

FILED
Court of Appeals
Division II
State of Washington
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NO. 50738-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

KATRINA S. LACY, RESPONDENT

Appeal from the Superior Court of Pierce County
The Honorable Shelly K. Speir

No. 10-1-00479-5

Brief of Appellant

MARK LINDQUIST
Prosecuting Attorney

By
Mark von Wahlde
Deputy Prosecuting Attorney
WSB # 18373

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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A. ASSIGNMENTS OF ERROR

1. The trial court erroneously remitted defendant's restitution obligation imposed as a condition of her judgment and sentence.
2. The trial court erroneously remitted defendant's DNA database fee obligation imposed as a condition of her judgment and sentence.
3. The trial court erroneously remitted defendant's crime victim penalty assessment obligation imposed as a condition of her judgment and sentence.
4. The trial court erroneously remitted defendant's criminal filing fee obligation imposed as a condition of her judgment and sentence.

B. STATEMENT OF THE CASE

Ms. Lacy, hereinafter "defendant," asked the trial court to waive legal financial obligations. CP 70-80; CP 119-129; 7/21/17 VRP; 6/16/17 VRP. Ms. Lacy specifically asked the Court to waive the mandatory legal financial obligations. CP 76-79. Defendant explicitly did not ask the trial court to eliminate the restitution obligation:

So I think the easy issues are the restitution, which we're agreeing Ms. Lacy will pay. And we ask the Court to sign an order that says once she pays the restitution, the interest on the restitution will be waived. Mr. Hawthorne objected to that. I propose that is really judicial economy. I mean, instead of having us bring a second motion saying she's paid, will you please waive now, I just thought we could do it all in one order.

7/21/17 RP 5.

The trial court was advised by a collection agency acting as an agent of the court clerk that the mandatory DNA collection fee, victim penalty assessment, and filing fee did not require an inquiry regarding a defendant's ability to pay. CP 88-89. The State expressed its position that mandatory legal financial obligations were fixed and nonmodifiable:

But I do know that discretionary LFOs can be addressed at any time. Mandatory LFOs, from my understanding, once they're ordered and collateral attack has passed, they've lost their ability to come back and address those. In fact, it's mandatory. They can't address them at all. But I haven't briefed it. I don't know for certain. I'm just saying we have criminal and civil being intermixed at this motion right now, and I think what we need to do is address civil, and depending on what the Court rules, ask me to become involved if that's needed.

7/21/17 RP 24.

The trial court issued an order vacating all of defendant's legal financial obligations, except interest. CP 158. The trial court remitted the entirety of restitution, along with the crime victim penalty assessment, the dna database fee, and the criminal filing fee. The trial court based its ruling on an unexpected basis: RCW 9.94B.040(3)(d).

C. SUMMARY OF ARGUMENT

The State appeals the trial courts remission of three legal financial obligations imposed in this case: restitution (\$580.52), crime victim penalty assessment (\$500.00), the DNA database fee (\$100.00), and the criminal filing fee (\$200.00). The State does not appeal the remission of

the court-appointed attorney fee (\$200.00) imposed in this case. CP 21. The former class of legal financial obligations are mandatory and cannot be remitted by the court.

D. ARGUMENT

1. THE TRIAL COURT ERRONEOUSLY
REMITTED RESPONDENT'S RESTITUTION
OBLIGATION.

Restitution in the amount of \$283.51 remains outstanding in this case. 7/21/17 RP 14. The trial court was not asked to eliminate restitution. 7/21/17 RP 5. The trial court's order eliminated all of respondent's legal financial obligations (except interest). CP 158. The trial court's order thus *sua sponte* eliminated defendant's restitution obligation. *Id.* The trial court expressly founded the elimination of restitution upon defendant's ability to pay. CP 157-58. This was plainly wrong: "The court may not reduce the total amount of restitution because the offender may lack the ability to pay the total amount." RCW 9.94A.753(4); *State v. Lundy*, 176 Wn.App. 96, 103, 308 P.3d 755 (2013).

The trial court order asserts that the court had authority to remit restitution pursuant to RCW 9.94B.040(3)(d). CP 157. Defendant was convicted on May 26, 2010 for an offense committed on January 25, 2010. CP 19. RCW 9.94B.040(3)(d) cannot apply in this case because RCW Chapter 9.94B "codifies sentencing provisions that may be applicable to

sentences for crimes committed prior to July 1, 2000.” RCW 9.94B.010(1).

The trial court’s order remitting restitution should be vacated with direction to the trial court that restitution may not be remitted based upon defendant’s inability to pay.

2. THE TRIAL COURT LACKED LEGAL AUTHORITY TO REMIT THE DNA DATABASE FEE, THE CRIMINAL FILING FEE, AND THE CRIME VICTIM PENALTY ASSESSMENT.

The DNA database fee (RCW 43.43.7541) the crime victim penalty assessment (7.68.035(1)(a)), and the criminal filing fee (RCW 13.18.020(2)(h)) are mandatory legal financial assessments which must be imposed regardless of the offender’s ability to pay. *State v. Lundy*, 176 Wn. App. at 203; *State v. Mathers*, 193 Wn. App. 913, 918–21, 376 P.3d 1163 (2016); *State v. Seward*, 196 Wn. App. 579, 587, 384 P.3d 620, 625 (2016), *review denied*, 188 Wn.2d 1015, 396 P.3d 349 (2017).

The trial court order asserts that the court had authority to remit these three mandatory legal financial obligations pursuant to RCW 9.94B.040(3)(d). CP 157. Defendant was convicted on May 26, 2010 for an offense committed on January 25, 2010. CP 19. RCW 9.94B.040(3)(d) cannot apply in this case because RCW Chapter 9.94B “codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.” RCW 9.94B.010(1).

The trial court's order remitting the DNA database fee, the crime penalty assessment, and the filing fee should be vacated and this matter remanded to the trial court with direction to the trial court that those legal financial obligations may not be remitted based upon defendant's inability to pay.

E. CONCLUSION

This court should vacate the trial court's letter ruling on defendant's motion to remit/revoke fines which was entered on July 26, 2017, and remand this matter for further proceedings with the direction that restitution, crime victim penalty assessment, DNA database fee, and criminal filing fee may not be remitted based upon defendant's inability to pay.

DATED: November 15, 2017.

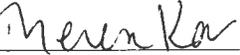
MARK LINDQUIST
Pierce County Prosecuting Attorney



Mark von Wahlde
Deputy Prosecuting Attorney
WSB # 18373

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11.15.17 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

November 15, 2017 - 11:10 AM

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