

FILED

MAY 03 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

WASHINGTON STATE COURT OF APPEALS
DIVISION III

STATE OF WASHINGTON,
RESPONDENT

NO. 324761

V.

Superior Ct. Cause No. 88-1-00341-7

PAUL KALAKOSKY,
PETITIONER

PETITIONER'S REPLY

The State contends that I should have raised the "Blazina" issue in my 2014 motion, (Response, Pg. 7, last sentence) + (Response, Pg. 8, footnote⁵) which states - "he has presented no evidence in the record that he filed a motion for the trial court to consider remitting any or all of his LFOs due to a demonstrated manifest hardship on the defendant."

The State is correct. I did not. Judge Cozza breached that subject in his decision in memorandum on April 11, 2014. Since his honor felt it necessary to raise that subject, would it not then be proper to allow me to respond to it?

REPLY - 1

1
2 Furthermore, I could not (in March 2014) have foreseen
3 The 2015 "Blazina" decision rendered a year in the future.

4
5 The State also contends (Response, Pg. 8): "any collateral
6 attack on the judgment needed to be made within one year of the
7 mandate, unless the attack addressed the court's jurisdiction -
8 tion, or the validity of the judgment on its face".

9 The court's jurisdiction, or rather (the statutory loss
10 of it) is exactly the issue at hand.

11
12 In my opinion I'm caught in a legal "catch 22".
13 IF I would have raised the issue of the court's loss of
14 jurisdiction in 1989 (at trial), or in 1993 (on appeal), it
15 would have been barred as being untimely (premature),
16 as the loss would not have occurred for 10 yrs + 6 yrs into
17 the future - respectively. Yet now the state claims I
18 should be denied (for untimeliness) for bringing it up too late.

19 Interestingly enough the state wishes to implement an
20 amended 1991 statute (9.94A.760) because it arose between my
21 1989 judgment and my 1993 appeal. Yet they want this
22 court to disregard the "2015 Blazina" decision even though
23 it arose right between the 2014 and 2016 dates of
24 this action.

25 IS the state trying to row both boats while
26 avoiding the main issue in "Blazina" which was the
27 court's statutory obligation to hold an ability to
28 pay hearing at the J+S level?

Reply-2

1
2 In all Fairness I Concede That The state in 1989
3 Could hardly be expected To "Crystal Ball" Future
4 events and see what lies in store For any of us
5 any more Than I could. So, Please allow me To
6 Update The Court:

- 7 1) My ERD is in Nov. 11, 2023
- 8 2) Incarceration Length 36 years
- 9 3) Age AT ERD - 70 yrs. old
- 10 4) Health, Diminished
- 11 5) Family Support - Minimal (I was The youngest)
- 12 6) Finances - Minimal SS, No Pension, No Assets
- 13 7) Hireability - Would you hire me?

14
15 I have included a Chart (Attachment 3) on The
16 Timeline of events For The Court's Convenience.

17
18 I would like To Point out That This is not a
19 "Bandwagon" case. The age and Circumstances puts
20 it in a very unique Crack, so To speak. IT could
21 almost be said To have a "Separation of Powers
22 Doctrine" aspect To it, but That would be something
23 best left To minds more adept in The Tides of
24 Law Than mine.

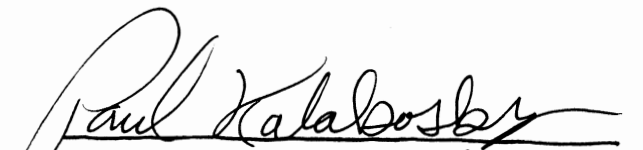
25
26 To Conclude, The laws at The Time of my
27 arrest and Trial were The existing guidelines For
28 The sentencing Judge at The Time he entered The 10

Reply-3

1
2 year Limitation of The Court into The J+S.
3 (see ATTACH. 2, Pg 5, 4.1 (5)), also (Attachment 1, LAWS, Pgs.
4 1184 and 1185 - marked for reference).

5 The Chart (ATTACH. 3) Shows The Timeline of Events.
6 There does exist obvious gaps in This Timeline
7 That I believe holds Legitimate issues For This Court's
8 Consideration. Especially since The legislature in 1997
9 granted The Court's Authority To extend Their Juris-
10 diction an additional 10 years Providing They do
11 So before The initial 10 year period expires.
12 This gave The Court a 2 year Window To exercise
13 That option which it did not do in This instance.

14
15
16 Submitted This 1ST day of May, 2016.

17
18 
19 Paul Kalakosky #237085
20 Coyote Ridge Correction Center
21 1301 N. EMVATA AVENUE (FA-08)
22 Connell, Wa. 99326
23
24
25
26
27
28

Reply-4

1

~~the terms and conditions under which the defendant shall make restitution~~)). The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

1

(4) This section does not limit civil remedies or defenses available to the victim or defendant.

Sec. 6. Section 10, chapter 443, Laws of 1985 as amended by section 4, chapter 281, Laws of 1987 and RCW 9.94A.142 are each amended to read as follows:

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days (~~and shall set the terms and conditions under which the defendant shall make restitution~~). The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

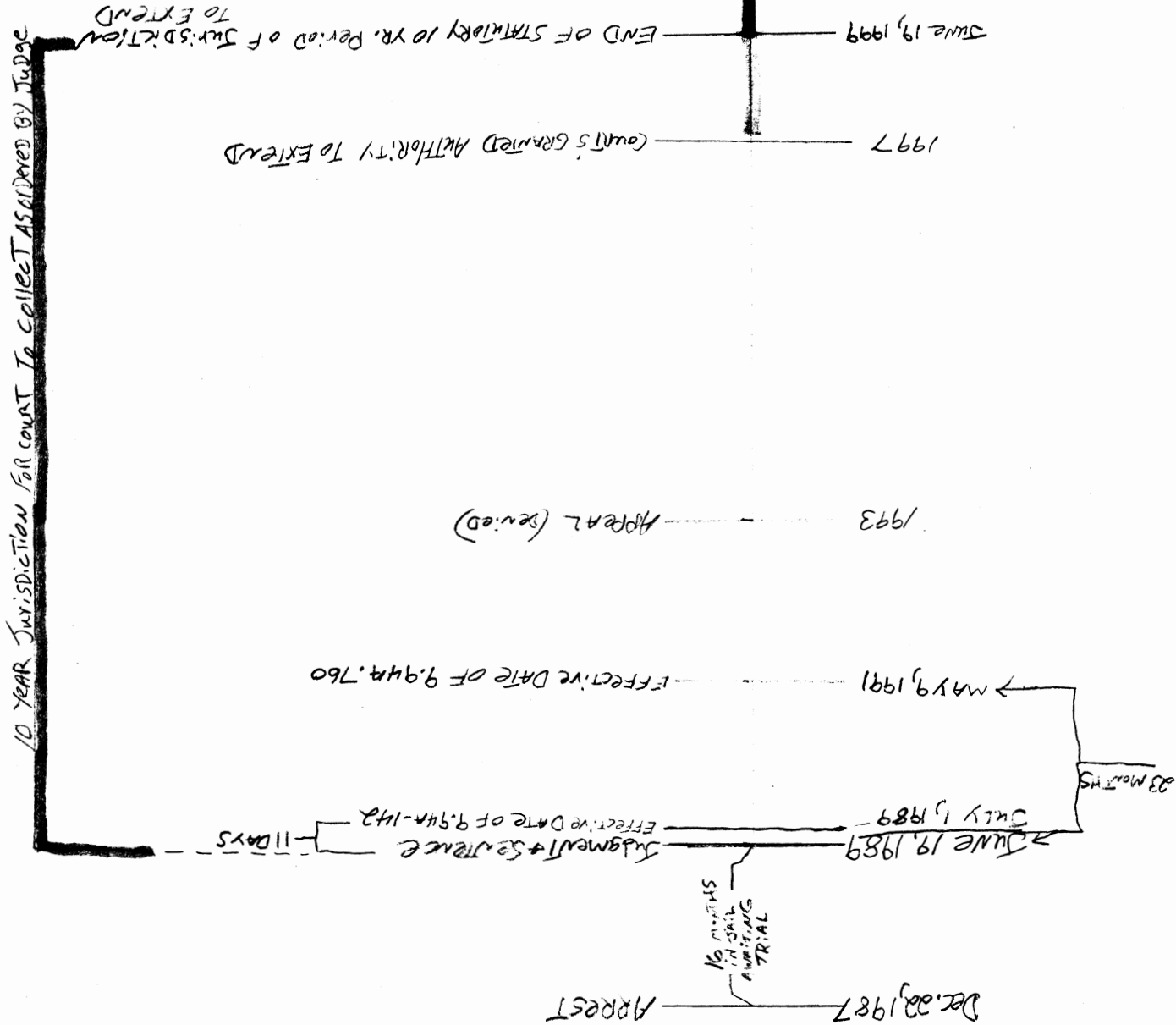
2

(i) Payments shall be made in the following manner: according to a schedule as set up by his CCO; that the DOC shall monitor said payments while the defendant is in prison

(j) This court shall retain jurisdiction over the defendant for a period of 10 years to assure payment of the above monetary obligations and the defendant shall report to the Department of Corrections to monitor compliance, to obey conditions as provided by RCW 9.94A.120(11)).

4.2 () The Court DISMISSES Count(s) _____

#3



- 11 DAY GAP BETWEEN SENTENCING AND EFFECTIVE DATE OF 9.944-142
- 23 MONTH GAP BETWEEN J+S AND EFFECTIVE DATE OF RW 9.944-760
- 10 YEAR JURISDICTION FOR COURT TO COLLECT AS JUDGE ORDERED
- 2 YEAR WINDOW TO EXTEND

Graph Not To Scale

DECLARATION OF MAILING

GR 3.1

I, Paul Kalakosky on the below date, placed in the U.S. Mail, postage prepaid, 3 envelope(s) addressed to the below listed individual(s):

THE COURT OF APPEALS
DIVISION III
N. 500 CEDAR
SPokane, WA.
99201

Superior Court Clerk
Spokane County
1100 W. Mallon
Spokane, WA.
99260-0270

Prosecuting Attorney
County-City Public Safety Bldg.
1100 W. Mallon
Spokane, WA.
99260-0270

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Reply Brief (4 pgs)
2. Attachment #1 (2 pgs) LAWS OF 1989
3. Attachment #2 (1 pg.) Pg. #5 of My J+S
4. Attachment #3 (1 pg) CHART
5. DECLARATION OF MAILING
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 1ST day of May, 2016, at Connell WA.

Signature Paul Kalakosky