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Supreme Court No. _____
COA No. 65367-9-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ADAM GRAY,

Petitioner.

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/DECISION BELOW

William Adam Gray requests this Court grant review pursuant to RAP 13.4 of the unpublished decision of the Court of Appeals in State v. Gray, No. 65367-9-I, filed June 6, 2011.¹ A copy of the opinion is attached as an appendix.

B. ISSUE PRESENTED FOR REVIEW

The Sentencing Reform Act (SRA) requires a trial court to determine the amount of restitution due in a criminal case at sentencing or within 180 days. The purpose of the mandatory time limit is to secure finality. Once restitution is awarded, the court may modify the amount of restitution for as long as the court retains jurisdiction over the offender. But the Legislature did not intend the State be able to modify a restitution award after 180 days to cover expenses it could have proved, but simply failed to prove, at the time of the initial award. The Legislature did not intend to provide the State a "second bite at the apple."

In this case, the Court of Appeals affirmed the trial court's order that modified a restitution award more than 180 days after sentencing to cover expenses incurred prior to sentencing. The

¹ The State filed a motion to publish, which the Court of Appeals denied on July 11, 2011.

Court of Appeals opinion conflicts with principles of statutory construction and legislative intent, and with basic notions of finality at sentencing that Washington courts have consistently affirmed. Therefore, this Court should grant review. Review is also warranted because the Court of Appeals opinion conflicts with State v. Ryan, 78 Wn. App. 758, 899 P.2d 825 (1995), which holds that a restitution award must be correctly determined within 180 days and may not be modified later to correct procedural infirmities underlying the initial award. Finally, no published Washington case addresses the factual scenario here—where the trial court modified a restitution award after the 180-day time limit had passed, in order to cover expenses incurred prior to the initial award. Because the scenario is likely to recur, the case involves an issue of substantial public interest that should be determined by this Court.

C. STATEMENT OF THE CASE

In May 2009, William Gray pled guilty to one count of first degree manslaughter, RCW 9A.32.060(1)(a), for recklessly causing the death of Sanelive Hikila; and one count of assault in the second degree, RCW 9A.36.021(1)(c), for intentionally assaulting Vita Moimoi with a handgun. CP 6-27. The allegations arose out of an incident that occurred on November 5, 2006. CP 3.

The guilty plea agreement provided: "the defendant shall pay restitution in full to the victim(s) on charged counts." CP 23.

At the sentencing hearing on June 5, 2009, the State requested restitution, with the amount to be determined on a future date. 6/05/09RP 3. Two months later, on August 12, 2009, the court entered an order requiring Mr. Gray to pay restitution in the amount of \$6,730.82 to "Crime Victims Compensation." CP 37.

More than eight months later, on April 30, 2010, the State moved to modify the restitution award and a hearing was held May 4. CP 41-44. The prosecutor explained Sanelive Hikila's family was now requesting restitution for funeral expenses incurred prior to the initial restitution award. 5/04/10RP 2. The State did not offer any evidence to prove those expenses until it filed the motion to modify. CP 49-71.

The prosecutor explained the prosecutor's office had sent a letter to the Hikilas soon after sentencing, inquiring whether they were seeking restitution, but the family never responded. 5/04/10RP 3; CP 42. Therefore, the prosecutor initially requested restitution for only the amount paid from the Crime Victim's Compensation Fund. 5/04/10RP 3; CP 42. Subsequently, in early April 2010, Hikila's mother Salome telephoned the prosecutor's

office inquiring about restitution. 5/04/10RP 3; CP 42. She never received the letter sent by the prosecutor's office in June 2009. She stated the family had incurred funeral expenses of \$15,253.32 in addition to the amount reimbursed from the Crime Victim's Compensation Fund. 5/04/10RP 3-4; CP 42. The prosecutor asked the court to modify the original restitution award and order Mr. Gray to pay the additional \$15,253.32. 5/04/10RP 4.

Defense counsel objected, arguing the court could not modify the restitution award more than 180 days after sentencing to cover expenses incurred prior to sentencing. 5/04/10RP 7; CP 38-40. The court overruled the objection and ordered Mr. Gray to pay the additional \$15,253.32 in restitution. CP 45-46.

Mr. Gray appealed and the Court of Appeals affirmed.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THE TRIAL COURT EXCEEDED ITS STATUTORY AUTHORITY IN MODIFYING THE RESTITUTION AWARD MORE THAN 180 DAYS AFTER SENTENCING, WHERE THE EXPENSES COVERED BY THE MODIFIED AWARD WERE INCURRED PRIOR TO SENTENCING

1. The Court of Appeals opinion conflicts with the Legislature's intent and is contrary to basic principles of finality at sentencing. In light of the language of the restitution modification provision and related provisions, the sentencing scheme as a

whole, and case law interpreting the restitution statute, the Legislature did not intend to provide the State with a "second bite at the apple." That is, the statute does not authorize modification of a restitution award to cover expenses the State could have proved, but simply failed to prove, at the time of the initial award.

A court's authority to order restitution is derived solely from statute. State v. Gonzalez, 168 Wn.2d 256, 261, 226 P.3d 131 (2010). The restitution statute provides that restitution "may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction." RCW 9.94A.753(4). An offender remains under the court's jurisdiction "until the obligation is completely satisfied." Id.

Here, the Court of Appeals concluded the trial court was authorized to modify the amount of the restitution award simply because Mr. Gray was still under the court's jurisdiction. The court looked only at the language contained in the modification provision and did not consider the meaning of that language in light of the statutory scheme as a whole. In doing so, the court erred.

It is well settled that the meaning of a statutory provision must be discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found,

related provisions, and the statutory scheme as a whole. See Christensen v. Ellsworth, 162 Wn.2d 365, 372-73, 173 P.3d 228 (2007) (citing Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-12, 43 P.3d 4 (2002)). The Court's ultimate objective is to give effect to the Legislature's intent. Christensen, 162 Wn.2d at 372-73 (citing Campbell & Gwinn, 146 Wn.2d at 9).

Thus, "to determine the statute's plain meaning [this Court] must take into account the language in the context of the greater statutory scheme governing sentencing procedures." State v. Mendoza, 165 Wn.2d 913, 924, 205 P.3d 113 (2009). After doing so, if the statute is amenable to more than one reasonable interpretation, it is ambiguous. Id. at 921. The ambiguity must be resolved in the defendant's favor. Id. at 925 n.5; State v. Jacobs, 154 Wn.2d 596, 601, 115 P.3d 281 (2005).

This Court reviews questions of statutory interpretation de novo. Burns v. City of Seattle, 161 Wn.2d 129, 140, 164 P.3d 475 (2007).

In another provision of the restitution statute, the Legislature established a time limit for determining the amount of a restitution award. RCW 9.94A.753(1) provides, "[w]hen restitution is ordered, the court shall determine the amount of restitution due at the

sentencing hearing or within one hundred eighty days." This 180-day time limit is mandatory unless extended by the court for good cause.² State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994); State v. Tetreault, 99 Wn. App. 435, 437, 998 P.2d 330 (2000); RCW 9.94A.753(1).

The meaning of the modification provision must be discerned in light of the provision establishing the 180-day time limit.

Christensen, 162 Wn.2d at 372-73; Mendoza, 165 Wn.2d at 924.

Both provisions viewed together show the Legislature intended a timeliness requirement be applied to the modification of a restitution award. Whether a trial court may modify a restitution award to cover expenses incurred prior to the initial award is an issue of first impression.

It is well-established that the purpose of the mandatory 180-day time limit is to secure finality of the judgment. State v. Moen, 129 Wn.2d 535, 542-43, 919 P.2d 69 (1996); State v. Johnson, 96 Wn. App. 813, 817, 981 P.2d 25 (1999); see also State v. Shove,

² Even where the defendant agrees to pay restitution as part of a plea agreement, the actual amount must be set within 180 days or else the restitution order is void. State v. Hunsicker, 129 Wn.2d 554, 559-62, 919 P.2d 79 (1996); State v. Duback, 77 Wn. App. 330, 332-33, 891 P.2d 40 (1995). Therefore, Mr. Gray's agreement to pay restitution as part of his guilty plea did not relieve the State of its obligation to prove the amount of restitution within 180 days.

113 Wn.2d 83, 88, 776 P.2d 132 (1989) (courts do not have inherent authority to modify sentences due to "the importance of finality in rendered judgments"). As the Court of Appeals explained, "it is in the best interest of all concerned that criminal matters be tried while they are fresh." State v. Duvall, 86 Wn. App. 871, 876, 940 P.2d 671 (1997) (citation omitted). Also, permitting courts to impose restitution at any time would infringe upon a defendant's rights to speedy sentencing. Tetreault, 99 Wn. App. at 438.

Although barring restitution when the order is entered too late means the victim will not receive compensation, that is a necessary result when the State's delay precludes compliance with the mandatory time limit. Moen, 129 Wn.2d at 542. "The principle that time limits exist which may bar compensation to injured persons is not a novel concept in our jurisprudence. At some point, rights will be cut off." Id. If the State fails to comply with the statutory time requirement, it is inappropriate to hold a defendant accountable, even for the purpose of advancing victims' rights. Id. For one thing, "the criminal justice system is not a substitute for a civil judgment against a criminal defendant." Id. "[C]ompensation is not the primary purpose of restitution, and the criminal process should not be used as a means to enforce civil claims." Id.

(quoting State v. Martinez, 78 Wn. App. 870, 881, 899 P.2d 1302 (1995)). For another thing, it is generally in the victim's best interest to have restitution set in a timely fashion, when evidence of loss is fresh and the victim's need is often at its greatest. Moen, 129 Wn.2d at 543. Thus, it is "imperative that the State obtain a timely restitution order both to serve the victim's interest and to comply with the Legislature's mandate that the amount of restitution be determined" within 180 days of sentencing. Id.

These policies and principles are no less important when a court modifies the amount of a restitution award than when it imposes an initial award. Modifying the amount of a restitution award undermines finality of the judgment. It is unreasonable to conclude the Legislature did not intend to impose a timeliness requirement on a prosecutor's request to modify the amount of a restitution award.

Instead, the purpose of the modification statute is to provide victims an avenue for recouping new or ongoing costs resulting from a crime. Gonzalez, 168 Wn.2d at 266; State v. Burns, 159 Wn. App. 74, 244 P.3d 988 (2010); State v. Goodrich, 47 Wn. App. 114, 116-17, 733 P.2d 1000 (1987). In Gonzalez, the defendant was convicted of first degree assault and first degree robbery and

after restitution was ordered, the victim continued to accrue medical bills. Gonzalez, 168 Wn.2d at 260. This Court upheld the trial court's decision to increase the total amount of restitution owed based on the victim's ongoing medical bills, even though the modified order was entered more than 180 days after sentencing.

If no amendment were available after 180 days, the victim would be limited to restitution for only the first six months of treatment after sentence. Disallowing amendments after 180 days would fundamentally undermine the purpose of the restitution statute where the victim is burdened with an ongoing serious injury.

Id. at 266.

In Burns, at sentencing, the trial court ordered restitution for the charged crimes "plus any additional restitution" for uncharged crimes. Burns, 159 Wn. App. at 77. The State sought to modify the restitution award past the 180-day statutory deadline, seeking additional restitution for the uncharged crimes, and the trial court imposed additional restitution as requested. Id. The Court of Appeals reversed, explaining, "[u]nlike Gonzalez, this is not a case where additional damages flowing from the crime continued to accumulate after the original restitution order was entered. In this case, *the State does not contend that the amount of additional restitution was undeterminable within the 180-day period following Burns' sentencing.*" Id. at 81 (emphasis added).

Finally, in Goodrich, the defendant was convicted of second degree assault and at sentencing the trial court ordered him to pay restitution that included amounts for future projected medical treatment. Goodrich, 47 Wn. App. at 115. The Court of Appeals reversed, holding the statute empowers a court to order restitution only for "*actual expenses incurred* for treatment for injury to persons." Id. at 116 (quoting former RCW 9.94A.140(1)) (emphasis in Goodrich). Because Goodrich had not yet incurred the projected medical expenses, the restitution award was premature. Goodrich, 47 Wn. App. at 116-17. Instead, the modification statute provided a remedy if the victim incurred ongoing expenses. Id. (citing former RCW 9.94A.140(1)). The modification provision

states an intent by the Legislature to allow a court to increase a defendant's obligation to make restitution when a victim incurs further costs. While this imposes a burden on the victim and the court to hold an additional hearing, it also enables the court to order restitution for the "actual medical expenses incurred."

Goodrich, 47 Wn. App. at 117.

Thus, the purpose of the restitution modification provision is to provide a means for victims to recoup ongoing expenses resulting from a crime which were not yet "incurred" at the time of the initial restitution order. Modified restitution awards that cover

ongoing expenses are not subject to the statutory 180-day time limit, because otherwise victims could not be fully reimbursed for their continuing losses. But this rationale does not apply where the modified award covers expenses that *were* incurred at the time of the initial restitution order. The Legislature did not intend to allow restitution awards be modified simply because the prosecutor failed to prove all of the victim's incurred expenses in a timely manner.

Finally, to interpret the modification statute as permitting modification of a restitution award in order to cover expenses incurred prior to the initial award leads to absurd or strained results. "[T]he rule of statutory construction that trumps every other rule" is that the Court should not adopt an interpretation that results in absurd or strained consequences. Davis v. Dep't of Licensing, 137 Wn.2d 957, 970-71, 977 P.2d 554 (1999). The modification statute provides that a court may modify a restitution award as to amount, terms, and conditions for as long as the court retains jurisdiction over the offender, which is until the obligation is completely satisfied. RCW 9.94A.753(4). Under the Court of Appeals' reading of the statute in this case, the sentencing court could modify the amount of a restitution award even years after sentencing to cover expenses the State simply failed to prove earlier, provided the

offender had not yet paid off the initial award. Allowing courts to modify restitution awards at any time up until the obligation is completely satisfied, simply in order to cover expenses that the State could have proved, but failed to prove, at the initial restitution hearing, is an absurd and strained result that the Legislature could not have intended.

For these reasons, this Court should accept review.

2. The Court of Appeals opinion conflicts with *State v. Ryan*.

The Court of Appeals held the State was permitted to present new evidence beyond the 180-day statutory deadline in order to prove the total restitution award. But the State *could* have presented that evidence at the time of the initial award and simply failed to do so. The Court of Appeals opinion conflicts with *State v. Ryan*, 78 Wn. App. 758, 899 P.2d 825 (1995), which holds that restitution must be accurately determined within 180 days of sentencing and procedural infirmities underlying the initial award may not be corrected later by the sentencing court.

In *Ryan*, trial courts in consolidated cases entered *ex parte* orders setting restitution and providing that the defendants could request evidentiary hearings if they objected to the amounts. *Ryan*, 78 Wn. App. at 760-61. Both defendants objected but no hearings

were held within the statutory time limit. Id. The Court of Appeals vacated the restitution awards because they did not comply with the mandatory time limit. The court explained, "[b]ecause a hearing is necessary to accurately make an appropriate determination when a defendant objects to the amount set in the *ex parte* order, the restitution hearing must be held within" the required statutory time period. Id. at 763. In other words, the restitution amount must be *accurately* determined within 180 days of sentencing. Id. at 761; RCW 9.94A.753(1). Although a court may modify a restitution order as to its amount, terms, or conditions for as long as the court retains jurisdiction over the offender, RCW 9.94A.753(4), "the trial court's ability to modify an order of restitution does not impact its initial obligation to accurately determine the amount within" the mandatory statutory time limit. Ryan, 78 Wn. App. at 763.

Thus, according to Ryan, a trial court may not modify the amount of a restitution award more than 180 days after sentencing, where the reason for the modification is that the State simply failed to prove the necessary facts within 180 days. See also State v. Griffith, 164 Wn.2d 960, 968 n.6, 195 P.3d 506 (2008) (where restitution order reversed for insufficient evidence, State may not introduce new evidence on remand, because "[i]ntroducing new

evidence on remand would conflict with the statutory requirement that restitution be set within 180 days after sentencing") (citing RCW 9.94A.753(1)).

As in Ryan, the trial court here held a restitution hearing beyond the 180-day deadline and permitted the State to present new evidence. But naming the procedure a "modification" did not relieve the State of its initial burden to prove the amount of restitution accurately within 180 days. The State simply failed to meet its burden of proof. Because the Court of Appeals opinion to the contrary conflicts with Ryan, this Court should grant review.

3. The Court of Appeals opinion presents an issue of substantial public importance that should be decided by this Court. To Mr. Gray's knowledge, no published case addresses the factual scenario presented here, where the trial court modified the amount of restitution more than 180 days after sentencing to cover expenses resulting from a crime that were incurred prior to the initial award. In Gonzalez, 168 Wn.2d 256, the trial court modified a restitution award to cover the victim's new, and ongoing, expenses resulting from the crime. The holding of Gonzalez is therefore not directly on point.

Because the scenario presented is likely to recur, and lower courts are in need of guidance, this Court should grant review.

4. The modified restitution award must be vacated. The 180-day statutory time limit for restitution awards operates like an ordinary statute of limitations. Duvall, 86 Wn. App. at 875. It may be tolled under appropriate circumstances, including bad faith, deception, or false assurances by the defendant and the exercise of diligence by the State. Id. But courts may extend the 180-day deadline only sparingly and not for a "garden variety claim of excusable neglect." Id. (citation omitted).

In this case, the State has not shown a sufficient basis to extend the 180-day deadline. Mr. Gray is not at fault in any way for the untimely modification request. The reason for the delay is no more than a "garden variety claim of excusable neglect" on the part of the State and the victim's family.

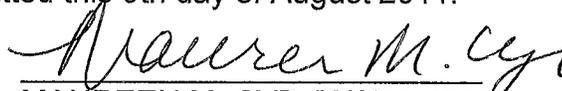
The initial restitution award, set within the 180-day time period, was for \$6,730.82, payable to the Crime Victim's Compensation Fund for amounts distributed by the fund to the victim's family for funeral expenses. CP 37, 42. About eight months later, the victim's family contacted the prosecutor requesting reimbursement for additional funeral expenses—

expenses that were incurred at the same time as the initial funeral expenses. CP 42. Although members of the victim's family were present at sentencing, the prosecutor did not make sure at that time to establish whether the family would be seeking restitution for funeral expenses. 6/05/09RP 2, 4-6; CP 39. The funeral expenses were incurred long before the sentencing hearing. The State *could have* proved those expenses at the time of the initial restitution award. The State did not offer a sufficient basis for the untimely request other than "excusable neglect." Therefore, the modified restitution award is void. State v. Lewis, 57 Wn. App. 921, 924, 791 P.2d 250 (1990) (order imposing restitution is void if statutory provisions are not followed).

E. CONCLUSION

The Court of Appeals opinion conflicts with legislative intent and basic principles of finality at sentencing; conflicts with State v. Ryan; and presents an issue of substantial public interest that should be decided by this Court. Therefore, the Court should grant review.

Respectfully submitted this 9th day of August 2011.


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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

WILLIAM ADAM GRAY,
Appellant.

No. 65367-9-I

DIVISION ONE

UNPUBLISHED

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Cox, J. — William Gray challenges the trial court's modification of its restitution order after the statutory 180-day deadline specified in RCW 9.94A.753, the restitution statute. He claims that the court was without authority to modify the restitution order to include additional funeral and burial costs after the expiration of the statutory time limit for seeking restitution. Because Gray remains under the jurisdiction of the court and the court made a timely modification of the original amount of restitution, we affirm.

Gray pled guilty to one count of first degree manslaughter for recklessly causing the death of Sanelive Hikila on November 5, 2006. Gray also pled guilty to another count not relevant to this appeal. The plea agreement provided, "Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts"¹

¹ Clerk's Papers at 23.

A sentencing hearing was held on June 5, 2009. At the hearing, the State requested that Gray pay restitution in an amount to be set at a later date, after the Prosecutor's Office's Victim Assistance Unit had computed the appropriate amount. The court agreed.

On June 10, 2009, an investigator with the Victim Assistance Unit sent a letter to Hikila's family, inquiring if the family sought any restitution reimbursement. The investigator did not receive a response. However, the investigator received information from the Crime Victims Compensation Program stating that \$6,730.82 for funeral expenses of Hikila had been expended from its funds.

On August 12, 2009, the court entered a restitution order requiring Gray to pay restitution to the Crime Victims Compensation Program in the amount of \$6,730.82. The documents in the record indicate that this amount was paid to the personal representative of Hikila's estate, Salame Hikila.

In early April 2010, Hikila's family contacted the Prosecutor's Office, indicating that they wished to seek additional restitution for Hikila's funeral and burial expenses in the amount of \$15,253.32. This included \$2,386.00 for the headstone, \$6,500.00 for items specific to cultural funeral rites, \$504.16 for a memorial and flower vase, and \$5,863.16 related to other internment expenses. These requests were supported by documentation indicating that they had been paid for by Salome Hikila. At this time, the family also indicated that they had not received the June 10, 2009, letter from the Victim Assistance Unit.

On April 30, 2010, the State moved to modify the restitution award to add this additional \$15,253.32 in funeral and burial expenses. Gray opposed the motion, arguing that it was untimely because more than 180 days had elapsed since sentencing. The court granted the State's motion, amending the amount of restitution.

Gray appeals.

MODIFICATION OF RESTITUTION AMOUNT

Gray contends that the trial court erred by modifying the restitution order to increase the total amount of restitution. He argues that the modified restitution order is untimely and inconsistent with the supreme court's holding in State v. Gonzalez² because it was granted for expenses incurred prior to the entry of the original, timely restitution order. We disagree.

A sentencing court's power to impose restitution is statutory.³ "Whether a trial court has exceeded its statutory authority is an issue of law reviewed de novo."⁴ Interpretation of the restitution statute is also an issue of law that this court reviews de novo.⁵

RCW 9.94A.753 governs the court's authority to impose and modify restitution. "When restitution is ordered, the court shall determine the amount of

² 168 Wn.2d 256, 226 P.3d 131, cert. denied, ___ U.S. ___, 131 S. Ct. 318, 178 L. Ed. 2d 207 (2010)).

³ State v. Burns, 159 Wn. App. 74, 78, 244 P.3d 988 (2010); RCW 9.94A.753.

⁴ Id. (citing State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003)).

⁵ Id. (citing Gonzalez, 168 Wn.2d at 263).

restitution due at the sentencing hearing or within one hundred eighty days."⁶

The statute provides for modification of a restitution order as follows:

The portion of the sentence concerning restitution *may be modified as to amount*, terms, and conditions *during any period of time the offender remains under the court's jurisdiction*, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.⁷

The supreme court recently addressed the modification provision of the restitution statute in Gonzalez. There, the trial court convicted Robert Bustmante Gonzalez of first degree assault and first degree robbery.⁸ Gonzalez's victim suffered extensive injuries to his face, was airlifted to Harborview Medical Center, and underwent reconstructive surgery.⁹ A court found Gonzalez guilty of first degree assault and first degree robbery.¹⁰

At the January 5, 2004, sentencing hearing, the trial court ordered Gonzalez to pay more than \$20,000 in restitution for expenses incurred as a result of the victim's medical treatment.¹¹ After this amount of restitution was ordered, the victim continued to accrue medical bills.¹²

⁶ RCW 9.94A.753(1).

⁷ RCW 9.94A.753(4) (emphasis added).

⁸ Gonzalez, 168 Wn.2d at 259-60.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 260.

On June 30, 2006, more than two years after sentencing, the State moved to amend the restitution order to add \$25,561.30 in additional medical expenses incurred after the initial restitution award.¹³ Gonzalez opposed the motion, arguing that the word “amount” in the statute is ambiguous because it may “mean either the total amount of restitution or the amount of the monthly payment” set by the court.¹⁴ Gonzalez also argued that the State’s motion was untimely because more than 180 days had elapsed since sentencing. The trial court granted the State’s motion, and amended the restitution order.¹⁵

The supreme court affirmed the trial court, holding that “RCW 9.94A.753(4) unambiguously **allows the total amount of restitution to be modified** ‘during any period of time the offender remains under the court’s jurisdiction.’”¹⁶

The supreme court also found that this plain language interpretation was consistent with the legislative intent of the restitution statute.¹⁷

When the legislature enacted the restitution statute, it clearly stated its intent that victims be afforded legal protections at least as strong as those given to criminal defendants. . . . **The legislature’s amendments to the restitution statute demonstrate that the legislature has consistently sought to ensure that victims of crimes are made whole after suffering losses caused by offenders and to increase offender accountability.** It established the monthly minimum payment system, for example, as

¹³ Id.

¹⁴ Id. at 263.

¹⁵ Id. at 260.

¹⁶ Id. at 266 (emphasis added).

¹⁷ Id. at 265.

part of its effort to "hold[] offenders accountable to victims . . . for the assessed costs associated with their crimes" and provide "remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." Thus, according to the statute's plain language and legislative history, ***it is clear the statute is intended to ensure that defendants fulfill their responsibility to compensate victims for losses resulting from their crimes. The plain meaning of the modification provision of RCW 9.94A.753(4) advances this intent by allowing an amendment to restitution in order to compensate a victim for losses resulting from a defendant's [crime].***^[18]

Here, the sentencing court timely determined that \$6,930.82 was the proper original amount of restitution. The words of the statute are plain. "The portion of the sentence concerning restitution ***may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction.***"¹⁹ It is undisputed that Gray was still subject to the court's jurisdiction at the April 10, 2010, hearing on the State's motion to modify the amount of restitution. The court properly increased the amount of restitution by the \$15,253.32 amount that the State requested.

Gray argues that a court may not modify a restitution award to include amounts that were incurred prior to the initial restitution award. This argument is unsupported either by the plain words of the statute or the cases on which he relies.

Gray does not point to any language in the statute to support this claim. Rather, he relies on his reading of Gonzalez. Specifically, Gray claims that the

¹⁸ Id. at 265-66 (emphasis added) (internal citations and quotations omitted).

¹⁹ RCW 9.94A.753(4) (emphasis added).

court's reference to ongoing expenses incurred after the entry of the initial restitution order somehow alters the plain words of the statute. It does not. While the Gonzalez court did discuss the reasons that modification was appropriate under the facts of that case, the holding is not limited to those facts. The court's primary analysis focuses on the appropriate interpretation of the plain words of the modification provision. Those plain words support the result here.

Moreover, that court specifically addressed the legislative intent behind the restitution statute and concluded that:

the statute is intended to ensure that defendants fulfill their responsibility to compensate victims for losses resulting from their crimes. The plain meaning of the modification provision of RCW 9.94A.753(4) advances this intent by allowing an amendment to restitution in order to compensate a victim for losses resulting from a defendant's [crime].^[20]

The court did not conclude, as Gray now argues, that this purpose was only relevant if the expenses were accrued after the entry of the initial restitution order.

Likewise, State v. Goodrich²¹ is also unpersuasive. There, the court merely held that restitution may not be ordered for expenses not yet incurred and noted that the statute provides an alternative remedy.²² The State may seek to amend the amount of the award after the expenses are incurred.²³

²⁰ Gonzalez, 168 Wn.2d at 265-66.

²¹ 47 Wn. App. 114, 733 P.2d 1000 (1987).

²² Id. at 116-17.

²³ Id.

Finally, Gray submitted a statement of additional authorities citing this court's recent decision in State v. Burns²⁴ for the proposition that Gonzalez does not apply where the amount of restitution could have been accurately determined within the 180-day deadline for seeking restitution. Burns does not support Gray's argument because it is factually distinguishable.

There, Burns pled guilty to one count of first degree theft, two counts of second degree theft, and one count of forgery.²⁵ Burns agreed to pay restitution in the amount of \$8,923.25 for the charged crimes.²⁶ "At the sentencing hearing, the court ordered restitution in this amount, 'plus any additional restitution' for several uncharged crimes."²⁷ The court did not hold a hearing to set the amount of restitution for the uncharged crimes until long after the expiration of the 180-day deadline.²⁸ At the hearing, the court ordered Burns to pay \$93,237.40 in restitution for the uncharged crimes.²⁹ Burns appealed, arguing that the additional restitution order for the uncharged crimes was not timely entered.

On appeal, the State argued that the additional order of restitution was merely a modification of the initial restitution order under RCW 9.94A.753(4), and as such, it was not subject to the 180-day deadline. We disagreed, concluding

²⁴ 159 Wn. App. 74, 244 P.3d 988 (2010).

²⁵ Id. at 77.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

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"the purpose of those hearings was not to modify the original restitution order; rather, it was to prove for the first time the amount of restitution Burns owed for his uncharged crimes. In other words, restitution for the uncharged crimes was not 'determined' until . . . more than 180 days after sentencing"³⁰ in violation of RCW 9.94A.753(1).

Here, the court timely determined the original amount of restitution. Therein lies the major distinction. Moreover, the modified award of restitution here was for the same crime, victim, and type of expense. The modification was proper.

We affirm the order modifying the amount of restitution.

COX, J.

WE CONCUR:

Dunn, C.J.

Scherbelle, J.

³⁰ Id. at 79-80.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 65367-9-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Kristin Relyea, DPA
King County Prosecutor's Office-Appellate Unit
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
2011 Washington Appellate Project

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