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Division II
State of Washington
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No. 51934-8-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JOSHUA NICHOLAS DELEON,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 17-1-04458-1
The Honorable Garold Johnson, Judge

REPLY BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

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I. ARGUMENT & AUTHORITIES

In its Brief of Respondent, the State argues that this Court should deny Joshua DeLeon's appeal because he waived his right to appeal by pleading guilty. (Brief of Respondent at 6-7) The State is incorrect.

A defendant who pleads guilty waives numerous rights, including, generally, the right to appeal from a finding of guilt and the sentence based on that finding of guilt. *State v. Majors*, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980); *State v. Gaut*, 111 Wn. App. 875, 880, 46 P.3d 832 (2002). But "a plea of guilty does not preclude an appeal where collateral questions, such as the validity of the statute, the sufficiency of the information, the jurisdiction of the court, or the circumstances under which the plea was made, are raised." *State ex rel. Fisher v. Bowman*, 57 Wn.2d 535, 536, 358 P.2d 316 (1961) (emphasis omitted); see also *Majors*, 94 Wn.2d at 356.

A defendant also may challenge his sentence if the trial court exceeded its statutory sentencing authority. *In re Personal Restraint of Moore*, 116 Wn.2d 30, 38-39, 803 P.2d 300 (1991); *State v. Eilts*, 94 Wn.2d 489, 495-96, 617 P.2d 993 (1980)¹; *In re Personal*

¹ Overruled by statute on other grounds as stated in *State v. Barr*, 99 Wn.2d 75, 78, 658 P.2d 1247 (1983).

Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980). “[A] defendant cannot agree to be punished more than the Legislature has allowed for.” *Moore*, 116 Wn.2d at 38.

For example, in *State v. Phelps*, the defendant pleaded guilty, and on appeal argued that the trial court “exceeded its statutory authority in imposing a ‘banishment’ provision and an \$86,000 fine, and in dismissing his civil suit.” 113 Wn. App. 347, 352, 57 P.3d 624 (2002). This Court found that the doctrine of waiver did not apply because Phelps “challenged neither the plea agreement nor his guilty plea.” 113 Wn. App. at 352.

Likewise, DeLeon is challenging neither his plea agreement nor his guilty plea. He is challenging the trial court’s statutory authority to order that he have no contact with his biological children, and its statutory authority to order the payment of certain legal financial obligations. Therefore, the doctrine of waiver does not apply here.

Additionally, in its Brief of Respondent, the State argues that DeLeon’s “claim that the DNA collection fee should be waived fails.” (Brief of Respondent at 22-23) But a more careful review of DeLeon’s Opening Brief shows that DeLeon is only challenging the imposition of the \$200.00 criminal filing fee and the interest accrual

provision. (Opening Brief at 9-10) DeLeon makes no argument that the DNA collection fee should be waived for the very reason stated in the State's brief—there is no evidence that a DNA fee was previously collected because DeLeon has no prior criminal history.

II. CONCLUSION

This Court should reach the merits of the arguments raised by DeLeon in this appeal. And, for the reasons argued in the Opening Brief of Appellant, this Court should reverse and remand this case to amend the no-contact orders and to strike the criminal filing fee and the interest accrual provision.

DATED: February 21, 2019



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Joshua N. DeLeon

CERTIFICATE OF MAILING

I certify that on 02/21/2019, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Joshua N. DeLeon, DOC# 407045, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326-0769.



STEPHANIE C. CUNNINGHAM, WSBA #26436

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