

August 18, 2020

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

ANASTASIA AMANDA SACKSTEDER,

Appellant.

No. 52237-3-II

UNPUBLISHED OPINION

LEE, J. — Anastasia A. Sacksteder appeals the imposition of discretionary legal financial obligations (LFOs), including \$10,000 in civil damages for her identity theft convictions, a \$200 criminal filing fee, and a \$500 court-appointed attorney fees. Sacksteder argues that these LFOs were improper because she was indigent. The State concedes that the trial court did not have the authority to impose civil damages as part of a criminal sentence. The State also concedes that the imposition of the \$200 criminal filing fee and \$500 court-appointed attorney fee was improper.

We accept the State’s concession. Accordingly, we reverse the imposition of the \$10,000 in civil damages, \$200 criminal filing fee, and \$500 court-appointed attorney fee and remand to the trial court to strike the improper LFOs from Sacksteder’s judgment and sentence.<sup>1</sup>

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<sup>1</sup> We stayed this case by order on January 29, 2020, pending supplemental briefing. Now that we have received supplemental briefing, we lift the stay.

## FACTS

The State charged Sacksteder with two counts of first degree identify theft, first degree criminal impersonation, eight counts of second degree identity theft, and unlawful possession of payment instruments. Sacksteder waived her right to a jury trial. The trial court found Sacksteder guilty as charged.

At sentencing, the State requested an exceptional sentence of 100 months confinement. The State also requested that the trial court impose a \$1,000 penalty on each identity theft charge under RCW 9.35.020(7).<sup>2</sup> The State argued,

Fees and fines I've outlined in the brief, which include for Identity Theft \$1,000 penalty for each count of identity theft. I have no other information with regards to the fees or fines.

Your Honor heard throughout the testimony some of the impact that [one of the victims] suffered. [Two other victims] were also impacted significantly and have submitted victim impact statements, that I trust the Court has reviewed.

Verbatim Report of Proceeding (April 20, 2018) at 8. Sacksteder requested a sentence under a Drug Offender Sentence Alternative (DOSA). RCW 9.94A.660. Sacksteder also requested that any nonmandatory LFOs be waived, including the \$1,000 for each identity theft charge.

The trial court imposed a prison-based DOSA. The trial court also imposed a \$500 crime victim assessment, \$200 filing fee, and \$100 DNA fee in mandatory LFOs. And the trial court imposed \$500 court-appointed attorney fees and \$10,000 in civil damages under RCW 9.35.020(7).

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<sup>2</sup> RCW 9.35.020(7) states, "A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court."

## ANALYSIS

### A. SENTENCING AUTHORITY

Sacksteder argues that the trial court exceeded its sentencing authority by imposing civil damages as part of a criminal sentence. The State concedes that the trial court exceeded its authority by imposing civil damages as part of a criminal sentence. We accept the State's concession and remand to the trial court to strike the \$10,000 in civil damages from Sacksteder's judgment and sentence.

The trial court's sentencing authority is limited to the authority that is granted to it by statute. *In re Postsentence Review of Combs*, 176 Wn. App. 112, 117, 308 P.3d 763 (2013), *review denied*, 182 Wn.2d 1015 (2015). We review whether a trial court exceeded its statutory authority de novo. *State v. Mann*, 146 Wn. App. 349, 357, 189 P.3d 843 (2008), *review denied*, 168 Wn.2d 1040 (2010). The trial court commits reversible error if it exceeds its statutory sentencing authority. *State v. Winborne*, 167 Wn. App. 320, 330, 273 P.3d 454, *review denied*, 174 Wn.2d 1019 (2012).

The identity theft statute includes the following provision, "A person who violates this section is liable for civil damages of one thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court." RCW 9.35.020(7). The State concedes that this provision creates a separate civil cause of action for victims of identity theft, and therefore, it does not authorize additional criminal penalties.

Washington courts have recognized “that the criminal process should not be used simply as a means to enforce civil claims.” *State v. Barnett*, 36 Wn. App. 560, 563, 675 P.2d 626 (1984). Here, the trial court imposed the \$10,000 under the identify theft statute provision, which expressly provides for “civil damages.” RCW 9.35.020(7). Thus, the trial court exceeded its statutory authority by imposing civil damages as part of a criminal sentence. Accordingly, we accept the State’s concession and reverse the trial court’s imposition of the \$10,000 in civil damages. We remand to the trial court to strike the \$10,000 in civil damages from Sacksteder’s judgment and sentence.

B. DISCRETIONARY LFOs

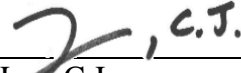
Sacksteder also argues that the trial court improperly imposed the \$200 criminal filing fee and \$500 court-appointed attorney fee because Sacksteder was indigent. The State concedes that Sacksteder is indigent and the \$200 criminal filing fee and \$500 court-appointed attorney fee are improper.

Sentencing courts are prohibited from imposing discretionary costs on a defendant who is indigent, including criminal filing fees and court-appointed attorney fees. RCW 10.01.160(3); RCW 36.18.020(2)(h); *State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714 (2018).

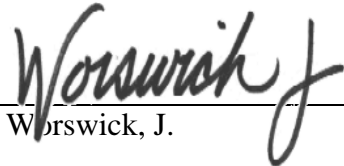
Here, the trial court imposed a criminal filing fee and court-appointed attorney fees. The State concedes that Sacksteder is indigent; therefore, the criminal filing and court-appointed attorney fees were improperly imposed and must be stricken. We accept the State’s concession and remand to the trial court to strike the \$200 criminal filing fee and \$500 court-appointed attorney fee from Sacksteder’s judgment and sentence.

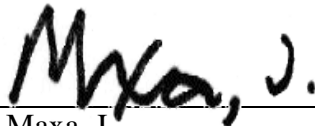
We reverse the trial court's imposition of the \$10,000 in civil damages, \$200 criminal filing fee, and \$500 court-appointed fee, and we remand to the trial court to strike the improper LFOs from Sacksteder's judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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L., C.J.

We concur:

  
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Worswick, J.

  
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Maxa, J.