

No. 86148-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 66631-2-I

CITY OF SEATTLE,
Respondent,

vs.

DONALD FULLER,
Petitioner.

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RESPONDENT'S BRIEF

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A. RESPONSE TO ASSIGNMENT OF ERROR

Seattle Municipal Court had authority to impose restitution as condition of Defendant's sentence under RCW 35.20.

B. ISSUE PRESENTED FOR REVIEW

Petitioner, Donald Fuller, was convicted of obstructing under RCW 9A.76.020. The trial court imposed restitution as part of a suspended sentence. Even though there is no statute specifically addressing the imposition of restitution in municipal courts, was Seattle Municipal Court authorized to order restitution under RCW 35.20?

C. STATEMENT OF THE CASE

Fuller was convicted of one count of obstructing in Seattle Municipal Court under RCW 9A.76.020 from an incident that occurred on March 6, 2009. At sentencing, the trial court imposed 365 days in jail with 358 suspended, a \$5000 fine with \$5000 suspended, and ordered restitution to the arresting officer for glasses damaged during the incident.

Fuller appealed his conviction in King County Superior Court claiming that the trial court had no authority to order restitution. He argued that the only authority allowing Seattle Municipal Court to impose restitution was RCW 9A.20.030 which allows restitution ordered in lieu of a fine. The superior court found the trial court had authority to order both restitution and a fine, that State v. Barnett, 36 Wn.App. 560, 675 P.2d 626 (1984), was controlling, and that RCW 9A.20.030 does not limit RCW 9.92.060. Fuller filed a motion for reconsideration which was denied. He sought discretionary review in the Court of Appeals and was denied. This Court granted review.

D. ARGUMENT

1. Municipal courts have authority to impose restitution under RCW Chapter 35.20.

The authority to impose restitution is statutory. State v. Soderholm, 68 Wn.App. 363, 377, 842 P.2d 1039 (1993). Under Title 9, Crimes and Punishment, RCW 9.92.060(2) and 9.95.210(2) provide for restitution as a condition for a suspended sentence and condition of probation. “An award for restitution for a misdemeanor offense is authorized under RCW 9.92.060(2) and 9.95.210(2), both

of which allow the court to require the defendant ‘to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question...’” Soderholm, 68 Wn.App. at 377.

Defendant argues that because of the reference to actions of the “superior court” in both statutes, neither applies to municipal courts. In spite of this reference, both statutes are applicable pursuant to the authority granted to municipal courts under RCW 35.20. Seattle Municipal Court is established by the legislature, and the scope of its jurisdiction and the extent of its powers are governed by chapter 35.20 RCW and not the Seattle Municipal Code. City of Seattle v. Briggs, 109 Wn.App. 484, 488, 38 P.3d 349 (2001). RCW 35.20.010(1) provides that a municipal court “shall have jurisdiction and shall exercise all the powers by this chapter declared to be vested in such municipal court, together with such powers and jurisdiction as is generally conferred in this state either by common law or statute.” RCW 35.20.010(1) confers municipal courts with the same authority granted to superior courts to suspend or defer a sentence and impose restitution as a condition of probation.

That there is also no specific provision in RCW Title 3 granting district courts or other courts of limited jurisdiction authority to order restitution suggests that the legislature intended RCW 9.92.060(2) and 9.95.210(2) to apply both district and municipal courts, as well as superior courts.

Additionally, RCW 35.20.255 authorizes municipal courts to fix the terms of a deferred or suspended sentence:

Judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violation of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence including installment payment of fines, *fix the terms of any such deferral or suspension, and provide for such probation as in their opinion is reasonable and necessary under the circumstances of the case,* but in no case shall it extend for more than five years from the date of conviction for a defendant to be sentenced for a domestic violence offense or under RCW 46.61.5055 and two years from the date of conviction for all other offenses.

(italics added). An important goal of sentencing is to provide an opportunity for rehabilitation of the defendant so that he or she can resume a productive role in the community. Probation is a means by which courts may provide defendants with this opportunity. State v. Hall, 35 Wn.App. 302, 306, 666 P.2d 930 (1983). The imposition of restitution is consistent with the goal of rehabilitation. While one of

the primary purposes of restitution is to aid victims, “its other purpose is to impress upon the offender the consequences of his conduct and his responsibility to repair that loss as much as possible.” State v. Eyre, 39 Wn.App. 141, 144, 692 P.2d 853, 854 (1984). Given its dual purposes of reimbursement and rehabilitation, restitution could be a “reasonable and necessary” term of a deferred or suspended sentence and probation.”

Additionally, there is no prohibition against imposing restitution in RCW 35.20.255. The only limitation set out is the length of jurisdiction. “When a statute lists the things upon which it operates, we presume the legislature intended the omissions.” City of Seattle v. Sisley, 164 Wn.App. 261, 265, 263 P.3d 610 (2011). The presumption applies that because there is no prohibition against the imposition of restitution, the legislature intended that municipal courts would have authority to impose the same.

Finally, RCW 35.20.250 provides that a municipal court “shall have concurrent jurisdiction with the superior court and district court in all civil and criminal matters as now provided by law for district judges...” Under this statute a municipal court may

exercise the same powers as a district court to try violations of state law. Avlonitis v. Seattle District Court, 97 Wn.2d 131, 136, 641 P.2d 169 (1982). Petitioner asserts that this provision does not convert Seattle Municipal Court into a superior court, nor render all statutes referring superior courts to Seattle Municipal Court. While this is correct, it does not make sense that the legislature would grant municipal courts the same power to try violations of state law, yet intend that municipal courts should not have the same authority as district courts to impose restitution. There is no logical reason that a criminal defendant should be allowed to escape responsibility for reimbursing a victim or that a judge may not use restitution as a rehabilitative tool simply because the case is charged in a municipal court instead of a district court.

2. The Washington Criminal Code, RCW 9A.20.030, grants the authority to impose restitution in lieu of a fine.

The Washington Criminal Code, RCW 9A.20.030(1) provides, “the court, in lieu of imposing the fine authorized for the offense under RCW 9A.20.020, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the

defendant's gain or victim's loss from the commission of a crime.”

RCW 9A.20.020 addresses authorized sentences for crimes committed before July 1, 1984. RCW 9A.20.021 addresses maximum sentences for crimes committed July 1, 1984, and after. In State v. Shannahan, 69 Wn. App. 512, 849 P.2d 1239 (1993), the Court stated in a footnote, “We hold that the authorization of restitution in lieu of a fine in RCW 9A.20.030 applies with equal force to fines imposed pursuant to RCW 9A.20.020 and to those imposed pursuant to RCW 9A.20.021.” Id. at fn.2.

Petitioner argued below on RALJ appeal that RCW 9A.20.030 limited the option of ordering restitution as a condition of a suspended sentence because it was not limited by references to cases in superior court. However, State v. Barnett, 36 Wn. App. 560, 675 P.2d 626 (1984), held that RCW 9.92.060, the suspended sentence statute, is not limited by RCW 9A.20.030, the restitution statute. The Court explained that the suspended sentence statute is remedial. Id. at 562. The restitution statute, on the other hand, is penal, and it is an additional sentencing option providing for an order

of restitution in lieu of a fine. “The two statutes serve different functions and do not limit each other.” Id.

Petitioner now argues that RCW 9A.20.030 is not applicable because it applies only to crimes committed before July 1, 1984, and that Shannahan should be overruled on this issue. Whether 9A.20.030 applies only to 9A.20.020 or extends to 9A.20.021 as well, does not clarify whether Seattle Municipal Court had authority to impose restitution as a condition of a suspended sentence and probation.

3. Public policy supports an interpretation of Title 35.20 authorizing municipal courts to impose restitution.

“Restitution is an integral part of the Washington system of criminal justice both for felonies and misdemeanors.” Shannahan, 69 Wn.App. at 517. In Shannahan, the defendant was convicted of negligent driving in the first degree, a misdemeanor, and ordered to pay restitution to the victim in lieu of a fine of \$250. In response to the defendant’s argument that authorizing restitution was contrary to public policy, the Court referred to RCW 9.94A.142(2), part of the Sentencing Reform Act of 1981, which states that restitution shall be

ordered whenever an offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exists making restitution inappropriate. The Court acknowledged that while the statute is not directly applicable to misdemeanors, it indicates a strong public policy to provided restitution whenever possible. Id. at 518. In the absence of clearly expressed legislative intent to prohibit restitution for negligent driving convictions, the Court declined to carve out an exception to the "otherwise general application of restitution to criminal offenses." Id. Similarly, in this matter there is an absence of clearly expressed legislative intent to prohibit the imposition of restitution in municipal courts. The public policy generally favoring the imposition of restitution for criminal offenses would be promoted by a finding that the powers conferred on municipal courts under Title 35.20 grant such courts authority to impose restitution.

E. CONCLUSION

Based on the foregoing argument, the superior court's decision affirming the imposition of restitution should be affirmed and the case remanded to Seattle Municipal Court.

Respectfully submitted this 11th day of April, 2012.

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Cc: 'Christine Jackson'
Subject: City of Seattle v. Donald Fuller - Supreme Court No. 86148-0

Re: Supreme Court No. 86148-0 – City of Seattle v. Donald Fuller

Sir or Madam-

I am re-filing the Respondent's Brief on the above matter with corrections and dated 4/11/12. Please disregard the brief filed yesterday dated 4/10/12. I am serving the corrected brief on Petitioner by cc'ing his attorney, Christine Jackson, in this email. I apologize for this inconvenience.

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