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Court of Appeals
Division III
State of Washington

33707-3-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JAMES E. BOYD JR., APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred by failing to consider whether Boyd's payment of legal financial obligations (LFOs) will impose manifest hardship on him or on his immediate family.

2. The court erred in finding "3. The defendant is incarcerated. He has very minimal, if any, income, but also has no living expenses. All of his/her daily needs (housing, food, clothing, etc.) are provided by the State of Washington." CP 505, 519, 561, 575.

3. The court erred in finding "4. The defendant has not established 'manifest hardship' as required by the statute." CP 505, 519, 561, 575.

II. ISSUES PRESENTED

1. Whether the order denying the defendant's motion to modify or terminate LFOs is appealable?

2. Whether the issues presented are now moot where the defendant has stipulated to having willfully violated the Legal Financial Obligations order, and the court has reset his payment plan?

3. Whether the trial court abused its discretion in denying the defendant's motion to modify or terminate LFOs where the defendant was incarcerated, and had all of his daily living expenses paid for him, and agreed to seek work both while in custody, and once released?

III. STATEMENT OF THE CASE

The defendant has appealed from the Superior Court's denial of his motion to modify or terminate legal financial obligations on four separate cause numbers.[1] In denying the defendant's motion to modify or terminate his LFOs, the trial court found that because the defendant was incarcerated at the time of the motion, and his daily needs were provided for by the State, he did not establish "manifest hardship" as required by RCW 10.01.160(4). CP 585, 587, 589, 591.

The defendant was found in violation of the terms of his LFO orders on numerous previous occasions. CP 20, 63-68, 70-77, 96-103. The most recent orders enforcing Mr. Boyd's LFOs were stipulated to by the defendant on August 9, 2013 and were signed by the court on August 12, 2013. CP 96-103. In those orders, the court found that the defendant had willfully violated the terms of the previous orders by failing to pay his LFOs as directed and by failing to provide an updated address as directed. CP 96-103. No sanction was imposed as a result of the court's finding that the defendant violated the order, and the defendant's

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[1] Superior Court case numbers 98-1-00427-5, 01-1-03039-7, 05-1-00985-4 and 08-1-02447-5. For purposes of appeal, the State accepts the defendant's estimates of his amounts owing on each case as accurate. Additionally, the state accepts the defendant's recitation of the general procedural history of the cases on appeal, with the exceptions as noted above; however, it does appear that a typo exists in the appellant's brief on page 4, wherein the defendant states he was incarcerated on his 2008 case for 182 months. The judgment and sentence reflects that he was ordered to be incarcerated for 12 months and a day. CP 87.

payments were modified to $5.00 per month on each case; the clerk of the court was directed to review his payments in October of 2014. CP 96-103. Those orders cautioned him that failure to comply with the terms of the order could result in the issuance of a bench warrant for his arrest. CP-96-103.

The Court Collection Deputy alleged on October 20, 2014 that the defendant had failed to pay his LFOs as previously ordered, and had failed to report a change in circumstances that affected the defendant's ability to make payments (i.e., changes in income and whether the defendant was receiving SSI). CP 104-111. Due to these allegations, the State moved the court for bench warrants for failing to comply with the terms and conditions of his Judgment and Sentence on each case. CP 684-689, 691-696, 698-703, 705-710. The court then issued warrants for the defendant's arrest on December 23, 2014. CP 690, 697, 704, 711.

The defendant, who was incarcerated on other matters, then wrote the court a series of letters. In the defendant's first letter to the court (January 30, 2015), he indicated that he had been incarcerated at the beginning of September 2014, and requested an agreement on "making new payments for when I get out into the community." The Honorable Judge Sypolt responded that "incarceration is not sufficient justification to modify or terminate a LFO," and that until the defendant

complied with the conditions of the LFO order, the warrants would remain in effect. CP 112-193.

The defendant's second letter to the court (February 12, 2015), was reviewed by the Honorable Michael Price, who also responded to the defendant that incarceration was an insufficient justification to terminate or modify an LFO, and that the warrant would remain in effect until the defendant complied with the terms of the order. CP 195 -205.

The defendant then sent another letter requesting relief from his LFOs along with his motion to modify and/or terminate LFOs,[2] proposed orders quashing the bench warrants, and proposed orders to terminate and/or modify legal financial obligations. In his boilerplate motion, the defendant also requested the court "order an evidentiary hearing to assist the court in developing a factual record" to properly assess the defendant's likely future ability to pay and whether or not the LFOs place an undue burden on the defendant or the defendant's family, or in the alternative, modification of the order, or other relief as deemed acceptable by the court. CP 251, 286, 329, 356. The defendant included documents demonstrating that he was in custody at the time the warrants were

[2] Defendant's note for motion to docket court calendar indicated no oral argument was requested on defendant's motions. CP 259, 290, 325, 364.

issued.[3] CP 232, 279, 302, 337. The defendant's request for modification or termination of his LFOs was predicated on the financial hardship he alleged would befall him when he was released from custody.[4] He did express, however, his desire to obtain a job once released from custody. CP 252, 287, 330, 357. Judge Sypolt acknowledged receipt of these letters and reiterated that incarceration is not a sufficient justification to modify or terminate an LFO. CP 226, 261, 296, 331.

The defendant corresponded with the court again on March 2, 2015, at which time the defendant filed a motion and affidavit requesting the court quash the warrants on each of the cases. CP 408-504. The documents included in defendant's third correspondence do not include a renewal of the defendant's motion to modify or terminate LFOs, CP at

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[3] The records indicate the defendant was incarcerated on Spokane County case number 14-1-03161-1.

[4]

> I am backed up against the wall on my LFOs. I can't work. I get GAX on the outs for mental health disorder, deppression [sic] bipolor [sic] anixety [sic]. I'm trying to get SSI when getting out until then if I get any type of money it will only be $199.00 GAX unless I am able to a make an turn around and that will take time in life I must pay rent off $199.00 on the outs so I have my work cut out. I am being honest open with integrity. I have in the past set up payments … I am request to get these LFOs terminated for the best and not the worst for the simple fact that they are an hardship on me and I am able to start over fresh **hopefully I will be able to get a job gain stability grow up and be responsible** and live a prosocial life style in the community. Thank you.

CP 252 (emphasis added). *See also*, CP 287, 330, 357.

passim, although he did state in his affidavit supporting the warrant quash motion, "I did not and currently do not have the ability to pay or otherwise meet conditions. The warrant should be quashed and a hearing date set." CP 371, 380, 391, 400, 411, 420, 431, 440.[5] The court, again, responded by letter to the defendant, indicating that incarceration was not a reason to modify or terminate an LFO and that the warrant would remain in effect. CP 368, 388, 408, 428

Then, the defendant sent correspondence on April 22, 2015 and April 24, 2015, again including a motion and affidavit to quash the bench warrants, proposed orders quashing the bench warrants, a handwritten letter to the court, and a typed letter indicating it was the defendant's "simple desire to eliminate these warrants so that I can proceed through my prison terms without the encumbrance of unnecessary detainers. These are hindering my rehabilitation and programming efforts." CP 518, 532, 574, 583.

Mr. Boyd clarified in his handwritten letter that his issue was with the outstanding warrants for his arrest for failure to comply with the LFOs.

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[5] These documents are also included elsewhere in the Clerk's papers. See CP 468, 478, 487, 497. It appears the defendant signed one copy of the documents on March 2, 2015, and then signed the other set on March 6, 2015. The State is unable to discern any material differences between the two versions. It also appears that one copy of the correspondence was sent to the Court, and one was sent to the Clerk of the Court. *See*, CP 448, 449.

> … Your Honor I failed to pay and was in default with paying my LFOs for the following reasons. I was already locked up from Sep. 8, 2014 until this day. Your Honor I got lost in the system without you the state the clerk and Mr. McClinton knowing I was incarcerated. At this time I am doing great and I must get these warrants quashed and or recalled. I lost 10 points. I am being denied work camp and I can't go to min and get an work release as an result of the outstanding warrants. I filed 4 quash warrants or 4 warrants to be recalled.
>
> …
>
> I the defendant agrees to stay in touch with Mr. Barry McClinton court collection Deputy … I the defendant also agrees to start making payments of $10.00 an month when finding employment and prior to my release and while in work release I will remain in compliance with McClinton.
>
> …
>
> I the defendant will be granted work release if this court will agree to quash the warrants recall the outstanding warrants and in return the defendant I Mr. James Edward Boyd agrees to appear and or stay in touch with the court's clerk Mr. Barry McClinton … at my arrival at the work release facility. I the defendant also agrees to being payments prior to my release from partial confinement work release.

CP 513-517, 533-537, 569-573, 578-582.

On May 8, 2015, the court denied the defendant's request to modify and/or terminate LFOs, finding that the defendant's incarceration meant that he had very minimal, if any, income, but also no living expenses, and that the defendant did not establish manifest hardship as

required by the statute. CP 505, 519, 561, 575. It is from that order that the defendant now appeals.

Subsequent to the filing of defendant's appeal, on February 26, 2014, the State moved the court for an order recalling the LFO bench warrants. CP 712-739.[6] The court granted the motion and the warrants were recalled. CP 712-739.

Also on February 26, 2016, the court signed a modification order on each of the four cases at issue here. In those orders, the defendant waived his right to a hearing on the LFO violations and agreed to a modification of the LFO order. CP 712-739. The modification of the LFO order stated that the court found the defendant willfully failed to pay his LFOs, but did not impose any punishment for the violation. CP 712-739. The defendant agreed to pay $5.00 per month on each case beginning May 1, 2016. CP 712-739. The defendant was subsequently released from incarceration and appeared, as ordered, at the Spokane County Clerk's Office. CP 712-739.

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[6] On April 26, 2016, the State filed a Second Supplemental Designation of Clerk's Papers with the Spokane Superior Court. It is anticipated that these documents will be designated as Clerk's Papers pages 712 through 739.

These clerk's papers include the motion to recall the warrants, the return of the recalled warrant, the defendant's stipulation to LFO violation and amended order, and two documents indicating that the defendant has made out of custody contact with the Superior Court Clerk's office.

IV. ARGUMENT

A. THE COURT'S DECISION DENYING MODIFICATION OR TERMINATION OF THE DEFENDANT'S LFOS IS NOT APPEALABLE BECAUSE IT IS NOT A FINAL DECISION.

RCW 10.01.160(3) provides that the sentencing court cannot order a defendant to pay court costs unless the defendant is or will be able to pay them. RCW 10.01.160(4) provides that a defendant, who is not in contumacious default, may seek relief from legal financial obligations "at any time" by seeking remission of the payment of costs or any unpaid portion thereof on the basis of manifest hardship. Courts review a denial of a defendant's motion for a reduction of costs for abuse of discretion. *State v. Campbell*, 84 Wn. App. 596, 600-01, 929 P.2d 1175 (1997).

As a preliminary inquiry, however, it is necessary for the court to determine whether the orders at issue in this case are appealable. They are not. In *State v. Smits*, the court addressed the very issue presented here, whether a trial court's denial of a defendant's motion for remission of LFOs could be appealed. 152 Wn. App. 514, 216 P.3d 1097 (2009). The court examined RAP 2.2 and held that the denial of motions for remission of LFOs "cannot be final under RAP 2.2(a)(1) because the order to pay LFOs as part of the judgment and sentence is condition, and RCW 10.01.160(4) allows a defendant to file a petition to modify or waive LFOs 'at any time'." *Id*. at 523. Additionally, the court held that a denial of

such a motion is not appealable under RAP 2.2(a)(9) as an order denying a motion to amend the judgment, holding that orders requiring repayment of LFOs are conditional in nature, and repayment is not mandatory "unless several conditions are met" and the amount imposed is always subject to modification. *Id*. at 524. The *Smits* court also found that the defendant's appeal was barred by RAP 3.1 as the defendant was not an aggrieved party, because the State had not yet sought to enforce payment. *Id*. at 525.

Here, defendant creatively attempts to circumvent the holding of *Smits* by alleging that he is aggrieved because he should have been provided a full evidentiary hearing on the issue of whether his legal financial obligations present a manifest hardship to him. Appellant's Br. at 23. However, the defendant has provided no authority that would suggest that every inmate who wishes to seek remission has the right to be transported back to each individual Superior Court in which he or she has been ordered to pay LFOs for a full evidentiary hearing, especially when, as here, the defendant not only requested remission and the recall of the LFO warrants *to enable him to qualify for work release*,[7] but also is subsequently released from incarceration, and is granted a modification of the LFO orders, as discussed below. Furthermore, although his boilerplate

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[7] CP 513-517, 533-537, 569-573, 578-582.

motion for remission requests an evidentiary hearing, or in the alternative, other forms of relief, CP 251, 286, 329, 356, his handwritten motion indicated that no oral argument was needed. CP 259, 290, 325, 364. This indication on the note for hearing reasonably indicates that an evidentiary hearing was not, in fact, requested or needed.

Furthermore, *Smits* is still good law, even in light of *Blazina*, contrary to defendant's assertions. Appellant's Br. at 24. *Blazina*, of course, stands for the principle that trial courts must engage in the statutorily mandated inquiry into a defendant's ability to pay prior to imposing Legal Financial Obligations at sentencing. 182 Wn.2d 827, 344 P.3d 680 (2015). Its decision has no impact, whatsoever, on whether the denial of a remission request (well after a sentence has been imposed), is an order that may be appealed under the Rules of Appellate Procedure.

B. THE ISSUES PRESENTED ON APPEAL ARE NOW MOOT BECAUSE THE LFO WARRANTS WERE RECALLED AND THE DEFENDANT STIPULATED TO A WILFUL VIOLATION OF HIS LFO ORDER.

A case is moot "when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005). In

general, a case presenting a moot issue on appeal is dismissed.[8] *City of Seattle v. Johnson*, 58 Wn. App. 64, 66–67, 791 P.2d 266 (1990).

Here, the issue of whether the court improperly denied the defendant's motion to modify or terminate his legal obligations is moot because the defendant subsequently moved[9] for modification of his LFO order, and stipulated that his violation of the preceding LFO order was willful. CP 712-739. Although the defendant maintained he was incarcerated after September 8, 2014, and was apparently unable to pay on his LFOs, he never provided an explanation for why he failed to pay at any time prior to that incarceration.[10] Thus, there was a basis for the court to find that his violation was willful.

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[8] However, a court may address a moot issue if "matters of continuing and substantial public interest are involved." *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). "Three criteria must be considered when determining whether the requisite degree of public interest exists: (1) the public or private nature of the question presented, (2) the need for a judicial determination for future guidance for public officers, and (3) the likelihood of future recurrences of the issue." *Matter of Eaton*, 110 Wn.2d 892, 895, 757 P.2d 961 (1988). A fourth factor may also be considered: the level of genuine adverseness and the quality of advocacy of the issues. *Hart v. Social & Health Svcs.*, 111 Wn.2d 445, 448, 759 P.2d 1206 (1988).

[9] The Defendant and the State were joint movants for the February 2016 modification order. CP 712-739.

[10] The Clerk of the Court reviewed the defendant's compliance with the 2013 LFO modification orders, CP 96-103, in October 2014. The clerk reported to the court that on one of the defendant's cases, no payment had been made since 2010 and on the three remaining cases, no payment had ever been made. CP 103-111. Thus, the defendant's incarceration in September 2014 does not explain why payments had not been made as he agreed between October 1, 2013

There is no additional relief that this court can order on appeal. Both of the defendant's complaints below, i.e. the existence of the warrants, and the alleged financial hardship imposed by this LFOs have been addressed by subsequent orders of the court, and at the defendant's request and agreement.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE DEFENDANT'S MOTIONS FOR MODIFICATION OR TERMINATION OF HIS LFOS, WHERE THE DEFENDANT AGREED THAT HE WAS EMPLOYABLE, AND THE DEFENDANT HAD NO LIVING EXPENSES WHILE IN PRISON.

RCW 10.01.160(4) provides that if "payment of the amount due will impose manifest hardship on the defendant … the court may remit all or part of the amount due in costs. Assuming these orders are appealable, this court reviews the denial of remission for abuse of discretion. *See Campbell*, *supra*.

Mr. Boyd's motion for a reduction or waiver of his Legal Financial Obligations was properly denied. In the defendant's most recent correspondence to the court, he requested that the LFO warrants be recalled such that he may qualify for work release programs through the prison system. These statements are the best indication that the defendant

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(the date he was ordered to resume payments after the 2013 modification order) and September 8, 2014 (the date of his incarceration).

is able to work, and therefore, has the ability to pay his LFOs.[11] *State v. Baldwin*, 63 Wn. App. 303, 311, 818 P.2d 1116, 837 P.2d 646 (1991) (LFOs affirmed on appeal where the only evidence to support trial court's finding of ability to pay was a statement in the presentence report in which the offender described himself as employable). Additionally, RCW 72.09.111 and RCW 72.11.020 specify that "court-ordered legal financial obligations shall be paid" by incarcerated offenders. Thus, under these statutes, it would be improper for the court to waive those LFOs simply due to the defendant's incarceration. Furthermore, the defendant failed to demonstrate "manifest hardship" as required by RCW 10.01.160, because all of his basic needs were provided by the State during his incarceration; therefore, the defendant could not demonstrate manifest hardship because he did not need to pay for any living expenses while incarcerated.[12] The trial court did not abuse its discretion in making its findings or in denying the defendant's motion on this basis.

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[11] The defendant made inconsistent statements in his letters to the court about his ability to work or gain employment. In his earlier letters, he indicated that he was unable to work, and when not incarcerated, subsisted off of GAX. CP 252. However, in later letters, he indicated that he needed the warrants to be recalled so that he could find employment and qualify for minimum security and work release programs. CP 252, 513-517.

[12] Recognizing a manifest hardship under such circumstances would have the practical effect of excusing all or substantially all incarcerated offenders from payment of court costs.

V. CONCLUSION

The trial court properly denied the defendant's motion to modify or terminate his legal financial obligations. The defendant explicitly told the court that the reason he wanted the warrants to be recalled was so that he would be able to qualify for work release. Thus, he is able to work. Additionally, incarceration alone is an insufficient reason for the court to terminate legal financial obligations, because the defendant has all of his daily needs provided by the State. Thus, there can be no manifest hardship in such a case.

Moreover, the orders denying the defendant's motion for remission are not appealable because they are not final orders, and the defendant, should he now or in the future find himself unable to pay his LFOs, may again seek remission in the Superior Court. Additionally, the issues presented on appeal are moot, because the warrants for defendant's arrest for his failure to comply with the LFO orders were subsequently recalled, and the defendant requested and agreed to a modification of his LFO orders in February of 2016. This modification did not impose any sanction for his failure to pay, and reset his payment plan to $5.00 month

on each case. The State respectfully requests that the court deny the defendant any relief, as he has already received the relief he requested.

Dated this 2 day of May, 2016.

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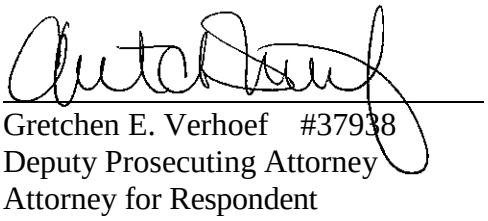
Prosecuting Attorney



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

STATE OF WASHINGTON, Respondent, v. JAMES E. BOYD JR., Appellant,	NO. 33707-3-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on May 2, 2016, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Susan Marie Gasch
gaschlaw@msn.com

5/2/2016	Spokane, WA	Kim Cornelius
(Date)	**(Place)**	**(Signature)**