

65367-9

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NO. 65367-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ADAM GRAY,

Appellant.

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COURT OF APPEALS
DIVISION I

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES CAYCE

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

KRISTIN A. RELYEA
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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A. ISSUES

1. A trial court must order restitution at sentencing or within 180 days of sentencing. After restitution is ordered, the trial court may modify the amount while the defendant is under the court's jurisdiction. Here, the trial court ordered restitution within 180 days of sentencing and modified the amount of restitution while Gray was under the court's jurisdiction. Did the trial court properly exercise its discretion by modifying the earlier amount?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On May 1st, 2009, William Gray pled guilty to Manslaughter in the First Degree and Assault in the Second Degree. CP 8-18. The Honorable James Cayce sentenced Gray within the standard range on both counts: 116 months for first degree manslaughter and 20 months for second degree assault. CP 28-36; 1RP 8.¹ Additionally, the trial court sentenced Gray to serve 24-48 months on community custody following his release. CP 32.

¹ The Verbatim Report of Proceedings consists of two volumes. The State has adopted the following reference system: 1RP (6/5/09) and 2RP (5/4/10).

2. SUBSTANTIVE FACTS

On November 5, 2006, Gray fired multiple gunshots outside a bar, fatally shooting Sanelive Hikila and wounding Vita Moimoi in the leg. CP 3, 17. Although the State immediately filed murder and assault charges, Gray fled and escaped apprehension for over two years. CP 1; 2RP 2. In exchange for reduced charges, Gray pled guilty and was sentenced on June 5, 2009. CP 8-18.

At sentencing, the State indicated its intent to seek restitution and sought leave to set a future hearing if the parties could not agree on an amount. 1RP 3. The court granted the State's request and the defendant waived his presence at such a hearing. CP 30; 1RP 8. Hikila's father and uncle attended Gray's sentencing, addressing Gray and expressing their forgiveness for what he had done, without discussing restitution or the money that they had expended to bury Hikila two years earlier. 1RP 4-5.

The State sought information from the Hikilas regarding restitution a week after Gray's sentencing, but unbeknownst to the State, the Hikilas never received the State's letter. CP 42; 2RP 2-3. With no response from the Hikilas, the State sought restitution on behalf of the Crime Victims Compensation Program (CVC) only, for \$6,730.82 paid in funeral expenses. CP 42. Gray did not object to

the amount requested and the court signed an agreed restitution order on August 6, 2009. CP 37; 2RP 5.

In early April 2010, Hikila's mother called the State's Victim Assistance Unit inquiring about restitution. CP 42; 2RP 2-3.

Mrs. Hikila indicated that she had never received the State's June 2009 letter and that she had additional funeral expenses beyond what CVC paid. CP 42; 2RP 3. Mrs. Hikila located additional receipts from her son's burial, totaling almost \$22,000.00, for Hikila's casket, headstone, memorial placement, interment, and other items. CP 42.

Based on this information, the State moved to modify the initial restitution order on May 4, 2010, to include the unreimbursed funeral costs. Gray did not object to the amount being sought, but rather objected to the timeliness of the State's motion. 2RP 7. The court granted the State's motion and entered a modification order awarding Mrs. Hikila an additional \$15,253.32 for the unreimbursed costs. CP 45-46.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY MODIFIED THE AMOUNT OF RESTITUTION.

Gray argues that the trial court erred by modifying the amount of restitution to include funeral expenses incurred by the victim's family prior to sentencing. Without citing any direct authority to support his claim, Gray argues that the amount of restitution can be modified only for "ongoing expenses . . . not yet 'incurred' at the time of the initial restitution order." *App. Br.* at 13. Gray's claim fails in light of the plain language of the statute, its legislative history, and the case law recognizing the broad discretion conferred on the trial court to modify restitution. Given the circumstances of this case, the trial court did not abuse its discretion by modifying the amount of restitution.

The Legislature has granted trial courts broad power to order restitution. *E.g.*, State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999); State v. Barr, 99 Wn.2d 75, 78-79, 658 P.2d 1247 (1983). "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." State v. Gonzalez, 168 Wn.2d 256, 265, 226 P.3d 131, cert. denied,

___ S. Ct. ___, 2010 WL 2898168 (2010). The language of the restitution statute, providing for both public and private damages and awards up to double the offender's gain or the victim's loss, signals the Legislature's intent that trial courts have wide discretion to order restitution. State v. Davison, 116 Wn.2d 917, 920, 809 P.2d 1374 (1991).

Later amendments to the restitution statute have continued to reflect the Legislature's efforts to ensure that victims are made whole and that defendants are held accountable for the losses they have caused. Gonzalez, 168 Wn.2d at 265 (noting amendment establishing monthly minimum payment system); see also State v. Tetreault, 99 Wn. App. 435, 437, 998 P.2d 330, review denied, 141 Wn.2d 1015 (2000) (recognizing amendment enlarging the deadline to request restitution from 60 to 180 days).

The trial court's authority to impose restitution derives solely from statute and as a result, a court's decision to impose restitution will be upheld on appeal unless it is an abuse of discretion. Davison, 116 Wn.2d at 919. A court abuses its discretion only when the court's decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Enstone, 137 Wn.2d at 679-80 (citations omitted).

Although the Legislature has afforded trial courts broad powers to impose restitution, the Legislature has also set limits on when restitution may be ordered and modified. A trial court must determine the amount of restitution owed at sentencing, or within 180 days of sentencing, unless good cause exists to continue the 180-day deadline. RCW 9.94A.753(1). The trial court may modify the amount, terms, and conditions of a restitution order while the defendant is under the court's jurisdiction.² RCW 9.94A.753(4).

Here, Gray argues that the trial court exceeded its statutory authority by modifying the initial restitution order to include burial costs "incurred at the time of the initial restitution order." *App. Br.* at 13. Without any authority in the plain language of the statute or its legislative history, Gray relies primarily on dicta in two cases to make his claim, State v. Gonzalez and State v. Goodrich, 47 Wn. App. 114, 733 P.2d 1000 (1987).

In Gonzalez, the Washington Supreme Court affirmed the trial court's order modifying restitution more than two years after the initial restitution order. 168 Wn.2d at 259. Although the trial court

² A defendant remains under the court's jurisdiction "until the obligation is completely satisfied, regardless of the statutory maximum for the crime," further demonstrating the Legislature's commitment to ensuring that victims are made whole for their losses. RCW 9.94A.753(4).

ordered restitution at sentencing, the victim continued to accrue medical bills after sentencing and received a permanent partial disability payment from CVC after his medical treatment was complete. Id. at 260. The trial court modified the initial restitution order to reimburse CVC for the total amount it paid in medical bills, permanent partial disability, and time loss. Id.

Applying rules of statutory interpretation, the Supreme Court upheld the modification order based on the plain language of the statute and its legislative history. Id. at 263-66. The Supreme Court reasoned that disallowing a modification would limit the victim's restitution to "the first sixth months of treatment after sentence" and undermine the purpose of the restitution statute "where the victim is burdened with an ongoing serious injury." Id. at 266. Based on this dicta, Gray argues that the modification provision is limited to providing victims with an avenue to recoup "ongoing costs" only, rather than costs that may have been incurred prior to sentencing. *App. Br.* at 11.

Gray's argument, however, ignores the plain language of the statute and the actual holding of Gonzalez:

Because of the plain language, legislative history, and legislative purpose of the restitution statute, **we hold that RCW 9.94A.753(4) unambiguously allows the**

total amount of restitution to be modified "during any period of time the offender remains under the court's jurisdiction."

Id. at 266 (emphasis added). Consistent with the broad language of the statute, the Gonzalez court reaffirmed that a restitution order may be modified at any point that the defendant is under the court's jurisdiction. Neither the statute nor Gonzalez limits the trial court's discretion to modify a restitution amount based on when the costs were incurred.

Gray's reliance on State v. Goodrich is also misplaced. In Goodrich, this Court reversed and remanded a restitution order that provided for lost wages and future medical treatment. 47 Wn. App. at 115. Although the Goodrich court recognized the Legislature's "strong desire" that victims receive restitution, the court reasoned that the statutory language limiting restitution to "*actual expenses incurred*" prevented the trial court from awarding restitution for future medical costs not yet incurred by the victim. Id. at 116-17 (emphasis in original). Goodrich, however, sheds little light on the issue here given that Gray does not dispute that the funeral expenses were actually incurred, but rather the timeliness of the State's request.

By arguing that the modification provision allows only for ongoing expenses or costs incurred after the initial restitution order, Gray essentially asks this Court to read language into the statute that does not exist. "Where the Legislature omits language from a statute, intentionally or inadvertently, this court will not read into the statute the language that it believes was omitted." State v. Moses, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002). Gray fails to cite any statutory language or legislative history indicating the Legislature's intent to limit modification to ongoing or later incurred expenses.

Instead, Gray argues that interpreting the modification statute to allow for expenses previously incurred leads to absurd or strained results. *App. Br.* at 14. Gray suggests that such an interpretation allows the State to delay in seeking restitution, thereby undermining the interests of finality and the underlying philosophy of determinate sentences contained in the Sentencing Reform Act. *App. Br.* at 15.

Gray's claim fails for multiple reasons. First, the State has no interest in delaying to seek restitution. The statute and case law make clear that the State must seek restitution within 180 days of

sentencing or risk forfeiting a victim's right to restitution. RCW 9.94A.753(1); see also State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994) (holding former 60-day deadline to seek restitution is mandatory). Second, the State cannot seek restitution on a victim's behalf until the victim has actually incurred expenses. Given this requirement, the State has a strong incentive to seek restitution in a timely manner to ensure that victims are compensated for their losses. Both the State and defendant share an interest in finality when it comes to ordering restitution.

Third, Gray's "absurd or strained results" argument overlooks the wide discretion vested in the trial court to *grant* or *deny* modification requests. There is nothing in the statute or case law requiring a trial court to modify a restitution amount. Indeed, the language of the statute indicates that the restitution amount "*may* be modified." RCW 9.94A.753(4) (emphasis added). A trial court faced with a modification request could presumably deny it based on the State's unexplained or unreasonable delay in seeking modification or the victim's unexplained or unreasonable delay in submitting proof of incurred expenses.

Considering the facts of this case, the Court should find that the trial court properly exercised its discretion to modify the restitution order to include the Hikilas' unreimbursed funeral expenses. Gray killed Hikila in November 2006 and escaped apprehension for two years. CP 17; 2RP 2. The Hikilas buried their son at the time of his death, incurring thousands of dollars of expenses. CP 42. The State's first opportunity to seek restitution was at Gray's sentencing in June 2009. Although the State requested restitution information from the Hikilas within a week of Gray's sentencing, the Hikilas never received the State's letter. 2RP 2-3. As a result, the State sought restitution only on behalf of CVC at the August 6, 2009 hearing. CP 37. The trial court ordered restitution on that date and there is no dispute that the initial restitution order fell within the 180-day deadline.

In April 2010, the State learned for the first time that Mrs. Hikila had not received the State's letter and that she had incurred unreimbursed funeral expenses. 2RP 2-3. The trial court properly considered the State's motion to modify restitution given that Gray remained under the court's jurisdiction. RCW

9.94A.753(4); Gonzalez, 168 Wn.2d at 266. The trial court exercised its discretion to grant the State's request and ordered Gray to pay for Hikila's burial costs not paid by CVC. CP 45-46.

There is nothing in the record to suggest that Mrs. Hikila intentionally delayed in contacting the State about her unreimbursed funeral costs, or that she sought to "game the system" or punish Gray further by drumming up additional expenses 10 months after Gray's sentencing. Indeed, Gray did not dispute the money spent by the Hikilas to bury their son, but rather disputed the timeliness of the State's request. 2RP 7. Similarly, there is nothing in the record to suggest that the State unreasonably delayed the modification request. The trial court's decision to modify a prior restitution amount to include all of the costs incurred by the Hikilas to bury their son is neither "manifestly unreasonable" nor "exercised on untenable grounds," given the clear statutory authority providing for such a modification and the broad power vested in the trial court to award restitution. Enstone, 137 Wn.2d at 679-80.

D. CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's May 4, 2010 order modifying the initial restitution amount.

DATED this 19th day of November, 2010.

Respectfully submitted,

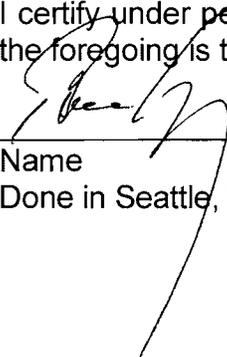
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
KRISTINA A. RELYEA, WSBA #34286
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Maureen M. Cyr, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. WILLIAM ADAM GRAY, Cause No. 65367-0-I, 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.



Name
Done in Seattle, Washington

11-19-10
Date

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