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Division II
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NO. 52895-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

PAVEL VICTOROVICH KORYAVYKH,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Judge Michael E. Schwartz

No. 18-1-02030-3

BRIEF OF RESPONDENT

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I. INTRODUCTION

On May 24, 2018, the State charged Pavel Koryavykh (hereafter, Koryavykh) with attempting to elude a pursuing police vehicle and driving while license suspended in the third degree, which stemmed from a high-speed pursuit. The State subsequently amended the charges to add reckless driving and reckless driving/racing. A jury convicted Koryavykh of reckless driving and driving with a suspended license in the third degree. The court sentenced Koryavykh to 45 days in jail on each count, to run concurrently, and imposed a \$250 mandatory Crime Victim Compensation fee.

First, there is no basis to amend the judgment and sentence, which accurately reflects the sentence imposed by the trial court. Second, the State concedes that remand is proper for the trial court to strike the interest accrual provision from the judgment and sentence.

II. RESTATEMENT OF THE ISSUES

- A. Should this Court deny Koryavykh's request to remand the case to amend the judgment and sentence when it accurately reflects the sentence imposed by the trial court?
- B. Should this Court remand for the trial court to strike the interest accrual provision from the judgment and sentence?

III. STATEMENT OF THE CASE

On May 23, 2018, Koryavykh sparked a short high-speed pursuit when he suddenly accelerated to a high rate of speed on his motorcycle in

front of Pierce County Sheriff's Deputy Lucas Baker. RP 324-34.¹ The State initially charged Koryavykh with attempting to elude a pursuing police vehicle and driving with a suspended license in the third degree, but subsequently amended the charges to add reckless driving and reckless driving/racing. CP 3-7. At a jury trial, Koryavykh was convicted of reckless driving and driving with a suspended license in the third degree. CP 65-66; RP 561. Koryavykh was acquitted of reckless driving/racing, and the jury could not reach a unanimous verdict for the charge of attempting to elude a pursuing police vehicle. CP 64, 67; RP 560-64.

The trial court sentenced Koryavykh to 45 days in jail on each count, to be served concurrently. RP 584; CP 77. This sentence is reflected both in the trial court's oral ruling and in the judgment and sentence. RP 584; CP 77. In the judgment and sentence, the court explained that the maximum term of confinement is not more than 90 days for count II (driving while license suspended in the third degree) and not more than 364 days for count III (reckless driving). *See* CP 74.² The judgment and sentence clarified that each sentence "shall be (suspended) on the attached conditions of (suspended) sentence...." CP 74. In the attached conditions, the court

¹ The Report of Proceedings are consecutively paginated from October 4, 2018 through October 19, 2018 and will be referred to as "RP" in this brief.

² Count II is driving while license suspended in the third degree and count III is reckless driving. CP 5-7.

imposed the following sentence: “90 days imposed, 45 days suspended” on count II and “364 days imposed, 319 days suspended” on count III. CP 77. The court ordered the 45-day sentences to run concurrently with “credit for 15 days served.” CP 77. The judgment and sentence is consistent with the court’s oral ruling at sentencing:

So the Court is going to impose 45 days in the Pierce County Jail. I’m going to suspend the balance. 45 days on each count, and that will be concurrent, and then I’m going to suspend the balance for a two year period. You get credit for time served, the time that you have already served.

RP 584. The trial court confirmed in its oral ruling that it “reviewed the Judgment and Sentence on suspended sentence, as well as the Warrant of Commitment” and that they “conform with the Court’s oral ruling.” RP 589. The court also imposed the mandatory \$250 Crime Victim Compensation fee. RP 588; CP 74, 76-77. Koryavykh timely appealed. *See* CP 82.

IV. ARGUMENT

A. There is no basis to remand the case to amend a judgment and sentence that accurately reflects the sentence imposed by the trial court.

Because the judgment and sentence accurately reflects the trial court’s oral ruling of the sentence imposed, there is no reason to amend the judgment and sentence. First, driving with a suspended license in the third degree is a misdemeanor offense. RCW 46.20.342(1)(c). Under RCW 9A.20.021(3), the maximum sentence for a misdemeanor offense is 90 days

in jail. Here, the trial court correctly noted that the maximum sentence for driving with a license suspended in the third degree is 90 days in jail. *See* CP 74, 77. The court sentenced Koryavykh to 45 days in jail with 45 days suspended for this offense. CP 74-77; RP 584.

Second, reckless driving is a gross misdemeanor, punishable by imprisonment for up to 364 days. RCW 46.61.500(1). Here, the trial court correctly noted that the maximum sentence for reckless driving is 364 days in jail. *See* CP 74, 76-77. The court suspended 319 days of Koryavykh's 364-day sentence, resulting in a total of 45 days to be served on the reckless driving count. CP 74, 76-77; RP 584.

The judgment and sentence accurately reflects the trial court's oral ruling. The court verbally stated it "is going to impose 45 days in the Pierce County Jail. I'm going to suspend the balance. 45 days on each count, and that will be concurrent, and then I'm going to suspend the balance for a two year period." RP 584. This ruling is accurately reflected in the judgment and sentence. *See* CP 74-78.

The first page of the judgment and sentence accurately reflects the maximum term that could be imposed for each offense:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That said Defendant is guilty of the crime(s) of II – DRIVING WHILE IN SUSPENDED OR REVOKED STATUS IN THE THIRD DEGREE; III – RECKLESS DRIVING...and that he shall be punished by confinement in

the Pierce County Jail **for a term of not more than II: 90 days, III: 364 days.** CP 74.

See CP 74 (emphasis added). Below this sentence on the first page, the court provided that “[s]aid sentence shall be (suspended) on the attached conditions of (suspended) sentence...” CP 74. These attached conditions appear on the fourth page of the judgment and sentence, where the court clarified it sentenced Koryavykh to “90 days imposed, 45 days suspended” on count II and to “364 days imposed, 319 days suspended” on count III. CP 77. The court ordered that the 45-day sentences shall run concurrently with credit for 15 days served. CP 77. The court explicitly stated in its oral ruling that it “reviewed the Judgment and Sentence on suspended sentence as well as the Warrant of Commitment” and that they “do conform with the Court’s oral ruling, and therefore, I have signed them in open court and in the presence of the defendant.” RP 589. Thus, the judgment and sentence accurately reflects the court’s oral ruling, and there is no basis upon which to amend the judgment and sentence.

B. The State concedes this Court should remand for the trial court to strike the interest accrual provision from the judgment and sentence.

The State concedes this Court should remand for the trial court to strike the interest accrual provision from Koryavykh’s judgment and sentence in light of *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). Recent legislative amendments to the legal financial obligation (LFO)

statutes prohibit sentencing courts from imposing interest accrual on the nonrestitution portions of LFOs. RCW 10.82.090(2)(a); *Ramirez*, 191 Wn.2d at 746-47. The judgment and sentence in this case contains a boilerplate provision that the financial obligations imposed in this judgment “shall bear interest” from the date of the judgment until payment in full. CP 77 (citing RCW 10.82.090). The court imposed a \$250 mandatory Crime Victim Compensation fee, which is a nonrestitution LFO. *See* CP 74, 76-77. Because courts are now prohibited from imposing interest accrual on nonrestitution LFOs, this Court should remand for the trial court to strike the interest accrual provision from the Judgment and Sentence.

V. CONCLUSION

For the foregoing reasons, this Court should remand this case only to strike the interest accrual provision in Koryavykh’s judgment and sentence. There is no basis to amend any other provision in the judgment and sentence.

RESPECTFULLY SUBMITTED this 24th day of December, 2019.

MARY E. ROBNETT
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Afton Gregson, Legal Intern



KRISTIE BARHAM, WSB# 32764
Deputy Prosecuting Attorney

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her 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.

12-24-15 [Signature]
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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