No. 45883-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CANDACE RALSTON,

Appellant.

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

BRIEF OF APPELLANT

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2. The trial court abused its discretion when it based portions of the restitution award on speculation and conjecture.

3. The trial court violated RCW 10.01.160(3) when it imposed $39,211.85 in discretionary legal financial obligations against Ms. Ralston without determining she had the ability, or likely future ability, to pay them.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under RCW 9.94A.585(4)(b), a sentence should be reversed when it is clearly excessive. Ms. Ralston was convicted of one count of first degree theft and one count of forgery for allegedly stealing from the resort where she was employed. Her standard sentencing range was 2-6 months and 0-90 days, respectively. The trial court imposed a sentence of 96 months incarceration, a significantly longer sentence than typically given for property crimes involving greater losses. Did the trial court abuse its discretion given that this sentence was clearly excessive?

2. Under the Due Process Clause of the Fourteenth Amendment and Article I, section 3, an award of restitution must be supported by substantial credible evidence, which requires that the trial court not rely on speculation or conjecture. The State presented evidence that the accounting firm guessed at how much of its time involved analyzing transactions irrelevant to the charges against Ms. Ralston and Ms. Ralston's employer failed to keep track of the actual amount of time its employees lost in productivity as a result of the case. Where the trial court relied on the speculative estimates by the accounting firm and Ms. Ralston's employer, was there sufficient evidence to support these portions of the restitution award?

3. Pursuant to RCW 10.01.160(3), a court may not impose legal financial obligations unless it finds the defendant is or will be able to pay them. The trial court imposed $39,211.85 in discretionary legal fees and costs, despite accepting that Ms. Ralston would be unlikely to pay enough money toward the financial obligations each month to cover even the accruing interest. Must this order be stricken and Ms. Ralston's case be remanded because the trial court failed to comply with the statute when imposing these exorbitant costs?

C. STATEMENT OF THE CASE

Candace Ralston was employed at Alderbrook Resort & Spa ("Alderbrook") for several years. 2 RP 206[1]; CP 21. From November 2009 to April 2011, Ms. Ralston worked in Alderbrook's accounting department, first as an assistant and later as the accounting program manager. 2 RP 206; CP 21. The State alleged Ms. Ralston stole $213,581.15 from the resort while working in the accounting department. 2 RP 251. It claimed she took over $190,000 in cash and the remaining amount in forged checks.

According to the State, Ms. Ralston was able to do this because the bank was conveniently located along her route home from work and as a result, she was typically responsible for making the resort's cash deposits at the bank. 2 RP 206. The State claimed that before making a deposit Ms. Ralston routinely took some of the cash and rewrote the deposit slip. 2 RP 221. She allegedly accounted for the discrepancies with false debits to Alderbrook's gift card account. 2 RP 221.

Jan Miser, the head of Human Resources, was the only Alderbrook employee authorized to sign checks for the resort. 2 RP

[1] The three verbatim reports of proceedings in this case encompass a significant number of dates. The first two, which pertain to Ms. Ralston's pre-trial hearings and sentencing, are numbered by volume, and will be referred to herein accordingly. For ease of reference, the third unlabeled volume, which pertains to the subsequent order of restitution, will be referred to as the third volume, or 3.

209. According to the testimony proffered by the State, Ms. Miser examined the invoices attached to the checks carefully but paid little attention to the checks that were written out for her signature by the accounting department. 2 RP 211. The State claimed that this allowed Ms. Ralston to obtain two signed checks for her son's soccer team and one check for a timeshare drawn on Alderbrook's accounts. 2 RP 207, 211. Ms. Ralston then forged Ms. Miser's name on checks for legitimate Alderbrook expenses in order to cover her actions. 2 RP 212-13.

The State amended the information against Ms. Ralston five times. 1 RP 67. The fourth amended information charged Ms. Ralston with one count of first degree theft and three counts of forgery. CP 118. Ms. Ralston submitted an Alford plea, denying she committed the crimes alleged but agreeing there was sufficient evidence for a jury to convict her.[2] 2 RP 204; CP 64. She also stipulated that there was sufficient evidence to support the aggravating factor that her actions constituted a major economic offense.[3] 2 RP 205; CP 65. In exchange for her change of plea, the State dropped two of the forgery charges

[2] North Carolina v. Alford, 500 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).
[3] RCW 9.94A.535(3)(d).

against her in a fifth amended information, leaving one count of first degree theft and one count of forgery. 2 RP 205; CP 64, 67.

Given Ms. Ralston's offender score of 1, the standard range for the theft charge was 2 to 6 months, and the standard range for the forgery charge was 0 to 90 days. CP 58. No agreement was reached between the parties regarding the State's recommendation. The State merely indicated it would ask for an exceptional sentence. CP 60.

The trial court reviewed impact statements from the State's witnesses in preparation for sentencing and permitted three witnesses to speak at the sentencing hearing: (1) Brian McGinnis, the Alderbrook owners' representative; (2) Sarah Delgado, a staff accountant who assisted Ms. Ralston at Alderbrook; and (3) Tammy Kessler, a representative from "West Sound FC soccer team." 2 RP 242, 244, 246. Mr. McGinnis discussed the time and resources expended by Alderbrook to assist the State in prosecuting the case, the negative media attention that resulted, and the "very bad feeling" he had after finding out about the theft. 2 RP 242-43. Ms. Delgado explained in detail the impact the case had on her professionally and personally. 2 RP 244-46. Although the court later indicated it did not consider any alleged theft against the soccer team, it permitted Ms. Kessler to

discuss how Ms. Ralston "took advantage" of the boys on the team, including Ms. Ralston's own sons, who were members. 2 RP 247, 271. Ms. Kessler acknowledged all of the funds allegedly taken from the soccer team had been returned, but insisted that "somebody that has that type of attitude, especially taking children's money, should receive a really strong sentence so to get the – you know, that they know that they can't do that to a minor." 2 RP 247.

After listening to the State's witnesses at length, the court denied Ms. Ralston's request to have her mother speak at sentencing. 2 RP 259. The trial court and Ms. Ralston's counsel engaged in the following exchange:

> THE COURT: While the State has the statutory allowance for victims to speak, there is nothing similar with respect to defendants.
>
> [DEFENSE COUNSEL]: Well, two people presented evidence who were not victims.
>
> THE COURT: And I heard no objection.

2 RP 259. Despite the court's reasoning, the State had offered no objection to Ms. Ralston's mother addressing the court, but the trial court nonetheless denied the defense's request to have her speak. Id.

The State recommended nine years on the theft charge and four years on the forgery charge, deferring to the court as to whether they

should run concurrently or consecutively. 2 RP 258. The trial court imposed a concurrent sentence of 96 months on the theft charge and 36 months on the forgery charge. 2 RP 272. Despite determining Ms. Ralston would only be able to pay back any legal fees and costs at a rate of $25 per month, it also imposed a total of $39,811.85 in financial legal obligations, which included $39,211.85 in discretionary fees. 2 RP 272-73; CP 12-13; Supp. CP __ (Order Re Costs, 1/23/14, sub no. 264).

In addition, the court required Ms. Ralston to pay restitution, with the specific amount to be set after a hearing. 2 RP 272. At the subsequent restitution hearing, Ms. Ralston contested the amount requested by the State. 3 RP 5. At issue, in part, was the amount for the services performed by the accounting firm hired by Alderbrook, Moss Adams, LLP ("Moss Adams"), and the amount requested by Alderbrook for time its employees allegedly spent on issues related to the charges against Ms. Ralston.

Moss Adams charged $73,807.84 for its services, but the State admitted that a portion of the billed hours were spent analyzing gift card transactions unrelated to the charges against Ms. Ralston. 3 RP 10. The State requested that Ms. Ralston pay 90 percent of the Moss

Adams bill because Moss Adams had estimated less than ten percent of its time had been spent on irrelevant analysis. 3 RP 10. The State also asked for reimbursement to Alderbrook in the amount of $8,607.54 for the time its employees spent working on issues related to the case, despite the fact Alderbrook's employees had not actually kept track of the hours they expended. 3 RP 28-29.

Over Ms. Ralston's objection, the court imposed restitution in the amount of $294,115.73, which included the full amount requested by the State for Moss Adams' services and the Alderbrook employees' time. Supp. CP __ (Order of Restitution, 7/28/14, sub no. 301); 3 RP 37.

D. ARGUMENT

1. **The trial court imposed an excessive sentence on Ms. Ralston and her sentence must be reversed and her case remanded for resentencing.**

a. When a sentence is clearly excessive, it must be reversed.

Appellate review of a defendant's sentence is dictated by statute. State v. Ritchie, 126 Wn.2d 388, 392, 894 P.2d 1308 (1995). When the trial court orders an exceptional sentence, that sentence must be reversed if the reasons are not supported by the record or if they do not justify the sentence. Id.; RCW 9.94A.585(4)(a). If support can be

found in the record, then the sentence must be reversed if it "was clearly too excessive or clearly too lenient." Ritchie, 126 Wn.2d at 392; RCW 9.94A.585(4)(b).

The trial court's imposition of an exceptional sentence is reviewed for an abuse of discretion. Ritchie, 126 Wn.2d at 392. The trial court abuses its discretion when the sentence is based on untenable grounds or imposed for untenable reasons, or the court takes action that no reasonable person would have taken. Id. at 393. When the length of the sentence is so long that it "shocks the conscience of the reviewing court," the trial court has acted in a way that no reasonable person would, and has therefore abused its discretion. Ritchie, 126 Wn.2d at 396 (quoting State v. Ross, 71 Wn. App. 556, 573, 861 P.2d 473 (1993)).

In Ritchie, the court examined the sentences of three defendants. 126 Wn.2d at 398-404. The first defendant severely beat and attempted to rape an elderly woman with Alzheimer's before killing her. Id. at 398. The trial court imposed a sentence less than three times the top of the defendant's standard range. Id. at 399 (standard range was 240 to 320 months, the court sentenced defendant to 900 months). The second defendant raped a six-week-old baby girl, causing severe injury to the

newborn that required surgery and hospitalization. Id. at 400-01. The trial court imposed a sentence of incarceration approximately four and a half times the top of the defendant's standard range, with additional community custody time. Id. at 401 (standard range was 51 to 68 months and the court imposed 312 months). The third defendant was convicted of breaking a 20-month-old boy's arms and legs, and evidence at trial suggested he had systematically tortured the children in his care, including repeatedly suffocating, and then resuscitating, the boy's younger sister. Id. at 402-03. The trial court imposed a sentence approximately nine times the top of the defendant's standard range. Id. at 404 (standard range was 3 to 9 months and the court imposed 84 months).

The Ritchie court affirmed all of the defendants' sentences, finding none shocked the conscience. Id. at 404. In each case, the defendant had engaged in incredibly brutal acts against a particularly vulnerable victim, and the sentences imposed were three to nine times the top of the standard range. Cases following Ritchie have shown such sentences are justified when the facts are similarly egregious. See e.g. State v. Haley, 140 Wn. App. 313, 325, 165 P.3d 409 (2007) (defendant sentenced to less than 5 times the top of the standard range

after raping a three-year-old). In contrast, Ms. Ralston committed a property crime against a corporation, and was sentenced to a period of incarceration sixteen times the top of her standard range. 2 RP 272; CP 58.

b. Ms. Ralston's sentence was clearly excessive and must be reversed.

Property crimes are, of course, subject to exceptional sentences. The legislature's intent that property crimes involving multiple acts or victims, resulting in a loss substantially greater than typical for the offense, occurring over a long period of time, or committed while in a position of trust, be punished more severely is evident from the plain language of RCW 9.94A.535(3)(d). However, where the trial court properly acted within its authority to impose an exceptional sentence, that sentence may still be unlawfully excessive. Prior cases involving the imposition of exceptional sentences for property crimes, in which the courts did not find the defendant's sentence was excessive, demonstrate that Ms. Ralston's sentence was harsher than the typical exceptional sentence.

In State v. Oxborrow, the defendant created an elaborate pyramid scheme, in which he defrauded investors of over $58 million.

106 Wn.2d 525, 526-27, 723 P.2d 1123 (1986). Of the amount stolen, $13 million was never returned. Id. at 527. Losses to individuals were as high as $2.4 million and over 500 of the investors lost everything. Id. at 527. Given that the theft occurred in the early 1980s, these numbers are even more striking if one accounts for inflation. The court upheld the defendant's exceptional sentence, finding that 180 months, or 15 times the top of the standard range, was not clearly excessive given the enormity of the amount stolen. Id. at 534. In comparison, Ms. Ralston allegedly stole $213,581.15 approximately 30 years later, and received a sentence 16 times the top of her standard range.

In State v. Knutz, the defendant preyed on an elderly man living in an assisted living home, convincing him to give her $347,000 over the course of three years. 161 Wn. App. 395, 399, 253 P.3d 436 (2011). The trial court imposed an exceptional sentence of five years, which was only ten times the top of the standard range. In State v. Branch, the defendant stole from his own company. 129 Wn.2d 635, 639, 919 P.2d 1228 (1996). Although the defendant's sentence was 16 times the top of the standard range, it resulted in a sentence of only 48 months for a theft of nearly $400,000, committed in 1996. Id. at 650. Again, the comparison is striking. The State alleged Ms. Ralston stole

considerably less money but she was sentenced to a far longer period of incarceration. The facts of Ms. Ralston's offense and the severity of the sentence imposed are easily distinguished from those cases in which this Court has found a sentence was not clearly excessive.

The State may highlight that Ms. Ralston, unlike some defendants, maintained her innocence at sentencing despite her plea of guilty, but a court may not consider a defendant's professed innocence when imposing an exceptional sentence. State v. Serrano, 95 Wn. App. 700, 709, 977 P.2d 47 (1999). Thus, the court should not have considered that factor when imposing sentence.

It is unclear, however, what the court did choose to consider. It refused to hear from Ms. Ralston's only sentencing witness despite hearing from multiple State witnesses, including one who was clearly confused about the basis for the charges against Ms. Ralston and discussed issues the court later determined were improper considerations at sentencing. 2 RP 247, 271. Although the court pointed to the fact Ms. Ralston failed to object to these witnesses, the State also had made no objection. 2 RP 259. Thus, the court's decision appeared arbitrary and biased against Ms. Ralston. The court's subsequent imposition of a 96-month sentence was shocking in light of

the facts of the case and Ms. Ralston's offender score. The sentence was clearly excessive and an abuse of discretion. It must be reversed and the case remanded for resentencing. Ritchie, 126 Wn.2d at 392.

2. A portion of the restitution award should be vacated because it was based on insufficient evidence.

a. Evidence supporting a restitution order is insufficient if it requires the trier of fact to rely on speculation or conjecture.

Evidence presented at restitution hearings must meet due process requirements. State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993); U.S. Const. amend. XIV; Wash. Const. art. I, § 3. In order to comport with due process, the amount of restitution imposed must be based on "easily ascertainable damages." RCW 9.94A.753(3); State v. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). "While the claimed loss 'need not be established with specific accuracy,' it must be supported by 'substantial credible evidence.'" State v. Deskins, 180 Wn.2d 68, 82, 322 P.3d 780 (2014). Evidence is only sufficient if it provides the trier of fact with a reasonable basis for estimating the loss and requires no speculation or conjecture. Id. at 82-83.

When the amount of restitution is in dispute, the State has the burden of proving the award by a preponderance of the evidence. State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). If the restitution order is authorized by statute, this Court reviews the order for an abuse of discretion. Deskins, 180 Wn.2d at 77. The trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Id.

b. Because a portion of the restitution order was based on speculation and conjecture, the trial court abused its discretion and that part of the restitution order must be vacated.

Alderbrook retained Moss Adams to "identify and quantify the extent of the suspected misappropriation" of cash receipts, cash disbursements, and assets at Alderbrook during a discrete period of time. Supp. CP __ (Restitution Estimate, 7/27/11, sub no. 36). Moss Adams charged Alderbrook $73,807.84 for its services, which Alderbrook's insurer paid. Supp. CP __ (Restitution Estimate, 7/27/11, sub no. 36). However, the State acknowledged that some of the work performed by Moss Adams involved the examination of gift card transactions unrelated to the charged offenses. 3 RP 10. The deputy prosecutor represented to the court that Moss Adams estimated less

than ten percent of its time was expended on an analysis of these irrelevant gift card transactions. 3 RP 10. Based on this estimate, the State agreed to reduce its request by ten percent, to $66,427.56, and the court adopted the State's recommendation. 3 RP 11; Supp. CP ___ (Order of Restitution, 7/28/14, CP 301).

This estimate from Moss Adams, relayed to the trial court by the deputy prosecutor, was not supported by substantial credible evidence. See Deskins, 180 Wn.2d at 82. Moss Adams' invoices were not itemized, and the State's representation indicated that Moss Adams had not taken the time to calculate exactly how much of its time was devoted to examining the unrelated gift card transactions. 3 RP 10. The State's report to the court that Moss Adams had spent less than ten percent of its time on the irrelevant gift card transactions was nothing more than a guess. Thus, the court improperly relied on speculation and conjecture when it ordered that Ms. Ralston pay $66,427.56 of the fees claimed by Moss Adams.

Similarly, Alderbrook estimated three of its employees neglected their regular duties for 80 hours each to attend to "various issues surrounding the Candace Ralston case." Supp. CP __ (Restitution Estimate, 7/27/11, sub no. 36). Alderbrook calculated the

loss of its employees' time at $8,607.54, and the court granted this request. Supp. CP __ (Restitution Estimate, 7/27/11, sub no. 36); Supp. __ (Order of Restitution, July 28, 2014, sub no. 301). However, the State conceded the Alderbrook employees had not kept track of the hours they spent on issues related to the alleged theft, and there was no suggestion the employees had been forced to work overtime. 3 RP 28-29. The court found that the estimate for Ms. Delgado, the staff accountant who assisted Ms. Ralston, was reasonable given the number of bank deposits at issue. 3 CP 38. It made no similar findings about the hours of lost productivity claimed by Alderbrook's general manager and director of human resources.

The State presented no evidence that any of these employees, much less all three, had lost a full two weeks of work to assist in issues related to the alleged theft. Indeed, the State's admission that none of the Alderbrook employees kept track of their hours demonstrates that Alderbrook did not know how much time their employees had devoted to the case against Ms. Ralston, and therefore had to speculate. Such speculation is not permissible. Deskins, 180 Wn.2d at 82-83.

Because the court relied on speculation and conjecture when it ordered Ms. Ralston to pay for Moss Adams's services and the

Alderbrook employees' time, the order must be vacated and the case remanded for a new hearing. At this restitution hearing, no new evidence may be admitted. State v. Griffith, 164 Wn.2d 960, 967 n.6, 195 P.3d 506 (2008) ("[i]ntroducing new evidence on remand would conflict with the statutory requirement that restitution be set within 180 days after sentencing").

3. **The legal financial obligations imposed against Ms. Ralston must be stricken and the case remanded because the court failed to consider Ms. Ralston's financial resources and the nature of the burden such costs would impose as required by RCW 10.01.160(3).**

   a. The court ordered Ms. Ralston to pay $39,211.85 in discretionary legal fees and costs without finding she would have the ability to pay them.

At sentencing, the trial court ordered Ms. Ralston to pay $5,678 in legal costs, which included discretionary costs of $200 for a filing fee and $4,878 for sheriff service fees. CP 12. It later imposed an additional $34,133.85 in defense costs, including fees for the court appointed attorney and defense expert for a total of $39,211.85 in discretionary fees. Supp. CP __ (Order Re Costs, 1/23/14, sub no. 264). Under RCW 10.01.160(3), a court may order a defendant to pay legal fees, but it "shall not order a defendant to pay costs unless the defendant is or will be able to pay them." In determining the amount of

the fees, "the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3).

Formal findings supporting the trial court's decision to impose legal fees under RCW 10.01.160 are not required, but the record must minimally establish that the sentencing judge actually considered the defendant's individual financial circumstances and made an individualized determination she has the ability, or likely future ability, to pay. State v. Bertrand, 165 Wn. App. 393, 404, 267 P.3d 511 (2011). In this case, boilerplate language in the Judgment and Sentence stated:

> The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change.

CP 9. However, nothing in the record suggests that the court actually considered Ms. Ralston's financial circumstances before imposing the costs, or determined it was likely Ms. Ralston would ever be able to pay the $39,211.85 of discretionary costs imposed.

Instead, the court imposed the costs, and then questioned defense counsel about what kind of payment schedule Ms. Ralston

would require, given her limited means and exorbitant prison sentence. 2 RP 272-72. The court engaged in the following exchange with defense counsel:

> THE COURT: The court costs will include the filing fee of $200.00; sheriff's return on service, which at this point, I believe, totals $4,878.50. The Court will also require that you reimburse the County for the cost of court-appointed counsel as well as the cost of defense experts. Additionally, $500.00 to the crime victims compensation fund; $100.00 to the DNA fund.
>
> The Court will require that, if these monies are not paid in full, that there be monthly payments toward the legal financial obligation. And Mr. Cordes, what type of employment and monthly income do you anticipate your client would be having after her release, which is when the payments are required to start?
>
> [DEFENSE COUNSEL]: Given her background, Your Honor, and the conviction, I don't have any idea. I mean, she's probably not going to get any type of employment that she's previously had, so my guess is that if she gets employment it's going to be on the low end somewhere.
>
> THE COURT: Well, the Court at this time will set minimum monthly payments of $25.00 per month. Obviously, that isn't going to be enough to even cover the interest that accrues at twelve percent per annum.

2 RP 272-73.

Thus, in direct violation of RCW 10.01.160(3), the trial court ordered the costs before giving any consideration to whether Ms. Ralston would be able to pay them. In fact, after issuing the order the

trial court acknowledged Ms. Ralston was unlikely to ever have the ability to pay the costs in full, and set a low minimum monthly payment in recognition of her inability to pay the fees after her release. 2 RP 273; CP 13. As the court noted, because Ms. Ralston would be capable of paying so little, her payments on the ordered legal financial obligations would not "even cover the interest that accrues at twelve percent per annum." 2 RP 273.

b. An illegal sentence may be challenged for the first time on appeal, and is ripe for review prior to the collection of legal fees.

Ms. Ralston did not object to the imposition of these fees. This Court indicated in State v. Blazina that it may decline to consider a challenge to costs raised for the first time on appeal, despite addressing this issue in past cases. 174 Wn. App. 906, 911, 301 P.3d 492 (2013), rev. granted 178 Wn.2d 1010 (2013). However, it is well established that an illegal or erroneous sentence may be challenged for the first time on appeal. State v. Ford, 137 Wn.2d 427, 477-78, 973 P.2d 452 (1999). The imposition of $39,211.85 in discretionary fees was an unlawful sentencing order.

In addition, while this Court has previously suggested legal costs may be challenged only after the State seeks to enforce the order,

those cases did not address the validity of an order that failed to comply with RCW 10.01.160(3). See e.g. State v. Lundy, 176 Wn. App. 96, 107, 308 P.3d 755 (2013); State v. Ziegenfuss, 118 Wn. App. 110, 74 P.3d 1205 (2003). A claim is fit for judicial determination "if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." State v. Bahl, 164 Wn.2d 739, 751, 193 P.3d 678 (2008). This order meets these requirements, as the court's failure to comply with RCW 10.01.160(3) is a legal issue fully supported by the record. Although Ms. Ralston could later seek to modify the court's order, that fact does not change the finality of the original sentencing order. Ms. Ralston is entitled to review of the unlawful order of costs imposed by the trial court.

c. Ms. Ralston's case must be remanded because the record does not show the trial court would have found the evidence established she had the ability to pay $39,211.85 in discretionary legal fees.

Remand is the appropriate remedy when the trial court fails to comply with a sentencing statute unless the record clearly indicates the court would have imposed the same condition regardless. State v. Chambers, 176 Wn.2d 573, 293 P.3d 1185 (2013) (citing State v. Parker, 132 Wn.2d 182, 937 P.2d 575 (1997)). Here, the record does

not show the evidence supported a finding that Ms. Ralston had the ability, or likely future ability, to pay $39,211.85 in discretionary legal financial obligations. When the court inquired about Ms. Ralston's ability to make payments, it accepted defense counsel's representation that Ms. Ralston was unlikely to find lucrative employment given her convictions and lengthy prison sentence, and set the monthly payments so low that they will not even cover the accruing interest. 2 RP 273; CP 13.

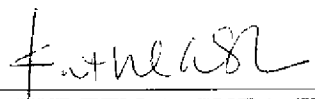
The court also noted Ms. Ralston would be required to pay restitution. 2 RP 272. Any payments made by Ms. Ralston would be applied to the order of restitution first. RCW 9.94A.760(1). At a rate of $25 per month, and without accounting for interest, it would take more than 980 years for Ms. Ralston to pay the $294,115.73 figure imposed by the court. That Ms. Ralston will have the future ability to pay an additional $39,211.85 in discretionary fines and costs is inconceivable. Because the evidence showed that, in fact, Ms. Ralston would not have the future ability to pay the legal financial obligations imposed, the order must be stricken and the case remanded.

E. CONCLUSION

For the reasons above this Court should reverse Ms. Ralston's sentence and remand the case for resentencing. It should also vacate a portion of the restitution award and remand for a new hearing at which no new evidence may be admitted.

DATED this 9th day of January, 2015.

Respectfully submitted,



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
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v.	)	
	)	
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	)	
Appellant.	)	

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