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SUPREME COURT OF THE STATE
OF WASHINGTON

State of Washington,

Respondent,

v.

Snohomish County District Court, Cascade Division,
The Hon. Paul F. Moon, Commissioner,

Defendants,

Douglas P. Hutchison,
Petitioner.

Snohomish County Superior Court
Cause No. 10-2-08562-7

PETITIONER'S REPLY BRIEF

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ORIGINAL

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A. ARGUMENT

The State's statutory analysis of the term "treatment plan" ignores its use in other provisions of RCW 10.05. The argument offered by the State renders language throughout RCW 10.05 superfluous and reaches the incongruous result where district courts pay for the recitation of a treatment program while being fully aware that the individual will not be able to pay the costs associated with that program of treatment. The State's arguments regarding the statutory interpretation of the term "treatment plan" repeatedly emphasize the cost involved in an effort to urge the Court to reach a results oriented ruling even though the costs involved bear no weight on the statutory interpretation at issue.

The State purports that the legislative history of RCW 10.05.130 that discusses the justice suspense funds bears on the Court's interpretation; however, at the same time that it cites to legislative history, the State argues that the statute is unambiguous. The plain and unambiguous language of RCW 10.05.130 states that the payments for an indigent person's deferred prosecution treatment plan shall come from the fines and forfeitures of the district court. Therefore, it is unnecessary to look to the legislative history of the suspense fund. Even if the Court looked to this legislative history, the history of the justice court suspense fund, specifically its elimination via a "state general fund," does not signal

a legislative intent to abandon appropriating court resources to treatment costs under RCW 10.05.130. The justice court suspense fund may be considered a special fund, rendering its incorporation into the state general fund inconsequential for the purposes of RCW 10.05.130. Lastly, even without express appropriation authorization, a court may have the ability to appropriate public funds because a court may require payment of necessary funds to administer duties of the court.

1. THE STATE'S ANALYSIS IGNORES USE OF THE TERM "TREATMENT PLAN" IN OTHER PROVISIONS OF RCW 10.05, RENDERS PORTIONS OF THE STATUTE SUPERFLUOUS, AND PRODUCES A RESULT INCONGRUOUS WITH THE INTENT TO INCLUDE INDIGENT DEFENDANTS.

- a. Statutes are to be construed as a whole and their individual sections harmonized; however, the State's argument ignores the use of the term "treatment plan" RCW 10.05.090.

The term "treatment plan" is used in four separate provisions of RCW 10.05. In its response brief, the State discusses RCW 10.05.050, RCW 10.05.060, and RCW 10.05.130 to support its argument that the term "treatment plan" refers only to the document reciting the program of treatment rather than the program of treatment itself. However, similar to the Superior Court when issuing its ruling, the State completely ignores the use of the term "treatment plan" in RCW 10.05.090, which states:

If a petitioner who has been accepted for a deferred prosecution fails or neglects to carry out and fulfill any term or condition of the

petitioner's *treatment plan*, the facility administering the treatment shall immediately report such breach to the court.

RCW 10.05.090 (emphasis added).

Here, the statute's use of the term "treatment plan" clearly refers to the program of treatment. The term as used in this provision contemplates an individual who has already been granted a deferred prosecution and who is currently participating in the "treatment plan". If an individual has already been accepted on a deferred prosecution, non-compliance with the "treatment plan" as used in the RCW 10.05.090 plainly means non-compliance with the actual course of treatment. Statutes are to be construed as a whole and their individual sections harmonized. State v. Williams, 62 Wn.App. 336, 338 (1991). The State's argument fails to take RCW 10.05.090 into account when putting forth its interpretation of "treatment plan".

- b. The State's construal of "treatment plan" disregards the nuances of language contained within RCW 10.05.060 and renders language contained within that provision superfluous.

In discussing RCW 10.05.060, the State overlooks key language contained within this provision. RCW 10.05.060 states:

If the *report* recommends treatment, the court shall examine the *treatment plan*. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution.

RCW 10.05.060 (emphasis added).

RCW 10.05.060 distinguishes between the “report” generated by the chemical dependency expert and the “treatment plan” itself. The court examines “the treatment plan”; if the court approves the plan, it may grant the petition for deferred prosecution if the petitioner agrees to comply with *its* terms and conditions and agrees to pay the cost *thereof* if able to do so. Id. (emphasis added). “The costs thereof” refers to the petitioner’s ability to pay for the course of treatment since the fee for generating the report reciting the treatment plan has already been paid. The State fails to recognize these nuances contained within the statute when putting forth its interpretation of “treatment plan” and renders the words “if able to do so” superfluous. RCW 10.05.060 confirms that a petitioner must agree to the terms and conditions of the course of treatment, not merely the recitation of the recommended treatment.

- c. The State’s interpretation of the term “treatment plan” produces a result that is wholly incongruous with the clear intention contained within the statute to include indigent individuals in the deferred prosecution program.

RCW 10.05.130 provides that “funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.” RCW 10.05.130. An indigent person

is entitled to public funds under RCW 10.05.130 if the person is unable to pay the cost of any program of treatment. The statute's plain language specifically presumes inclusion of indigent defendants unable to pay for treatment costs in the deferred prosecution program.

The State's narrow reading of "treatment plan" will lead to situations where indigent defendants are deemed eligible for the program; however, their inability to pay for the course of treatment bars their participation. The State's reading of RCW 10.05.130 creates a procedural scenario whereby the district courts, fully aware that the person will be unable to pay for the program of treatment and therefore unable to participate, still pay for the narrative report reciting the program of treatment. This interpretation produces a result that the legislature did not intend and which conflicts with the entire purpose of including RCW 10.05.130 in the initial legislation. The State's claim that "treatment plan" only refers to a document entirely contradicts the statute's intent evidenced by its plain language to include indigent persons in the deferred prosecution program.

2. THE STATE'S ARGUMENT REGARDING THE JUSTICE COURT SUSPENSE FUND ARE UNPERSUASIVE AND SHOULD NOT FACTOR INTO THE COURT'S INTERPRETATION OF RCW 10.05.130.
 - a. Because the plain and unambiguous language of RCW 10.05.130 dictates that payments for an indigent person's

program of treatment must come from the fines and forfeitures of the court, the court need not look to the legislative history regarding the justice court suspense fund.

The State asserts in its brief that the justice court suspense fund was the contemplated source of revenue to fund treatment under RCW 10.05. Nothing in the text of RCW 10.05 requires that funds be dispersed from the justice court suspense fund to pay for deferred prosecution treatment plans for indigent defendants. Rather, the plain text of RCW 10.05.130 provides that “funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment.” RCW 10.05.130.

The State urges the Court to consider the legislative history of RCW 10.05 to conclude that funds for deferred prosecutions must be withdrawn from the justice court suspense fund. However, in judicial interpretation of statutes, the first rule is the court should assume the legislature means exactly what it says. City of Kent v. Jenkins, 99 Wn.App. 287, 290 (2000). Plain words do not require construction. Id. When a statute is clear and unambiguous, a reviewing court may not engage in statutory construction. State v. Hahn, 83 Wn. App. 825, 834 (1996), review denied, 131 Wn.2d 1020 (1997). The court may not look to legislative history, as the State does in its argument regarding the justice

suspense fund, when the statutory language is plain and unambiguous.

State v. Hirschfelder, 170 Wn.2d 536, 548 (2010).

The plain language of RCW 10.05.130 confirms that payment for deferred prosecutions must come from the fines and forfeitures of the court. It is therefore not necessary to resort to legislative history to determine the source of funding. In providing such broad language in 10.05.130, the legislature allowed for changes in the structure of the district court fine collection process; such broad language survives despite the dissolution of the justice court suspense fund.

- b. The history of the justice court suspense fund, specifically its elimination via a “state general fund,” does not signal a legislative intent to abandon appropriating court resources to treatment costs under rcw 10.05.130.

Even if the Court finds that the legislature intended for funds for deferred prosecutions to come from the justice court suspense fund, that fund’s elimination does not evince a desire by the legislature to abolish funding for deferred prosecutions. This issue arises primarily due to a 1984 revision of RCW 3.62.020. Prior to 1984, the statute required the county treasurer to place all court costs, fines, forfeitures, and penalty fees into the “justice court suspense fund.” Laws of 1969, Ex. Sess., ch. 199, §2. In 1984, however, the legislature enacted the Court Improvement Act of 1984. Laws of 1984 c 258 §1. By this act, the legislature intended to

assure accountability, uniformity, economy, and efficiency in the collection and distribution by superior, district, and municipal court of all court generated revenue. 1984 c 258 §301. Therefore, the suspense fund became the state general fund.

The legislature did not similarly edit RCW 10.05.130 in 1984, causing the statute's fines and forfeitures appropriation for treatment program costs to be an appropriation from the state general fund rather than the justice court suspense fund. Without an additional amendment, the State contends that court appropriation of state general funds without express legislative permission runs afoul to Article 8, Section 4 of the Washington Constitution, which states, "No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law." WASH. CONST. Art. 8, §4. In other words, the State argues that by transforming the suspense fund into a general fund, the legislature implicitly intended to erect an appropriation requirement that has yet to be enacted.

The State errs with this construction in two ways. First, in construing a statute, the court's objective is to determine the legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600 (2005). The soundest indication of legislative intent is the language enacted by the legislature, thus mandating a court to give effect to that plain meaning. Id. (quoting

Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9 (2002)).

Determining the plain meaning of a statutory provision involves looking to the text of the statute at issue, as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. Id. Here, the State fails to examine the context of RCW 3.62.020, a wholly administrative statute, as well as this statute's bearing on deferred prosecutions, a creature of statute. Abad v. Cozza, 128 Wn.2d 575, 580 (1996). By neglecting this contextual analysis, the State fails to realize that the funding previously directed to the suspense fund, though now amalgamating with additional court resources in the state general fund, existed as a proprietary special fund.

Secondly, the State forgoes the contextual analysis in order to misconstrue the legislative history of RCW 3.62.020. If a court resorts to construing legislative history, a maneuver reserved only if the statutory text is susceptible to more than one reasonable understanding, it may examine the purpose of the statute to determine whether the legislature intentionally discontinued appropriating court funds to treatment costs. North Coast Air Serv. v. Grumman Corp., 111 Wn.2d 315, 321 (1988). The history of the 1984 amendment reveals legislative concern for administrative efficiency. Under the 1984 Court Improvement Act, the legislature described the general fund shift as a measure to "assure

accountability, uniformity, economy, and efficiency.” 1984 c 258 §301. The legislature merely desired a centralized financial fund available to recycle court revenue and expenditure; nothing in the legislative history indicates the amendment was a reaction or response to the suspense fund, either in its general operation or as a means of allocating treatment funds for indigent persons unable to pay.

The legislature has not amended RCW 10.05.130 since its enactment in 1975. Laws of 1975 1st ex.s. c 244 § 13. Since the 1984 general fund amendment followed the enactment of RCW 10.05.130, this court must presume the legislature had “full knowledge of existing statutes affecting the matter upon which they are legislating.” State v. Conte, 159 Wn.2d 797, 808 (2007). Thus, by not altering the grant of indigent financial support of RCW 10.05.130, the legislature did not intend to foreclose indigent financial support from court revenue; rather, the legislature intended to implement an efficient revenue management plan within the court system, without subsequently intending to eliminate previously appropriated means of judicial expenditure.

- c. The justice court suspense fund may be considered a special fund, rendering its incorporation into the state general fund inconsequential for the purposes of RCW 10.05.130.

Although the literal bearing of Article 8, Section 4 of the Washington Constitution requires express legislative appropriation of any

public funds prior to disbursement from the state treasury, Washington courts honor a “common sense interpretation...that the treasurer may be made custodian of particular funds of a proprietary nature which are held for a specific purpose...distributable without specific legislative appropriation.” Municipality of Metro. Seattle v. O’Brien, 86 Wn.2d 339, 345 (1976). Consequently, in establishing a financial appropriation system specifically for indigent persons unable to cover program treatment, the legislature could elect to create a monetary fund for that purpose either (1) by creating a state fund with the state treasury, under state auditor and treasurer control, disbursable only in pursuance of an appropriation as provided by Article 8, Section 4, or (2) by making the fund, in whole or in part, a special fund, proprietary in nature, designed to meet certain specific objectives.

This latter fund may be placed in the state treasurer’s custody, acting ex officio, and resources may be expended as directed by the legislature without a specific appropriation. Id. at 346. Beyond constitutionally required state payment, typically manifest in state taxes, the legislature may determine the “nature, the place and character of custody, and the requisites for the expenditure of a fund created by it.” Id. at 345.

Consideration of the history of RCW 3.62.020 indicates that the suspense fund was perhaps a special fund rather than state fund rigidly restricted by Article 8, Section 4. By treating the 1984 “elimination” of the suspense fund and subsequent diversion of court revenue to the general fund, the State surmises that any and all court revenue is not of a special and proprietary nature. Illustrative is Municipality of Metro. Seattle v. O’Brien, 86 Wn.2d 339 (1976), in which this Court heard a case concerning a shift from the motor vehicle excise fund to a general fund. Id. Absent a superseding constitutional or legislative directive, the Court characterized the distinction between state funds and special funds by “the character of the funds themselves.” Id. at 347. That is, although revenue generated by the court currently flows into a state general fund, the underlying purpose of the funds is determinative.

The State explicitly acknowledges the local character of misdemeanor crimes and court funding, illuminating the special and proprietary nature of court funding. Although court revenue itself currently enters a county funded general fund, the intimately local quality of court funding coupled with the statutory shift from the suspense fund to the general fund indicate that the funds available for indigent treatment “should be considered local funds to be held by the state treasurer in a custodial capacity; hence, no appropriation is required.” Id. at 347.

The general fund under RCW 3.62.020 accrues county by county; thus, the Snohomish County District Court receives funding from the Snohomish County General Fund, further supplemented by County “sales and property taxes, charges for service, fines and forfeitures, etc.” Respondent’s Brief at Appendix F, p.52. County district courts bring in revenue “primarily through traffic infractions.” Id. Though the infractions “pay for themselves: they do not take up a lot of judicial and staff time,” misdemeanors demand more time and cost than what is covered by fines. Id. Courts do not budget deferred prosecution treatment for indigent persons, which is understandable given the State’s concession that court payment for indigent treatment is apparently unprecedented despite the mandate of RCW 10.05.130.

By combining individual county discretion in budget appropriation and potential monetary savings inherent in the deferred prosecution system, the court funded treatment for indigent clients in deferred prosecutions under RCW 10.05.130 should be viewed as a statutory means of permissible local spending. See Abad, 128 Wn.2d at 581 (“Thus, the successful completion of the treatment program by a person who acknowledges culpability pursuant to RCW 10.05.020 and is in need of treatment results in the complete avoidance of the usual process and consequences of the criminal system.”).

- d. Even without express appropriation authorization, a court may have the ability to appropriate public funds because a court may require payment of necessary funds to administer the duties of the court.

Without coterminous revision of RCW 10.05.130 in 1984, when the legislature effectively transformed the “suspense fund” into a “general fund”, granting an indigent defendant’s request for court funded treatment may have been reasonably necessary in order to administer the duties of the court. A court may “require payment of necessary funds for the efficient administration of justice.” Zylstra v. Piva, 85 Wn.2d 743, 749 (1975). This Court has expressly acknowledged the malleable limits imposed by the separation of powers doctrine on a court given statutory complications in judicial administration, as “separation of powers also dictates that the judiciary be able to ensure its own survival when insufficient funds are provided by other branches.” In re Juvenile Director, 87 Wn.2d 232, 245 (1976). Therefore, even without express authorization, the district courts have the ability to appropriate public funds to administer the duties of the court.

B. CONCLUSION

The issue before the Court is the meaning of the term “treatment plan” as used in RCW 10.05.130. In articulating its position, the State continually reiterates its themes of funding and costs. While these issues

bear no weight on the statutory interpretation issue before the court, the State persistently highlights the costs that may be involved to urge the court to reach a results oriented decision. The State's argument ignores the use of the term "treatment plan" in RCW 10.05.090 and renders language contained within RCW 10.05.060 superfluous. The State's interpretation of the term "treatment plan" produces a result that is wholly inconsistent with the clear intention contained within the plain language of the statute: inclusion of indigent individuals in the deferred prosecution program.

The State's argument regarding the justice court suspense fund are unconvincing and should not factor into the court's interpretation of "treatment plan" as used in RCW 10.05.130. Because the plain and unambiguous language of RCW 10.05.130 dictates that payments for an indigent person's program of treatment must come from the fines and forfeitures of the court, the Court need not look to the legislative history regarding the court suspense fund. Furthermore, the history of the justice court suspense fund, specifically its elimination via a "state general fund," does not signify a legislative intent to abandon appropriating court resources to treatment costs under RCW10.05.130. The justice court suspense fund may be considered a special fund, rendering its incorporation into the state general fund inconsequential for the purposes

of RCW 10.05.130. Lastly, even without express appropriation authorization, a court may have the ability to appropriate public funds because a court may require payment of necessary funds to administer the duties of the court.

For these reasons, Mr. Hutchison respectfully requests that the Court reverse the Superior Court's ruling and remand with instructions to reinstate Commissioner Moon's order disbursing funds to pay for Mr. Hutchison's program of treatment.

RESPECTFULLY SUBMITTED this 28th day of June, 2012.

WHITNEY RIVERA, WSBA #38139
Attorney for the Petitioner

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 29, 2012, I arranged for service of the Petitioner's Reply Brief to the court and counsel for the parties to this action as follows:

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State of Washington v. Douglas P. Hutchison
10-2-08562-7

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