

70442-7

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NO. 70442-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARTIN PANG,

Appellant.

CO:G 01 03 2013  
COURT OF APPEALS  
DIVISION I  
CLERK OF COURT

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BETH M. ANDRUS

**BRIEF OF RESPONDENT**

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A. ISSUE

Under RCW 9.94A.753(4) and RCW 9.94A.760(4), for crimes committed before July 1, 2000, does the period for collecting restitution and legal financial obligations begin to run upon an offender's release from incarceration, regardless of whether a county clerk's office indicated that it planned to seek a legally unnecessary extension of the time period?

B. FACTS

The facts necessary for review were recited in the trial court's order and appear to be uncontested on appeal. CP 28. Pang pled guilty to four counts of manslaughter for setting fire to his parents' warehouse and thereby causing the deaths of four firefighters who responded to extinguish the flames. CP 28. He received four consecutive 105 month sentences and was ordered to pay restitution, court costs, the Victim Penalty Assessment, and extradition costs. CP 31-32.

On November 1, 2007, Pang received a form notice from the King County Superior Court Clerk's Office indicating that the balance of his legal financial obligations (LFOs) would be extended for ten years. CP 14. When Pang never received such an extension, he filed a motion on March 27, 2013, claiming that the period to collect LFOs had expired. CP 8-20. The State responded that the time period for Pang's obligations to pay had not yet begun to run because he was still incarcerated.

CP 21-23. On April 19, 2013, the trial court entered an order denying Pang's motion. CP 29. Pang's notice of appeal was filed on May 21, 2013.

C. ARGUMENT

Martin Pang claims on appeal that the trial court erred by denying his Motion to Terminate Legal Financial Obligations. He argues that the State lost the ability to collect legal financial obligations (LFOs) because the trial court never extended the obligations beyond 2008. Pang's appeal appears to be untimely, but it is also meritless. The ten-year period within which to collect legal financial obligations begins to run only after he is released from custody, and he is still incarcerated.

1. PANG'S APPEAL WAS UNTIMELY.

The trial court entered its order denying Pang's motion on April 19, 2013. CP 28. Pang was obliged to file a notice of appeal within thirty days of that date. RAP 5.2(a). Monday, May 20, 2013 was the deadline to appeal. Pang's notice of appeal was not filed until May 21, 2013. Thus, the appeal is untimely. This requirement is jurisdictional. Mackey v. Champlin, 68 Wn.2d 398, 413 P.2d 340 (1966) (where notice of appeal was not filed within 30-day period after entry of judgment, Supreme Court was without jurisdiction to entertain appeal, notwithstanding that notice of appeal may have been deposited in mail on 30th day subsequent to entry

of judgment); Kelly v. Schorzman, 3 Wn. App. 908, 478 P.2d 769 (1970). An extension of time will be granted “only in extraordinary circumstances and to prevent a gross miscarriage of justice.” RAP 18.8(b). Pang did not timely file a notice of appeal and he has not shown extraordinary circumstances that merit an extension. The appeal should be dismissed.

2. PANG IS OBLIGATED TO PAY RESTITUTION FOR A TEN-YEAR PERIOD BEGINNING UPON HIS RELEASE FROM INCARCERATION.

RCW 9.94A.753 establishes rules for ordering and collecting restitution; RCW 9.94A.760 governs the ordering and collecting of other legal financial obligations (LFOs). Both statutes include a provision addressing the court’s authority to collect restitution and legal financial obligations. See RCW 9.94A.753(4) (restitution) and RCW 9.94A.760(4) (LFOs). Each statute provides that, for crimes committed before July 1, 2000, the obligation may be enforced for a ten-year period following release from total confinement. Compare RCW 9.94A.753(4) (“...the offender shall remain under the court’s jurisdiction for a term of ten years following the offender’s release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later,” with RCW 9.94A.760(4) (“All other legal financial obligations...may be enforced at any time during the ten-year period following the offender’s release from total confinement or within ten years

of entry of the judgment and sentence, whichever period ends later.”). Each statute also authorizes the court to extend the ten-year period. RCW 9.94A.753(4); RCW 9.94A.760(4). As for crimes committed after July 1, 2000, the court has the authority to collect restitution or LFOs “until the obligation is completely satisfied.” Id.

Pang committed his crimes in 1995 and he has been continuously incarcerated since his sentencing. Under the plain language of the statute, the ten-year period within which to collect legal financial obligations has not yet started because he has not been “release[d] from total confinement.” Id. The provision that authorizes an extension, relied upon by Pang in his motion in the trial court, is simply inapposite because the time for collections has not even begun.

Pang argues on appeal that the collection period “started” when the clerk of the King County Superior Court sent out an “extension notice,” and that the ten-year period has now expired because it was not renewed. Br. of App. at 10. But Pang provides no authority for the proposition that the actions of a deputy clerk can alter the statutorily-defined period during which Pang is obligated to pay the families of the men whose death he caused. Even overt concessions by a prosecutor during litigation are not binding on a court if the legal concession is erroneous. State v. Knighten, 109 Wn.2d 896, 902, 748 P.2d 1118 (1988) (“a party concession or

admission concerning a question of law or the legal effect of a statute as opposed to a statement of fact is not binding on the court.”). In other words, even if a letter was erroneously sent by the clerk, it did not change the law and it did not extinguish Pang’s legal financial obligations. By law, Pang’s duty to pay was set by the trial court and the time for payment will not *begin* to run until he is released from confinement.

D. CONCLUSION

The trial court correctly determined that it has the authority to collect legal financial obligations from Pang until approximately 2028, ten years from his projected 2018 date of release. Should Pang fail to meet his obligations between the years 2018 and 2028, this Court will have the authority to extend collections for an additional ten-year period.

DATED this 20<sup>th</sup> day of August, 2014.

Respectfully submitted,

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