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NO. 52884-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

THYJUAN TOMIKIO TAPLIN,

Appellant.

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

The Honorable Bryan Chushcoff, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred by not striking discretionary legal financial obligations (LFOs) when amended ThyJuan Taplin's judgment and sentence.

Issue Pertaining to Assignment of Error

The trial court amended Taplin's judgment and sentence to strike a 12-month term of community custody imposed in addition to a statutory maximum 60-month sentence for violation of the uniform controlled substance act. Given that the trial court was revisiting the terms of Taplin's judgment and sentence, should it have also stricken discretionary LFO provisions—the criminal filing fee, DNA collection fee, and interest accrual provision—to comport with changes in the law since Taplin's original judgment and sentence was entered?

B. STATEMENT OF THE CASE

By way of amended information, the State charged Taplin with two counts of possession of a controlled substance with intent to deliver, one count of simple possession of a controlled substance, and one count of unlawful possession of a firearm. CP 6-8. The simple possession of a controlled substance charged included a deadly weapon enhancement allegation. CP 7. Taplin pleaded guilty to these charges. CP 9-19; RP 7-8.

The trial court sentenced Taplin to a total term of 90 months based on an offender score of 9 for all counts. CP 28, 30. The 90 months

consisted of the six-month deadly weapon sentence enhancement imposed with the simple possession of a controlled substance (Count 3), 84 months on each of the possessions of a controlled substance with intent to deliver (Counts 1 and 2), and 60 months on the unlawful possession of a firearm (Count 4). CP 30. Despite imposing the statutory maximum of 60 months (54 months plus a six-month sentence enhancement) on the third count, the trial court also imposed a 12-month community custody term. CP 31.

The trial court also imposed the \$100 DNA collection fee, \$200 criminal filing fee, and an interest accrual provision indicating that all LFOs accrue interest at the rate applicable to civil judgments. CP 28-29.

Taplin filed timely CrR 7.8 motions to vacate his judgment, arguing that the community custody term imposed on counts 1, 2, and 3 exceeded the statutory maximums and improperly delegated to the Department of Corrections the responsibility to reduce the sentences so that they did not exceed the statutory maximums, contravening State v. Boyd, 174 Wn.2d 470, 275 P.3d 321 (2012) (holding error to impose a total term of confinement and community custody in excess of statutory maximum notwithstanding a notation in the judgment and sentence pursuant to In re Pers. Restraint of Brooks, 166 Wn.2d 664, 211 P.3d 1023 (2009)). CP 53-57, 60-65.

The trial court partially agreed with Taplin, ruling that the 12-month community custody term for count 3 did exceed the statutory maximum of 60 months.¹ CP 67-68. Accordingly, the trial court entered an order amending the judgment and sentence to strike the 12-month term of community custody imposed in conjunction with count 3. CP 71-72.

Taplin appeals this order.² CP 119-21.

C. ARGUMENT

THE DNA COLLECTION FEE, THE CRIMINAL FILING FEE,
AND THE INTEREST ACCRUAL PROVISION MUST BE
STRICKEN FROM THE JUDGMENT AND SENTENCE BASED
ON INDIGENCY

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783) applies prospectively to cases currently pending on direct appeal. State v. Ramirez, 191 Wn.2d 732, 747-50, 426 P.3d 714 (2018). When legal financial obligations are impermissibly imposed, the remedy is “for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs.” Id. at 750.

¹ The trial court correctly determined that the 12-month community custody terms for counts 1 and 2 did not exceed the statutory maximums of 120 months for those counts. CP 67-68.

² Taplin subsequently filed another motion to vacate judgment, which the trial court transferred to this court to be treated as a personal restraint petition. CP 95-105, 107-10. This court has not screened the personal restraint petition pursuant to RAP 16.8.1 or RAP 16.11, and counsel has not been appointed to assist Taplin with respect to the personal restraint petition. Accordingly, this brief addresses only the direct appeal.

The DNA collection fee, the criminal filing fee, and the interest accrual provision were imposed against Taplin in the judgment and sentence. CP 28-29. However, Taplin is indigent and has qualified as such throughout these proceedings. CP 122-28. Accordingly, the DNA collection fee, criminal filing fee, and interest accrual provision must be stricken from Taplin's judgment and sentence pursuant to Ramirez's prospective application of HB 1783.

RCW 43.43.7541, whose title applies to collection of biological samples for the DNA identification system, was amended by HB 1783 to read, "Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender's DNA as a result of a prior conviction." LAWS OF 2018, ch. 269, § 18 (emphasis added). RCW 43.43.754(1)(a) requires the DNA fee to be imposed in every adult felony case. Per Taplin's criminal history stated in the judgment and sentence, Taplin has prior felony convictions for possession of a controlled substance, second degree theft, taking a motor vehicle without permission, and attempting to elude. CP 27. Therefore, the DNA fee was already imposed. Because HB 1783 applies prospectively and because the DNA fee was already imposed against Taplin for at least one prior conviction, his instant judgment and sentence should not have imposed the DNA fee. The fee should be stricken. Ramirez, 191 Wn.2d at 749-50.

Likewise, RCW 36.18.020(2)(h) now states that the \$200 criminal filing fee “shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c).” LAWS OF 2018, ch. 269, § 17. Taplin’s indigency is established in the record, given that the order of indigency allows Taplin to proceed on appeal at public expense. CP 127-28. Therefore, Taplin is “entitled to benefit from this statutory change,” requiring the criminal filing fee to be stricken from Taplin’s judgment and sentence. Ramirez, 191 Wn.2d at 749.

HB 1783 also eliminated interest accrual on nonrestitution LFOs.³ LAWS OF 2018, ch. 269, § 1 (codified as amended at RCW 10.82.090); Ramirez, 191 Wn.2d at 747. Although interest must accrue on restitution amounts, if any, “[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1). The judgment and sentence in this case was imposed on February 23, 2018. CP 25. Thus, it was not error to impose an interest accrual provision from February 23, 2018 to June 6, 2018. However, the interest accrual provision requires that all LFOs imposed in the judgment and sentence “bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090[.]” CP 29. This provision should be stricken because it violates RCW 10.82.090(1) for interest to accrue after

³ No restitution was imposed in this case.

June 7, 2018. Accordingly, this court should strike the interest accrual provision from the judgment and sentence.

Finally, in response, the State might argue that Taplin's LFO arguments are not within the scope of the order correcting the judgment and sentence from which Taplin appealed. However, when a trial court reviews a judgment and sentence and issues an order to correct it, the court has discretion to review any and all aspects of the judgment and sentence. For instance, recently in State v. Barbee, ___ Wn.2d ___, ___ P.3d ___, 2019 WL 2909230, at *1 (Jul. 3, 2019), Barbee was resentenced only with respect to the first count he was convicted of out of nine counts, given that the exceptional sentence exceeded imposed on the first count exceeded the statutory maximum. Nonetheless, the trial imposed a new restitution award with respect to Count 9. Id. at *1, *3. The Washington Supreme Court held that it was appropriate for the court to "resentence" Barbee with restitution on Count 9 even through the scope of resentencing was arguably limited just to correcting Count 1's exceptional sentence. Id. at *3.

As in Barbee, the question is what the trial court had discretion to revisit with respect to correcting the judgment and sentence and the answer was every aspect of the judgment and sentence. Certainly, the trial court here had the authority to review whether discretionary LFOs should be stricken based on legislative changes to LFO provisions in HB 1783. Given

the change in the law, the trial court should have acted within its authority and should have stricken the criminal filing fee, the DNA collection fee, and the interest accrual provision. These LFO provisions should be stricken now by this court or this matter should be remanded for the trial court to strike them.

D. CONCLUSION

For the reasons stated, the DNA collection fee, the criminal filing fee, and the interest accrual provision should be stricken from Taplin's judgment and sentence.

DATED this 22nd day of July, 2019.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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