

FILED
Court of Appeals
Division II
State of Washington
7/17/2019 2:56 PM

NO. 53014-7-II

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

STATE OF WASHINGTON, RESPONDENT
v.
TOMMIE BERNARD TUCKER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Frank Cuthbertson, Judge

No. 18-1-03052-0

Brief of Respondent

MARY E. ROBNETT
Prosecuting Attorney

By 
Teresa Chen
Deputy Prosecuting Attorney
WSB # 31762

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

Table of Contents

A. INTRODUCTION. 1

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 2

 1. Whether the trial court denied the DOSA sentence based on the Defendant's intermediate age as alleged or rather based on the court's determination that the program was inappropriate for a defendant with no genuine interest in treatment as the record demonstrates? (Appellant's Assignment of Error 1). 2

 2. Where collection costs are not imposed by the court as costs of prosecution under *Fuller v. Oregon, State v. Ramirez*, or RCW 10.01.160 but are subject to the clerk's sole discretion under RCW 36.18.190 as the legislatively-created mechanism for enforcing a lawful order on refractory parties, is there any basis to strike this notice provision? (Appellant's Assignment of Error 2). 2

 3. Should this court amend the interest provision consistent with the amended statute? (Appellant's Assignment of Error 3). 2

C. STATEMENT OF THE CASE..... 2

D. ARGUMENT..... 6

 1. THE SENTENCING JUDGE DENIED THE DOSA BECAUSE THE ALTERNATIVE WAS INAPPROPRIATE IN LIGHT OF THE DEFENDANT'S REFUSAL TO ACCEPT RESPONSIBILITY AND HIS INSINCERE DESIRE FOR TREATMENT..... 6

2.	THERE IS NO LAWFUL BASIS TO CHALLENGE THE NOTICE AND RECITATION OF THE LAW IN THE JUDGMENT	9
a.	<u>Collection costs are not costs of prosecution for which an ability-to-pay inquiry is required.....</u>	10
b.	<u>There is no lawful reason to strike the provision...</u>	13
c.	<u>Striking the provision will not restrict the Clerk's authority.....</u>	15
d.	<u>The courts must respect a constitutional statute...</u>	15
3.	NO INTEREST WILL ACCRUE ON THE DEFENDANT'S CASE.....	17
E.	CONCLUSION.....	18

Table of Authorities

State Cases

<i>Matter of Cargill</i> , 3 Wn. App. 2d 1040, 2018 WL 2021805 at *2 (2018)	12
<i>State v Clark</i> , 191 Wn. App. 369, 362 P.3d 309 (2015)	12
<i>State v. Barklind</i> , 87 Wn.2d 814, 557 P.2d 314 (1976)	10
<i>State v. Barklind</i> , 87 Wn.2d 814, 557 P.2d 314 (1976)	11
<i>State v. Blank</i> , 131 Wn.2d 230, 930 P.2d 1213 (1997)	12
<i>State v. Clark</i> , 191 Wn. App. 369, 362 P.3d 309, 312 (2015)	12
<i>State v. Curry</i> , 118 Wn.2d 911, 829 P.2d 166, 169 (1992)	16
<i>State v. Garcia-Martinez</i> , 88 Wn. App. 332, 944 P.2d 1104 (1997)	7
<i>State v. Glas</i> , 147 Wn.2d 410, 54 P.3d 147, 154 (2002)	15
<i>State v. Grayson</i> , 154 Wn.2d 333, 342, 111 P.3d 1183 (2005)	7
<i>State v. Jones</i> , 171 Wn. App. 52, 55, 286 P.3d 83 (2012)	7
<i>State v. Lemke</i> , 7 Wn. App. 2d. 23, 434 P.3d 551 (2018)	7
<i>State v. Ramirez</i> , 191 Wn.2d 732, 426 P.3d 714 (2018)	2, 10, 14
<i>State v. Roy</i> , 198 Wn. App. 1015, 2017 WL 993106 at *4 (2017)	15

Federal and Other Jurisdiction

<i>Fuller v. Oregon</i> , 417 U.S. 40, 51, 94 S. Ct. 2116, 2123, 40 L. Ed. 2d 642 (1974)	1, 2, 10, 11
OR. REV. STAT. § 161.665	11

Constitutional Provisions	
Fourteenth Amendment, United States Constitution	10
Statutes	
HB 1783	14, 15
Laws of 2018, ch. 269.....	14
Laws of 2018, ch. 269, § 1.....	1, 14, 17
Laws of 2018, ch. 269, § 6.....	12
Laws of 2018, ch. 269, §§ 13(14)(1)	14
Laws of 2018, ch. 269, §§ 13(2)(c).....	14
Laws of 2018, ch. 269, §§ 13(3)(f)	14
Laws of 2018, ch. 269, §§ 13(5)	14
Laws of 2018, ch. 269, §§ 15(4)(f)	14
Laws of 2018, ch. 269, §§ 7(2)(c).....	14
Laws of 2018, ch. 269, §§ 7(8)(5)	14
RCW 10.01.160	2, 12
RCW 10.01.160(2).....	1, 12, 14
RCW 10.01.160(3).....	10, 12, 13, 14
RCW 10.101.010(3).....	13
RCW 10.82.090	17
RCW 19.16.500	14
RCW 36.18.190	1, 2, 14, 15

RCW 7.68.035	16
RCW 9.94A.510.....	6
RCW 9.94A.517.....	6
RCW 9.94A.585(1).....	6
RCW 9.94A.660.....	7
RCW 9.94A.660(3).....	9
RCW 9.94A.660(5)(a)	7, 8
RCW 9.94A.780.....	14
RCW 9.94A.780(7).....	13
RCW 9A.20.021.....	13
Rules and Regulations	
GR 14.1	15

A. INTRODUCTION.

The Defendant Tommie Tucker claims the superior court denied his request for a Drug Offender Sentence Alternative (DOSA) based on his being 50 years old. The record demonstrates that the court's denial was based on the Defendant's preference for blaming others, his refusal to take responsibility for his actions, and his history of treatment failure and treatment rejection.

The court imposed only the mandatory crime victim assessment. The Defendant asks this Court to prevent its collection by striking the notice provision which explains that the clerk may send recalcitrant cases to collection. Because collection costs are not costs of prosecution related to the exercise of the constitutional right to counsel, they are not defined as "costs" under RCW 10.01.160(2) and not subject to the ability-to-pay inquiry mandated in *Fuller v. Oregon*. They are authorized by RCW 36.18.190. Striking this notice language will not affect the superior clerk's ability to exercise his discretionary authority to send refractory cases to collection.

The Defendant asks the Court to strike out-dated form language regarding interest. With the change in JIS software, there is no risk that non-restitution interest will accrue contrary to Laws of 2018, ch. 269, § 1.

However, because no restitution has been requested, this Court may strike the interest provision without necessitating any remand.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the trial court denied the DOSA sentence based on the Defendant's intermediate age as alleged or rather based on the court's determination that the program was inappropriate for a defendant with no genuine interest in treatment as the record demonstrates? (Appellant's Assignment of Error 1).
2. Where collection costs are not imposed by the court as costs of prosecution under *Fuller v. Oregon, State v. Ramirez*, or RCW 10.01.160 but are subject to the clerk's sole discretion under RCW 36.18.190 as the legislatively-created mechanism for enforcing a lawful order on refractory parties, is there any basis to strike this notice provision? (Appellant's Assignment of Error 2).
3. Should this court amend the interest provision consistent with the amended statute? (Appellant's Assignment of Error 3).

C. STATEMENT OF THE CASE.

The Appellant/Defendant Tommie Tucker appeals from his sentence for possessing a stolen vehicle. CP 35. The Defendant was found sleeping in the driver's seat of a stolen Subaru Legacy with two different license plates (BDV 113 and AEW6918). RP 23, 43, 46, 76-77. Woken by police, he said, "Well, it looks like I'm going to jail." RP 47, 49.

The ignition had been punched, and a screwdriver lay on the driver's floorboard. RP 55. Mesa Winter, the true owner of the car, had not given

the Defendant permission to drive the car. RP 24-25. And when she last had possession of her car, it started with a key. RP 27.

On the day scheduled for his bench trial, the Defendant went back and forth on matters of self-representation and jury waiver. RP 1-13. He complained his attorney refused to file a particular motion. RP 2, 9. The court advised that the attorney was precluded from filing it by ethical rules. RP 9. The Defendant eventually settled where he had begun, proceeding to a bench trial with his appointed attorney. CP 7; RP 13-14.

At the bench trial, the Defendant was not a credible witness. RP 100-01. He had a conviction for a crime of dishonesty, and he provided conflicting statements. RP 74, 101. On the day of his arrest, the Defendant had told the arresting officer that his girlfriend La Toya had parked the car by his sister's house. RP 54. At trial, however, he claimed his girlfriend's name was Yolanda Carey and that he believed she had purchased the car with disability income after her first car was repossessed and before she was taken to jail. RP 69-72. Contrary to his previous statement, he testified that he was the one who drove the car with the screwdriver from the back lot of a shelter to the alley by his sister's house. RP 70-71, 75, 77-79.

After closing argument, the Defendant asked to reopen his case and to continue trial while he attempted to acquire cell phone video which he claimed would show that more than one person drove the victim's car before

it was reported stolen. RP 96-97. The motion was denied, and the Defendant was found guilty as charged. RP 97, 101-02.

Sentencing was delayed for the Defendant to obtain a Drug Offender Sentencing Alternative (DOSA) screening evaluation. CP 8; RP 105-07. The Defendant also required the State to obtain certified copies of criminal history which he had previously stipulated to. CP 56-59, 105. This included 81 convictions, including nine felony violations of the Uniform Controlled Substances Act. CP 12, 46-47, 56-59.

In a sentencing memorandum, the State opposed a DOSA. CP 52. The Defendant had been ordered to enter treatment on at least four prior occasions in 1996, 2006, 2008, and 2009. *Id.* The most recent of these was a 6-month Breaking the Cycle (BTC) program. *Id.* The State noted that the Defendant had yet to take responsibility for his actions, admit drugs played a role in the crime, or indicate that he will participate in treatment. *Id.*

At sentencing, the parties agreed the Defendant had an offender score of 9+. RP 109. The State requested a mid-range sentence of 50 months, noting that the victim was disabled and left without any transportation. RP 109-10. The State opposed a DOSA, citing a lengthy criminal history and multiple failed attempts at treatment alternatives in previous cases. RP 110-11. The prosecutor calculated, based on the Defendant's age of 50, the Defendant averaged only 86 days in the

community between offenses. RP 110. The Defendant requested a DOSA, arguing that “at his age” his sobriety was “becoming even more important with every passing year.” RP 111-13.

The court denied the DOSA and imposed the low-end of the standard range—43 months. RP 114. The court waived all legal financial obligations other than the crime victim assessment fee. *Id.*; CP 20-34. This timely appeal follows. CP 35.

Although the court had ruled, the Defendant persisted, complaining that the judge was “no different than the other ones” who sent him to prison rather than offering him treatment. RP 114, 117. The judge noted the falsity of this statement, reciting all the past attempts by judges to get him into treatment. RP 115. The Defendant acknowledged that he had been through four programs. RP 116. But he complained that this treatment had been offered in prison, apparently misinterpreting that he was eligible for a residential DOSA. RP 115-16.

The judge told the Defendant to take responsibility for his situation where treatment had been provided to him repeatedly to no avail.

THE DEFENDANT: So I don't get no treatment, no help.

THE COURT: Mr. Tucker, you know what, you're 50-some years old, and it's your life, and any time you want to stop using, you can stop using. And at least for the next 24 months, you won't be using, unless somebody got it inside.

THE DEFENDANT: Exactly.

THE COURT: And that's up to you. But at some point, Mr. Tucker, you know what, you can take this off of me right now and you assume responsibility for your life.

THE DEFENDANT: I'm very responsible.

THE COURT: At 50 years old –

THE DEFENDANT: I'm very responsible.

THE COURT: -- you're not some spring chicken.

THE DEFENDANT: I'm very responsible.

THE COURT: Just sign the papers. I'm done.

RP 116-17.

D. ARGUMENT.

1. THE SENTENCING JUDGE DENIED THE DOSA BECAUSE THE ALTERNATIVE WAS INAPPROPRIATE IN LIGHT OF THE DEFENDANT'S REFUSAL TO ACCEPT RESPONSIBILITY AND HIS INSINCERE DESIRE FOR TREATMENT.

The Defendant received a standard range sentence under RCW 9.94A.517. A standard range sentence is the presumptive sentence. It is generally unappealable. RCW 9.94A.585(1) (“A sentence within the standard range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed.”).

Specifically, a criminal defendant may not appeal a trial court's decision to impose a standard range sentence instead of a Drug Offender

Sentencing Alternative (DOSA) under RCW 9.94A.660. *State v. Jones*, 171 Wn. App. 52, 55, 286 P.3d 83 (2012) (citing *State v. Grayson*, 154 Wn.2d 333, 338, 342, 111 P.3d 1183 (2005)). A criminal defendant has no right to a DOSA, which is a grace granted to an offender who suffers from drug addiction and who wants to receive substance abuse treatment. RCW 9.94A.660(5)(a).

The only lawful basis for a challenge would be if the trial court refused to exercise discretion at all or relied on an impermissible basis in making the decision. *State v. Lemke*, 7 Wn. App. 2d. 23, 27, 434 P.3d 551 (2018). An example of an impermissible basis would be refusing to consider a defendant for a DOSA based on race, sex or religion. *See State v. Garcia-Martinez*, 88 Wn. App. 332, 326-330, 944 P.2d 1104 (1997). In contrast, when a trial court refuses to give a DOSA based upon factors such as a defendant's criminal history, whether he would benefit from treatment, or whether the alternative would better serve the community, the refusal is proper. *Jones*, 171 Wn. App. at 55-56.

The Defendant claims the court denied the DOSA due to his being middle aged. This claim is not a reasonable reading of the record. The Honorable Judge Cuthbertson found a DOSA inappropriate because the Defendant was unlikely to benefit from treatment based on his refusal to take responsibility for his actions and his history of failed and refused

treatment. RP 110-11, 113-14. And the community was unlikely to benefit from the alternative based on the Defendant's 30-year history of 101 convictions, where he averaged one crime for every 86 days that he spent in the community. *See* CP 48-225.

The record suggests the Defendant was not and has never been sincerely interested in treatment. He was interested in staying out of prison. And he did not seem to understand that the DOSA for which he was eligible would necessarily be in prison.

In deciding whether to impose a DOSA, the court may consider whether there is effective treatment for the offender's addiction and whether the alternative, on balance, will better serve both the offender and the community. RCW 9.94A.660(5)(a). In this case, the court was aware that the Defendant had eschewed many treatment opportunities and failed others. CP 48-222; RP 110-11, 113-16.

Moreover, the reduction of a standard range sentence should not be offered to an offender who does not accept responsibility for his offense or who minimizes the offense. The Defendant refused to accept responsibility for his offense. He blamed his attorney. RP 12. He blamed the prosecutor. RP 96-97. And he blamed all the judges. RP 177. In deciding whether to grant a significantly reduced sentence, it was reasonable for Judge Cuthbertson to consider the Defendant's attitude. There is no likelihood of

successful treatment and behavior change when the person will not accept responsibility.

A court shall only grant a DOSA if it determines that (1) the offender is eligible and (2) the alternative is appropriate. RCW 9.94A.660(3). The Defendant was eligible. In denying the DOSA, the court implicitly found that the alternative to a standard sentence was not appropriate. The record supports such a finding. The Defendant refused to take responsibility for his actions or acknowledge the role drugs had in the commission of his crime. He has an extensive history of failed or refused court-ordered treatment. The community would not have benefitted from the Defendant's treatment due to his apparent inability to exist in the community without committing new crimes.

No reasonable interpretation of the record demonstrates that the court's denial was due to the Defendant's age. This Court should affirm the standard range sentence.

2. THERE IS NO LAWFUL BASIS TO
CHALLENGE THE NOTICE AND RECITATION
OF THE LAW IN THE JUDGMENT

The Defendant challenges a notice provision in his Judgment and Sentence which reads:

COLLECTION COSTS. The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

CP 28. Because the case has not been sent to collections, this language serves to provide notice only that the clerk has discretion to do so.

- a. Collection costs are not costs of prosecution for which an ability-to-pay inquiry is required.

The Defendant challenges the clerk's possible, future use of collection agencies to collect the crime victim penalty assessment as authorized under various statutes. He argues that collection costs are a discretionary cost that may not be imposed on indigent defendants under *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018) and RCW 10.01.160(3). This argument demonstrates a fundamental misperception of the ability-to-pay jurisprudence and the function of collection costs.

State v. Ramirez interpreted RCW 10.01.160(3), a statute which has no application to collection costs. The recoupment statute was crafted and approved as a safeguard for the right to counsel. Criminal defendants have a constitutional right to the assistance of counsel without cost. U. S. CONST. amend. 14; *State v. Barklind*, 87 Wn.2d 814, 815, 557 P.2d 314 (1976). Defendants "cannot be influenced to surrender that right by the imposition of a penalty on the exercise thereof." *Barklind*, 87 Wn.2d at 815. A reimbursement requirement may chill that exercise. *Fuller v. Oregon*, 417 U.S. 40, 51, 94 S. Ct. 2116, 2123, 40 L. Ed. 2d 642 (1974). Therefore, a recoupment procedure must pass constitutional muster. Washington's does,

because the costs of prosecution (i.e. fees for appointed counsel and associated defense costs prior to conviction) may not be imposed upon indigent defendants who lack the ability to pay.

In *Fuller v. Oregon*, the court reviewed an Oregon recoupment statute identical to Washington's. *State v. Barklind*, 87 Wn.2d 814, 818, 557 P.2d 314 (1976). Fuller was represented by appointed counsel who hired an investigator. *Fuller*, 417 U.S. at 41. And the state assumed both fees. *Id.* The defendant eventually pled guilty and the fees were transferred to his judgment. *Id.* at 41-42. Fuller challenged the constitutionality of OR. REV. STAT. § 161.665 which required him to repay the state for the costs of his counsel and investigator.

The United States Supreme Court held the statute was constitutional because it contained safeguards against oppressive application. *Fuller*, 417 U.S. at 44-47.

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. Repayment may only be ordered if the defendant is or will be able to pay;
4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may not be imposed if there is no likelihood the defendant's indigency will end;
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion;

7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

State v. Blank, 131 Wn.2d 230, 237-38, 930 P.2d 1213 (1997).

While some legal professionals have fixated on the discretionary/mandatory¹ distinction, for the purpose of RCW 10.01.160, the only relevant question under the statute and constitution is: Is the legal financial obligation (LFO) a “cost” within the context of the recoupment statute? If it is, then it cannot be imposed upon defendants who are indigent or who lack the ability to pay.² RCW 10.01.160(3).

In the context of the recoupment statute, “costs” are “limited to expenses incurred by the state in prosecuting the defendant.” RCW 10.01.160(2). The costs of prosecution would be such costs as attorney fees, investigator fees, and fees to obtain witnesses and jurors. Not every LFO is a cost. *State v. Clark*, 191 Wn. App. 369, 376, 362 P.3d 309, 312 (2015) (the definition of “cost” in RCW 10.01.160(2) does not include “fines”).

¹ See e.g. *State v. Clark*, 191 Wn. App. 369, 374, 362 P.3d 309 (2015); *Matter of Cargill*, 3 Wn. App. 2d 1040, 2018 WL 2021805 at *2 (2018) (unpublished) (focusing on the clerk’s discretion rather than whether collection services are a cost of prosecution).

² Laws of 2018, ch. 269, § 6 amended RCW 10.01.160(3) to replace the “ability to pay” standard with an “indigency” standard.

Costs do not include post-conviction punishment or penalties, e.g. the discretionary fine under RCW 9A.20.021 or the mandatory crime victim penalty assessment. They do not include reparative or restorative consequences like restitution. And they do not include collection costs which are an alternative means to criminal contempt for enforcing a judgment.

Collection costs as applied in this judgment have no relation to the constitutional right to counsel. They are not related to the prosecution of a conviction. They are a means of enforcing a judgment on recalcitrant parties. Accordingly, they are not a “cost” within the meaning of RCW 10.01.160(3). A party’s indigency as broadly defined in RCW 10.101.010(3) will not prevent the clerk from sending a case to collection. The clerk will, however, consider all extenuating circumstances when considering an exemption or deferral of all LFOs. RCW 9.94A.780(7) (referencing subsection (1)).

- b. There is no lawful reason to strike the provision.

Collection costs are specifically authorized by statute. After a defendant has completed his supervision, if LFOs remain, the county clerk assumes legal responsibility for collection. RCW 9.94A.780(7). The clerk’s office may act as the collector and may assess upon the debtor the collection costs the office incurs. *Id.* Because many county clerks do not always have

the staffing resources to provide collection services to the court, they are authorized to contract with collection agencies to collect unpaid LFOs. RCW 36.18.190. If they do, the debtor again bears the collection costs of the agencies. *Id.* This is no different from any other civil debt. RCW 19.16.500.

The challenged judgment merely summarizes the law. There is no lawful basis to strike an accurate recitation of the law.

The Defendant relies on *State v. Ramirez*, a case which interpreted RCW 10.01.160(3). *Ramirez*, 191 Wn.2d at 740. But collection costs are not subject to RCW 10.01.160(3). RCW 10.01.160(2) (defining “costs” as the costs specially incurred by the state “in prosecuting” the defendant). They are authorized under different statutes. Therefore, the interpretation of RCW 10.01.160(3) has no bearing on this matter.

The Defendant relies on HB 1783 (Laws of 2018, ch. 269). This bill amended many statutes. However, it made no modifications to RCW 36.18.190, RCW 9.94A.780, or RCW 19.16.500. Therefore, HB 1783 has no bearing on this matter.

Notably the bill did not do away with LFOs entirely. Specifically, it left intact or added the crime victim assessment in various places. Laws of 2018, ch. 269, §§ 7(2)(c), (8)(5), 13(3)(f), (14)(1), (2)(c) and (5), 15(4)(f). The assessment remains mandatory regardless of ability to pay. Because in

this bill, the Legislature did not do away with LFOs altogether, a collection mechanism remains necessary to enforce the court's order. The provision in the judgment references the law as it exists.

c. Striking the provision will not restrict the Clerk's authority.

The challenged provision only accurately recites the statutes. Therefore, removing this language from the judgment will have no effect on the clerk's ability to send a case to collections. The clerk's office is statutorily authorized to do so under RCW 36.18.190. *See State v. Roy*, 198 Wn. App. 1015, 2017 WL 993106 at *4 (2017) (unchecked "collection cost" box on a judgment and sentence meant the document did not independently authorize imposition of such costs, but clerk has independent authority to impose it.)³

d. The courts must respect a constitutional statute.

The Legislature created the collection mechanism. It made no changes to this system in HB 1783. If the law is constitutional, the courts must uphold it. The laws are presumptively constitutional. *State v. Glas*, 147 Wn.2d 410, 422, 54 P.3d 147, 154 (2002) (a court will make every

³ GR 14.1 allows citation to unpublished opinions of the Court of Appeals filed on or after March 1, 2013. The unpublished decision cited above has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.

presumption in favor of constitutionality where the statute's purpose is to promote safety and welfare and bares a reasonable and substantial relationship to that purpose). The Defendant does not claim or demonstrate otherwise.

The Washington Supreme Court has found the mandatory victim penalty assessment in RCW 7.68.035 to be constitutional. *State v. Curry*, 118 Wn.2d 911, 829 P.2d 166, 169 (1992) (noting there are sufficient safeguards in RCW 10.01.160(4) to prevent imprisonment of indigent defendants). As applied here, the collection statute implements the assessment. And, because collection agencies have other methods of persuasion that do not involve potential confinement, allowing collection through a third-party agency reduces the threat of incarceration.

The county clerk is authorized to exempt or defer LFO payments and shall consider a defendant's diligent attempts at employment, school attendance, age, support of dependents, undue hardship, and any extenuating circumstance. RCW 9.94A.780(7) (referencing subsection (1)7). On a case-by-case basis, for intractable debtors, the clerk may choose to refer cases to collection.

In many counties, clerks' offices simply do not have the ability to enforce collections without the assistance of collections agencies. If the clerk could not refer case to collections, as a practical matter, the court's

orders for mandatory assessments and restitution would be unenforceable. This Court must respect the Legislature's separate power to authorize this mechanism which enforces court orders.

3. NO INTEREST WILL ACCRUE ON THE DEFENDANT'S CASE.

The Defendant also complains of the interest provision of his Judgment and Sentence, which reads:

INTEREST. The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

CP 28. RCW 10.82.090 was amended by Laws of 2018, ch. 269, § 1 such that, going forward from the effective date of June 7, 2018, interest will only accrue on restitution.

Consistent with the change in law, the Pierce County Prosecutor's Office has updated the form language to read:

The restitution obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. No interest shall accrue on non-restitution obligations imposed in this judgment. RCW 10.82.090.

The Defendant's judgment was entered after the statute took effect, but before the prosecutor's form was changed.

In the Defendant's particular case, while restitution would have been warranted for the punched ignition, the insurance company did not request

it. Therefore, no restitution has been or will be imposed. Accordingly, there will be no circumstance where interest will be proper.

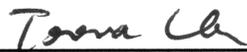
The challenge is premature. The Defendant does not allege that any interest has been imposed on him. In fact, regardless of the use of the older form, he is not at any risk of accruing interest.⁴ Although the Defendant is at no risk, this Court may choose to strike the interest language. If it does so, the order should be included in the mandate rather than through the additional expense of remand.

E. CONCLUSION.

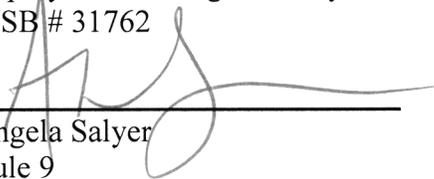
For the above stated reasons, the State requests this Court affirm the Defendant's conviction and sentence.

DATED: July 17, 2019

MARY E. ROBNETT
Pierce County Prosecuting Attorney



Teresa Chen
Deputy Prosecuting Attorney
WSB # 31762

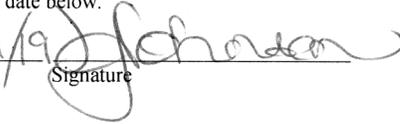


Angela Salyer
Rule 9

⁴ The JIS software—the program used by clerks across the state—has been updated such that no non-restitution interest can accrue in any case in Washington after the effective date of June 7, 2018.

Certificate of Service:

The undersigned certifies that on this day she delivered by ^{file} 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.

7/17/19 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

July 17, 2019 - 2:56 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53014-7
Appellate Court Case Title: State of Washington, Respondent v. Tommie B. Tucker, Appellant
Superior Court Case Number: 18-1-03052-0

The following documents have been uploaded:

- 530147_Briefs_20190717145541D2513287_7699.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Tucker Response Brief.pdf

A copy of the uploaded files will be sent to:

- swiftm@nwattorney.net

Comments:

Sender Name: Heather Johnson - Email: hjohns2@co.pierce.wa.us

Filing on Behalf of: Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7875

Note: The Filing Id is 20190717145541D2513287