. RCW 2.36.070; *see also Jury Duty*, Wash. Courts.[1] If the defendant simply does not have the means to pay off the order of restitution, then the order of restitution serves to encumber his constitutional and civil liberties.

Moreover, individuals have a liberty interest in pursuing the lawful career of their choice, but an order of restitution bears the potential of also depriving the defendant of this liberty interest. *See Fields v. Dep't of Early Learning*, 193 Wn.2d 36, 43-44, 434 P.3d 999 (2019). This is because an order vacating a person's criminal record allows him to represent to a potential employer that he was never convicted of a crime. *See* Wash. Cts., *Sealing and Destroying Court Records, Vacating Convictions, and*

[1] https://www.courts.wa.gov/newsinfo/resources/ (last visited Sept. 5, 2018).

Deleting Criminal History Records in Washington State 7 (Oct. 2019).[2] This is an important step in obtaining a job because employers are generally reluctant to hire individuals with criminal records; however, an unpaid order of restitution requires a defendant to tell a potential employer about his criminal history. *See generally* Simone Ipsa-Landa & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois*, 54 Criminology 3 (June 8, 2016).

Thus, individuals at restitution hearings face a significant deprivation of both property and liberty. The court may order the defendant to pay a significant sum of money based on questionable hearsay evidence, and this sum of money accrues interest. As the restitution order grows, it becomes more difficult for the defendant to pay off the order of restitution, which leaves the individual without the ability to restore his civil liberties.

Because of the importance of these liberty interests, the due process requirements of a sentencing hearing must be greater than the due process protections of a sentence modification hearing. At *minimum*, the defendant should be allowed to confront and cross-examine the witnesses against him. This will comply with *Morrisey's* minimal mandate that a

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[2] https://www.courts.wa.gov/content/publicUpload/Publications/SealingandDestroyingCourtRecords.pdf.

deprivation of liberty be based on "verified facts" and "accurate knowledge" of the *actual* losses the aggrieved parties sustained. *Id.* at 484.

Common sense also compels this conclusion. It makes little sense to afford individuals with the right to confront and cross-examine the witnesses against him in a non-criminal proceeding like a parole revocation hearing yet not afford this protection in a criminal proceeding. If a person fails to pay restitution, they may face confinement. *See generally* RCW 10.01.180. At such a hearing, the person would have the right to confront and cross-examine the witnesses against him. No reason exists to provide the right to confront and cross-examine witnesses *only* upon an allegation of nonpayment; the right to confront must also exist at the inception of the order, which is at the time the court imposes the order.

Without this protection, the defendant may be deprived of exorbitant sums of money and his constitutional liberties based merely on unreliable hearsay evidence. Here, the court ordered Mr. Morgan to pay nearly $80,000 in restitution without Mr. Morgan having the opportunity to cross-examine the individuals who claimed he owed them money. Mr. Morgan vigorously disputed this amount, and yet the court still ordered this sum. 5/29/18RP 18-23. This Court should accept review. RAP 13.4(b)(3); RAP 13.4(b)(4).

2. This Court should accept review because the Sixth Amendment independelty bars courts from ordering restitution based on losses the State never proved to a jury with proof beyond a reasonable doubt.

The Sixth Amendment's right to a jury guarantees the right to have a jury find every fact essential to punishment beyond a reasonable doubt. U.S. CONST. amend. VI; *Apprendi v. New Jersey*, 530 U.S. 466, 476, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *Blakely v. Washington*, 542 U.S. 296, 298, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). The State must prove these facts with proof beyond a reasonable doubt, and the constitution forbids the legislature from removing from the jury "the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed." *Apprendi*, 530 U.S. at 490. This rule preserves the "historic jury function" of "determining whether the prosecution has proved each element of an offense beyond a reasonable doubt." *Oregon v. Ice*, 555 U.S. 160, 163, 129 S. Ct. 711, 172 L. Ed. 2d 51 (2009). Concluding the historical function of the jury included determining the value of a financial penalty or fine, the Supreme Court has made clear that criminal fines are subject to the rule of *Apprendi*. *Southern Union Co. v. United States*, 567 U.S. 343, 356, 132 S. Ct. 2344, 2354, 183 L. Ed. 2d 318 (2012).

Restitution is punishment imposed for a conviction. *State v. Kinneman*, 155 Wn.2d 272, 280, 119 P.3d 350 (2005); *see also Pasquantino v. United States*, 544 U.S. 349, 365, 125 S. Ct. 1766, 161 L. Ed. 2d 619 (2005) ("The purpose of awarding restitution in this action is not to collect a foreign tax, but to mete out appropriate criminal punishment for that conduct"); *State v. Edelman*, 97 Wn. App. 161, 166, 984 P.2d 421 (1999) (". . . restitution is part of an offender's sentence and is primarily punitive in nature").

In *Southern Union*, the defendant corporation was subject to a $50,000 fine for each day it was in violation of the Resource Conservation and Recovery Act. 567 U.S. at 347. The defendant argued that imposition of anything more than $50,000, one day's fine, required a jury finding of the duration of the violation. *Id*. The Supreme Court agreed. *Id*. at 360. In doing so, the Court rejected any effort to distinguish between the punishment of incarceration and financial punishments. *Id*. at 352. The Court noted the "core concern" of *Apprendi* is the reservation to the jury of "the determination of facts that warrant punishment." *Id*. at 349 (citing *Ice*, 555 U.S. at 170). "That concern applies whether the sentence is a criminal fine, or imprisonment or death." *Southern Union*, 567 U.S. at 349. The Court specifically recognized *Apprendi* applies where the punishment is based upon "the amount of the defendant's gain or the

victim's loss." *Id*. at 349-50. That is precisely how restitution is determined under RCW 9.94A.753.

Prior to the United States Supreme Court's holding in *Southern Union*, *Kinneman* held that restitution did not trigger the Sixth Amendment's protections. 155 Wn.2d at 282. This Court reasoned that because the statute does not set a maximum amount, even though restitution is a mandatory part of punishment under RCW 9.94A.753, the court does not exceed the statutory maximum when it imposes restitution. *Id*. This Court found RCW 9.94.753 was "more like the advisory Federal Sentencing Guidelines after *Booker* [*v. United States*, 543 U.S. 220, 245, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005)]." *Id*. at 281.

But *Alleyne v. United States*, 570 U.S. 99, 111-12, 133 S. Ct. 2151, 186 L. Ed.2d 314 (2013) undermines *Kinneman*'s reasoning. "A fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offense" that must be proved beyond a reasonable doubt. *Id*. at 112. *Alleyne* overturned prior cases that limited the reasoning of *Apprendi* to factual questions that increase the statutory maximum and not those that simply raise the minimum. *Id*. at 107. In *Kinneman*, this Court focused on the notion that no jury finding would be required unless restitution exceeded the maximum allowed by statute, without regard to the increase in minimum punishment triggered by restitution. However,

Alleyne holds that"[a] fact that increases a sentencing floor, thus, forms an essential ingredient of the offense" that must be proven as an element of the offense. 570 U.S. at 112.

Kinneman also reasoned that a judge has discretion in determining the amount of restitution and treated restitution as advisory, but the judge has no discretion to omit restitution. 155 Wn.2d at 282. Nothing in the statute permits a judge to impose anything less than the actual damages the State proves with a preponderance of the evidence. *State v. Hughes*, 154 Wn.2d 118, 154, 110 P.3d 192 (2005).

A judge's discretion to decline to impose restitution in "extraordinary circumstances" is irrelevant to the inquiry. There is no published case explaining what "extraordinary circumstances" might mean. The SRA affords judges the ability to impose a sentence below the standard range based upon mitigating circumstances without a jury finding. But the discretion to depart downward does not change the mandatory requirement of a jury finding when additional facts are alleged as a basis for an upward departure, as made plain by *Blakely*. The discretion to impose a lesser sentence does not determine whether the Sixth Amendment applies to facts which increase the sentence.

In addition, when *Booker* concluded the federal guidelines were advisory, it did not mean a court had discretion in limited cases to deviate

from an otherwise required sentence, or that certain provisions afforded courts discretion within the guidelines. Instead, what the court meant by advisory was that the statute did not bind the sentencing court in any manner. *Booker*, 543 U.S. at 245. That is not the case with RCW 9.94A.753.

RCW 9.94A.753 requires restitution be imposed in all but the undefined extraordinary circumstances. Indeed, in any case in which the victim receives benefits from the crime victims' compensation fund, the trial court has no discretion at all and must impose restitution. RCW 9.94A.753(7). The SRA's mandate of restitution is not "advisory" but rather mandatory, and creates a mandatory minimum amount based on factual findings made by a judge and explicitly tied to the particular factual findings the judge is required to make. *See Southern Union*, 567 U.S. at 348-49.

Kinneman erroneously concluded that the absence of a maximum in RCW 9.94A.753 avoids any Sixth Amendment implications. Restitution is permissible only if the State proves "easily ascertainable damages for injury to or loss of property" by a preponderance of the evidence. *Hughes*, 154 Wn.2d at 154. To use the lexicon of *Apprendi*, the "maximum" permitted by RCW 9.94A.753 is $0 unless there is a determination of "easily ascertainable damages." Moreover, the statute sets an additional

cap when it provides, “restitution shall not exceed double the amount of the offender’s gain or the victim's loss from the commission of the crime.” RCW 9.94A.753(3).

Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact (as in *Apprendi*), one of several specified facts, or any aggravating fact (as here), it remains the case that the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact. *Blakely*, 542 U.S. at 305. That the State bears the burden of proving the amount of restitution illustrates that a court may not impose any amount absent an additional factual determination. Because that factual determination results in an increase in punishment it must be made by the jury.

Before a court may impose any amount of restitution, the Sixth and Fourteenth Amendments require the State prove damages resulting from the loss or injury to a jury beyond a reasonable doubt. *Southern Union*, 567 U.S. at 350.

A jury finding is unnecessary where a defendant pleads guilty and stipulates to the relevant facts. *Blakely*, 542 U.S. at 310; *State v. Suleiman*, 158 Wn.2d 280, 289, 143 P.3d 795 (2006). Such a stipulation must include the factual basis for the additional punishment and stipulate that record supports such a determination. *Suleiman*, 158 Wn.2d at 292. Mr. Morgan

did not agree to restitution or stipulate to it during or after his trial; rather, he contested restitution. *See* CP 13-17. Mr. Morgan never waived his right to a jury determination of damages. Therefore, the court imposed restitution in violation of the Sixth and Fourteenth Amendments.

This Court should accept review. RAP 13.4(b)(3).

3. This Court should accept review because the Washington Constitution guarantees a jury determination of damages.

The Washington Constitution provides that "the right of trial by jury shall remain inviolate." Const. art. I, § 21. This Court held the assurance of this right requires a jury determination of damages. Indeed, "to the jury is consigned under the constitution the ultimate power to weigh the evidence and determine the facts—and the amount of damages in a particular case is an ultimate fact." *James v. Robeck*, 79 Wn.2d 864, 869, 490 P.2d 878 (1971).

Washington has consistently looked to the jury to determine damages as a factual issue, especially in the area of noneconomic damages. This jury function receives constitutional protection from article 1, section 21. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 648, 771 P.2d 711, *amended*, 780 P.2d 260 (1989). "The constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name." *State v. Strasburg*, 60 Wash. 106, 116, 110 P. 1020 (1910)

(quoting *Cummings v. Missouri,* 71 U.S. (4 Wall. 277, 325, 18 L. Ed. 356 (1866)). "In other words, a constitutional protection cannot be bypassed by allowing it to exist in form but letting it have no effect in function." *Sofie*, 112 Wn.2d at 660. Thus, the Court reasoned the jury's function as fact finder could not be divorced from the ultimate remedy provided. "The jury's province includes determining damages, this determination must affect the remedy. Otherwise, the constitutional protection is all shadow and no substance." *Id*. at 661.

In *Sofie*, this Court held the legislature could not remove this traditional function from the jury by means of a statute that capped noneconomic damages. Similarly, nothing permits the legislature from removing this damage-finding function from the jury simply by terming such damages "restitution." Restitution is limited to damages causally connected to the offense. RCW 9.94A.753.

The damages at issue are here are no different than the damages at issue in *Sofie*: the value of the loss suffered as a result of the acts of another. To preserve "inviolate" the right to a jury trial, Article I, section 21 must afford a right to a jury determination such damages.

Mr. Morgan was not afforded his jury trial rights, which undermines the restitution order imposed. This Court should accept review. RAP 13.4(b)(3).

E. CONCLUSION

Based on the foregoing, Mr. Morgan respectfully requests that this Court accept review.

DATED this 11th day of November, 2020.

Respectfully submitted,

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

THE STATE OF WASHINGTON, Respondent, v. DONALD W. MORGAN, Appellant.	No. 80030-2-I UNPUBLISHED OPINION

PER CURIAM — The State charged Donald Morgan with two counts of first degree theft and two counts of second degree theft relating to his commission of insurance fraud. As part of a plea agreement, the State agreed to dismiss all but one count of first degree theft, and Morgan agreed to pay restitution on the dismissed charges.

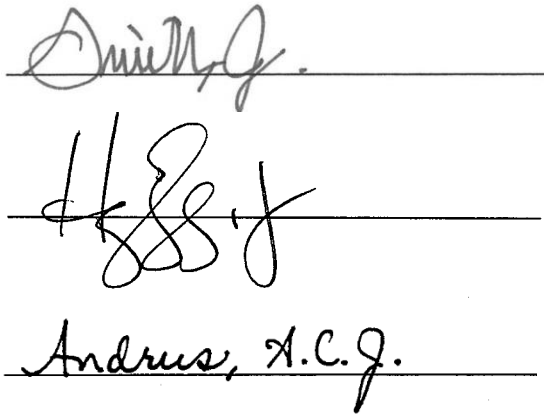
The State and Morgan agreed to the sum of restitution for the second degree thefts, but disputed the sum of restitution for the first degree thefts. Both the State and Morgan presented physical evidence, including bank statements, at a restitution hearing.

Morgan first contends he was denied due process because the trial court did not allow him to confront and cross-examine adverse witnesses. But we have already rejected the argument that the Sixth Amendment right to confront witnesses applies to restitution hearings. State v. Fambrough, 66 Wn. App. 223, 226-27, 831 P.2d 789 (1992). And Morgan's reliance on Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972), which involved due process at parole revocation hearings, is misplaced because restitution hearings do not involve the potential loss of a liberty interest.

Morgan furthermore argues that both the Sixth Amendment and article I, section 21 of the Washington State Constitution require a jury determination of the facts necessary to set a restitution amount. But this claim has been rejected by the Washington Supreme Court in State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). Though Morgan contends that Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013), has eroded the reasoning of Kinneman, Alleyne held only that a fact that increases the mandatory minimum penalty for a crime is an element that must be submitted to the jury. Restitution does not involve a mandatory maximum or minimum penalty and Alleyne is not implicated here. Morgan's citation to Sofie v. Fibreboard Corp., 112 Wn.2d 636, 648, 771 P.2d 711, 780 P.2d 260 (1989) is similarly uncompelling because Sofie was a civil case in which the court concluded that a statute placing a limit on noneconomic damages was unconstitutional, because it interfered with the jury's traditional function to determine damages. Morgan provides no analysis of why Sofie applies in a criminal setting to the determination of restitution.

Affirmed.

FOR THE COURT:



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