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Court of Appeals
Division III
State of Washington
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35318-4-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT,

v.

DANIEL M. CAMPBELL, APPELLANT.

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. Whether the trial Court erred in delaying payment obligations?
2. Whether this Court should impose costs on appeal?

II. STATEMENT OF THE CASE

In December of 2016, Daniel Campbell punched Denean Hellman in the face. *See* RP 108-19. The attack knocked out one tooth, loosened three others, extensively tore her gum tissue to expose bone, and fractured a portion of her oral cavity. RP 57. As a result, the State charged Mr. Campbell with first degree assault. RP 18. After trial, a jury convicted Mr. Campbell on the lesser included offense of second degree assault. RP 122.

On May 5, 2017, the trial court sentenced Mr. Campbell to 63 months confinement and 18 months community custody. RP 137-38. Defense asked the court to delay payments on any legal financial obligations until May of 2019, arguing that Mr. Campbell would need time to get back on his feet. RP 292. The Court imposed \$800 of legal financial obligations with payments of \$5 per month beginning on May 15, 2018. RP 294.

III. ARGUMENT

Now on appeal, Mr. Campbell challenges the May 2018 date set for the beginning of repayment on mandatory financial obligations imposed by the court. He argues that he cannot reasonably be expected to make

payments while he is still incarcerated. However, this argument wholly ignores the existence of inmate work programs. Because Mr. Campbell's future financial status is uncertain, the issue is not presently ripe for review.

A. LEGAL FINANCIAL OBLIGATIONS

Under RCW 10.01.170, the sentencing court may grant permission to the defendant to pay fines or costs in a specified period or in specified installments. There is, however, no requirement that the court do such. Mr. Campbell asserts that the court erred by refusing to delay payments because he cannot make payments while in custody. This argument assumes, without support, that it would be impossible for Mr. Campbell to have any income while in prison.

There are, however, inmate work programs. RCW 72.09.100. Inmates participating in these programs are paid wages, and can contribute to the legal financial obligations imposed against them. *Id.*, see also RCW 72.09.110; RCW 72.09.111. It was even noted at sentencing that Mr. Campbell went through work release on his last case, highlighting to the court the possibility for him to have an income while incarcerated. RP 92. In short, we do not know what Mr. Campbell's financial status will be in May of 2018.

Because of this uncertainty in Mr. Campbell's future income, his assertion that the court's order is manifestly unreasonable is not yet ripe for

review. A claim is ripe for review on appeal if (1) the issues raised are primarily legal, (2) the issues raised do not require further factual development, and (3) the challenged action is final. *State v. Valencia*, 169 Wn.2d 782, 786, 239 P.3d 1059 (2010) (internal quotations omitted). Mr. Campbell's challenge fails each of these three prongs.

First, the sole issue raised is factual: Mr. Campbell asserts that a discretionary decision of the trial court is manifestly unreasonable given the facts presented. Second, this issue certainly requires further factual development because we cannot yet know what Mr. Campbell's financial status will be in May of 2018. Third, the action is not final. There are numerous mechanisms for adjusting the payment schedule depending on Mr. Campbell's circumstances. *See* RCW 9.94A.760. Each of these three reasons alone is sufficient to render Mr. Campbell's challenge unripe.

Furthermore, a challenge to an order establishing financial sentencing conditions is not ripe for review until the State attempts to curtail a defendant's liberty by enforcing those financial obligations. *State v. Lundy*, 176 Wn. App. 96, 108-9, 308 P.3d 755 (2013). Here, the LFOs imposed do not restrain Mr. Campbell's liberty, and the State has not attempted to collect on them. Consequently, his present challenge is unripe for a fourth reason.

As a final note, while Mr. Campbell asserts that payments should be delayed until after his term of incarceration, the prudent course of action would have been to impose a flexible order. If the court declines to set a payment schedule, the Department of Corrections becomes responsible for setting payments and adjusting those payments to reflect any changing financial circumstances. RCW 9.94A.760(1), (7). Importantly, detailed statutes govern precisely how the Department apportions inmate funds and income, and how much can be applied to LFOs. *See* RCW 72.09.480; RCW 72.09.111.

If this court decides to review the issue, the order imposed by the trial court was arbitrary in setting both the repayment date and the amount of payments. Five dollars per month does not even cover the interest on the LFOs imposed.¹ Both the amount of payments and the date of payments were selected by the court without reference to any facts. Should this court grant Mr. Campbell's appeal, the appropriate remedy would be to simply strike that portion of the Judgment and Sentence, leaving the terms of payment on legal financial obligations to the Department for the duration of its supervision, and then after, to the clerk of the court.

¹ Twelve percent annual interest on \$800, split over 12 months comes to \$8 per month in interest.

B. APPEALS COSTS

Under RAP 14.2 a commissioner or clerk of this court will award costs to the prevailing party unless it determines that a criminal defendant does not have the current or future ability to pay such costs. Additionally, a trial court order finding the defendant indigent for the purposes of appeal remains in effect unless a commissioner or clerk of this Court finds by a preponderance that the offender's financial circumstances have significantly improved. RAP 14.2.

The trial court found Mr. Campbell indigent for purposes of this appeal. At this time, the State is unaware of any changes in his circumstances. Should his appeal be unsuccessful, the Court should only impose appellate costs in conformity with RAP 14.2.

IV. CONCLUSION

Because Mr. Campbell's challenge is not ripe for review, the State respectfully asks this court to affirm the Judgment and Sentence entered below.

Dated this 1st day of December, 2017.

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

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v.

DANEIL M. CAMPBELL,

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NO. 35318-4-III

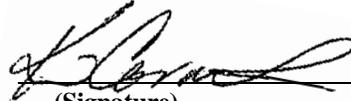
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on December 1, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Andrea Burkhart
andrea@2arrows.net

12/1/2017
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

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