

NO. 71252-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KURTIS W. BRISKEY,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA MACK

BRIEF OF RESPONDENT

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A. ISSUE

The goal of statutory interpretation is to carry out the intent of the legislature; the first step is to examine the plain language of the statute. The statute governing sealing of juvenile offense records states that the court “shall not” grant a motion to seal unless “[f]ull restitution has been paid.” One of the stated purposes of the legislature in enacting the Juvenile Justice Act was to “[p]rovide for restitution to victims of crime.” Did the trial court properly deny Briskey’s motion to seal his juvenile offense records because he had not paid all of his restitution, even though jurisdiction to *enforce* the order of restitution had expired?

B. STATEMENT OF THE CASE

Kurtis Briskey (D.O.B. 4/9/77) was charged by information filed on November 22, 1994, when he was 17 years old, with two counts of Malicious Mischief in the First Degree. Supp. CP ____ (sub #1). Briskey pled guilty as charged, and the juvenile court entered disposition. Supp. CP ____ (sub #6). The court ordered

restitution in the amount of \$7,617.32, to be apportioned among 34 separate victims. Supp. CP ____ (sub #8).

On August 28, 2013, when Briskey was 36 years old, he filed a motion to seal the records of this offense. CP 1-2. At that time, he had paid a total of \$956.62 toward his obligation of \$7,617.32. CP 12.¹ The trial court denied the motion on the basis that full restitution had not been paid. CP 20-21. Briskey timely appealed.² CP 22-25.

C. ARGUMENT

1. THE STATUTE UNEQUIVOCALLY REQUIRES THAT ALL RESTITUTION BE PAID AS A PREREQUISITE TO SEALING A JUVENILE RECORD OF CONVICTION.

Briskey contends that the trial court erred in denying his motion to seal his juvenile offense records on the basis that he had not paid restitution in full. Because the relevant statute *requires*

¹ The amount paid appears in the State's response to Briskey's motion to seal. CP 12-15. Briskey does not dispute the accuracy of this figure. Brief of Appellant at 2.

² Briskey's appeal has been linked for consideration with State v. Arash Hamedian, No. 71253-5-I.

that restitution be paid in full before these records may be sealed, the trial court properly denied the motion.³

An appellate court reviews questions of statutory interpretation *de novo*. State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). The goal of statutory interpretation is to carry out the intent of the legislature. Id. “The first step in interpreting a statute is to examine its plain language.” Id. Plain meaning must be discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, any related provisions, and the statutory scheme as a whole. Id. “If the statute is unambiguous after a review of the plain meaning, the court’s inquiry is at an end.” Id.

The statute at issue here, RCW 13.50.050, governs motions in the trial court to seal records relating to the commission of juvenile offenses:

³ Briskey also claims a violation of the Equal Protection Clause. Brief of Appellant at 11. In support, he cites nothing more than a case supporting the proposition that similarly situated individuals must receive like treatment under the law. Id. He makes no attempt to show how an adult offender and a juvenile offender are similarly situated, given that the two sentencing schemes differ in purpose and the relevant statutory language is different. This court should decline to address the equal protection claim. See RAP 10.3(a)(6) (brief must contain argument in support of issues presented for review); State v. Goodman, 150 Wn.2d 774, 781-82, 83 P.3d 410 (2004) (assignment of error waived where not adequately argued in brief).

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless: . . . (v) **Full restitution has been paid.**

RCW 13.50.050(12)(b)(v) (emphasis added).⁴

The language at issue here – “unless . . . [f]ull restitution has been paid” – is unambiguous on its face. Looking to other provisions of the same statute, the legislature’s focus on payment of restitution as a requirement before a juvenile offender may take advantage of provisions of the statute is clear and unequivocal. See RCW 13.50.050(12)(c) (allowing sealing of vacated deferred disposition in certain circumstances “**if restitution has been paid**”) (emphasis added); RCW 13.50.050(17)(a)(i)(E) (providing for automatic destruction of juvenile records maintained by a court or law enforcement agency under certain circumstances if “**[t]here is no restitution owing in the case**”) (emphasis added).

Nor is the emphasis on restitution limited to sealing and destruction of juvenile offense records. Restitution is central to the

⁴ The legislature recently amended RCW 13.50.050 to provide for regular sealing hearings at specified intervals after disposition. SSHB 1651, new section 4, subsection 1 (effective June 12, 2014). Persons in Briskey’s position may still file a motion to seal under subsection (3) of this new section. Significantly, the new bill retains the requirement that a person filing such a motion must pay restitution in full before the records may be sealed. SSHB 1651, new section 4, subsection 4(b)(v) (“The court shall grant any motion to seal records for class B, C, gross misdemeanor, and misdemeanor offenses and diversions made under subsection (3) of this section if: . . . (v) Full restitution has been paid.”).

Juvenile Justice Act of 1977 (“JJA”). In enacting the JJA, wherein all of these provisions may be found, the legislature explicitly set out its purpose. Payment of restitution received special attention:

It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders and their victims, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, the legislature declares the following to be *equally important purposes* of this chapter:

. . .
(h) **Provide for restitution to victims of crime . . .**

RCW 13.40.010(2)(h) (emphasis added). By contrast, the Sentencing Reform Act of 1981 (“SRA”), which governs adult sentencing, contains no mention of restitution in its statement of purpose. See RCW 9.94A.010.

The courts have recognized the significance of this distinction. See, e.g., State v. Bennett, 92 Wn. App. 637, 640-41, 963 P.2d 212 (1998) (in contrast with the adult scheme under the SRA, compensation of victims is a primary component of the juvenile scheme, and the JJA is liberally construed in favor of imposing restitution) (citing State v. Moen, 129 Wn.2d 535, 542-43,

919 P.2d 69 (1996)); State v. A.M.R., 108 Wn. App. 9, 12-13, 27 P.3d 678 (2001) (same), *aff'd*, 147 Wn.2d 91, 51 P.3d 790 (2002); State v. D.P.G., 169 Wn. App. 396, 401-02, 280 P.3d 1139 (2012) (same).

Despite the plain language of the statute, and the legislature's unequivocal emphasis on paying restitution under the JJA, Briskey contends that he need not pay restitution in full before obtaining the benefit of having his juvenile offense records sealed. He relies primarily on State v. Gossage, 165 Wn.2d 1, 195 P.3d 525 (2008), a case under the SRA interpreting RCW 9.94A.637, which sets out the conditions under which an adult offender may obtain a certificate of discharge. This reliance is misplaced, as there is a significant difference in the language used in the statutes at issue.

In December 2005, convicted felon Henry Gossage sought a certificate of discharge under RCW 9.94A.637. Gossage, 165 Wn.2d at 5. That statute provides that "[w]hen an offender has completed all requirements of the sentence, **including any and all legal financial obligations**," he may obtain a certificate of

discharge.⁵ RCW 9.94A.637(1)(a) (emphasis added). Gossage had not completed payment of his legal financial obligations stemming from his 1992 judgment and sentence; while he had paid an amount sufficient to cover the court costs and the victim assessment, he still owed a considerable amount on the restitution obligation. Gossage, 165 Wn.2d at 4.

Gossage nevertheless argued that his failure to pay his legal financial obligations in full was not an impediment to his receiving a certificate of discharge. He reasoned that, because the restitution order had expired, he no longer *had* any legal financial obligations. Id. at 6.

Gossage was correct that the financial requirements of his 1992 judgment and sentence could no longer be enforced. Legal financial obligations for crimes committed prior to July 1, 2000 may be enforced for ten years following either entry of the judgment and sentence or the offender's release from confinement, whichever period ends later. RCW 9.94A.760(4). An additional ten years of enforcement may be ordered, but only if the extension is effected prior to the expiration of the first ten-year term. Id. Gossage's obligation had never been extended, and his 1992 obligation had

⁵ The offender must obtain a certificate of discharge before he may apply for vacation of his record of conviction. RCW 9.94A.640(1).

expired by the time he sought a certificate of discharge. Gossage, 165 Wn.2d at 8. The supreme court held that he was accordingly entitled to a certificate of discharge. Id. at 9.

Briskey's order to pay restitution has similarly expired. The monetary portion of a juvenile judgment remains enforceable for ten years, unless within that ten-year period it is extended for an additional ten years. RCW 13.40.192; RCW 6.17.020(3),(4). The restitution order in Briskey's case was signed by the trial court on February 15, 1995. Supp. CP ____ (sub #8). There is no indication in the record that the order was extended. Thus, the restitution order had expired by the time Briskey moved in 2013 to seal his juvenile offender records. CP 1-2.

This ends the similarity between Briskey's situation and Gossage's, however. The cases are *dissimilar* in the one way that really matters for this appeal – the language of the relevant statutes. While the legislature used the specific term “restitution” in the juvenile statute, it used the much broader term “legal financial obligations” in the adult statute. The SRA defines “legal financial obligation” in terms of what it *includes* (court costs, restitution, crime victims' compensation fees, etc.), but the definition does not specifically address the meaning of the word “obligation.” See

RCW 9.94A.030(30). An obligation “may exist by reason of a judgment,” and entails a “legal duty on the part of the one bound to comply with the promise.” BLACK’S LAW DICTIONARY 1074 (6th ed. 1990).⁶

Applying the definition to Gossage’s situation explains the outcome in his case. Once his restitution order had expired, he no longer had an *obligation* to pay. Because the relevant statute allowed him to seek discharge once he had completed his “legal financial obligations,” there was no impediment to such a certificate under the circumstances of his case.

Briskey, however, is in a different position. The legislature has specifically required that he pay *restitution* before he may get his juvenile offense records sealed. RCW 13.50.050(12)(b)(v) (“The court *shall not* grant any motion to seal records . . . unless . . . *[f]ull restitution has been paid.*”) (emphasis added). While he no longer has an independent *obligation* to pay restitution, he may not obtain the additional benefit of having his records sealed until he has paid it in full.

⁶ “When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning.” Gonzalez, 168 Wn.2d at 263.

The difference between the relevant juvenile and adult statutes is exhibited in more than just this difference in terminology. As noted above, while the JJA includes the payment of restitution to crime victims in its statement of intent and purpose, the SRA does not. *Compare* RCW 13.40.010(2)(h) *with* RCW 9.94A.010. This emphasis on payment of restitution to crime victims under the JJA cannot be ignored. The goal is to carry out the legislature's intent, and that intent is clear.

Moreover, strong public policy concerns support interpreting RCW 13.50.050 to require that a person convicted of a criminal offense as a juvenile be required to pay restitution in full to his victims before he can gain the benefit of having his offense records sealed. The court in Gossage was clearly dissatisfied with the result it was forced to reach – granting a certificate of discharge even though Gossage had failed to complete his restitution payments – but believed that the result was compelled by the statutory language at issue: “Because the language of RCW 9.94A.760 is plain, courts must effectuate it, *even if it evinces policy choices that we consider to be ill advised.*” Gossage, 165 Wn.2d at 7 (emphasis added). This Court faces no such impediment to furthering sound policy, because the language at issue here

supports requiring restitution to be paid in full before sealing of juvenile offense records may be obtained.

Based on clear statutory language and legislative intent, as well as sound public policy, the trial court properly denied Briskey's motion to seal his juvenile offense records. Once he has paid restitution in full, he may reapply for this benefit.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the trial court's order denying the motion to seal juvenile offense records because Briskey has failed to pay restitution in full.

DATED this 30th day of June, 2014.

Respectfully submitted,

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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 **David M. Newman & Paula K. Royalty**, the attorneys for the appellant, at **The Rainier Law Group, PLLC, P.O. Box 7328, Bellevue WA 98008-1328**, containing a copy of the **Brief of Respondent** in **STATE V. KURTIS W. BRISKEY**, Cause No. **71252-7-I**, in the Court of Appeals for the State of Washington, Division I.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Name



Date

06/30/14

Done in Seattle, Washington