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NO. 64692-3-I

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

2011 APR 11 AM 11:21
COURT REPORTER
STATION

STATE OF WASHINGTON

Respondent

v.

JOSHUA J. ISLER,

Appellant

BRIEF OF RESPONDENT

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I. ISSUES

1. Does a constitutionally valid guilty plea require knowledge of the specific nature of the financial assessments imposed when the defendant has been generally told the court may impose financial obligations as part of his sentence?

II. STATEMENT OF THE CASE

On August 11, 2003 the defendant, Joshua Isler, was charged in juvenile court with one count of First Degree Criminal Trespass.¹ 1 CP 41-42. He pled guilty to the charge on September 5, 2003. In the statement of juvenile on plea of guilty the defendant was informed that he could be assessed \$0-\$500 fine, \$100 crime victims penalty, and restitution "as ordered." 1 CP 33-40, RP 4, 11.

The court sentenced the defendant on the same date he pled guilty. The court ordered the defendant to serve 12 days of detention and pay \$100 crime victim penalty and \$25.00 for attorney fees. 1 CP 25, 28.

III. ARGUMENT

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. State v. Barton, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980). In order to be a voluntary plea the

¹ The defendant was born February 12, 1989 and is now an adult.

defendant must be advised of all of the direct consequences of the plea. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). The defendant argues that because he was not advised that he could be assessed attorney fees his plea was involuntary, and therefore he is entitled to withdraw his plea.

The defendant ignores the information on the plea agreement which told him that the court could impose up to \$500 in fines and fees, \$100 crime victim's compensation and an amount of restitution to be determined. 1 CP 36. He provides no authority for the proposition that a voluntary plea necessarily requires that he be notified of the nature of the fund for which the financial obligation could be imposed. Rather he points out that restitution is a direct consequence of the plea citing State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981). He then draws a comparison between restitution and attorney fees. He concludes that in the absence of specific information attorney fees could be imposed his plea was involuntary.

In Cameron a defendant who pled guilty was told the court could impose a \$10,000 fine, but was not told the court could also impose restitution. At sentencing the court did not impose a fine, but did impose over \$24,000 in restitution. The defendant appealed

from his sentence arguing his plea was not knowing and voluntary. The Court decided that restitution was a direct consequence of a guilty plea. The Court reasoned that since the court could convert the fine to restitution pursuant to RCW 9A.20.030, the possibility of restitution stemmed directly from the conviction of a crime that resulted in some pecuniary gain to the defendant or loss to the victim. Accordingly, if a defendant was not specifically informed he could be assessed restitution that portion of the plea agreement was involuntary. Cameron, 30 Wn. App. at 233-234.

Cameron does not answer the question presented here: when a defendant is told an amount he could face as a monetary penalty, is his plea involuntary because he was not told which funds would benefit from that monetary penalty? This appears to be a question of first impression in Washington. Under the circumstances of this case the Court should find the defendant was advised of all the direct consequences of his plea and therefore it was entered into knowingly, intelligently, and voluntarily.

The question presented is more analogous to the case where the court considered whether a plea was involuntary because the defendant had not been informed of the specifics of a restitution order. The Court rejected the argument that a

defendant's plea was involuntary because he did not know that part of the restitution order would reimburse the crime victim's compensation fund and part would reimburse the victim's family directly in State v. Hurt, 107 Wn. App. 816, 830-831, 27 P.3d 1276 (2001). Here the uncertainty as to what the monetary penalty would be comprised of at the time of disposition similarly did not render the plea involuntary because the defendant was advised that he would be subject to a fine of up to \$500.

The defendant was clearly advised that he would be assessed a range of monetary penalty as a fine. A standard range sentence in juvenile court includes a fine. RCW 13.40.357 (option A), RCW 13.40.190. The statute does not define the term "fine". When a statutory term is not defined the court will give it its ordinary meaning, and may look to a dictionary definition to determine that meaning. State v. Gonzalez, 168 Wn.2d 256, 263-264, 226 P.3d 131 cert. denied, ___ U.S. ___, 131 S.Ct. 318, 178 L.Ed.2d 207 (2010). "Fine" is defined as a pecuniary punishment imposed by lawful tribunal upon a person convicted a crime. Black's Law Dictionary (West 5th Edition, 1979).

Certainly attorney fees could fall within the definition of a fine. The defendant would not have been assessed that amount

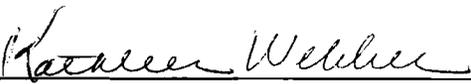
unless he had been convicted of the crime. RCW 13.16.085, RCW 13.40.145. The defendant was told that he could pay as much as \$500 in a fine. He was assessed much less than that when he was sentenced. Thus he was aware at the time that he could be responsible for some financial costs, which he was assessed. The characterization of the monetary penalty assessed does not affect the ultimate fact that he was told he could be ordered to pay some money at the time of sentencing.

IV. CONCLUSION

For the forgoing reason the State asks the Court to find the defendant's plea was knowing and voluntary, and deny his request to withdraw his guilty plea.

Respectfully submitted on April 7, 2011.

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