

64692-3

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No. 64692-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA JAMES ISLER,

Appellant.

2011 JUN 31 PM 4:51
COURT OF APPEALS
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY
JUVENILE DIVISION

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT 1

B. ASSIGNMENT OF ERROR 1

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

D. STATEMENT OF THE CASE 1

E. ARGUMENT 2

MR. ISLER'S GUILTY PLEA WAS UNKNOWING IN VIOLATION OF CONSTITUTIONAL DUE PROCESS, BECAUSE HE WAS NOT INFORMED OF A DIRECT SENTENCING CONSEQUENCE OF THE PLEA—THAT HE WOULD BE ORDERED TO PAY ATTORNEY'S FEES..... 2

1. A person pleading guilty to a crime must be correctly informed of all direct sentencing consequences of the plea . 2

2. Mr. Isler was not informed of a direct sentencing consequence of his guilty plea—that he would be ordered to pay attorney's fees 4

3. Mr. Isler is entitled to withdraw his plea 8

F. CONCLUSION 8

TABLE OF AUTHORITIES

Constitutional Provisions

Const. art. 1, § 3.....	2
U.S. Const. amend. 14.....	2

Washington Cases

<u>In re Pers. Restraint of Isadore</u> , 151 Wn.2d 294, 88 P.3d 390 (2004)	3, 8
<u>State v. Barton</u> , 93 Wn.2d 301, 609 P.2d 1353 (1980).....	3, 4
<u>State v. Cameron</u> , 30 Wn. App. 229, 633 P.2d 901 (1981)	5, 6
<u>State v. Mendoza</u> , 157 Wn.2d 582, 141 P.3d 49 (2006)	3
<u>State v. Miller</u> , 110 Wn.2d 528, 756 P.2d 122 (1988).....	3
<u>State v. Vensel</u> , 88 Wn.2d 552, 564 P.2d 326 (1977)	4
<u>State v. Walsh</u> , 143 Wn.2d 1, 17 P.3d 591 (2001)	3
<u>Wood v. Morris</u> , 87 Wn.2d 501, 554 P.2d 1032 (1976)	3, 4

Statutes

RCW 13.40.145.....	5
RCW 13.40.192.....	6
RCW 9A.52.070	1

Rules

CrR 4.2(g)	7
JuCR 7.6(b).....	7

JuCR 7.7 7

Other Authorities

State v. Banuelos, 124 Idaho 569, 861 P.2d 1234 (1993)..... 6

A. SUMMARY OF ARGUMENT

Joshua Isler pled guilty in juvenile court to one count of first degree criminal trespass. At the time of the plea, he was not informed that the court would order him to pay \$25 in attorney's fees as part of his disposition. Because Mr. Isler was therefore not informed of a direct sentencing consequence of the plea, the plea was unknowing in violation of due process. He is entitled to withdraw the plea.

B. ASSIGNMENT OF ERROR

Mr. Isler's guilty plea was unknowing in violation of constitutional due process.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A person pleading guilty to a crime must be informed of all direct sentencing consequences of the plea. If not, the plea is unknowing and involuntary in violation of due process. Is Mr. Isler's guilty plea unknowing where he was not informed that the court would order him to pay attorney's fees as part of his disposition?

D. STATEMENT OF THE CASE

On August 11, 2003, Mr. Isler was charged in Snohomish County Superior Court, Juvenile Division, with one count of first degree criminal trespass, RCW 9A.52.070. CP 41-42.

Mr. Isler pled guilty to the crime as charged. CP 33-40. In the guilty plea statement, he was advised the standard sentence range included 0-12 months supervision; 0 to 150 hours community service; a fine of from \$0 to \$500; 0 to 30 days detention; \$100 in crime victims' compensation; and restitution "as ordered." CP 34; see also 9/03/03RP 4 (guilty plea hearing). But Mr. Isler was never informed, either on the guilty plea statement or at the guilty plea hearing, that the court would order him to pay attorney's fees.

One week later, the court entered a disposition order. CP 20-32. As part of the disposition, the court ordered Mr. Isler to pay \$25 in attorney's fees. CP 25.

E. ARGUMENT

MR. ISLER'S GUILTY PLEA WAS UNKNOWING IN VIOLATION OF CONSTITUTIONAL DUE PROCESS, BECAUSE HE WAS NOT INFORMED OF A DIRECT SENTENCING CONSEQUENCE OF THE PLEA—THAT HE WOULD BE ORDERED TO PAY ATTORNEY'S FEES

1. A person pleading guilty to a crime must be correctly informed of all direct sentencing consequences of the plea. When a person pleads guilty to a crime, constitutional due process requires that he do so knowingly, voluntarily, and intelligently. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); U.S. Const. amend. 14; Const. art. 1, § 3. Whether a plea satisfies this

standard depends primarily on whether the defendant correctly understood its consequences. State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988), overruled on other grounds by State v. Barber, ___ Wn.2d ___, No. 83640-0, 2011 WL 172088 (Jan. 20, 2011).

A person pleading guilty must be properly informed of all direct sentencing consequences of the plea. Ross, 129 Wn.2d at 285; State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980) ("Defendant must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea."). "A guilty plea is not knowingly made when it is based on misinformation of sentencing consequences." In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004) (citing Miller, 110 Wn.2d at 531). The record must *affirmatively* show the defendant was informed of the full consequences of the plea. Barton, 93 Wn.2d at 304 (citing Wood v. Morris, 87 Wn.2d 501, 554 P.2d 1032 (1976)).

When a defendant is misinformed about a direct sentencing consequence of a guilty plea, he need not demonstrate that the misinformation materially affected his decision to plead guilty. State v. Mendoza, 157 Wn.2d 582, 591, 141 P.3d 49 (2006); Isadore, 151 Wn.2d at 302. A guilty plea based on misinformation

about a direct consequence of the plea is involuntary "regardless of whether the actual sentencing range is lower or higher than anticipated." Mendoza, 157 Wn.2d at 591. Thus, "[a]bsent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea." Id.

2. Mr. Isler was not informed of a direct sentencing consequence of his guilty plea—that he would be ordered to pay attorney's fees. As stated, a person pleading guilty must be informed of all direct sentencing consequences of the plea. Barton, 93 Wn.2d at 305. But he need not be informed of all possible collateral consequences. Id. "The distinction between direct and collateral consequences of a plea turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." Id. (citation omitted). Thus, for example, a defendant must be correctly informed of the standard sentence range, Walsh, 143 Wn.2d at 8, mandatory minimum, Wood, 87 Wn.2d at 513, or possible maximum sentence, State v. Vensel, 88 Wn.2d 552, 555, 564 P.2d 326 (1977), and community custody term, Ross, 129 Wn.2d at 284-85, to be imposed for the crime to which he pleads guilty. But he need not

be informed, for example, of the possibility of an habitual offender proceeding, because: (1) an habitual proceeding is not automatically imposed after a person pleads guilty; and (2) a person's status as an habitual offender is determined in a subsequent independent trial in which he is entitled to further procedural protections. Barton, 93 Wn.2d at 305-06.

This Court has held that restitution is a direct rather than collateral consequence of a guilty plea. State v. Cameron, 30 Wn. App. 229, 233, 633 P.2d 901 (1981). That is because "[r]estitution does not turn on a defendant's personal history, but the possibility of restitution stems directly from the conviction of a crime that results in some pecuniary gain to the defendant or loss to the victim." Id. at 233-34. Therefore, restitution is a direct consequence and the defendant must be advised of the possibility of restitution prior to entering the plea. Id. at 234.

Like restitution, attorney's fees are a direct consequence of a guilty plea. When a juvenile offender pleads guilty to a crime, RCW 13.40.145 authorizes the court to order the offender to pay "a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel." A court imposing attorney's fees must do so "[u]pon disposition or at the time of a

modification." Id. The money judgment for attorney's fees, like restitution and other legal financial obligations, remains enforceable for a period of ten years. RCW 13.40.192.

Thus, like restitution and other direct sentencing consequences of a guilty plea, attorney's fees stem directly from the conviction of a crime. They are imposed at disposition and become part of the disposition order. They are therefore a direct consequence of pleading guilty and a juvenile must be informed of the possibility of attorney's fees prior to entering such a plea.

The Idaho Supreme Court came to a similar conclusion in State v. Banelos, 124 Idaho 569, 861 P.2d 1234 (1993). In Banelos, the defendant pled guilty to two counts of conspiracy to deliver a controlled substance and at sentencing the court ordered him to pay \$167,199.90 in investigative costs incurred by law enforcement agencies. Id. at 1236-37. The order was authorized by statute and was within the discretion of the trial court. Id. at 1238. Citing this Court's decision in Cameron, the Idaho court concluded the order was similar to "an order for restitution to victims for losses directly resulting from the defendant's criminal conduct." Id. The order was therefore a direct consequence of the

guilty plea and the defendant was required to be informed of the possibility of such an order before pleading guilty. Id.

An order to pay the fees of court-appointed counsel is not materially different from an order to pay the costs of investigating a crime incurred by law enforcement agencies. Both stem directly from the commission of a crime. Therefore, both are direct consequences and the defendant must be informed about them before entering a guilty plea.

Consistent with this conclusion, the standard guilty plea form used in superior courts in Washington State when an adult offender pleads guilty to a crime requires that the defendant be advised of the possibility that attorney's fees will be imposed. CrR 4.2(g) requires "[a] written statement of the defendant in substantially the form set forth below shall be filed on a plea of guilty." The form provided requires the defendant be informed that "[t]he judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration." CrR 4.2(g)(6)(e).

In juvenile court, "[t]he taking of a plea of an alleged juvenile offender is governed by CrR 4.2." JuCR 7.6(b). But the standard guilty plea form used when a juvenile offender pleads guilty, provided by JuCR 7.7, does not include the advisement of the

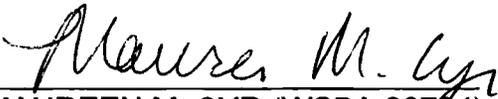
possibility of attorney's fees. That is an oversight that led to the constitutional violation in this case.

3. Mr. Isler is entitled to withdraw his plea. When a person pleads guilty but is not fully informed of the direct sentencing consequences of the plea, the plea is involuntary and the defendant is entitled to withdraw the plea. Isadore, 151 Wn.2d at 298; Ross, 129 Wn.2d at 284; CrR 4.2(f). Because he was misinformed of the sentencing consequences of his guilty plea, Mr. Isler is entitled to withdraw the plea.

E. CONCLUSION

Mr. Isler was not fully informed of all of the direct sentencing consequences of his guilty plea. The plea is therefore involuntary in violation of due process and he is entitled to withdraw the plea.

Respectfully submitted this 31st day of January 2011.


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DIVISION ONE**

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JOSHUA ISLER,)

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NO. 64692-3-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF JANUARY, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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