

69761-7

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No. 69761-7-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

NOE F.
(D.O.B. 11/8/1995),

Appellant.

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

APPELLANT'S REPLY BRIEF

NANCY P. COLLINS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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STATE OF WASHINGTON
COURT OF APPEALS
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A. ARGUMENT.

The prosecution reads the court’s statutory discretion to decline restitution for an insurance company as a nullity, contrary to principles of statutory construction

As this Court previously explained, by enacting RCW 13.40.190(1)(g), the Legislature “unambiguously authorizes a court to relieve a juvenile’s obligation to pay restitution to an insurance provider” upon a showing of the juvenile’s inability to pay. COA 67804-3-I, Slip op. at 9 n.7. This statute expressly directs a juvenile court to exercise “discretion not to order restitution to an insurance provider based on the juvenile’s inability to pay over a 10-year period.” *Id.* at 5; RCW 13.40.190(1)(g).

Yet the State argues that it would be “contrary to the statute’s requirements” if the court had declined to order Noe F. to pay restitution to an insurance provider. Response Brief at 10. The prosecution posits that no court could find a teenager unable to pay restitution within the next ten years because any person can find employment. *Id.* This reasoning renders the statutory discretion allotted under RCW 13.40.190(1)(g) as a nullity and treats it as superfluous. If a court could never find a juvenile unable to some amount of

restitution, then it would always lack discretion not to order restitution, and yet, in the context of the rehabilitatively-focused juvenile justice system, the Legislature awarded this discretion to the trial court.

Courts “may not delete language from an unambiguous statute.” Instead, courts “must” interpret and construe statutes “so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) (internal citations omitted). The prosecution’s interpretation for the statute deletes the discretionary authority expressly given by statute and this construction of RCW 13.40.190(1)(g) is untenable.

Furthermore, contrary to the prosecution’s rendition of the evidence before the court, Noe F. and his mother explained his continued inability to secure employment due to his limited education, mental health problems, and felony conviction, none of which are facts likely to be altered and all of which undermine his ability to find and retain employment. CP 11, 15. His current financial circumstances are dire enough that he and his mother struggle to meet their basic needs. CP 11-16. The court had discretion to find that Noe “could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period,” and upon such a finding, the court

should waive restitution for an insurance provider. RCW 13.40.190(1)(g).

The court made such a finding in this case when it agreed that Noe would not be able to pay the restitution, but it imposed the restitution anyway. 12/7/12RP 6. The court did not apply the statutory criteria of RCW 13.40.190(1)(g), agreed with Noe's dire financial situation, and should have exercised its discretion as the statute mandates. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005).

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, Noe F. respectfully requests this Court reverse the restitution order.

DATED this 9th day of September 2013.

Respectfully submitted,


NANCY P. COLLINS (28806)
Washington Appellate Project (91052)
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 69761-7-I
v.)	
)	
NOE F.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 9TH DAY OF SEPTEMBER, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 9TH DAY OF SEPTEMBER, 2013.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710