

67804-3

67804-3

No. 67804-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

---

STATE OF WASHINGTON,

Appellant,

v.

NOE FUENTES,

Respondent.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

---

BRIEF OF RESPONDENT

---

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2012 MAR 23 PM 4:26

LINDSAY CALKINS  
Attorney for Respondent

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, WA 98101  
(206) 587-2711

TABLE OF CONTENTS

A. STATEMENT OF THE ISSUES.....1

B. ARGUMENT.....1

    1. THE STATE PROPOSES A “MEANINGFUL  
    INQUIRY” STANDARD THAT HAS NO  
    BASIS IN THE STATUTE OR CASELAW.....2

    2. THE JUDGE MADE AN INDIVIDUALIZED  
    DETERMINATION OF NOE’S ABILITY TO  
    PAY, AND EXERCISED THE DISCRETION  
    PURPOSEFULLY GRANTED BY LAW.....6

C. CONCLUSION.....7

TABLE OF AUTHORITIES

Washington Supreme Court

State v. A.M.R., 147 Wn.2d 91, 1 P.3d 790 (2002).....5  
State v. Lord, 161 Wn.2d 276, 165 P.3d 1251 (2007).....3

Washington Court of Appeals

State v. Gronnert, 122 Wn. App. 214, 93 P.3d 200 (2004).....7

Statutes

RCW 13.40.190.....2, 7

Other Sources

Laws of 2004, ch. 120, § 6.....5  
House Bill Report, ESSB 6472 (March 3, 2004).....5

**A. STATEMENT OF THE ISSUES**

1. Does RCW 13.40.190(g), whose plain language gives the juvenile court broad discretion to relieve the offender of a restitution obligation to an insurance company if the court is “reasonably satisfie[d]” that the juvenile does not have the ability to pay, indicate that the juvenile court may exercise its discretion without making an exhaustive list of findings?

2. Where the juvenile court had before it an In Forma Pauperis order, a financial declaration indicating that the defendant had no assets, no money, no checking account, and no job, and information from probation services indicating that the juvenile was not in school and could not work, could the court have been “reasonably satisfied” of an indigent child’s inability to pay \$1600 to an insurance company in addition to the \$500 already ordered to the car owner?

**B. ARGUMENT**

The State asks this Court to overrule the trial judge’s sound discretion and impose chronic financial hardship on an impoverished youth. The State’s argument is contrary to the plain language of the restitution statute, and the State cannot cite a single case to support its contention that the judge erred in choosing to relieve Noe Fuentes, an

unemployed fifteen-year-old boy, of additional payments to a multi-billion dollar insurance company. This Court should affirm.

1. THE STATE PROPOSES A “MEANINGFUL INQUIRY” STANDARD THAT HAS NO BASIS IN THE STATUTE OR CASELAW.

Noe pleaded guilty to the misdemeanor of malicious mischief in the third degree for damaging Nami Headland’s car window. CP 2, 7, 28. The State requested restitution in the amount of \$500 to Ms. Headland and \$1,639.22 to American Family Insurance. CP 28, RP 3–4. The judge, finding that Noe would be unable to pay all of the restitution ordered to American Family in addition to Ms. Headland, used his statutory discretion to decline to impose the insurance restitution on Noe. RP 4–5.

The juvenile restitution statute states,

At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider . . . if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

RCW 13.40.190(g). Thus, by the plain language of the statute, the juvenile court only needs to be “reasonably satisfie[d]” of an

individual's inability to pay. Nowhere does the statute require an exhaustive colloquy or an extensive inquiry into a juvenile's financial circumstances. Rather, the statute gives the judge wide latitude to decline to impose restitution to an insurance company if the judge reasonably believes that a juvenile will not be able to pay. A trial court abuses its discretion when its decision is "manifestly unreasonable," "takes a view that no reasonable person would take," or "applies the wrong legal standard." See State v. Lord, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007).

The State complains that the judge found that Noe was presently unable to pay, but did not find that Noe would not be able to pay full or partial restitution in the future. AOB 7. That mischaracterizes the record. The judge said,

I think he's going to have a hard time paying \$500 . . . If you want me to comment on what the likelihood is that this is going to be paid off at any time in the near future, I guess I could give you my opinion. It's probably not real likely.

RP 4–5. The judge then said that he would make the finding that Noe was financially unable to pay restitution. RP 5. The judge's assertion that Noe would have difficulty even paying \$500 clearly indicates the judge's reasoned belief that Noe would have difficulty paying a partial

amount of the additional request by American Family Insurance of \$1600. And the judge explicitly stated that it was unlikely that Noe would be able to pay restitution not only now, but in the future. RP 5.

The State next argues, “If the legislative requirement to prove an inability to pay is to have any meaning, the juvenile must provide some proof that he has no present or future earning power.” AOB 8. That proposition—that one must prove a complete inability to earn any money in any way ever in the future—is absurd. What evidence would suffice: an affidavit from every single business in Seattle, or in the state, swearing that they would never hire Noe? An affidavit from a physician that Noe would never be able to use his hands, mind, or voice to create something of value? It is incredibly difficult to prove a negative, and the statute does not require it.

It is unclear what standard of “proof” Appellant imagines, but the only one called for in the statute is the respondent’s “reasonably satisfy[ing]” the judge of an inability to pay. Here, Noe was represented by a public defender, and submitted a financial declaration stating that he owned no real estate, did not have any stocks or notes, did not have a trust account, had no money in checking accounts, no money in savings accounts, no cash, and no job. CP 24–26. Noe’s

probation counselor had testified that Noe was not in school and could not work. RP 5. The court had more than enough evidence to reasonably satisfy him that Noe would be unable to pay back over \$1600 to an insurance company in addition to the \$500 that he was ordered to pay to the car owner.

The fact that the Legislature initially permitted the juvenile court to forgive financial obligations to insurance companies, and then took away that power, and then returned to give judges that precise discretion is important. See Laws of 2004, ch. 120, § 6 (restoring language permitting a judge to relieve juveniles of restitution to insurance providers); State v. A.M.R., 147 Wn.2d 91, 96, 1 P.3d 790 (2002) (discussing the 1997 amendment deleting the language). It shows the Legislature's belief that society's interest in alleviating youth poverty takes precedence over making restitution to insurance companies mandatory. The 2004 amendment was passed after the Legislature heard uncontested testimony establishing that making restitution mandatory to insurance companies would have a radically disproportionate effect on juvenile offenders who were poor. See House Bill Report, ESSB 6472 (March 3, 2004) at 4.

This is precisely the kind of case that the Legislature had in

mind. And in Noe's case, the judge properly exercised the discretion that the Legislature provided.

**2. THE JUDGE MADE AN INDIVIDUALIZED DETERMINATION OF NOE'S ABILITY TO PAY, AND EXERCISED THE DISCRETION PURPOSEFULLY GRANTED BY LAW.**

The State argues that the juvenile court "categorically" ruled that restitution would not be ordered to insurance companies. AOB 6, 8. But that is not what happened here. The judge did explain that insurance companies were adept at seeking their own judgments if they desired. RP 4, 7. He also stated that "I am reminded by counsel that it is my practice" to decline to impose restitution to insurance companies. RP 4.

But nowhere did the judge state that it was his "practice" to decline insurance restitution without being reasonably satisfied that an individual would not be able to pay. It is more likely that the judge appeared to have a practice of declining insurance restitution because he had exercised his discretion to do so in the past. This is not the same as a "categorical" denial of insurance restitution, which is done as a matter of policy. Moreover, in this case, the judge clearly stated that he believed that this defendant, Noe Fuentes, would not be able to pay additional restitution now or in the future. RP 4-5.

That finding had solid grounding in Noe's financial declaration, his status as an indigent defendant, his age, and his probation counselor's testimony. See CP 24–26; RP 5. A judge may state his general perception of a sentencing alternative before appropriately applying that alternative to an individual case. See State v. Gronnert, 122 Wn. App. 214, 225–26, 93 P.3d 200 (2004) (explaining that a judge had not “categorically” denied a Drug Offender Sentencing Alternative when the judge had noted general beliefs about the program, but then stated specific reasons for not granting it for that defendant). That is what happened here. See RP 4–5.

C. CONCLUSION

Noe Fuentes, an indigent juvenile, was ordered to pay full restitution to the primary victim in his case. RP 4. The judge appropriately exercised his statutory discretion to relieve Noe of the additional restitution to an insurance company. See RCW 13.40.190(g). The juvenile court should be affirmed.

DATED this 23<sup>rd</sup> day of March, 2012.

Respectfully submitted,



LINDSAY CALKINS (No. 44127)  
Washington Appellate Project (91052)  
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
	)	NO. 67804-3-I
v.	)	
	)	
NOE FUENTES,	)	
	)	
Respondent.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23<sup>RD</sup> DAY OF MARCH, 2012, I CAUSED THE ORIGINAL **BRIEF OF RESPONDENT** 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:

[X] JAMES WHISMAN, DPA KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
--	-------------------	-------------------------------------

[X] NOE FUENTES 32127 20 LN SW #81 FEDERAL WAY, WA 98023	(X) ( ) ( )	U.S. MAIL HAND DELIVER _____
--	-------------------	------------------------------------

**SIGNED** IN SEATTLE, WASHINGTON THIS 23<sup>RD</sup> DAY OF MARCH, 2012.

X \_\_\_\_\_ 

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2012 MAR 23 PM 4:26

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710