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Court of Appeals  
Division III  
State of Washington  
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No. 36353-8-III

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

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STATE OF WASHINGTON,

Respondent,

v.

NEIL BOYD MCLEOD,

Appellant.

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

The Honorable Judge David G. Estudillo

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APPELLANT'S OPENING BRIEF

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### **A. ASSIGNMENTS OF ERROR**

1. The trial court erred by imposing interest on legal financial obligations other than restitution.
2. The judgment and sentence contains an error that should be corrected: it indicates Mr. McLeod was sentenced to a maximum term of confinement of life on each count.

### **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Issue 1: Whether the trial court erred by imposing interest on legal financial obligations other than restitution.

Issue 2: The judgment and sentence contains an error that should be corrected: it indicates Mr. McLeod was sentenced to a maximum term of confinement of life on each count.

### **C. STATEMENT OF THE CASE**

The State charged Neil Boyd McLeod with one count of vehicular homicide and two counts of vehicular assault, based on events occurring on July 20, 2016.<sup>1</sup> (CP 355-356). Mr. McLeod pleaded guilty to these charges.<sup>2</sup> (CP 259-270, 327-328; Brittingham RP 100-111; RP 56). The parties agreed to argue sentencing, and were aware the State would ask for an exceptional sentence of 330 months confinement, and Mr. McLeod would ask for a standard range

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<sup>1</sup> The Report of Proceedings consists of two volumes: (1) one volume, transcribed by Amy Brittingham, containing several pre-trial hearings, the guilty plea hearing, and a hearing held following sentencing; and (2) one volume, reported by Tom R. Bartunek, containing the sentencing hearing. The volume transcribed by Ms. Brittingham is referred to herein as “Brittingham RP.” The volume reported by Mr. Bartunek is referred to herein as “RP.”

<sup>2</sup> The State also charged Mr. McLeod with one count of murder in the first degree (extreme indifference), but this count was dismissed following Mr. McLeod’s guilty plea to the other three counts. (CP 263, 333, 355-356; Brittingham RP 102).

sentence of 280 months confinement. (CP 263, 292-313, 317-321; Brittingham RP 104, 106-107).

On September 14, 2018, the trial court sentenced Mr. McLeod to an exceptional sentence of 330 months confinement on the vehicular homicide count, pursuant to RCW 9.94A.535(2)(c)<sup>3</sup>, and 84 months confinement on each count of vehicular assault, to run concurrent to the 330 month sentence. (CP 322-324, 329-347; RP 56-62). The trial court entered written findings of fact and conclusions of law for the exceptional sentence. (CP 357-358; Brittingham RP 117-118).

The trial court also imposed legal financial obligations, comprised of \$8,940.36 in restitution, and a \$500 victim penalty assessment. (CP 120-127, 336-337; RP 54-66). The judgment and sentence requires Mr. Leod pay interest on all legal financial obligations:

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

(CP 337).

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<sup>3</sup> This statute provides “[t]he trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances . . . [t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.” RCW 9.94A.535(2)(c).

The judgment and sentence also indicates Mr. McLeod was sentenced to a maximum term of confinement of life on each count. (CP 334).

Mr. McLeod appealed. (CP 365-366).

#### **D. ARGUMENT**

##### **Issue 1: 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 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).

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 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, HB 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, HB 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, RCW 10.82.090 requires the sentencing court to impose interest on restitution. RCW 10.82.090(1). However, following the changes made by HB 1783, the statute now prohibits the accrual of interest on non-restitution LFOs. RCW 10.82.090(1).

The provision in Mr. McLeod's judgment and sentence requiring payment of interest, entered after June 7, 2018,<sup>4</sup> violates this provision of amended RCW 10.82.090. Interest cannot accrue on the \$500 victim penalty assessment imposed on Mr. McLeod. *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, and replace it with a provision imposing interest on restitution only.

**Issue 2: The judgment and sentence contains an error that should be corrected: it indicates Mr. McLeod was sentenced to a maximum term of confinement of life on each count.**

The trial court sentenced Mr. McLeod to a total term of confinement of 330 months. (CP 322-324, 329-347; RP 56-62). However, the judgment and

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<sup>4</sup> Mr. McLeod was sentenced after June 7, 2018. (RP 56-62). Nonetheless, the changes effected by HB 1783 apply prospectively to all cases not yet final on appeal. *See State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

sentence indicates Mr. McLeod was sentenced to a maximum term of confinement of life on each count. (CP 334).

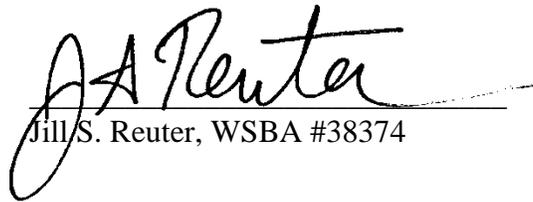
Ms. McLeod was not sentenced to a maximum term of confinement of life. (RP 56-62). This term of confinement applies to convictions for aggravated first degree murder, and Mr. McLeod was not found guilty of aggravated first degree murder. (CP 259-270, 329-333, 355-356); *see also* RCW 10.95.030 (sentence for aggravated first degree murder). Therefore, this court should remand this case for correction of the judgment and sentence to remove the language indicting Mr. McLeod was sentenced to a maximum term of confinement of life. *See, e.g., State v. Naillieux*, 158 Wn. App. 630, 646, 241 P.2d 1280 (2010) (remand appropriate to correct scrivener's error in judgment and sentence, erroneously stating the defendant stipulated to an exceptional sentence); *State v. Healy*, 157 Wn. App. 502, 516, 237 P.3d 360 (2010) (remand appropriate to correct scrivener's error in judgment and sentence, incorrectly stating the terms of confinement imposed).

#### **E. CONCLUSION**

The provision imposing interest on all legal financial obligations must be stricken from Mr. McLeod's judgment and sentence, and replaced with a provision imposing interest on restitution only.

The judgment and sentence should also be corrected to remove the language indicting Mr. McLeod was sentenced to a maximum term of confinement of life on each count.

Respectfully submitted this 22nd day of March, 2019.



Jill S. Reuter, WSBA #38374

COURT OF APPEALS  
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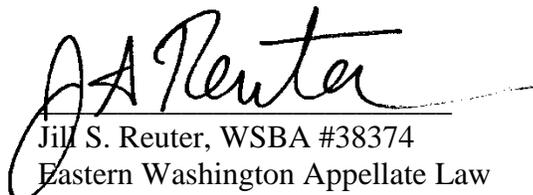
STATE OF WASHINGTON ) COA No. 36353-8-III  
Plaintiff/Respondent )  
vs. ) Grant Co. No. 16-1-00503-1  
)  
NEIL BOYD MCLEOD )  
Defendant/Appellant )  
\_\_\_\_\_ )

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on March 22, 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:

Neil Boyd McLeod, DOC #844126  
Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326

Having obtained prior permission, I also served a copy on the Respondent at [kburns@co.grant.wa.us](mailto:kburns@co.grant.wa.us) using the Washington State Appellate Courts' Portal.

Dated this 22nd day of March, 2019.

  
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