

COA NO. 67271-1-1

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

REC'D
OCT 26 2011
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

ALLAN PARMELEE,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 OCT 26 PM 4:31

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

The Honorable Gregory Canova, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The current judgment and sentence is not definite and certain regarding when accrual of interest on appellant's financial obligation begins to run.

Issue Pertaining to Assignment of Error

When a sentence is vacated and the case remanded for resentencing, does interest on an imposed financial obligation begin to accrue from the date of the new judgment imposed at resentencing?

B. STATEMENT OF THE CASE

Allan Parmelee was found guilty of one count of felony stalking and three misdemeanor counts of violating a protection order. State v. Parmelee, 108 Wn. App. 702, 708, 32 P.3d 1029 (2001). The trial court ordered a standard range 12 month term confinement for the stalking conviction to be served consecutively with the misdemeanor convictions. CP 17-19; Supp CP __ (sub no. 105B, Judgment and Sentence, 5/13/99). The trial court also ordered a \$500 Victim Penalty Assessment and costs. CP 18. On appeal, this Court remanded for resentencing because two of Parmelee's convictions for violation of a protection order merged with the stalking conviction and probation conditions could not be imposed in the absence of a suspended sentence. Parmelee, 108 Wn. App. at 704.

On remand, the trial court entered an exceptional sentence of 48 months confinement on the stalking conviction, to be served consecutively with the remaining misdemeanor conviction. CP 87-90, 93. The trial court again imposed a \$500 Victim Penalty Assessment and court costs. CP 89. On appeal from the resentencing, this Court rejected Parmelee's judicial vindictiveness argument but vacated the no-contact order. State v. Parmelee, 121 Wn. App. 707, 90 P.3d 1092 (2004).

Parmelee later filed a personal restraint petition challenging the exceptional sentence. CP 117. The State agreed Parmelee needed to be resentenced in light of State v. Recuenco, 163 Wn.2d 428, 180 P.3d 1276 (2008) and In re Pers. Restraint of Hall, 163 Wn.2d 346, 181 P.3d 799 (2008). CP 117. This Court determined the State could seek reimposition of an exceptional sentence on remand. CP 117-18. This Court's opinion states, "The sentence is vacated and the case is remanded for resentencing and such other proceedings as are consistent with this opinion." CP 118.

On remand, the State declined to seek an exceptional sentence. RP¹ 35-36; Supp CP __ (sub no. 312, State's Motion, 5/25/11). The trial court imposed a standard range term of 12 months confinement on the stalking conviction to run consecutive with the misdemeanor count. CP

¹ The verbatim report of proceedings is referenced as follows: RP - one volume consisting of 3/4/11, 5/25/11, 6/10/11.

163-66; Supp CP __ (sub no. 326, Judgment and Sentence, 6/14/11). The court imposed a \$500 Victim Penalty Assessment (VPA) as part of the felony sentence for stalking but no other costs. CP 165.

At the resentencing hearing, stand-by counsel asked if the court was "waiving interest accrual on the \$500 VPA." RP 49. The court replied, "The Court is not waiving anything to do with the victim penalty assessment." RP 49. The court noted it was waiving previously imposed court costs. RP 49. Counsel followed up on the interest issue: "Your Honor, I don't want to belabor the point though, but you're -- so the answer is no you're not going to allow waiver of interest accrual on the \$500 VPA?" RP 50. The court answered, "That's correct." RP 50. The box in the judgment and sentence for waiver of interest was unchecked. CP 165. This appeal follows. CP 161-62.

C. ARGUMENT

ACCRUAL OF INTEREST ON THE VICTIM PENALTY ASSESSMENT MUST RUN FROM THE DATE OF THE CURRENT JUDGMENT AND SENTENCE BECAUSE THE PREVIOUS JUDGMENTS NO LONGER LEGALLY EXIST AS A RESULT OF RESENTENCING.

When Parmelee's previous sentence was vacated and the case remanded for resentencing, the previously imposed judgment and sentence was destroyed. It follows that accrual of interest, which by statute runs from the date of judgment, began when the current judgment and sentence

was entered following resentencing. The current judgment and sentence is infirm because it does not make the accrual date clear.

Accrued interest on financial obligations is part of an offender's criminal punishment. State v. Cunningham, 116 Wn. App. 946, 954, 69 P.3d 358 (2003). Former RCW 10.82.090(1),² in effect at the time of Parmelee's original sentencing, provides "Financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments."³ Under the unambiguous language of the statute, "[i]nterest begins to accrue from the date of judgment." State v. Claypool, 111 Wn. App. 473, 476, 45 P.3d 609 (2002), review denied, 148 Wn.2d 1004 (2003).

From *which* judgment, though, does the interest accrue in the event of resentencing? That is the question presented by this appeal.

When a court reverses a sentence it effectively vacates the judgment. In re Pers. Restraint of Skylstad, 160 Wn.2d 944, 954, 162 P.3d 413 (2007). "Without the sentence there can be no judgment." Skylstad, 160 Wn.2d at 954. A sentence therefore no longer exists as a final judgment after it is reversed or vacated on appeal. State v. Harrison, 148

² Laws of 1995, ch. 291 § 7.

³ The statute now allows the court to waive interest under certain conditions, but continues to provide "financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments." RCW 10.82.090(1).

Wn.2d 550, 561-62, 61 P.3d 1104 (2003). "[R]emand for resentencing renders the prior judgment and sentence void and results in a new final judgment, which is appealable as a matter of right." State v. Amos, 147 Wn. App. 217, 224 n.1, 195 P.3d 564 (2008) (citing Harrison, 148 Wn.2d at 562).

In granting Parmelee's personal restraint petition, this Court vacated the previously imposed sentence and remanded for resentencing. CP 118. As a result, there is no previously imposed judgment and sentence upon which interest for the VPA could accrue. The previous judgment and sentence no longer legally exists as a final, valid judgment. Harrison, 148 Wn.2d at 561-62; Skylstad, 160 Wn.2d at 954. Accrual of interest cannot be predicated on a judgment and sentence that is void. Amos, 147 Wn. App. at 224 n.1. The legal life of the previous sentence was destroyed when this Court vacated it and remanded for resentencing. Harrison, 148 Wn.2d at 561-62. The start date of interest accrual must therefore be the date of entry of the current judgment and sentence — the only judgment and sentence that legally exists.

The trial court's oral remarks on interest accrual are open to interpretation. RP 49-50. The court's remarks allow for the interpretation that interest is to accrue from the date of a previously imposed judgment

and sentence: "The Court is not waiving *anything* to do with the victim penalty assessment." RP 49 (emphasis added).

In any event, the written judgment and sentence does not indicate when accrual of interest begins. CP 165. The judgment and sentence is ambiguous in this regard.

A criminal sentence must be "definite and certain." State v. Jones, 93 Wn. App. 14, 17, 968 P.2d 2 (1998) (quoting Grant v. Smith, 24 Wn.2d 839, 840, 167 P.2d 123 (1946)). Courts have the authority to clarify insufficiently specific sentences. See State v. Broadaway, 133 Wn.2d 118, 136, 942 P.2d 363 (1997) ("Where a sentence is insufficiently specific about the period of community placement required by law, remand for amendment of the judgment and sentence to expressly provide for the correct period of community placement is the proper course.").

"Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them." United States v. Daugherty, 269 U.S. 360, 363, 46 S. Ct. 156, 70 L. Ed. 309 (1926); cf. State v. Davis, 146 Wn. App. 714, 724, 192 P.3d 29 (2008), review denied, 166 Wn.2d 1033, 217 P.3d 782 (2009) (addressing sentence that potentially exceeds statutory maximum: "We believe it is better for both the offender and the Department to have the trial court impose a sentence that is clear to all from the outset. Given the

number of offenders and the complexity of many sentences imposed under the SRA, a clear mandate from the trial court eliminates the chance of legal errors in implementing the trial court's sentence.").

If the judgment and sentence is left to stand without specification of when interest begins to accrue, those ultimately tasked with ensuring collection of Parmelee's legal financial obligation may be laboring under a misapprehension of what is required.⁴ That part of the judgment and sentence related to interest should specify its start date as the date of the current judgment and sentence entered on June 14, 2011. The case should be remanded for this purpose.

D. CONCLUSION

For the reasons stated, this Court should remand for clarification of the judgment and sentence to specify the start date of interest accrual is June 14, 2011.

⁴ Parmelee has more than served his confinement time under this cause number and is due to be released on another cause number in 2020. Supp CP __ (sub no. 312, supra at 2-3).

DATED this 26th day of October 2011.

Respectfully Submitted,

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

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)	
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v.)	COA NO. 67271-1-I
)	
ALLAN PARMELEE,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 26TH DAY OF OCTOBER, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ALLAN PARMELEE
DOC NO. 793782
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 26TH DAY OF OCTOBER, 2011.

x Patrick Mayovsky