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July 27, 2016
Court of Appeals
Division I
State of Washington

NO. 73696-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

TED GRIMES,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SEAN P. O'DONNELL

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

IAN ITH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

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A. ISSUE PRESENTED

An order of restitution in a criminal judgment and sentence may be enforced in the same manner as a judgment in a civil action, including with a lien, for 10 years after the offender's release from total confinement, plus a 10-year extension. When Grimes was convicted of stealing from real-estate escrow accounts, he was ordered to pay more than \$616,000 in restitution, and was released from prison in 2005. In 2015, the Superior Court modified a previous order to correct the expiration of the court's jurisdiction over Grimes' legal financial obligations to 2025. Did the trial court's modification of the term of jurisdiction over Grimes' legal financial obligations allow enforcement of the order, including a lien, until 2025?

B. STATEMENT OF THE CASE

BACKGROUND FACTS

The facts of Grimes' long-lived case, from 1998 to mid-2014, were succinctly recounted by this Court in its unpublished opinion in Grimes' most recent prior appeal, decided in November 2015:

In 1998, the State of Washington charged Ted J. Grimes with eight counts of theft in the first degree and one count of theft in the second degree.

Grimes managed three related Federal Way companies: Pacific Coast Escrow Inc. (PCE); Pacific Coast

Data Services Inc. (PCDS), which facilitated 26 U.S.C. section 1031 tax deferred real estate exchanges; and Pacific Coast Financial Services Inc. (PCFS). Grimes was responsible for all transactions at the three companies.

Grimes loaned money from PCDS's section 1031 exchange accounts to PCFS. PCFS, in turn, used those funds to make commercial loans at high interest rates. Grimes used the proceeds from the loans to pay for the construction of his new home and for other personal and business expenses. Grimes also made unauthorized withdrawals from PCE's escrow accounts. Grimes used false entries to the computerized accounting system to conceal his thefts.

The shortfall in PCE's accounts eventually exceeded \$630,000 and PCE declared bankruptcy. After Safeco Insurance Company paid the policy limits of a \$500,000 fidelity bond, PCE still owed clients \$116,102. Grimes' clients lost more than \$780,000 including taxes and consequential damages.

The jury found Grimes guilty of seven counts of theft in the first degree and one count of theft in the second degree. The court sentenced Grimes to a concurrent 60-month exceptional sentence. The court also ordered Grimes to pay restitution of \$116,102 to the clients and \$500,000 to Safeco for the bond funds paid to the victims. Grimes' judgment and sentence set minimum restitution payments as a percentage of his gross monthly income.

This court affirmed Grimes' convictions and the restitution order on appeal. State v. Grimes, 111 W[n]. App. 544, 547-48, 46 P.3d 801 (2002), review denied, 148 W[n].2d 1002, 60 P.3d 1211 (2003).

In 2000, the Department of Corrections set Grimes' monthly restitution payments at \$633. Grimes began serving his sentence in 2003. Upon release in 2005, Grimes initially paid \$100 monthly toward restitution. He later reduced his monthly payment to \$25.

In 2007, the Superior Court King County Clerk's Office (Clerk's Office) issued a "Notice of Violation" alleging Grimes had failed to comply with the restitution payment schedule and was uncooperative in providing accurate employment and financial information. Following a hearing in 2008, the trial court ordered the State to subpoena complete financial information from Grimes.

In January 2014, the Clerk's Office issued a second Notice of Violation alleging Grimes was in violation of his restitution payment schedule and had failed to disclose his complete financial situation. The Clerk's Office further alleged that Grimes' recent tax returns indicated that he could pay substantially more toward his restitution than the \$25.00 per month he had paid since 2008. Based on the restitution payment schedule in the judgment and sentence, the Clerk's Office asked the court to order Grimes to pay at least \$775.02 per month. At the time of the second violation notice, Grimes had paid a total of \$26,642.49 in restitution. The outstanding balance was \$1,564,245.74 of which \$974,216.61 was interest on restitution.

The trial court conducted a hearing over the course of several days in March and April 2014. Both Grimes and a King County legal financial obligations officer testified at the hearing. Grimes argued the trial court could not consider his federal and state pension income and that his monthly restitution payment should be no more than \$100. The trial court found Grimes' monthly income was about \$3,000 and set the monthly restitution payment at \$700.

The court entered an "Order on Failure to Pay" on May 14, 2014. The court also ordered Grimes to provide the Clerk's Office with an updated financial status report twice a year for the first year. The court declined to impose any sanctions on Grimes for the amount of his past restitution payments.

Supp. CP __ (Sub# 205B, Mandate); State v. Grimes, 190 Wn. App. 1004 at *1-2 (2015), review denied, 185 Wn.2d 1011, 368 P.3d 171 (2016) (affirming the trial court's setting of Grimes' monthly restitution payment).¹

Additionally, during the restitution hearing in March and April 2014:

Grimes testified he had borrowed \$150,000 after his release from prison without telling the bank about the restitution obligation. Grimes acknowledged he always makes the \$1,550 monthly payment on the loan and a voluntary monthly payment of \$1,358 to his sister for a "moral obligation." The monthly loan payment and voluntary payment alone exceeded Grimes' claimed monthly income of \$2,800. The record also shows that Grimes always pays his credit card statements. And as the trial court noted, his monthly expenses included "luxuries" such as \$200 for a cell phone and \$125 for cable television.

Supp. CP __ (Sub# 205B, Mandate); 190 Wn. App. 1004 at *5.

In the midst of all this, Grimes in August 2013 had filed a Motion to Compel Performance, asking the trial court to order the State and court clerk's office to allow the \$550,000 sale of a home Grimes co-owns, with only about 26 percent of the net proceeds — \$143,605 — going to Grimes' restitution obligation, while \$150,000 would go to Grimes to pay off his personal loan, and the remainder

¹ Cited and quoted here for factual history, not legal precedent.

to the co-owner. Supp. CP __ (Sub# 140, Note for Motion Docket). Grimes warned that if the lien-free sale were not allowed, the State would “lose out on any of the proceeds of the sale” of the home because he would continue to wait “until the judgment lien expires in 2019” and then “sell the house with a clear title as the lien would no longer exist.” Id.

The court clerk objected because there was no legal basis for the court to order such a disposition. Supp. CP __ (Sub# 147, King County Superior Court Clerk’s Response To Motion To Compel Performance). The State objected because Grimes was again trying to “play the system in order to benefit himself.” Supp. CP __ (Sub# 141, State’s Opposition To Defendant’s Motion To Compel Performance And State’s Request For A Hearing). The proposal was “yet another scheme to avoid paying the entire amount of what he owes.” Id. The State provided a sworn report from a court-clerk’s officer attesting that Grimes had repeatedly told her that he intended to pay as little as possible toward restitution “because his intent is to cease paying in 6-7 years when the civil judgment expires.” Id. at Attachment B, Notice of Violation. In January 2014, the trial court denied Grimes’ motion to compel.

Supp. CP __ (Sub# 156, Order Denying A Motion To Compel Performance).

In June 2015, the State moved to amend a 2009 order that had set jurisdiction over Grimes' legal financial obligation to expire in August 2019. CP 3; Supp. CP __ (Sub #138, Motion and Order Extending Court's Civil Jurisdiction Over Legal Financial Obligations). The State noted that the 2009 order, prompted by an ex parte motion of the court clerk, was based on the erroneous assumption that jurisdiction began at sentencing in 1999 instead of upon Grimes' release from prison in 2005. CP 3-4.

Grimes agreed that the "court already has jurisdiction" over his legal financial obligations until 2025. CP 8, 10. But he argued — similar to the argument he makes here — that a legally separate "debt judgment" and "judgment lien" must expire by statute 20 years after its entry in 1999. CP 11. "The prosecutor is confused over the two different meanings of the word judgment in this case," he argued. Id.

On June 15, 2015, the trial court issued an Order Modifying the Court's Order Extending Jurisdiction Over Legal Financial Obligations. CP 13. The order established that "jurisdiction over the criminal judgment in the above case is extended an additional

ten years from the date of August 1, 2015,” and during that time “an execution may be issued for restitution, crime victim’s assessment, and other legal financial obligations imposed pursuant to the above-entitled cause number.” Id. Grimes appealed.² Supp. CP __ (Sub# 188, Notice of Appeal).

On January 28, 2016, the trial court held a review hearing and found that “the defendant made a willful violation of failing to pay his legal financial obligations and failure to provide financial reports.” Supp. CP __ (Sub# 201, Clerk’s Minutes). The court ordered Grimes to make all his past-due payments and supply the proper documents including his tax returns. Supp. CP __ (Sub.# 202, Order Modifying Sentence). On February 26, 2016, the court clerk’s office notified Grimes that the financial report he submitted was deficient because he did not include all his finances or a repayment plan, and did not include a tax return as ordered. Supp. CP __ (Sub# 203, Notice Re: LFO/DJA).

² At the invitation of a commissioner of this Court, the State had challenged Grimes’ right to a direct appeal of the trial court’s order. However, the commissioner ruled in Grimes’ favor, and this Court denied the State’s motion to modify the ruling. This Court afforded the State the opportunity to repeat its appealability argument here. While the State respectfully disagrees with the commissioner’s ruling, it is not furthering an appealability argument here because Grimes’ issue on appeal plainly lacks legal merit.

On April 4, 2016, the State filed a Notice of Post Sentencing Violation and/or Review Hearing, stating that Grimes still had not made his payments or submitted his proper financial declaration. Supp. CP ___ (Sub# 204). A court clerk's compliance officer declared under oath that Grimes "continues to be deceptive with both the court and the clerk's office about his true assets," and "has continued to obscure, transfer, and co-mingle his assets" to conceal them from the court. Id.

For example, Grimes was still paying thousands of dollars in credit-card and mortgage payments — often more than the minimum due — and still giving his sister about \$1,300 a month while also collecting more than \$3,500 in rental income from one of his houses. Id. Meanwhile, Grimes had paid absolutely nothing toward his legal financial obligations since the court's last order in January. Id.

On April 29, 2016, the trial court remanded Grimes to jail for 30 days for willfully failing to pay and provide documents to the court clerk. Supp. CP ___, ___, ___ (Sub# 206, Clerk's Minutes; Sub# 208, Order Modifying Sentence; Sub# 209, Order Remanding Defendant To The Department of Adult Detention (Jail)). The trial court also increased Grimes' restitution payment to \$1,000 a month

until his past-due payments were paid in full. Supp. CP __ (Sub# 208, Order Modifying Sentence).

On July 22, 2016, the court clerk filed another notice of Grimes' failure to pay his legal financial obligations. Supp. CP __, __, __ (Sub# 213, Court – Notice of Violation; Sub# 214, Court's Correspondence to Defendant; Sub# 215 Court – Notice of Information). The clerk's office reported that Grimes still had not filed a complete financial report and tax returns, and he had paid only \$75 since the last court hearing. Id. The financial information that Grimes did submit showed that he had claimed an adjusted gross income of \$124,162 in 2014 and \$52,234 in 2015. Id. Yet in 2014 Grimes paid only \$3,600 in restitution, and in 2015 he paid only \$920. Id. As of July 21, 2016, Grimes still owed his victims \$585,214.51, not counting the \$1.15 million he owes in interest. Id.

C. ARGUMENT

Grimes has spent nearly two decades trying to avoid compensating his victims, hoping to run out the clock on the court's ability to enforce its orders. Now he claims, with no authority and an insufficient record to review, that criminal jurisdiction over his legal financial obligations does not affect a judgment lien against his property because it is a separate civil judgment that expires

independently of the criminal judgment and sentence. Grimes' argument should be rejected as unsupported by the record and frivolous.

Matters of statutory interpretation are reviewed de novo. State v. Linssen, 131 Wn. App. 292, 296, 126 P.3d 1287. If the language of a statute is clear and unequivocal, the court must apply the language as written. In re Pers. Restraint of Sappenfield, 138 Wn.2d 588, 591, 980 P.2d 1271 (1999). Washington's restitution statutes are to be broadly construed in order to carry out the legislative intent of providing restitution. Id.

A trial court's imposition of restitution is generally reviewed for an abuse of discretion. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999). So are ex parte orders. See State v. Hotrum, 120 Wn. App. 681, 683, 87 P.3d 766 (2004).

Under the Sentencing Reform Act of 1981 (SRA), restitution and other legal financial obligations are part of the criminal judgment and sentence. See RCW 9.94A.760(1). In addition, the state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. RCW 9.94A.753(9). However, the time period for enforcement of legal financial obligations "pursuant to a criminal judgment and sentence," is

different than for enforcing civil judgments. RCW 6.17.020(4). In criminal cases, the court may “execute, garnish and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence *or ten years following the offender’s release from total confinement.*” Id. (emphasis added).

The clerk of superior court, or a party designated by the clerk, may seek extension for another 10 years, during which an execution, garnishment, or other legal process may be issued. RCW 6.17.020(3), (4). The extension does not modify the original terms of the judgment and sentence but “merely permit[s] the State to attempt to collect restitution ... for another 10 years under the terms of the original restitution orders.” Hotrum, 120 Wn. App. at 684. “The perfection of any judgment lien and the priority of that judgment lien on property ... is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended.” RCW 6.17.020(6). A lien based upon an underlying judgment continues in force for the additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020. RCW 4.56.210(3).

The trial court's modification of jurisdiction until August of 2025 was statutorily sound and well within its discretion. By the plain language of the statutes, the trial court may assert jurisdiction over Grimes' legal financial obligations for 20 years from the date of his release from total confinement in August 2005. That jurisdiction includes all civil enforcement mechanisms, including liens. Because jurisdiction was extended under RCW 6.17.020, the lien "continues in force for the additional ten-year period." RCW 4.56.210(3).

Grimes' arguments to the contrary should be rejected as unreviewable because he has not provided all portions of the record needed to review his claim. See Story v. Shelter Bay Co., 52 Wn. App. 334, 345, 760 P.2d 368 (1988) (appellant has burden of providing an adequate record on appeal). Most notably, his entire argument relies on declaring his judgment lien to be its own separate civil judgment, but he has not provided documentation of the judgment lien or when it was entered. Nor has he supported his key factual allegations with any meaningful reference to the record. See RAP 10.3(a)(5), (6) (statement of the facts and legal argument

require references to relevant parts of the record).³ This Court has no obligation to search the record for evidence supporting his arguments. See Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). Nor does the State.

Regardless, Grimes' legal argument fails because it is built on a false premise, unsupported by any authority, that a lien is a separate civil judgment independent of the criminal judgment.⁴ To the contrary, a "judgment shall be a lien," not the other way around, including a judgment that "results from a criminal sentence."⁵ RCW 4.56.190. "A judgment granted by the superior court creates a

³ Grimes' initial Brief of Appellant was rejected by this Court for failing to cite to the record. Grimes then designated three items as clerk's papers (Notice of Hearing, Order Extending Jurisdiction and Response of Defendant) and resubmitted his brief as a Revised Brief of Appellant with no discernible changes or citations to the record.

⁴ Grimes' misunderstanding of the nature of a lien results in his turning the term "judgment lien" into "lien judgment," making "judgment" the noun instead of the adjective. See Revised BOA at 7-8 ("Grimes' civil lien judgment was entered September 1999, beginning its ten year life span.").

⁵ Under RCW 4.56.190, if the "judgment results from a criminal sentence for a crime that was committed on or after July 1, 2000, ... the lien will remain in effect until the judgment is fully satisfied." While this does not apply to Grimes because his thefts were committed before 2000, it certainly shows legislative intent for a lien to last at least as long as the court's jurisdiction over restitution, not to be treated as a separately expiring judgment. In fact, this addition to the statute came in 2011 as part of legislation to reform legal financial obligations. JUDGMENTS AND DECREES--INTEREST--WAIVER, 2011 Wash. Legis. Serv. Ch. 106 (S.S.B. 5423). The legislature found that it was in the public interest to "promote the reintegration into society of individuals convicted of crimes" by easing the burden of nonrestitution legal financial obligations and interest, but "[a]t the same time, the legislature believes that payment of legal financial obligations is an important part of taking personal responsibility for one's actions. The legislature therefore, supports the efforts of county clerks in taking collection action against those who do not make a good faith effort to pay." Id.

lien.” Hartley v. Liberty Park Associates, 54 Wn. App. 434, 437, 774 P.2d 40 (1989). And the SRA’s pronouncement that restitution may be enforced “in the same manner as a judgment in a civil action,” plainly means that no separate civil judgment exists here or is needed to collect restitution from Grimes. RCW 9.94A.753(9). The lien enforces the criminal judgment. There is only one judgment.

Grimes’ false premise leads him to RCW 6.17.020(7), which says that “no judgment is enforceable for a period exceeding twenty years from the date of entry in the ordering court.” But Grimes glaringly omits the first part of the sentence, which says, “*Except as ordered in ... chapter 9.94A RCW,*” — the criminal Sentencing Reform Act. RCW 6.17.020(7) (emphasis added). RCW 6.17.020(7) does not apply in criminal cases. His argument is frivolous.

The trial court properly corrected the expiration of jurisdiction over Grimes’ legal financial obligations, and enforcement may include a lien on Grimes’ property. This Court should affirm the order.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm the trial court's Order Modifying The Court's 2009 Order Extending Jurisdiction Over Legal Financial Obligations.

DATED this 21st day of July, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
IAN ITH, WSBA #45250
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Ted James Grimes, pro se appellant, at 1402 22 ST NE, AUBURN, WA, 98002, containing a copy of the BRIEF OF RESPONDENT in State v. Ted James Grimes, Cause No. 73696-5, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 27 day of July, 2016.


Name
Done in Seattle, Washington