66265-1

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No. 66265-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SILVERIA LOPEZ-VASQUEZ,

Appellant

v.

WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES

Respondent.

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STATE OF WASHINGTON
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APPELLANT'S REPLY BRIEF

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A. ARGUMENT

The elements of collateral estoppel have been met in this case. In its response brief, Respondent alleges Appellant has not satisfied the identity of issues or injustice elements of collateral estoppel. Respondent is incorrect.

1. Appellant's entitlement to Crime Victims' Benefits was at issue in both proceedings.

There can be no dispute that Skagit County Superior Court Judge Michael Rickert ruled the "court makes findings as to the victim that she should be compensated by the crime victims fund," and further states that, the "Court finds Silveria Lopez-Vasquez, as well as Diego Montar Lopez as a victim of this crime and should be eligible for crime victims compensation as such." Clerk's Papers (CP) at 124 -128.

Those findings directly bear on the underlying issue in this case: whether Appellant is entitled to Crime Victims' Benefits. Respondent continues to contend this issue was not before Judge Rickert, however, this position is betrayed by the facts. Respondent may not have initially contemplated that the issue would be decided by Judge Rickert, but ultimately it was. Since it was decided, identity of issues is satisfied.

Furthermore, Respondent mistakenly paints Judge Rickert's ruling on this issue as not essential to the sentencing. See Br. of Respondent at 20. Appellant's eligibility for benefits was material to the underlying case because the finding appears two different times and the entire plea agreement hinged on the finding. The conclusion that Appellant was a crime victim and entitled to Crime Victims' Benefits was essential to the plea agreement. It was her "compensation" for the Respondent's decision to bargain away her right to have Mr. Marx held accountable for the Assault against her. Therefore, the determination that she was entitled to compensation was "essential."

Ultimately, identity of issues has been satisfied. Whether Appellant was entitled to benefits was at issue in both proceedings.

2. Applying collateral estoppel would not work an injustice, but declining to apply collateral estoppel would work an injustice.

The Honorable John Meyer correctly concluded that Respondent's decision to deny the appellant's application for Crime Victims' Benefits was "patently unfair." CP at 75. As such, injustice would be done in preventing Ms. Lopez-Vasquez from receiving benefits under the Crime Victims' Compensation Act (Act). She was not a party to the deal struck by the Respondent in the criminal proceeding. She should not be further penalized by decisions made during proceedings where she had no voice.

Injustice would only occur if the Respondent is not bound by the deal that it struck. No such injustice would occur in applying collateral estoppel.

Respondent argues that collateral estoppel should not be applied because there is a different purpose between a criminal proceeding and a Crime Victims' adjudication. See Br. of Respondent at 23. Although that might be generally true, it is not correct in these proceedings. As they relate to Appellant, the purpose of both proceedings shared the common goal of providing justice to her under terrible circumstances. Judge Rickert recognized the potential impact a plea agreement would have on Appellant and with the State's approval, determined she was entitled to Crime Victims' Benefits. To argue otherwise would imply that Judge Rickert and the State sought to intentionally preclude Appellant from receiving Crime Victims' Benefits.

Respondent's argues that applying collateral estoppel would burden it with the responsibility to appear at all criminal sentencing hearings. See Br. of Respondent at 24. Essentially, Respondent is arguing that Sentencing Judges cannot be trusted to reasonably apply the law and that it should solely determine benefit eligibility under the Act. That assertion is incorrect. Sentencing Judges in Superior Court ultimately have the ability to determine eligibility on appeal under the Act, so clearly

they are qualified. More importantly, simple training of prosecutors would serve to avoid the parade of horrible cautioned by Respondent.

Respondent relies on State v. Williams, 132 Wn.2d 248, 937 P.2d 1052 (1997), to support its position. See Br. of Respondent at 23-24. The Williams holding on the injustice element specifically focuses on public policy and why public policy would not be served by allowing an administrative decision to control a criminal proceeding. Williams, 132 Wn.2d at 257-258. The reverse is true here. It would be against public policy to allow the State to bargain Appellant's ability to obtain Crime Victims' Benefits, and then use that bargain to actually deny the benefits. That is what Respondent did here. In the criminal proceeding Respondent gave up the opportunity to obtain a Vehicular Assault conviction. It then used the lack of a conviction to deny Appellant benefits. Fortunately, Judge Rickert had the foresight to recognize this conundrum and made a ruling that satisfied both the State and Appellant. Appellant had no voice in the criminal process, whereas Respondent, as a Sovereign of the State, had access to the criminal proceedings. Respondent has party status that victims do not. As a matter of public policy, Respondent is better able to protect against the alleged harm to itself than Appellant is to herself.

If there is any injustice, it would be in preventing Ms. Lopez-Vasquez from receiving benefits under the Act. She was not a party to the

deal struck by the State in the criminal proceeding. Despite agreeing that she was entitled to benefits, the State now uses that same agreement deny her benefits. She should not be further penalized by a proceeding where she had no voice. Injustice would only occur if the State is not bound by the deal that it struck.

B. CONCLUSION

Ultimately, this Court should find that collateral estoppel bars relitigation of Appellant's eligibility for Crime Victims' Benefits. Thus, it should find that it was error to uphold the denial of Ms. Lopez-Vasquez's application for benefits under the Act.

Respectfully submitted this 19TH day of July, 2011.

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CERTIFICATE OF SERVICE

The undersigned certifies that under penalty of perjury under the laws of the State of Washington that on the below date I caused the Appellant's Reply Brief to be served the foregoing document on:

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