

FILED

AUG 23 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

NO. 33830-4-III

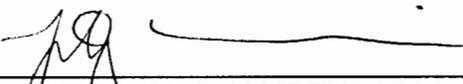
STATE OF WASHINGTON,
Respondent,

vs.

TONYA LEIGH KIEHN,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR ADAMS COUNTY
CAUSE NO. 08-1-00028-1

BRIEF OF RESPONDENT



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CASES

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2. State v. Baldwin, 63 Wn.App. 303, 312, 818 P.2d 1116 (1991) 1, 2
3. State ex rel. Carroll v. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971). 1

I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The court was within its authority to deny the defendant's motion for remission of payment of legal financial obligations (LFOs) and it was not an abuse of discretion to do so.

II. STATEMENT OF THE CASE

The Respondent accepts the statement of the case as presented by the Appellant with the addition that during the Finding of Fact hearing on September 28, 2015, the court reduced Ms. Kiehn's payments of \$5 a month on her LFOs and she acknowledged that she could make that monthly payment. (RP 27-28)

III. ARGUMENT

The court was within its authority to deny the defendant's motion for remission of payment of legal financial obligations (LFOs) and it was not an abuse of discretion to do so.

In Washington State, Appellate Courts review a decision on whether to impose LFOs for abuse of discretion. *State v. Clark*, 191 Wn.App. 369, 372, 362 P.3d 309 (2015) (citing *State v. Baldwin*, 63 Wn.App. 303, 312, 818 P.2d 1116 (1991)). Discretion is abused if it is based on untenable grounds, or is manifestly unreasonable, or is arbitrarily exercised. *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971). Determining this depends upon the

comparative and compelling public or private interests of those affected by the order or decision and the comparative weight of the reasons for and against the decision one way or the other. *Id.* Appellate Courts review the trial court's factual determination concerning the defendant's ability to pay LFOs under the "clearly erroneous" standard. *Clark*, 191 Wn.App. 369 at 372. "The inquiry is whether the court's determination is supported by the record. As such, it is like review of a trial court's reasons for imposing an exceptional sentence. Both are factual determinations and should be reviewed for clear error." *Baldwin*, 63 Wn.App. 303 at 312 (footnote 27).

In this case, the original imposition of LFOs at sentencing is not in dispute. The issue is whether the trial court erred when it did not waive any of the Ms. Kiehn's LFOs when she moved for remission of payments. The court reduced the payments from \$25 to \$5 per month. Ms. Kiehn provided the court with documentation that her situation has changed since she was sentenced and claimed that she was no longer able to make the payments on her LFOs. When the judge asked her if she could afford to pay \$5 per month she agreed that she could afford that.

IV. CONCLUSION

The defendant acknowledged that she could afford to make the payments imposed by the court in the Order Setting Payment Terms and Conditions filed on September 28, 2015. Hence, the trial court did not abuse its discretion and its ruling should be upheld.

DATED this 22 day of AUGUST, 2016.

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