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Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 29967-8-III

STATE OF WASHINGTON, Respondent,

v.

FRANK WILLIAM HAVENS, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

Frank Havens was ordered to pay restitution by order dated October 26, 1992. More than ten years after the order was entered, the trial court entered an order extending jurisdiction for purposes of enforcing Havens' legal financial obligations. Havens filed a motion to dismiss, arguing that under *State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525 (2008), his legal financial obligations were no longer enforceable. Without addressing *Gossage*, the trial court denied Havens' motion on the grounds that his case had been in warrant status since 1999. Because nothing in *Gossage* nor in former statutory language provides that the time to extend jurisdiction to enforce legal financial obligations is tolled by the issuance of a warrant, the trial court erred in entering an amended order *nunc pro tunc* extending jurisdiction beyond the ten-year enforcement period. The order should be reversed and the case remanded to discharge Havens' legal financial obligations and for any further appropriate proceedings.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR 1: The trial court erred in denying Havens' motion to dismiss.

ASSIGNMENT OF ERROR 2: The trial court erred in allowing jurisdiction to be extended beyond the ten-year period established in *Gossage* on the grounds that the case was in warrant status, because nothing in former RCW 9.94A.637 provided for tolling of the enforcement period.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE 1: Does former statutory language, as interpreted by *Gossage*, preclude the enforcement of legal financial obligations against Havens when the order extending jurisdiction was not entered until more than ten years after the order imposing restitution was entered? YES.

ISSUE 2: Under former statutory language and *Gossage*, does the issuance of a bench warrant toll the ten year time period in which legal financial obligations can be enforced, permitting entry of an order extending jurisdiction beyond the ten-year enforcement period? NO.

IV. STATEMENT OF THE CASE

Frank Havens was sentenced for various crimes under three cause numbers on October 2, 1992. CP 23-26. At that time, the trial court imposed legal financial obligations of $610 and reserved restitution until a hearing on October 26, 1992. CP 24-25. Restitution was imposed in the amount of $3,885.68.[1] CP 28.

Subsequently, in October 1999, a bench warrant was issued against Mr. Havens. CP 29. On December 31, 2002, the court issued orders extending jurisdiction over the causes for an additional ten-year period.[2] CP 32-34. The orders do not address the enforcement of the outstanding restitution obligations and other legal financial obligations, nor do they cite to any statutory authority.

Havens filed a motion to dismiss in which he argued that the order extending jurisdiction was entered two months too late and requesting that the trial court issue a certificate of discharge and cancel the bench warrant outstanding against him. CP 15-17. At the hearing on Havens' motion, the State argued that the issuance of the bench warrant tolled the

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[1] The State noted at the hearing on Havens' motion that "these cases are too old for us to have our files." RP 1. The order imposing restitution is not a part of the record, which raises the additional question whether restitution may be enforced when the order imposing it apparently no longer exists.

[2] The record does not show whether Havens received notice and an opportunity to be heard prior to the entry of the order.

jurisdictional period and that the order extending jurisdiction was, consequently, timely entered. RP 2, 4. The trial court acknowledged that Havens did not receive notice of the 2002 order prior to its entry. RP 3, 4. Ultimately, the trial court dismissed one of the original causes on the grounds that it had not been in warrant status. RP 4. As to the remaining two causes, the trial court issued orders *nunc pro tunc* extending jurisdiction over the matter, referencing the bench warrants that had been issued. CP 49.

Havens timely appeals.[3] CP 61.

V. ARGUMENT

The State apparently does not contest that the orders extending jurisdiction, entered on December 31, 2002, were entered more than ten years after the orders imposing restitution. *See* RP 4 (agreeing to dismiss one case that was not on warrant status). Instead, the State's position was that the issuance of warrants on the remaining cases tolled the jurisdictional period during which the legal financial obligations could be enforced. But this position is not borne out by the statutory language or the case law.

[3] On August 12, 2011, this court entered an order denying its motion to dismiss the appeal as untimely due to extraordinary circumstances and to prevent a miscarriage of justice pursuant to RAP 18.1(b).

An offender's punishment is governed by the law in effect at the time the offense was committed. *State v. Schmidt,* 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001). At the time of Havens' sentence,[4] the applicable law provided,

> All legal financial obligations that are ordered as a result of a conviction for a felony, may also be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. These obligations may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period is longer.

Laws of 1989, ch. 252, sec. 3(2). In addition, current RCW 9.94A.753(4) addresses pre-existing restitution requirements and states:

> For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution.

This language is exactly the same language interpreted by the Washington Supreme Court in *State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525 (2008). In *Gossage*, the Court reviewed the plain language of the statutes at issue and determined that legal financial obligations for

[4] The dates of Havens' offenses do not appear in the record.

offenses committed before July 2000 "expire and become void unless the superior court extends them for another 10 years prior to the expiration of the first period." 165 Wn.2d at 8.

Here, as in *Gossage*, the order extending jurisdiction was not timely entered because it was not entered within ten years of the judgment and sentence. The statutory language plainly provides that the order must be entered before the initial ten-year period expires. That did not happen in this case. Consequently, the order extending jurisdiction was ineffective and Havens' legal financial obligations are no longer enforceable.

The State is expected to contend that because a warrant was issued in Havens' case in 1999 that remained active at the time of the hearing on Havens' motion, the time period in which jurisdiction could be extended was tolled. But this same argument was previously rejected in *In re Pers. Restraint of Sappenfield*, 138 Wn.2d 588, 980 P.2d 1271 (1999). There, the Washington Supreme Court observed that nothing in the language applicable to enforcement of restitution orders provides for tolling, and that the court's ability to retain jurisdiction over a defendant is not identical to the court's ability to extend the time period in which a restitution order can be enforced. *Sappenfield*, 138 Wn.2d at 593-94.

Subsequent opinions have applied the holding in *Sappenfield* to similar arguments by the State that the time period to enforce restitution orders can be extended by subsequent periods of incarceration resulting from violations of conditions of community custody or failure to pay legal financial obligations. *See, e.g., In re Pers. Restraint of Spires*, 151 Wn. App. 236, 211 P.3d 437 (2009); *State v. Olson*, 148 Wn. App. 238, 198 P.3d 1061 (2009).

In short, the tolling argument relied upon by the trial court in this case has already been rejected as applied to restitution orders. Consequently, the fact that an active bench warrant was outstanding in the cases under which Havens was subject to restitution orders does not impact the time period in which the restitution order must be enforced or the ten-year period extended.

VI. CONCLUSION

For these reasons, the trial court's order was erroneous and Havens' motion to dismiss the legal financial obligations and enter a certificate of discharge should have been granted. This court should reverse the amended order *nunc pro tunc* extending jurisdiction and remand the cause for further proceedings.

RESPECTFULLY SUBMITTED this 13th day of February, 2012.

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DECLARATION OF SERVICE

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 13th day of February, 2012 in Walla Walla, Washington.

Andrea Burkhart