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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Supreme Court No. _____
Court of Appeals No. 26180-8-III

FILED
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CLERK OF SUPREME COURT
STATE OF WASHINGTON
[Signature]

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

JAMES ROBERT NASON,
Defendant/Petitioner.

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT
HONORABLE MICHAEL P. PRICE

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER.

Petitioner, James Robert Nason, was the defendant in the trial court and the appellant in the Court of Appeals. He asks this Court to accept review of the Court of Appeals decision terminating review, designated in Part II of this petition.

II. COURT OF APPEALS DECISION.

Mr. Nason seeks review of the Court of Appeals published decision¹ that concluded the procedure the trial court used to modify and impose jail time for violation of a sentencing condition to pay legal financial obligations did not violate due process. The opinion was filed July 31, 2008, and a copy of it is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW.

1. The “auto jail” scheme, which allows arrest and incarceration for failure to make payments on a legal financial obligation without a contemporaneous hearing to determine whether an offender had the ability to pay and the conduct was willful, violates due process.

2. The “auto jail” scheme, which allows a Superior Court clerk to negotiate a stipulated order including sanctions, advise a defendant of his constitutional and due process rights or accept a waiver thereof, or apply

discretion and judgment to implement a jail report date, violates due process.

3. The trial court exceeded its authority by imposing a suspended sentence pursuant to the “auto jail” scheme.

4. The trial court erred in denying Mr. Nason credit toward his legal financial obligation for the time served in jail that was attributable to his failure to pay.

IV. STATEMENT OF THE CASE.

The relevant facts are contained in the Brief of Appellant filed on December 10, 2007, pp. 8-17, and are incorporated herein by reference.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

The issues raised by Mr. Nason’s petition should be addressed by this Court because the Court of Appeals decision conflicts with settled case law of the Court of Appeals and of this Court, raises significant constitutional issues under the Washington State Constitution and the U.S. Constitution, and involves issues of substantial public interest that should be determined by this Court. RAP 13.4(b)(1), (2), (3) and (4).

¹ By Order filed September 18, 2008, Division III of the Court of Appeals granted the State’s motion to publish this opinion.

1. The “auto jail” scheme, which allows arrest and incarceration for failure to make payments on a legal financial obligation without a contemporaneous hearing to determine whether an offender had the ability to pay and the conduct was willful, violates due process.

Division III of the Court of Appeals misunderstands how the “auto jail” scheme functions. Judge Moreno’s July 7, 2006 order modifying sentence contained the offending provision that is at issue in this appeal:

The defendant shall pay \$25 or more monthly, effective 8/15/06. The case is to be reviewed 1/10/07 for compliance. If the defendant has not complied with the payment schedule, nor filed a motion with the court for a stay by the review date, the defendant is to report to jail on 1/17/07 by 4:00 p.m. to serve 60 days in jail.

CP 52. In late January 2007, the Spokane County clerk notified the prosecutor and police that after review she’d determined Mr. Nason had not made any payment and did not report to jail *as required in the disputed provision*. Based on the failure to report to jail, the State obtained a bench warrant and Mr. Nason was arrested in late March. CP 53, 57, 55-60, 62-63.

Mr. Nason sat in jail approximately 30 days before a hearing was held. Judge Price presided over the April 27, 2007 sentence violation hearing, at which time he ruled the “auto-jail” scheme was constitutional and refused to strike the offending language from the order he signed that

day. 4/27/07 RP 2-9. The provision mirrored that found in Judge

Moreno's order:

The defendant shall pay \$30 or more monthly, effective 8/1/07. The case is to be reviewed 10/31/07 for compliance. If the defendant has not complied with the payment schedule, nor filed a motion with the court for a stay by the review date, the defendant is to report to jail on 11/14/07 by 4:00 p.m. to serve 60 days in jail.

CP 109. Mr. Nason filed this appeal. Subsequently, he filed an Amended Notice of Appeal to include Judge Moreno's 7/7/06 order, as well as Judge Price's 4/30/07 order. CP 51-52 134-38. This time, rather than be arrested on a warrant, Mr. Nason through counsel filed² a motion to stay sentence pending hearing regarding inability to pay on his LFO. CP 128-32.

Contrary to Division III's conclusion, the "auto jail" scheme violates due process. *Slip opinion*, p. 1.

Mr. Nason was denied due process where the auto jail scheme required incarceration before the court had determined his ability to pay and the willfulness of the failure to pay.

It is fundamentally unfair to imprison indigent defendants solely because of their inability to pay court-ordered fines. Bearden v. Georgia, 461 U.S. 660, 667-68, 103 S.Ct. 2064; 76 L.Ed.2d 221 (1983); Williams v.

Illinois, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586, (1970). WA Const. art. 1, § 17, which prohibits imprisonment for debt, similarly precludes imprisonment based solely on inability to pay.

In order to impose jail time for failure to make timely payments toward legal financial obligations, the court must *first* find that the defendant's failure to make payments was willful. RCW 9.94A.634(3)(c) and (3)(d)³; State v. Curry, 118 Wn.2d 911, 917-18, 829 P.2d. 166 (1992). The court must inquire into the reason for failure to pay, including the financial inability to make payments, in order to determine whether the violation was willful. State v. Bower, 64 Wn. App. 227, 231-32, 823 P.2d 1171, *rev. denied*, 119 Wn.2d 1011 (1992).

The district court was therefore required to find that Smith's failure to pay her fines was willful. Bearden requires [1] consideration of ability to pay, [2] bona fide efforts to acquire the resources to pay, and, if necessary, [3] alternative measures other than imprisonment. 461 U.S. at 672, 103 S.Ct. 2064. In Washington the court may place the burden on the defendant to prove inability to pay. State v. Bower, 64 Wn. App. [at 234]. However, this does not eliminate the court's duty to inquire, which Bearden plainly demands.

Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 112, 52 P.3d 485 (2002). If the violation is non-willful, the court must consider alternatives

² The motion to stay was filed on 10/31/07, which was the compliance review date set by the court's 4/30/07 order.

to imprisonment. Bower, 64 Wn. App. at 230, 232; RCW

9.94A.634(3)(d).

Furthermore, the inquiry into an offender's ability to pay must take place at the time he is alleged to be in noncompliance, that is, *prior to incarceration*.

Constitutional principles will be implicated . . . only if the government seeks to enforce collection of the assessments "at a time when [the defendant is] unable, through no fault of his own, to comply." . . .

. . . *It is at the point of enforced collection . . .*, where an indigent may be faced with the alternatives of payment or imprisonment, that he "may assert a constitutional objection on the ground of his indigency." (emphasis added)

State v. Curry, 118 Wn.2d at 917, citing with approval State v. Curry, 62 Wn. App. 676, 681-82, 814 P.2d 1252 (1991) (quoting United States v. Pagan, 785 F.2d 378, 381-82 (2d Cir., *cert. denied*, 479 U.S. 1017 (1986)).

Any prior inquiry into Mr. Nason's "future ability to pay is necessarily speculative." State v. Bower, 64 Wn. App. 808, 814, 827 P.2d 308 (1992).

Herein, the "auto jail" scheme is self-executing and operates without any notion of due process. If an offender fails in the *future* to make any of the required *future* payments, s/he must report to jail. There is no provision for the court to fulfill its required duty to determine *at the*

³ The text of RCW 9.94A.634 is attached as **Appendix B**.

time of the future alleged noncompliance whether the offender is indigent and unable to pay or whether the conduct is willful or, if willful, what is the appropriate sanction or amount of jail sanction. The scheme violates due process.

There is no evidence – in the transcripts from the 7/7/06 and 4/30/07 hearings – that Mr. Nason made an “advance waiver” of his statutory and constitutional rights to have the trial court inquire at the time of the future alleged noncompliance into the reasons for nonpayment. Moreover, such an advance waiver would be invalid because there is no way to know in advance whether the failure to pay is willful.

The auto-jail scheme’s “opportunity” to file a motion to stay execution does not cure the due process violation. This provision erroneously assumes the trial court has the authority to constitutionally find willfulness and affix a sanction *in advance* of noncompliance. The trial court does not have any such authority under RCW 9.94A.634. Furthermore, Bearden and its progeny only permit jail after a hearing and the court’s inquiry into willful failure to pay despite ability to do so. Placing the burden on a defendant to obtain a stay as a prerequisite to avoiding jail violates the due process required by Bearden. Even if an offender could waive the trial court’s violation of due process, there is no

evidence in the record from either hearing that Mr. Nason was informed of the opportunity for a stay process.

Other jurisdictions agree with this conclusion that the auto-jail provision is an unlawful scheme that violates due process. A similar provision reached by agreement was determined to be illegal by the Florida Supreme Court in Stephens v. State, 630 So.2d 1090 (Fla. 1994), 1994 Fla. LEXIS 108.

In Stephens, the yacht broker petitioner pled *nolo contendere* to a charge of grand theft for failing to return a customer's \$100,000 deposit. The trial court withheld adjudication, placing Stephens on five years probation conditioned on his making full restitution. Three years later, his failure to make scheduled restitution payments prompted a probation violation hearing. There, he was sentenced to one year in the county jail to be followed by 10 years probation. The probation was conditioned upon a payment schedule that included the understanding that if the schedule were not followed, Stephens would be automatically imprisoned. The trial court conducted an inquiry to ensure Stephens understood all conditions of the agreement and that he waived his right not to be imprisoned for debt.

Stephens v. State, 630 So.2d at 1090.

The 4th District Court of Appeal affirmed, relying on its earlier holding that “a person charged with a crime can legally enter into a plea agreement with the state that he receive probation rather than be imprisoned on conditions ... and that he waive his right not to be imprisoned for failure to pay a debt if he fails to make restitution as he has agreed, whether or not the state can prove his financial ability to make restitution. Such an agreement is not void as against public policy and is enforceable.” Stephens v. State, 630 So.2d at 1090-1091, citing Brushingham v. State, 460 So.2d 523, 524 (Fla. 4th DCA 1984).

The Florida Supreme Court disagreed, citing Bearden as controlling its decision. “In Bearden v. Georgia, the [U.S.] Court held that a court must investigate the reasons for failing to pay a fine or restitution in probation revocation proceedings.” Stephens v. State, 630 So.2d at 1091 (citation omitted). “[B]efore a person on probation can be imprisoned for failing to make restitution, there must be a determination that that person has, or has had, the ability to pay but has willfully refused to do so. We understand the instant trial court’s frustration at having Stephens abuse the lenient treatment given him at his original sentencing. *The scheme* Stephens agreed to at his second sentencing, however, *was illegal* and he must be resentenced.” Id. (emphasis added).

The scheme of future automatic imprisonment found to be unlawful in Stephens was reached by agreement and after inquiry by the trial court as to the petitioner's understanding of triggering events as well as waiver of the constitutional right not to be imprisoned solely for debt.

Herein, the facts are even more egregious than in Stephens. Unlike in Stephens, there was no discussion or agreement regarding inclusion of the auto-jail provision in Judge Moreno's 7/7/06 order modifying sentence. Furthermore, the scheme was imposed without any discussion or inquiry on the record as to understanding or waiver of precious future rights in the event of default.

Similarly, in his 4/20/07 order modifying sentence, Judge Price imposed the same auto-jail provision after a contested hearing. There certainly was no agreement as to its inclusion and there *still* was no discussion or inquiry on the record as to understanding or waiver of future rights in the event of default.

Finally, there is no evidence in either record that Mr. Nason was informed of and knowingly waived his constitutional rights not to be imprisoned for mere debt. Bearden v. Georgia, supra; WA Const. art. 1, § 17.

Mr. Nason's due process rights were violated by an illegal scheme whereby the trial court is relieved of its duty to determine ability to pay and willfulness prior to any sentence of incarceration. Consequently, the auto-jail provision must be stricken, and any sentence imposed under that scheme must also be stricken.

Mr. Nason was further denied due process where the auto jail scheme required incarceration without a hearing and opportunity for advice of counsel.

A sentencing court "shall require the offender to show cause why the offender should not be punished for the noncompliance" and may issue a warrant of arrest for the offender's appearance. RCW 9.94A.364(3)(b).

Where the revocation of a defendant's probation may result in incarceration, the defendant is entitled to a hearing and to be represented by counsel, and if the defendant is financially unable to obtain counsel, the court shall appoint counsel for the defendant. CrR 7.6(b); RCW 9.94A.364(3)(b); State v. Conlin, 49 Wn. App. 593, 595, 744 P.2d 1094 (1987), *rev. denied* 110 Wn.2d 1010 (1988).

The waiver of the right to counsel at a sentence modification or revocation proceeding must be knowing and voluntary. Conlin, 49 Wn. App. at 595. The knowledge required to waive counsel may be gained

from participation in an earlier trial on the same matter, or evidenced by experience with the criminal justice system. Conlin, 49 Wn. App. at 595-56 (citations omitted). Minimum due process requires some colloquy on the record advising a defendant of his or her rights, the risks of self-representation, and the possible penalty involved. Conlin, 49 Wn. App. at 596, citing Bellevue v. Acrey, 103 Wn.2d 203, 211, 691 P.2d 957 (1984).

Furthermore, a court must indulge every reasonable presumption against the waiver of fundamental rights. Glasser v. United States, 315 U.S. 60, 86 L.Ed. 680, 62 S.Ct. 457 (1942); Matter of Wentworth, 17 Wn. App. 644, 647, 564 P.2d 810 (1977).

Herein, there is no evidence in the transcripts from the 7/7/06 and 4/30/07 hearings that Mr. Nason was advised of his right to a future hearing and to appointment of counsel in the event of future failure to make scheduled payments, or that he waived those rights.

Similarly, the 7/7/06 and 4/30/07 orders modifying sentence make no reference to these rights or to their waiver by Mr. Nason. The orders contain identical clauses signed by the clerk:

The undersigned Court Collection Deputy, *being in agreement with this disposition* and having advised the defendant of the right to a hearing, the right to have a lawyer at the hearing, the right to have a lawyer appointed at public expense if the defendant cannot afford a

lawyer, and [sic] I witnessed the defendant affix his/her signature above after being advised of his/her rights. (Emphasis added)

(CP 52, 109) The italicized phrase confirms that any advice given by the clerk to Mr. Nason concerned the hearing resulting in that particular order, and not to future hearings or future right to counsel.

The 7/7/06 and 4/30/07 orders also contain identical clauses signed by Mr. Nason:

I, James R. Nason, being fully advised that I have the right to be brought before the Court for a hearing, and to have an attorney present to represent me, and that the Court will appoint an attorney to represent me if I cannot afford one, by my signature below hereby waive my right to a hearing and my right to an attorney and *having read the above modification(s) and having agreed to the punishment imposed*, agree to the entry of this order.

(CP 52, 109) Here, too, the italicized phrases emphasize that the advice of rights and waiver was made only as to the hearing resulting in that particular order. The clause cannot reasonably be construed to be a knowing and valid waiver of rights to future hearings or future appointment of counsel. Conlin, 49 Wn. App. at 595.

In Mr. Nason's case, two orders modifying sentence that *predate* the use of the auto-jail provision also contain these identical clauses. *See*

CP 31,⁴ 122-23.⁵ The fact that the same language was used before and after inclusion of the auto-jail provision supports the conclusion that the referenced clauses in the present two orders concern only the present hearing and have nothing to do with future hearings and future appointment of counsel.

Due process was violated where Mr. Nason was not advised of his rights to a hearing and opportunity for advice of counsel prior to incarceration for failure to make scheduled payments. There is no evidence of waiver or even the trial court's inquiry into waiver. Because this Court must indulge every reasonable presumption against the waiver of fundamental rights, the auto-jail scheme must be stricken, and any sentence imposed under that scheme must also be stricken. Glasser v. United States, *supra*.

2. The "auto jail" scheme, which allows a Superior Court clerk to negotiate a stipulated order including sanctions, advise a defendant of his constitutional and due process rights or accept a waiver thereof, or apply discretion and judgment to implement a jail report date, violates due process.

In 2003, RCW 9.94A.760⁶ was amended to specifically include superior court clerks in the process of collecting legal financial

⁴ Order filed 1/11/01, signed by the Community Corrections Officer, instead of the Court Collection Deputy.

⁵ Order filed 11/9/05.

⁶ The text of RCW 9.94A.760 is attached as Appendix C.

obligations. *See* Laws of 2003, c 379 §§ 13-27.⁷ However, the county clerk has only limited clerical authority under the statutes, which give the clerks the authority to conduct a “review” and verify employment or income for the sole purpose of modifying the monthly payment schedule, and to issue payroll deductions in the event of failure to pay - but nothing else. RCW 9.94A.760 (1), (3), (4), (7)(b), (8), (9), (11)(d) and (13).

A superior court clerk is not authorized to negotiate a stipulated order, to advise a defendant of his constitutional rights or to apply discretion and judgment to implement the auto-jail report date.

The 2003 amendments to RCW 9.94A.760, set forth above, do not authorize a superior court clerk to participate in and negotiate a stipulated order with an offender regarding an unpaid LFO, including the recommendation of any sanction. Nor do they authorize the clerk to advise an offender of his due process rights to a hearing or appointment of counsel, or to accept a waiver of those rights. Nor do the 2003

⁷ Intent and Purpose statement:

The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. ... The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections.

Law of 2003 c 379 § 13.

amendments empower the clerk to determine in his or her discretion that a defendant must report to jail.

In contrast, former RCW 9.94A.200 (recodified as RCW 9.94A.634 by Laws of 2001, c 10, § 6) was amended in 1995⁸ to authorize the Department of Corrections to enter into agreements with non-complying offenders and to impose alternative sanctions. Such agreements must be reported to the sentencing court and prosecutor, and the court may modify the sanctions after a hearing. *See* RCW 9.94A.634(3)(a).⁹ While the 2003 amendments to RCW 9.94A.760 included county clerks in the collection process, the Legislature did *not* authorize county clerks to assume the role of DOC in general and

⁸ Laws of 1995 c 142 § 1.

⁹ RCW 9.94A.634 (3)(a) provides as follows:

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

specifically did not authorize them to negotiate and enter into agreements with non-complying offenders *or* to recommend sanctions. Id.

In the absence of a stipulated agreement between DOC and a non-complying offender, or where the court is not satisfied with the sanctions DOC has imposed under RCW 9.94A.634(3)(a), “the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance.” RCW 9.94A.634(3)(b). Since the clerk has no authority to negotiate a stipulated agreement or recommend sanctions, the trial court is required by statute to conduct a show cause hearing.

Herein, the Spokane County clerk has actively participated in and negotiated stipulated orders and has apparently recommended sanctions, without lawful authority. DOC terminated its supervision of Mr. Nason in July 2002. (CP 32) Regarding the 11/7/05 order modifying sentence, the clerk acknowledged that she advised Mr. Nason of his rights to a hearing, and stated that he waived those rights and signed the LFO Agreed Order – In Custody, apparently while in jail. (CP 47, 123)

Regarding the 7/7/06 order modifying sentence, the clerk told the trial court she “went to the jail with Deputy Kyle to see Mr. Nason to ask him why he has not been paying on his LFOs” and that “[The Spokane

County Superior Court Clerk's Office] felt that [a sanction of] 60 days, because of this violation, was appropriate because we have gone through this with him before and ... he failed to report back in, he failed to provide financial information, and we wanted to set up a \$25 or more monthly payment with him." (7/7/06 RP 5-6) The clerk also stated she advised Mr. Nason of his rights to a hearing. (CP 52)

There is no violation report in the superior court file regarding the 4/30/07 order modifying sentence from which to glean details of the negotiating of the order. However, the clerk again stated that she advised Mr. Nason of his rights to a hearing. (CP 109) The report that triggered his arrest in connection with this order demonstrates unauthorized discretion and exercise of judgment by the clerk: "As indicated by the accounting above, [Mr. Nason] has made none of the payments ordered by Judge Moreno's 7/7/06 order and a review of the court file on this date reveals no motion to stay the order. Therefore, [Mr. Nason] is required to report to jail on 1/24/07 by 4 p.m. to serve the 60 days specified in the attached Order Enforcing Sentence. The defendant is in further violation for not turning himself into the jail on 1/24/07." (CP 53)

In summation, the county clerks are mimicking, without any statutory authority, the procedures followed by DOC officers when a

defendant fails to comply with sentencing conditions, and the superior court is illegally allowing them to do so. Mr. Nason's due process rights and those of other offenders in similar situations have been violated by this unauthorized conduct. The trial court should be directed to limit the superior court clerk's participation in the collection of LFOs to those duties authorized by the Legislature.

The original opinion in this case was unpublished. In its motion to publish dated August 11, 2008, the State listed as its sole ground for relief, "This case raised the issue of whether the County Clerk's involvement in the monitoring and collection of legal financial obligations violates a defendant's due process rights. ... The Spokane County Clerk has advised that other County Clerk's in this State have reviewed this Court's opinion and that publication of Nason would be useful to them" Division III granted the motion to publish. This Court should accept review because this issue of first impression raises issues of substantial public interest and a significant question under the state and federal constitutions. RAP 13.4(b)(3) and (4).

3. The trial court exceeded its authority by imposing a suspended sentence pursuant to the "auto jail" scheme.

Petitioner hereby incorporates by reference the relevant argument contained in Brief of Appellant, at pages 18-20.

4. The trial court erred in denying Mr. Nason credit toward his legal financial obligation for the time served in jail that was attributable to his failure to pay.

Petitioner hereby incorporates by reference the relevant argument contained in Brief of Appellant, at pages 40-45

CONCLUSION.

Review of the instant case is appropriate as Division Three's opinion conflicts with opinions issued by this Court and by the other divisions of the Court of Appeals, involves a significant question of law under the Constitution of the United States and state constitution, and raises issues of substantial public interest.

Respectfully submitted October 20, 2008.


Susan Marie Gasch, WSBA #16485
Attorney for Petitioner

FILED

JUL 31 2008

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 26180-8-III
)	
Respondent,)	
)	Division Three
v.)	
)	
JAMES ROBERT NASON,)	PUBLISHED OPINION
)	
Appellant.)	

KULIK, A.C.J.—James R. Nason appeals two orders from the Spokane Superior Court, Maryann C. Moreno, J., and Michael P. Price, J., modifying his sentence and imposing incarceration for violations of the terms of his sentence. He argues that:

(1) the trial court lacks authority to impose a suspended sentence, (2) provisions within the orders violate due process, (3) the trial court erred by denying him credit against his financial obligations for time served, and (4) the county clerk's involvement in the monitoring and collection of his legal financial obligation violates due process rights.

We conclude that the trial court correctly modified and imposed jail time for Mr. Nason's violations of his sentence. And the court's actions did not violate due process.

Accordingly, we affirm.

APPENDIX "A"

FACTS

In July 1999, James R. Nason pleaded guilty to second degree burglary. The judgment and sentence required Mr. Nason to pay fines and costs. In October 2000, the Department of Corrections requested a hearing, alleging that Mr. Nason had violated the terms of his probation, and that he had failed to pay his legal financial obligation (LFO). A warrant was issued and Mr. Nason was arrested. The court modified Mr. Nason's probation to include 95 days' confinement for his violations. The Department of Corrections' supervision was terminated on July 12, 2002.

In November 2003 and June 2004, Mr. Nason was sent collection notices by the Spokane County Superior Court Clerk. The notices advised Mr. Nason of his continuing delinquency and that enforcement of his legal financial obligations had been transferred to the clerk of the superior court. By July 2005, Mr. Nason had not made payments or contacted the clerk's office. The clerk of the court produced a violation report and the prosecutor moved the court for issuance of a warrant. Mr. Nason was arrested, he signed an agreed order, and he agreed to serve 30 days in jail and report to the county clerk's office within 48 hours of release. When Mr. Nason did not report, a bench warrant was issued for his arrest.

In June 2006, Mr. Nason was arrested on the warrant. A hearing in the matter occurred on July 7, 2006. At the hearing Mr. Nason stipulated to the violation of failing

to report following his release. He asserted that he was homeless and unemployed, but was close to obtaining a job through his mother's employer. The court found Mr. Nason's violations were willful and entered its order modifying the sentence and imposing 60 days in confinement. Mr. Nason signed the agreed order, indicating that he agreed to 60 days' confinement, and that he would begin payments of \$25, starting August 15, 2006. A review date was set for January 10, 2007, in order to review Mr. Nason's compliance. Mr. Nason did not comply with the payment schedule.

On February 9, 2007, a bench warrant was issued for Mr. Nason. Mr. Nason was arrested. A hearing on the matter was conducted on April 6, 2007, where the court directed the parties to brief issues, and continued the matter to April 27, 2007. At hearings on April 6 and April 27, 2007, Mr. Nason stipulated to his violations and raised other arguments presented in this appeal. The court found Mr. Nason's violations were willful and entered an order modifying the sentence and imposing 120 days' confinement. Mr. Nason signed the agreed order, indicating that he agreed to 120 days' confinement, and that he would begin payments of \$30, effective August 1, 2007. This appeal follows.

ANALYSIS

Whether a trial court has exceeded its statutory authority under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, is an issue of law, which we review independently. *State v. Hale*, 94 Wn. App. 46, 54, 971 P.2d 88 (1999). A trial court may

exercise discretion in sentencing only where the SRA authorizes discretion. *State v. Shove*, 113 Wn.2d 83, 86-87, 776 P.2d 132 (1989). “When a trial court exceeds its sentencing authority under the SRA, it commits reversible error.” *Hale*, 94 Wn. App. at 53.

“The SRA permits modification of sentences only in specific, carefully delineated circumstances.” *Shove*, 113 Wn.2d at 86. The authority for a court to increase the duration of an offender’s commitment is provided by RCW 9.94A.634(1).¹ *Id.* When an offender violates any requirement of a sentence, the trial court retains broad discretion to modify the sentence or impose additional punishment. *State v. Woodward*, 116 Wn. App. 697, 702-03, 67 P.3d 530 (2003).

“By violating the terms of his sentence, [Mr. Nason] moved outside the initial protections of the SRA and subjected himself to other statutory penalties, including the maximum penalty for the underlying offense.” *See State v. McDougal*, 120 Wn.2d 334, 352, 841 P.2d 1232 (1992). RCW 9.94A.634 provides in relevant part:

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

....

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

¹ RCW 9.94A.200 was recodified as RCW 9.94A.634 by LAWS OF 2001, ch. 10, § 6.

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

.....
(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

Mr. Nason contends the court lacked authority to enter the orders that modified his sentence conditions because the orders contain provisions which impose suspended sentences that are prohibited by RCW 9.94A.575. RCW 9.94A.575 provides:

The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.670, the special sex offender sentencing alternative, whose sentence may be suspended.

First, RCW 9.94A.575 does not control when a trial court is acting pursuant to RCW 9.94A.634 because the court is not *sentencing* the defendant. *See State v. DeBello*, 92 Wn. App. 723, 727, 964 P.2d 1192 (1998). To be more precise, a trial court acting pursuant to RCW 9.94A.634 is *imposing* or *ordering* additional confinement as a penalty or sanction. *Id.* at 726-27. Contrary to Mr. Nason's assertion, RCW 9.94A.575 does not apply when the court orders him to additional confinement for violating his sentence. *Id.*

The court was acting within its authority.

Second, the court did not suspend Mr. Nason's jail terms. In support of his argument, Mr. Nason relies upon *DeBello*. However on this point, *DeBello* is distinguishable. In *DeBello*, the defendant's sentence required him to advise the State of any change of address, and pay monetary obligations. *DeBello*, 92 Wn. App. at 725. The trial court later amended the sentence to permit the defendant to perform community service in lieu of paying part of his financial obligations. The defendant failed to perform the community service or make payments toward his legal financial obligations. He also failed to notify the State of his change of address. Following a hearing on the matter, the trial court imposed 60 days' confinement for each of the violations. The court then suspended 90 days of confinement on the condition that the defendant makes payments beginning 30 days after his release. *Id.*

Here, neither the challenged orders nor the actions of the trial court are the same as the suspended sentence disapproved of in *DeBello*. The sentencing court in *DeBello* ordered the defendant to serve multiple 60-day jail terms, and then suspended 90 days conditioned upon the defendant's performance of payment after his release from jail. *Id.* at 725. Therefore, the defendant was released 90 days before his term was completed. Mr. Nason was not released from confinement before his term was completed. When Mr. Nason was ordered to confinement of 60 days on July 10, 2006, he served the 60 days in

jail. Similarly, on August 30, 2007, Mr. Nason was ordered to confinement of 120 days and to make payments as scheduled.² The court did not suspend either of these jail terms.

Further, under the provision which Mr. Nason calls “auto-jail,” he was not sentenced to confinement at all. CP at 53, 109. Although the provision specifies a report date and a number of days to serve in jail, nothing is ordered. Those are the prospective consequences “if” Mr. Nason fails to make payment and fails to file a motion for a stay with the court. Report of Proceedings (RP) (April 27, 2007) at 5, 7.

Mr. Nason compares these provisions to the suspended sentence disapproved of in *DeBello*. However, the *DeBello* trial court sentenced the defendant to a specific jail term, and he was released early conditioned upon future payment. 92 Wn. App. at 725. On review, the court held that the sentencing court did not have express or implied authority to authorize the suspension of confinement terms. *Id.* at 728-29.

The provisions that Mr. Nason challenges did not sentence him to confinement and nothing was suspended. The sentence enforcements schemes in *DeBello* and the one used by the court here under RCW 9.94A.634 are not equivalent. Under these circumstances, the trial court has authority to modify Mr. Nason’s sentence, the court did not exceed that

² Although, the record is not clear about how many days he served, Mr. Nason was jailed on March 27, 2007, and received credit for the time served against his 120-day term. The court’s findings of fact and conclusions of law were entered more than 120 days after March 27, 2007.

authority, and did not impose a suspended a sentence. *See* RCW 9.94A.634; *Shove*, 113 Wn.2d at 86.

Finally, Mr. Nason's argument is premature because it is directed at something the court might do, i.e., impose a jail term if he fails to comply with the scheduled payments and fails to file a motion with the court for a stay by the review date. As noted by the trial court, the jail term in the provision is by no means a certainty. For example, if Mr. Nason's financial circumstances changed, nothing prevents him from supplying the appropriate documents to assist the court in setting a new monthly payment. RCW 9.94A.760(5). Mr. Nason is still free to file a motion to stay as provided for in the order, which he has filed in the proceedings below. Also, if Mr. Nason was to violate the order by not paying his LFO, the court may determine the violation is not willful and may modify its previous order regarding payment. RCW 9.94A.634(3)(d); *State v. Dalseg*, 132 Wn. App. 854, 862, 134 P.3d 261 (2006). ("When an offender violates any requirement of a sentence, the trial court retains broad discretion to modify the sentence and/or impose additional punishment.").

In *State v. Roberts*, 77 Wn. App. 678, 683, 894 P.2d 1340 (1995), the court explained:

We cannot say that the trial court has engaged in the prohibited practice of deferred sentencing unless or until the court actually uses [the offender's] behavior during the . . . period as a basis for deviating from the

sentencing guidelines. Thus, the State prematurely directs its argument at something the court might do – *i.e.*, impose a reduced sentence – rather than at something the court has already done. To characterize the order as an unlawful deferred sentence at this point would be to “render an advisory opinion on a record which has yet to be completed.” This we decline to do.

Accordingly, to characterize the provision which Mr. Nason challenges as a suspended sentence, when it has not been imposed and the court has taken no action based on Mr. Nason’s behavior would be to render an advisory opinion. *Id.*

Mr. Nason next contends that his incarceration without a hearing denied him due process. A defendant has minimal due process rights in a probation revocation hearing. *In re Pers. Restraint of Boone*, 103 Wn.2d 224, 230-31, 691 P.2d 964 (1984). This court applies the same standard to a hearing to consider violations of a sentence. *See State v. Badger*, 64 Wn. App. 904, 907-08, 827 P.2d 318 (1992). These requirements are:

(a) written notice of the claimed violations of [probation or] parole; (b) disclosure to the [probationer or] parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a “neutral and detached” hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact-finders as to the evidence relied on and reasons for revoking [probation or] parole.

Boone, 103 Wn.2d at 231 (citations omitted).

Pursuant to RCW 9.94A.634, a trial court may punish an offender who has violated any condition or requirement of his sentence. Under RCW 9.94A.634(3)(b), a

sentencing court shall require a defendant to show cause why he should not be punished for noncompliance. *State v. Curry*, 118 Wn.2d 911, 918, 829 P.2d 166 (1992). The purpose of this show cause requirement is to ensure that an indigent offender is not punished because of their inability to pay a fine. *See State v. Gropper*, 76 Wn. App. 882, 886, 888 P.2d 1211 (1995) (citations omitted).

At the hearing, the State had the burden of showing by a preponderance of the evidence that the defendant violated a sentencing condition. *Id.* at 887. Once the State's burden is met, the burden shifts to the defendant to show the violation was not willful. *Id.* This scheme provides sufficient safeguards to prevent imprisonment of indigent defendants, and the court is empowered to treat a nonwillful violation more leniently. *Curry*, 118 Wn.2d at 918.

It is undisputed that Mr. Nason has not complied with the financial obligations imposed in his sentence and subsequent modifications. He stipulated to these violations and the court found the violations to be willful. Unchallenged findings are treated as verities on appeal. *State v. Stenson*, 132 Wn.2d 668, 697, 940 P.2d 1239 (1997). Nevertheless, Mr. Nason contends that he was denied due process because he claims "auto-jail" provisions in the orders require his incarceration before the court determines the willfulness of his conduct and his ability to pay.

However, as noted above, the provision Mr. Nason challenges does not impose a

jail term. More importantly, the jail terms he did serve were imposed by orders entered by the court after Mr. Nason appeared at hearings on the matters, and agreed to them. These hearings afforded Mr. Nason the opportunity to show cause, why he should not be incarcerated for his violation. Also, in both cases, Mr. Nason was given credit for the time he had served awaiting his hearings. Mr. Nason was not denied the required minimum due process of a hearing before the court imposed its terms of additional confinement. *See Boone*, 103 Wn.2d at 230-31.

Mr. Nason also asserts that the trial court erred by denying him credit against his financial obligation for the jail time he served. "Statutes in pari materia must be construed together." *State v. Houck*, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). "Statutes in pari material are those which relate to the same person or thing, or the same class of persons or things; and in construing a statute, or statutes, all acts relating to the same subject matter or having the same purpose, should be read in connection therewith as together constituting one law." *Id.* at 684-85. The object of the rule is to ascertain and effect the intent of the legislature. The rule proceeds "upon the supposition that the several statutes having to do with related subject matters were governed by one spirit or policy, and were intended to be consistent and harmonious in their several parts and provisions." *Id.*

Mr. Nason argues that RCW 10.01.180 and RCW 9.94A.634 should be construed

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together because both statutes discuss financial obligations. RCW 10.01.180(3) provides, “[a] person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.”

Therefore, Mr. Nason seeks credit against his legal financial obligations for confinement that was imposed when he violated his sentence. As support for this position, Mr. Nason employs general rules of statutory construction, i.e., statutes relating to the same subject matter must be read as a unified whole. *See Anderson v. Dep’t of Corrections*, 159 Wn.2d 849, 861, 154 P.3d 220 (2001).

The argument is flawed because these two statutory schemes do not relate to the same subject matter and do not have the same purpose. “The contempt proceeding authorized by RCW 10.01.180 is civil.” *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 105, 52 P.3d 485 (2002). The primary purpose of the civil contempt power is to coerce a party to comply with an order or judgment. *Id.* In *Smith*, the court found that:

RCW 10.01.180(1) clearly defines nonpayment as *contempt*, RCW 10.01.180(3) clearly contemplates that jail time may be imposed for nonpayment, and RCW 7.21.030(2)(a) clearly authorizes jail time as a remedial sanction. *The jail time imposed for nonpayment is not part of the sentence. . . . Imposing jail time for nonpayment was not an execution of originally suspended jail time.*

Id. at 110 (citations omitted) (emphasis added). RCW 10.01.180 relates to a term of imprisonment to coerce a defendant who is found in contempt for nonpayment of a fine or

costs.

In contrast, an order pursuant to RCW 9.94A.634 is the only circumstance under which the SRA permits sentence modification. *See State v. McDougal*, 120 Wn.2d at 346. The SRA regulates the sentencing of felony offenders. RCW 9.94A.010. When “an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment.” RCW 9.94A.634(1). The sentence modification is punishment for the original crime. *See State v. Prado*, 86 Wn. App. 573, 577, 937 P.2d 636 (1997). “A proceeding, the purpose of which is punitive and which results in a determinate jail sentence, with no opportunity for a defendant to purge himself of the contempt, is criminal.” *State v. Browet, Inc.*, 103 Wn.2d 215, 218, 691 P.2d 571 (1984). RCW 9.94A.634 relates to additional confinement as punishment for a defendant who is found to be willfully violating the terms of his sentence.

The sanctions imposed by these separate statutory schemes employ different procedures, have different subject matter, and are applied for fundamentally different purposes. Jail time imposed for contempt pursuant to RCW 10.01.180 is not the same as the additional confinement imposed under RCW 9.94A.634. “[S]tatutes providing for one kind of contempt cannot be read to circumscribe statutes providing for the other.” *See In re Pers. Restraint of King*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988). Mr.

Nason's sentences were modified to impose additional confinement pursuant to RCW 9.94A.634. Thus, credit for the time served pursuant to RCW 10.01.180 cannot properly be applied to Mr. Nason's legal financial obligations.

Finally, Mr. Nason contends that his due process rights were violated because of the clerk's, rather than the judge's, participation in the LFO. The failure to raise an issue in the trial court precludes review on appeal unless the trial court committed a manifest error affecting a constitutional right. RAP 2.5(a). Because RAP 2.5(a)(3) is an exception to the general rule, we construe the exception narrowly by requiring the asserted error to be (1) manifest and (2) truly of constitutional magnitude. *See State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999).

The burden is upon the defendant to make the required showing. *See State v. McDonald*, 138 Wn.2d 680, 691, 981 P.2d 443 (1999). The defendant must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant's rights; it is this showing of *actual prejudice* that makes the error "manifest," allowing appellate review. *Id.* (citations omitted). If the record from the trial court is insufficient to determine the merits of the constitutional claim, then the claimed error is not manifest and review is not warranted. *Id.*

The SRA authorizes the sentencing court to order additional confinement as a penalty or sanction for an offender who willfully violates his sentence. RCW 9.94A.634;

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see also DeBello, 92 Wn. App. at 727.

Mr. Nason argues that the county clerk's involvement to monitor and collect his legal financial obligation violates his and other offenders' due process rights. In support of this position, he alleges that the clerk's involvement amounts to negotiating and entering into agreements, advising him of his constitutional rights, and recommending sanctions. He argues the county clerk has no statutory authority to perform these acts. Mr. Nason asserts that the court illegally allowed the court clerk to follow procedures used by the Department of Corrections to carry out the process of collecting financial legal obligations. Mr. Nason contends that the clerk's actions violated due process, but he does not say how, and none of these arguments were presented below.

Mr. Nason also fails to cite any authority to support his arguments.

RAP 2.5(a)(3) precludes review of an issue raised for the first time on appeal unless the trial court committed a manifest error affecting a constitutional right. *See McDonald*, 138 Wn.2d at 691. Mr. Nason fails to demonstrate that such an error occurred and cites no authority in support of his position. Both orders challenged by Mr. Nason in this appeal were entered by the trial court, not the court clerk. The actions of the county clerk are simply not at issue here.

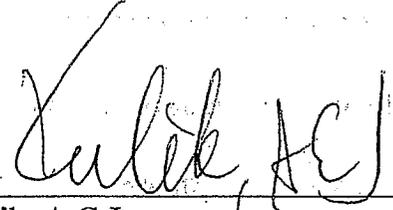
We affirm.

A majority of the panel has determined this opinion will not be printed in the

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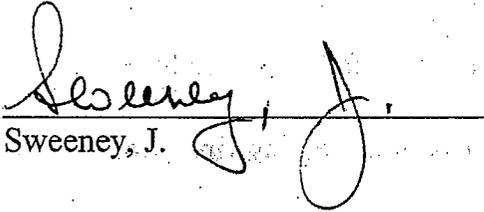
Washington Appellate Reports, but it will be filed for public record pursuant to RCW

2.06.040.

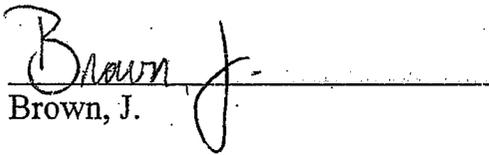


Kulik, A.C.J.

WE CONCUR:



Sweeney, J.



Brown, J.

*4002

**WEST'S REVISED CODE OF
WASHINGTON
UNANNOTATED
TITLE 9. CRIMES AND
PUNISHMENTS
CHAPTER 9.94A.
SENTENCING REFORM ACT
OF 1981**

*Current through Chapter 4 of the 2008
Regular Session*

**9.94A.634. Noncompliance with condition
or requirement of sentence--
Procedure--Penalty**

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and

sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

*4003 (d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate.

CREDIT(S)

[2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW 9.94A.200.]

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WEST'S REVISED CODE OF
WASHINGTON
UNANNOTATED
TITLE 9. CRIMES AND
PUNISHMENTS
CHAPTER 9.94A.
SENTENCING REFORM ACT
OF 1981

*Current through Chapter 4 of the 2008
Regular Session*

9.94A.760. Legal financial obligations

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one

hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

*4085 If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each

victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to

collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

***4086** (5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be

modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

*4087 (8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

*4088 (13) The county clerk may access the

records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

offender who is no longer, or was not, subject to supervision by the department for a term of community custody, community placement, or community supervision, and who remains under the jurisdiction of the court for payment of legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any

CREDIT(S)

[2005 c 263 § 1, eff. July 24, 2005; 2004 c 121 § 3, eff. June 10, 2004; 2003 c 379 § 14, eff. Oct. 1, 2003. Prior: 2001 c 10 § 3; prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

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

FILED
OCT 20 2008
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,)
Plaintiff/Respondent,)
vs.)
JAMES ROBERT NASON,)
Defendant/Appellant.)

Spokane County No. 99-1-00353-6
Court of Appeals No. 26180-8-III
PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on October 20, 2008, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or personally served, a true and correct copy of petition for review:

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