

FILED
Court of Appeals
Division II
State of Washington
11/19/2019 11:06 AM

NO. 53674-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

TAMI REEVES,

Appellant.

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

The Honorable Stephan H. Warning, Judge

BRIEF OF APPELLANT

ERIN MOODY
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	2
D. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Benn
120 Wn.2d 631, 845 P.2d 289
cert. denied, 510 U.S. 944, 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993)..... 2

State v. Cawyer
182 Wn. App. 610, 330 P.3d 219 (2014) 2, 3, 4

State v. Davison
116 Wn.2d 917, 809 P.2d 1374 (1991) 3

State v. Hassan
184 Wn. App. 140, 336 P.3d 99 (2014) 2, 4

State v. Kyllo
166 Wn.2d 856, 215 P.3d 177 (2009) 2

State v. Tobin
161 Wn.2d 517, 166 P.3d 1167 (2007) 3

FEDERAL CASES

Strickland v. Washington
466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)..... 2

RULES, STATUTES AND OTHER AUTHORITIES

Former RCW 9.94A.030(53) 3

RCW 7.68.035 1

RCW 9.94A.030(54) 3

RCW 9.94A.753 3

RCW 69.50.401 1

TABLE OF AUTHORITIES (CONT'D)

	Page
U.S. Const. Amend. VI.....	2
Violation of the Uniform Controlled Substances Act.....	1
Wash. Const. art. 1, § 22	2

A. ASSIGNMENT OF ERROR

1. Defense counsel was ineffective at sentencing because he agreed to restitution that the trial court had no authority to impose.

Issues Pertaining to Assignments of Error

1. Was the State entitled to restitution for costs its “Drug Task Force” incurred executing a controlled buy?

2. Was defense counsel ineffective for agreeing to the award of restitution to the task force?

B. STATEMENT OF THE CASE

The State charged Tami Michelle Reeves with one count of Violation of the Uniform Controlled Substances Act: Delivery, in violation of RCW 69.50.401(1) and (2)(b). CP 3. The charges arose from a controlled buy, orchestrated by the Cowlitz Wahkiakum Narcotics Task Force, involving a confidential informant. Clerk’s No. 1; RP 5.

A jury convicted Ms. Reeves as charged, and the trial court imposed a low-end standard range sentence of 72 months followed by 12 months of community custody. CP 23, 27-28.

At Ms. Reeves’s sentencing hearing, defense counsel agreed to the imposition of \$40 in restitution to the “Drug Task Force.” CP 30; RP 7. The court imposed that amount plus the \$500 “Victim assessment” required under RCW 7.68.035. CP 29.

C. ARGUMENT

Both the federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22. A defendant is denied this right when (1) his or her attorney's conduct "falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct." State v. Benn, 120 Wn.2d 631, 663, 845 P.2d 289 (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), cert. denied, 510 U.S. 944, 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993). Both requirements are met here.

"Reasonable conduct for an attorney includes carrying out the duty to research the relevant law." State v. Kylo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009) (citing Strickland, 466 U.S. at 690-691). This includes the statutes governing the sentencing court's authority to impose restitution. See State v. Hassan, 184 Wn. App. 140, 151-52, 336 P.3d 99 (2014) (defendant has right to effective assistance of counsel at restitution hearing).

Those statutes permit restitution only to compensate a "victim," defined as a "person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged." State v. Cawyer, 182 Wn. App. 610, 617, 330 P.3d 219 (2014)

(quoting former RCW 9.94A.030(53)).¹ See also State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991) (court’s authority to impose restitution derives entirely from statute).

The State may be a “victim,” for purposes of the restitution statutes, where the defendant’s crime directly depletes state resources. E.g., State v. Tobin, 161 Wn.2d 517, 521, 527-28, 166 P.3d 1167 (2007) (State entitled to restitution where defendant convicted of illegally harvesting state- and tribe-owned shellfish). But where the State merely incurs costs pursuant to law enforcement, it is not a “victim” entitled to restitution. Cawyer, 182 Wn. App. at 617-18. Thus, in Cawyer, this court reversed an award of restitution that compensated the State for expenses it incurred extraditing the defendant from Ohio to face charges of custodial interference. Id. at 614. The court reasoned that the custodial interference offense neither directly victimized the State nor caused the State to incur expenses to assist those who were directly victimized. Id. at 618.

¹ At the time Ms. Reeves committed her offense, this definition of “victim” was codified at RCW 9.94A.030(54) but was substantively identical. The other statute applicable here provides:

restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury.

RCW 9.94A.753(3).

The same is true in this case. Ms. Reeves was convicted of knowingly delivering methamphetamine. CP 18. Its involvement in securing this conviction does not make the “Drug Task Force” a “victim” under the restitution statutes. Cawyer, 182 Wn. App. at 617-18; CP 30. Had defense counsel pointed this out at the sentencing hearing, the court would not have imposed restitution to compensate the task force.

Where trial counsel’s deficient performance leads the trial court to impose restitution in excess of its statutory authority, the remedy is remand with instructions to strike the unlawful amount. Hassan, 184 Wn. App. at 152-53. Ms. Reeves is entitled to that remedy here.

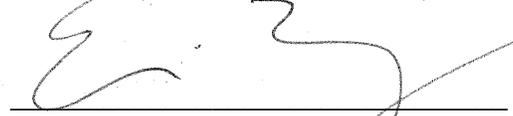
D. CONCLUSION

The trial court had no authority to award the State restitution for costs incurred executing a controlled drug buy. Defense counsel was ineffective for agreeing to that award. This case should be remanded for correction of the improper restitution award.

DATED this 18th day of November, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



ERIN MOODY, WSBA No. 45570
Office ID No. 91051
Attorneys for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

November 19, 2019 - 11:06 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53674-9
Appellate Court Case Title: State of Washington, Respondent v. Tami Michelle Reeves, Appellant
Superior Court Case Number: 19-1-00310-1

The following documents have been uploaded:

- 536749_Briefs_20191119110441D2307997_9238.pdf
This File Contains:
Briefs - Appellants
The Original File Name was State v. Tami Reeves 53674-9-II.BOA.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- WallaceA@co.cowlitz.wa.us
- appeals@co.cowlitz.wa.us
- moodye@nwattorney.net
- nielsene@nwattorney.net

Comments:

Copy mailed to client: Tami Reeves 416487 Washington Corrections Center for Women 9601 Bujacich Rd. N.W. Gig Harbor, WA 98332-8300

Sender Name: Jamila Baker - Email: Bakerj@nwattorney.net

Filing on Behalf of: Erin Irene Moody - Email: MoodyE@nwattorney.net (Alternate Email: MoodyE@nwattorney.net)

Address:
1908 E. Madison Street
Seattle, WA, 98122
Phone: (206) 623-2373

Note: The Filing Id is 20191119110441D2307997