

FILED

MAY 29, 2015
Court of Appeals
Division III
State of Washington

No. 32664-1 III (consolidated with 32674-8-III)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

CHRISTOPHER DOUGLAS REMINGTON,
Appellant.

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY
The Honorable Ellen Kalama Clark

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

The trial court is not authorized to impose separate legal financial obligations (LFOs) when two (2) cases are sentenced at the same time.

II. ISSUES PRESENTED

Are separate criminal cases containing separate informations filed under separate cause numbers subject to separate legal financial obligations?

III. STATEMENT OF THE CASE

After failing Drug Court, Defendant was convicted and sentenced on five counts of residential burglary under Spokane County Superior Court cause number 13-1-02991-1. CP 23. He was also convicted of two additional counts of residential burglary, and one count of attempted residential burglary under a separate cause number, 13-1-02920. CP 7.

The defendant received LFO obligations under each separate cause number, totaling \$800 on cause number 13-1-02991-1, CP 103-104; and totaling \$800 on cause number 13-1-02920, CP 89. He now claims his two separately imposed LFO's of \$800 each for a total of \$1600 should result in a LFO of \$800 because sentences were ordered to run concurrently.

IV. ARGUMENT

SEPARATE CRIMINAL CASES CONTAINING SEPARATE INFORMATIONS FILED UNDER DIFFERENT CAUSE NUMBERS ARE SUBJECT TO SEPARATE LEGAL FINANCIAL OBLIGATIONS EVEN WHEN THE SENTENCES ARE ORDERED TO RUN CONCURRENTLY.

RCW 9.94A.589 sets forth the methods by which the offender score is calculated, how the sentencing range for current offenses is determined, and when *confinement* is to be served concurrently or consecutively.¹ It does not mention LFO's.

¹ RCW 9.94A.589(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW [9.94A.535](#). "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW [9.94A.515](#) shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW [9.41.040](#) for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the

The defendant had a \$500 Crime Victim Assessment imposed in each case. Victim assessments are governed by RCW 7.68.035, which states in relevant part:

(1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, *there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and*

felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW [9.95.210](#) or [9.92.060](#), or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW [9.94A.535](#), if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors. (Emphasis added).

The statute is clear. It mandates a \$500 penalty be imposed “*for each case or cause of action that includes one or more convictions of a felony.*” This is in addition to any other penalty or fine. The statute is clear and unambiguous. If a statute's plain language is subject to only one interpretation, this court’s inquiry ends because plain language does not require construction. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). Therefore a \$500 victim assessment was properly ordered for each separate cause of action.

There was a \$100 DNA fee imposed in each case. A separate sentence was imposed in each case. The DNA collection fee is governed by RCW 43.43.7541.¹ RCW 43.43.7541 provides:

DNA identification system — Collection of biological samples — Fee.

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94.A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee

collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754. (Emphasis added).

Defendant received two sentences. The fact that the commitment time was ordered to run concurrently does not exempt him from the plain language of the statute. “In 2008 the legislature passed an amendment to make the fee mandatory regardless of hardship. The current version simply states that ‘Every sentence ... must include a fee of one hundred dollars.’” RCW 43.43.7541. *State v. Thompson*, 153 Wn. App. 325, 336, 223 P.3d 1165, 1170 (2009). The same holds true for the \$200 court costs separately imposed in each cause number. RCW 10.46.190.

If defendant’s claim that concurrent sentences requires LFO’s separately imposed be halved or subsumed in the greater amount, when two cases are being sentenced on the same date, then restitution orders for different victims in different cause numbers would be halved for each victim anytime the defendant was sentenced on two separate cases on the same sentencing date. Under Defendant’s theory, if twenty burglary victims were equally divided among ten separate informations (two per information), and were each entitled to \$2000 restitution; the total restitution would be \$40,000. However, if the informations were sentenced on the same date, the defendant would only be responsible for \$4,000 of restitution.

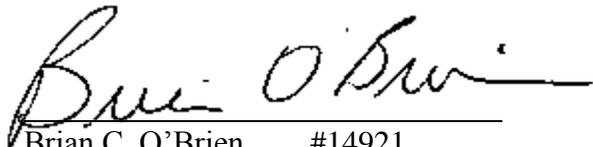
Courts should avoid strained, unlikely, or unrealistic consequences. *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990).

V. CONCLUSION

RCW 9.94A.589 does not demand that the LFOs be cut in half because the defendant was sentenced on two separate informations on the same date. Because the costs are governed by separate statutes, and because RCW 9.94A.589 sets forth the methods by which the offender score is calculated, the sentencing range for current offenses is determined, and how the determination of whether *confinement* is to be served concurrently or consecutively, therefore, the defendant's convictions and sentences should be affirmed.

Dated this 29 day of May, 2015.

LAWRENCE H. HASKELL
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

Brian C. O'Brien #14921
Deputy Prosecuting Attorney
Attorney for Respondent

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on May 29, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Dennis Morgan
nodblspk@rcabletv.com

and mailed a copy to:

Christopher Douglas Remington, DOC 375407
Olympic Correction Center
11235 Hoh Mainline Rd.
Forks, WA 98331

5/29/2015
(Date)

Spokane, WA
(Place)

Crystal McNees
(Signature)