

FILED
Court of Appeals
Division II
State of Washington
4/27/2020 3:18 PM

NO. 53927-6-II

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

STATE OF WASHINGTON,
Respondent,
v.

LEONARD HAMILTON,
Appellant.

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

The Honorable Carol Murphy, Judge (plea)
The Honorable Erik D. Price, Judge (post plea motion)

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in ordering interest accrual on unpaid, non-restitution legal financial obligations (LFOs).

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

By statute, the trial court could not legally impose interest accrual on unpaid non-restitution legal financial obligation. Nevertheless, the court ordered Hamilton to pay interest any unpaid non-restitution legal financial obligation. Does the trial court's mistaken order require remand to strike the inaccurate interest accrual order?

C. STATEMENT OF THE CASE

On August 28, 2018, Leonard Hamilton pleaded guilty to a single count of felony violation of a domestic violence no contact order. CP 2-12; RP¹ 8/28/18 2-15. Hamilton agreed with Prosecutor's Statement of Criminal History. CP 13. He

¹ "RP" refers to the verbatim report of proceedings. There are two RP dates specified herein as "RP 8/28/18" and "RP 8/8/19."

agreed with the state's representation as his criminal history and offender score. RP 8/28/18 11.

At Hamilton's request, the court imposed a prison-based drug offender sentencing alternative. CP 16-17; RP 8/28/18 17-18. The court ordered Hamilton serve 30 months in custody and 30 months on community custody. CP 18.

The judgment and sentence included outdated information about interest accrual on non-restitution legal financial obligations. CP 21. No one called the court's attention to the inaccurate information. RP 8/28/18 13-19.

On December 13, 2018, Hamilton filed a pro se motion to withdraw his guilty plea. CP 29-50. He argued an error in calculating his offender score was a manifest injustice entitling him to withdraw his guilty plea. CP 29-50.

The court heard Hamilton's motion telephonically on August 8, 2019. RP 8/8/19 5-14. The state argued, and the court agreed, that the offender score was properly calculated

because misdemeanor convictions prevented wash out of

Hamilton's felony convictions. RP 8/8/19 7-9, 13-14.

Consequently, the court denied his motion. RP 8/8/19 14; CP

86.

Hamilton appeals the court's denial of his motion to withdraw his guilty plea. CP 90-108.

Appellate counsel reviewed the court file to include the motion pleadings, the verbatim report of proceedings, and found no error in the court's denial of the motion to withdraw the plea.

In reviewing the judgment and sentence, counsel did find an error in interest accrual on non-restitution legal financial obligations. CP 21. The interest accrual should be stricken as argued below.

D. ARGUMENT

Issue: The court must modify Leonard Hamilton's judgment and sentence to eliminate interest accrual on the non-restitution legal financial obligations.

In 2018, the legislature amended former RCW 10.82.090 to prohibit interest accrual on non-restitution LFOs as of June 7, 2018. Laws of 2018, ch. 269, § 1.

The court sentenced Hamilton on August 28, 2018, well after the amended law went into effect. RP 8/28/18 17-18; CP 15. At sentencing, the court failed to strike the following paragraph from the judgment and sentence:

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.

CP 21.

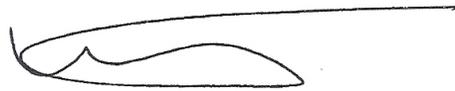
The sentencing court imposed a \$500 victim assessment and a \$15 domestic violence offender fine. CP 19. The court did not impose restitution. CP 20. Restitution bears interest, but the mandatory LFOs do not. RCW 10.82.090.

Because the court failed to strike the boilerplate interest language from the judgment and sentence, Hamilton is subject to improper interest accrual on the \$515 LFOs. Hamilton's case should be remanded to strike the non-restitution interest accrual language.

E. CONCLUSION

Remand is required to strike Hamilton's obligation to pay interest on non-restitution legal financial obligations.

Respectfully submitted April 27, 2020.

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LISA E. TABBUT/WSBA 21344
Attorney for Leonard Hamilton

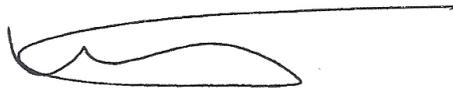
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Brief of Appellant to (1) Thurston County Prosecutor's Office, at paoappeals@co.thurston.wa.us; (2) the Court of Appeals, Division II; and (3) I mailed it to Leonard Hamilton, DOC#303031, Monroe Correctional Complex-WSR, PO Box 777, Monroe, WA 98272.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed April 27, 2020, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal stroke extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Leonard Hamilton, Appellant

LAW OFFICE OF LISA E TABBUT

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Transmittal Information

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