

FILED

MARCH 30, 2015

Court of Appeals
Division III
State of Washington

NO. 32799-0-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JUAN MANUAL REYES,

Defendant/Appellant.

BRIEF OF APPELLANT

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RULES AND REGULATIONS

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ASSIGNMENTS OF ERROR

1. The sentencing court imposed the wrong term of community custody.

2. The sentencing court improperly imposed \$489.18 for investigator fees as a portion of the legal financial obligations (LFOs).

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Since first degree robbery is not a serious violent offense did the sentencing court err by imposing a term of thirty-six (36) months of community custody?

2. Does RCW 9.94A.760 authorize reimbursement for investigator fees in contravention of CrR3.1(f)?

STATEMENT OF CASE

Officer Pruneda of the Pasco Police Department was advised of a motor vehicle theft on February 25, 2014. He contacted Gabriel Valdovinos near 15th Avenue and Court Street in Pasco. Juan Manual Reyes was identified as the individual who took the car. (RP 10, ll. 24-25; RP 11, ll. 10-15; RP 12, ll. 9-10; RP 13, ll. 11-12; RP 14, l. 1)

On March 1, 2014 Officer McGee of the Kennewick Police Department was dispatched to an address near the intersection of Clearwater and Neal. Mr. Reyes was observed at a bus stop and arrested. When the officer conducted a pat-down search he discovered what “appeared to be a handgun.” (RP 27, ll. 22-24; RP 28, ll. 21-25; RP 29, ll. 8-10; RP 30, ll. 7-9; RP 31, ll. 16-20; RP 32, ll. 18-22)

While being transported from Kennewick to the Pasco Police Department by Officer Perry, Mr. Reyes told him that he had the keys to the car and had been allowed to use it. (RP 40, ll. 10-12; RP 41, ll. 1-2; RP 47, ll. 5-9)

Mr. Valdovinos is acquainted with Mr. Reyes. He also knows Mr. Reyes’s former girlfriend, Evelyn Guizar. Ms. Guizar had called him on February 25th for a ride. (RP 48, ll. 20-21; RP 49, ll. 20-23; RP 51, ll. 3-13; RP 78, ll. 1-8)

When Mr. Valdovinos arrived at their location Mr. Reyes sat in the front passenger seat. Ms. Guizar was on the rear driver’s side. Mr. Reyes had Mr. Valdovinos drive to an area near 12th and Sylvester in Pasco. At that point he removed the keys from the ignition and pointed what appeared to be a gun at Mr. Valdovinos. He told him to get out of the car and then drove away. (RP 52, l. 22 to RP 53, l. 4; RP 53, l. 20 to RP 54, l. 2; RP 82, ll. 3-9)

Mr. Valdovinos walked to a friend's house and called 9-1-1. His car was found the next day in the parking lot near an apartment in Kennewick. (RP 56, ll. 6-17; RP 57, ll. 2-9)

An Information was filed on March 4, 2014 charging Mr. Reyes with first degree robbery by displaying what appeared to be a firearm. (CP 103)

Several continuances were granted. Trial commenced on August 20, 2014. (CP 84; CP 88; CP 89; CP 100)

A jury found Mr. Reyes guilty of first degree robbery. (CP 20)

Judgment and Sentence was entered on September 30, 2014. Mr. Reyes was sentenced to forty-two (42) months in prison based upon an offender score of one (1). The trial court also imposed thirty-six (36) months community custody. LFOs included \$489.18 for reimbursement of defense investigator fees. (CP 7)

Mr. Reyes filed his Notice of Appeal on September 30, 2014. (CP 5)

SUMMARY OF ARGUMENT

The sentencing court imposed the wrong term of community custody. It also improperly imposed \$489.18 for investigator fees.

Mr. Reyes's case needs to be remanded for correction of the errors in the Judgment and Sentence.

ARGUMENT

I. COMMUNITY CUSTODY

The sentencing court imposed thirty-six (36) months of community custody on Mr. Reyes's first degree robbery conviction. Paragraph 4.6A.(1) of the Judgment and Sentence states that thirty-six (36) months of community custody may only be imposed for sex offenses and serious violent offenses. Eighteen (18) months of community custody applies to violent offenses.

First degree robbery is not a serious violent offense. It is only a violent offense. Thus, eighteen (18) months of community custody is the correct term to be imposed. (Appendix "A" - Section 5: Offense Lists - Serious Violent Offenses; Appendix "B" - First Degree Robbery Scoring Sheet)

II. LFOs

The sentencing court, under paragraph 4.1 of the Judgment and Sentence, imposed court appointed defense expert and other defense costs in the amount of \$489.18.

RCW 9.94A.760(1) provides, in part:

Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must ... segregate this amount among the separate assessments made for restitution, **costs**, fines, and other assessments required by law. ...

(Emphasis supplied.)

Defense investigator costs are not restitution. They are not fines. They do not constitute an assessment.

If the reimbursement of investigator fees can be authorized, the authorization must come pursuant to an existing statute.

“Statutes authorizing costs are in derogation of the commonlaw and should be strictly construed.” *State v. Buchanan*, 78 Wn. App. 648, 651, 898 P.2d 862 (1995).

RCW 9.94A.760(1), by itself, does not support imposition of defense investigator fees.

Costs are defined in RCW 10.01.160(2) which states, in part:

Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant They cannot include expenses inherent in providing a constitutionally guaranteed jury trial

CrR 3.1(f)(1) provides:

A lawyer for a defendant who is financially unable to obtain investigative, expert, or other services **necessary to an adequate defense** in the case may request them by a motion to the court.

(Emphasis supplied.)

Defense counsel obtained the appropriate authorization from the court to hire an investigator. The investigator's fees totaled \$489.18.

CrR 3.1(f)(2) provides, in part:

Upon finding that services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to whom the administration of the program may have been delegated by local court rule, shall authorize the services.

CrR 3.1(f)(2) requires a finding of indigency. When a criminal defendant is indigent he/she is entitled to certain constitutional rights as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Const. art. I, §§ 3 and 22.

The Fifth Amendment provides, in part:

No person ... shall be ... deprived of life, liberty, or property, without due process of law

The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment provides, in part:

... No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Due process, equal protection, and the constitutional right to assistance of counsel (including experts) is guaranteed to anyone charged with a criminal offense. When a person, whether indigent or not, cannot afford an expert witness, the court is authorized, pursuant to CrR 3.1(f), to appoint an expert.

In *State v. Punsalan*, 156 Wn.2d 875, 880, 134 P.3d 934 (2006), the Court stated: “Indigent criminal defendants represented by private

counsel are entitled to expert assistance necessary to an adequate defense under CrR 3.1(f).”

Const. art. I, § 3 states: “No person shall be deprived of life, liberty, or property, without due process of law.”

Const. art. I, § 22 provides, in part:

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, ... to meet the witnesses against him face-to-face, to have compulsory process to compel the attendance of witnesses in his own behalf ... and the right to appeal in all cases
....

In *State v. Anderson*, 33 Wn. App. 517, 519, 655 P.2d 1196 (1982), the Court ruled that a criminal defendant’s constitutional right to an expert witness is no broader than what’s provided in CrR 3.1(f).

Nevertheless, in order to have effective assistance of counsel, and in particular where there is a problem locating witnesses, an investigator’s services is absolutely necessary.

Finally, RCW 10.01.160(1) states, in part: “The court **may** require a defendant to pay costs. ...” (Emphasis supplied) Imposition of costs is thus discretionary with the Court.

CONCLUSION

The sentencing court erred by imposing the thirty-six (36) months of community custody. The correct term of community custody is eighteen (18) months.

The requirement to reimburse the State for defense investigator fees is not specifically authorized by statute.

Mr. Reyes' case needs to be remanded to correct the Judgment and Sentence.

DATED this 30th day of March, 2015.

Respectfully submitted,

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APPENDIX “A”

SECTION 5

OFFENSE LISTS

SERIOUS VIOLENT OFFENSES RCW 9.94A.030(45)

Statute (RCW)	Offense	Class	Seriousness Level
10.95.020	Aggravated Murder 1	A	XVI
9A.36.011	Assault 1	A	XII
9A.36.120	Assault of a Child 1	A	XII
9A.32.075	Homicide by Abuse	A	XV
9A.40.020	Kidnapping 1	A	X
9A.32.060	Manslaughter 1	A	XI
9A.32.030	Murder 1	A	XV
9A.32.050	Murder 2	A	XIV
9A.44.040	Rape 1	A	XII

Attempt, Solicitation or Conspiracy to commit one of these felonies

Any federal or out-of-state conviction for an offense that, under the laws of this state, would be a felony classified as a serious violent offense

The Sentencing Council is not liable for errors or omissions in this manual, for sentences that may be inappropriately calculated as a result of a user's error, or for any other written or verbal information related to adult or juvenile sentencing. The sentencing sheets are intended to provide assistance in most cases but do not cover all permutations of the sentencing rules. If you find any errors or omissions, we encourage you to report them to the Sentencing Council.

APPENDIX “B”

ROBBERY FIRST DEGREE

RCW 9A.56.200
CLASS A – VIOLENT

OFFENDER SCORING RCW 9.94A.525(8)

If it was found that this offense was committed with sexual motivation (RCW 9.94A.533(6)) on or after 7/01/2006, use the General Violent Offense with a Sexual Motivation Finding scoring form on page 181.

If the present conviction is for a felony domestic violence offense where domestic violence was plead and proven, use the General Violent Offense Where Domestic Violence Has Been Plead and Proven scoring form on page 179.

ADULT HISTORY:

Enter number of serious violent and violent felony convictions x 2 = _____
Enter number of non-violent felony convictions x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 2 = _____
Enter number of non-violent felony dispositions x 1 = _____

OTHER CURRENT OFFENSES:

(Other current offenses other than those on this page are current offender scores)

Enter number of other serious violent and violent felony convictions x 2 = _____
Enter number of other non-violent felony convictions x 1 = _____

STATUS:

Was the offender on community custody on the date the current offense was committed? + 1 = _____

Total the last column to get the **Offender Score** (Round down to the nearest whole number)

SENTENCE RANGE

	Offender Score									
	0	1	2	3	4	5	6	7	8	9+
LEVEL IX	31m - 41m	42m - 48m	49.5m - 53.5m	54.5m - 58.5m	59.5m - 65.5m	66.5m - 72.5m	73.5m - 80.5m	81.5m - 87.5m	88.5m - 100.5m	101.5m - 150m

- ✓ For attempt, solicitation, conspiracy (RCW 9.94A.595) see page 20 or for gang-related felonies where the court found the offender involved a minor (RCW 9.94A.1003) see page 167 for standard range adjustments.
- ✓ For deadly weapon enhancement, see page 170.
- ✓ For sentencing alternatives, see page 160.
- ✓ For community custody eligibility, see page 168.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 165.

The Cascade Forensic Council is not liable for errors or omissions in this manual, for sentences that may be inappropriate or calculated as a result of a miscalculation or court's reliance on the manual, or for any other written or verbal information related to adult or juvenile sentencing. The scoring sheets are intended to provide assistance in many cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Cascade Forensic Council.

NO. 32799-0-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	FRANKLIN COUNTY
Plaintiff,)	NO. 14 1 50125 0
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JUAN MANUAL REYES,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 30th day of March, 2015, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

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