

FILED
Court of Appeals
Division III
State of Washington
4/15/2019 3:15 PM

No. 36350-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

DEMI R. KVETON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WALLA WALLA COUNTY

The Honorable Judge John W. Lohrmann

APPELLANT'S OPENING BRIEF

Jill S. Reuter, WSBA #38374
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203
Phone: (509) 242-3910
admin@ewalaw.com

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR.....1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

C. STATEMENT OF THE CASE.....1

D. ARGUMENT.....3

Issue 1: Whether the trial court erred in imposing a \$200 criminal filing fee and a \$100 DNA collection fee.....3

Issue 2: Whether the trial court erred by imposing interest on legal financial obligations other than restitution.....6

E. CONCLUSION.....7

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008).....3, 6
State v. McCorkle, 137 Wn.2d 490, 973 P.2d 461 (1999).....3, 6
State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018).....6

Washington Statutes and Session Laws

RCW 10.82.090(1).....6, 7
RCW 10.101.010(3)(a)-(d).....5
RCW 36.18.020(2)(h).....4
RCW 43.43.7541.....4, 5
Laws of 2018, ch. 269.....6, 7
Laws of 2018, ch. 269, § 17.....4
Laws of 2018, ch. 269, § 18.....4

A. ASSIGNMENTS OF ERROR

1. The trial court erred in imposing a \$200 criminal filing fee and a \$100 DNA collection fee.
2. The trial court erred by imposing interest on legal financial obligations other than restitution.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether the trial court erred in imposing a \$200 criminal filing fee and a \$100 DNA collection fee.

Issue 2: Whether the trial court erred by imposing interest on legal financial obligations other than restitution.

C. STATEMENT OF THE CASE

The State charged Demi R. Kveton with two counts of delivery of methamphetamine, with one count (count 1) alleging the crime occurred within 1,000 feet of the perimeter of a school grounds, and one count (count 2) alleging the crime occurred within 1,000 feet of a school bus stop route designated by the school district. (CP 15-17). Ms. Kveton pleaded guilty to count 2, and the State dismissed count 1. (CP 80-89; Driver RP¹ 1-6). The parties agreed to argue sentencing; there was no joint sentencing recommendation made. (CP 83; Driver RP 4-5).

On October 14, 2016, the trial court sentenced Ms. Kveton to a prison-based drug offender sentencing alternative (hereinafter “DOSA”) sentence

¹ The Report of Proceedings consists of two separately paginated volumes, one volume reported by Tina Driver, and one volume reported by Linda Latham. The volume reported by Ms. Driver is referred to herein as “Driver RP.” The volume reported by Ms. Latham is referred to herein as “Latham RP.”

pursuant to RCW 9.94A.660. (CP 96-109; Latham RP 3-26). The trial court also imposed legal financial obligations, comprised of a \$500 victim penalty assessment, a \$200 criminal filing fee, and a \$100 DNA collection fee. (CP 99; Latham RP 23, 26). The judgment and sentence requires Ms. Kveton pay interest on all legal financial obligations:

Per RCW 10.82.090, Financial Obligations imposed shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments.

(CP 100).

In August 2018, the Department of Corrections alleged Ms. Kveton violated two conditions of her sentence, and requested the trial court revoke her DOSA sentence. (CP 143-146; Latham RP 37-52). An attorney was appointed to represent Ms. Kveton on these allegations. (CP 124; Latham RP 28, 31). On August 30, 2018, Ms. Kveton admitted both violations. (CP 147-150; Latham RP 41, 46). The trial court then revoked Ms. Kveton's DOSA sentence, and resentenced her, stating as follows:

And at this time, I'm entering the Order Revoking the Prison DOSA Sentence previously imposed. And at this time, I'm signing a commitment order that you serve 44 months on Count 2. All of the previous terms of the conditions of the original Judgment and Sentence do remain in effect.

....

Because this is a resentencing, Ms. Kveton, I will explain to you that you do have the right to appeal this new sentence. . . .

(Latham RP 50-51).

The trial court entered a written order revoking Ms. Kveton's prison DOSA sentence. (CP 147-150). The order states "[a]ll other terms and conditions of the original Judgment and Sentence shall remain in effect." (CP 148).

Ms. Kveton appealed. (CP 154; Supp. CP). An order of indigency was entered for purposes of appeal. (CP 155-161).

D. ARGUMENT

Issue 1: Whether the trial court erred in imposing a \$200 criminal filing fee and a \$100 DNA collection fee.

The trial court imposed a \$200 criminal filing fee and a \$100 DNA collection fee on Ms. Kveton. The law now prohibits trial courts from imposing a \$200 criminal filing fee on defendants who are indigent at the time of sentencing. The law also now provides that the \$100 DNA collection fee is no longer mandatory where the State has previously collected a defendant's DNA as a result of a prior conviction. Therefore, the \$200 criminal filing fee and the \$100 DNA collection fee imposed here should be stricken.

Illegal or erroneous sentences can be challenged the first time on appeal. *See State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *see also State v. McCorkle*, 137 Wn.2d 490, 495–96, 973 P.2d 461 (1999).

Although Ms. Kveton's judgment and sentence was initially entered on October 14, 2016, she was resentenced on August 30, 2018, following her DOSA sentence revocation. (CP 96-109, 147-150; Latham RP 3-26, 50-51). The

resentencing court ordered that all of the conditions of Ms. Kveton's original Judgment and Sentence remain in effect. (CP 148; Latham RP 51).

At the time of Ms. Kveton's resentencing on August 30, 2018, the trial court was no longer authorized to impose a \$200 criminal filing fee on indigent defendants. Effective June 7, 2018, by House Bill 1783, our Legislature amended RCW 36.18.020(2)(h) to prohibit the imposition of the \$200 criminal filing fee on indigent defendants:

(2) Clerks of superior courts shall collect the following fees for their official services . . . (h) Upon conviction . . . an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, *except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).*

Laws of 2018, ch. 269, § 17 (emphasis added).

In addition, House Bill 1783 amends former RCW 43.43.7541 to make the DNA database fee no longer mandatory if a defendant's DNA has been collected because of a prior conviction:

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender's DNA as a result of a prior conviction.*

Laws of 2018, ch. 269, § 18 (emphasis added).

Here, Ms. Kveton was resentenced after the effective date of House Bill 1783, and therefore, she is entitled to benefit from the statutory changes in House Bill 1783. *See* Laws of 2018, ch. 269, § 17.

Ms. Kveton was indigent at the time of resentencing. (CP 124, 155-161; Latham RP 28, 31); *see also* RCW 10.101.010(3)(a)-(d) (defining indigent). Therefore, the trial court erred in imposing a \$200 criminal filing fee. *See* RCW 36.18.020(2)(h).

In addition, a \$100 DNA collection fee was already imposed upon Ms. Kveton, pursuant to her prior conviction for possession of methamphetamine, and the collection of a DNA sample from her was already ordered and obtained. (CP 97); *see also* Felony Judgment and Sentence in Walla Walla County Superior Court No. 14-1-00288-0; email from Washington State Patrol representative Jodi Sass, dated April 15, 2019.² Her DNA has been previously collected. The trial court authorized a second collection contrary to the amended RCW 43.43.7541. *See* RCW 43.43.7541.

This court should remand this case for the trial court to strike the \$200 criminal filing fee and the \$100 DNA collection fee from Ms. Kveton's judgment and sentence.

² On the same day as this opening brief was filed, Ms. Kveton filed a Motion to Accept Additional Evidence under RAP 9.11, asking this Court to accept and consider copies of her Felony Judgment and Sentence in Walla Walla County Superior Court No. 14-1-00288-0, and an email from Washington State Patrol representative Jodi Sass, dated April 15, 2019, as additional evidence.

Issue 2: Whether the trial court erred by imposing interest on legal financial obligations other than restitution.

The provision of the judgment and sentence imposing interest on all legal financial obligations (LFOs) is contrary to recent statutory amendments and must be stricken.

Illegal or erroneous sentences can be challenged the first time on appeal. *See Bahl*, 164 Wn.2d at 744; *see also McCorkle*, 137 Wn.2d at 495–96.

Although Ms. Kveton’s judgment and sentence was initially entered on October 14, 2016, she was resentenced on August 30, 2018, following her DOSA sentence revocation. (CP 96-109, 147-150; Latham RP 3-26, 50-51). The resentencing court ordered that all of the conditions of Ms. Kveton’s original Judgment and Sentence remain in effect. (CP 148; Latham RP 51).

House Bill 1783, effective June 7, 2018, modified Washington’s system of LFOs, addressing “some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction.” *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Among other changes, House Bill 1783 eliminates interest accrual on the non-restitution portions of LFOs. *See* Laws of 2018, ch. 269, § 1; *see also Ramirez*, 191 Wn.2d at 747 (noting this change). Specifically, House Bill 1783 amended RCW 10.82.090 as follows:

Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments.

As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.

RCW 10.82.090(1) (emphasis added); *see also* Laws of 2018, ch. 269, § 1.

Thus, following the changes made by House Bill 1783, the statute now prohibits the accrual of interest on non-restitution LFOs. RCW 10.82.090(1).

The provision in Ms. Kveton's judgment and sentence requiring payment of interest, entered after June 7, 2018,³ violates this provision of amended RCW 10.82.090. (CP 100, 148; RP 51). Interest cannot accrue on the non-restitution LFOs imposed on Ms. Kveton. *See* RCW 10.82.090(1); *see also* Laws of 2018, ch. 269, § 1.

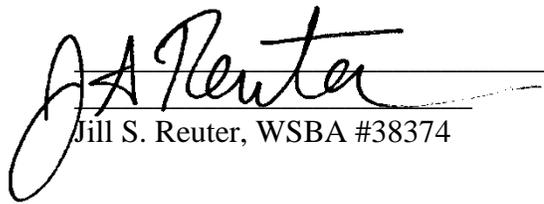
This Court should remand with instructions to modify the judgment and sentence to strike the provision imposing interest on all LFOs.

E. CONCLUSION

This court should remand this case for the trial court to strike the \$200 criminal filing fee, the \$100 DNA collection fee, and the provision imposing interest on all legal financial obligations from Ms. Kveton's judgment and sentence.

³ As recognized above, Ms. Kveton was resentenced after June 7, 2018, on August 30, 2018, and the resentencing court ordered that all of the conditions of Ms. Kveton's original Judgment and Sentence remain in effect. (CP 96-109, 147-150; Latham RP 3-26, 50-51).

Respectfully submitted this 15th day of April, 2019.



Jill S. Reuter, WSBA #38374

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

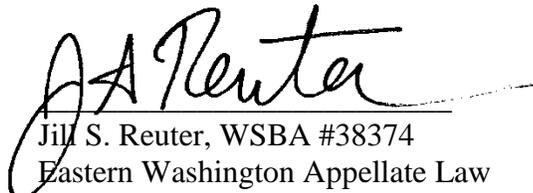
STATE OF WASHINGTON) COA No. 36350-3-III
Plaintiff/Respondent)
vs.) Walla Walla Co. No. 16-1-00008-5
)
DEMI R. KVETON)
) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on April 15, 2019, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Demi R. Kveton DOC #378617
Tri-Cities Work Release
524 E. Bruneau Ave.
Kennewick, WA 99336

Having obtained prior permission, I also served a copy on the Respondent at tchen@co.franklin.wa.us using the Washington State Appellate Courts' Portal.

Dated this 15th day of April, 2019.


Jill S. Reuter, WSBA #38374
Eastern Washington Appellate Law
PO Box 8302
Spokane, WA 99203
Phone: (509) 242-3910
admin@ewalaw.com

NICHOLS AND REUTER, PLLC / EASTERN WASHINGTON APPELLATE LAW

April 15, 2019 - 3:15 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36350-3
Appellate Court Case Title: State of Washington v. Demi R. Kveton
Superior Court Case Number: 16-1-00008-5

The following documents have been uploaded:

- 363503_Briefs_20190415151458D3639843_6350.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Opening Brief filed 4.15.19.pdf
- 363503_Motion_20190415151458D3639843_8231.pdf
This File Contains:
Motion 1
The Original File Name was Motion to Accept Additional Evidence filed 4.15.19.pdf

A copy of the uploaded files will be sent to:

- jnagle@co.walla-walla.wa.us
- tchen@co.franklin.wa.us

Comments:

Sender Name: Jill Reuter - Email: jill@ewalaw.com
Address:
PO BOX 8302
SPOKANE, WA, 99203-0302
Phone: 509-242-3910

Note: The Filing Id is 20190415151458D3639843