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Court of Appeals  
Division II  
State of Washington  
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No. 53927-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

LEONARD C. HAMILTON,

Appellant.

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

The Honorable Erik D. Price, Judge  
Cause No. 16-1-01452-34

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether an appeal filed after an order denying a motion to withdraw a guilty plea, but that assigns error only to a portion of the judgment and sentence that was entered approximately a year prior, is untimely.

2. Whether remand is appropriate to modify boilerplate language regarding interest on Legal financial Obligations that does not reflect the July 7, 2018, amendments to RCW 10.82.090.

B. STATEMENT OF THE CASE.

Leonard C. Hamilton pled guilty to one count of felony violation of a no contact order/domestic violence. CP 1-12. He was sentenced to a drug offender sentencing alternative sentence of 30 months in custody and 30 months in community custody. CP 15-25, 1 RP 18.1 Hamilton then filed a motion to withdraw his guilty plea alleging that two prior offenses were improperly included in his offender score. CP 26-70. The trial court ruled that his offender score was properly calculated at 8 because he did not spend five years in the community prior to the date of the commission of a new offense pursuant to RCW 9.94A.525. 2 RP 13.

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<sup>1</sup> The verbatim report of proceedings appears in two volumes. The Sentencing hearing held on August 28, 2018, will be referenced as 1 RP and the Motion to Withdraw Guilty Plea hearing on August 8, 2019 will be referenced as 2 RP.

Based on all of the reasons cited in the State's Response to Hamilton's motion to withdraw guilty plea and the trial court's verbal ruling, the State agrees with appellate defense counsel that the trial court correctly ruled that his offender score was correctly calculated. 2 RP 13, CP 80-83, 86, Brief of Appellant, at 3. Hamilton filed a notice of appeal after the trial court denied his motion to withdraw his guilty plea, over one year after he was initially sentenced. CP 90-93.

C. ARGUMENT.

1. This appeal is untimely.

A notice of appeal must be filed within 30 days after entry of the decision of the trial court the party filing the notice wants reviewed. RAP 5.2(a). "The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal." RAP 18.8(b). In this case, the judgment and sentence was entered on August 28, 2018. CP 15-25. The order denying Hamilton's motion to withdraw his plea was entered on August 8, 2019. CP 86. The notice of appeal was filed on September 9, 2019, but the date above Mr. Hamilton's signature is August 30, 2019. CP 90-93. The only order in Hamilton's case that was arguably reviewable in a

timely manner at the time the notice of appeal was filed was the order denying the motion to withdraw the plea, not the judgment and sentence entered a year prior to the notice.

Hamilton assigns no error to the order entered on August 8, 2019. The Brief of Appellant provides no reason why a notice of appeal with regard to the judgment and sentence was not timely filed. For the reasons included in the next section, the State is not asking that this appeal simply be dismissed, but the State requests that this Court note in its ruling that the judgment and sentence became final for purposes of RCW 10.73.090 thirty days after it was entered.

2. The State does not oppose treating this late filed appeal as a collateral attack on the judgment and sentence and remanding for entry of an order modifying the provision for interest on legal financial obligations.

Despite the untimeliness of this appeal, the State recognizes that Hamilton is correct that the judgment and sentence included outdated boilerplate language regarding interest on non-restitution Legal Financial Obligations (LFOs). Effective June 7, 2018, “no interest shall accrue on non-restitution legal financial obligations.” RCW 10.82.090(1). The statute also now states “The court shall waive all interest on the portions of legal financial obligations that

are not restitution that accrued prior to June 7, 2018.” RCW 10.82.090(2)(a). While the boilerplate language included in Hamilton’s judgment and sentence refers to the correct RCW, the language included reflects the law as it existed prior to June 7, 2018. CP 21.

Given the current form of RCW 10.82.090, it is clear that Hamilton is not required to pay interest on non-restitution legal financial obligations as he was sentenced after June 7, 2018. CP 84. The Administrative Office of the Courts provided a modified form for a felony prison judgment and sentence that reflects the change in the law on its website in July of 2019.<sup>2</sup> To reflect the current state of the law, the language should read:

The restitution obligations imposed in this judgment shall bear interest from the date of the judgment until paid 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. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

The State does not oppose remand for entry of an order substituting that language for the erroneously included language.

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<sup>2</sup> See, [www.courts.wa.gov/forms/?fa=forms.contribute&formID=18](http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=18), at form WPF CR 84.0400 P; 07/2019.

D. CONCLUSION.

The judgment and sentence in this case became final when a notice of appeal was not filed within 30 days of its entry. RAP 5.2(a), RCW 10.73.090(3). The State understood the notice of appeal related to this case to be an appeal of the order denying Hamilton's motion to withdraw guilty plea, as was acknowledged in the Brief of Appellant. Brief of Appellant, at 3. Because Hamilton's LFO argument is correct, the State does not oppose an order remanding the case to the Superior Court to amend the interest on LFOs provision to reflect the current version of RCW 10.82.090, but respectfully request that this Court note that the appeal was untimely for purposes of RCW 10.73.090(3)(b).

Respectfully submitted this 3rd day of June, 2020.

  
\_\_\_\_\_  
Joseph J.A. Jackson, WSBA# 37306  
Attorney for Respondent

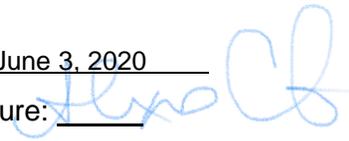
**DECLARATION OF SERVICE**

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: June 3, 2020

Signature: \_\_\_\_\_

A handwritten signature in blue ink, appearing to be "John C. B.", written over the signature line.

**THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE**

**June 03, 2020 - 1:58 PM**

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