

June 22, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LEONARD CLINTON HAMILTON,

Appellant.

No. 53927-6-II

UNPUBLISHED OPINION

LEE, C.J. — Leonard C. Hamilton appeals the trial court’s denial of his motion to withdraw his guilty plea, arguing that the trial court improperly imposed an interest accrual provision on nonrestitution legal financial obligations (LFOs) in his original judgment and sentence entered after he pled guilty. Hamilton also requests remand for resentencing in light of *State v. Blake*.¹ The State concedes that remand is appropriate.²

We accept the State’s concession that the imposition of an interest accrual provision for nonrestitution LFOs was improper and that prior convictions for simple possession should not be included in the calculation of Hamilton’s offender score. Therefore, we remand to the trial court for resentencing.

FACTS

¹ *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

² The State argues that Hamilton’s appeal is untimely, but ultimately concedes that Hamilton is correct that the judgment and sentence improperly included outdated boilerplate language imposing interest on nonrestitution LFOs, and does not oppose remand to correct this error.

On August 28, 2018, Leonard Hamilton pleaded guilty to one count of violation of a domestic violence no contact order under RCW 26.50.110(5). Hamilton's offender score also included two prior convictions for possession of a controlled substance. On the same day, the trial court imposed a Drug Offender Sentencing Alternative sentence and ordered Hamilton to 30 months of confinement and 30 months on community custody. The trial court further ordered Hamilton to pay a \$500 crime victim assessment fee and a \$15 violation of a domestic violence protection order fee, neither of which were restitution fees. The judgment and sentence stated, "The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090." Clerks Papers at 21.

On December 13, 2018, Hamilton moved to withdraw his guilty plea under CrR 7.8(b), arguing that the trial court imposed a sentence based on a miscalculated offender score. On August 8, 2019, the trial court denied Hamilton's motion to withdraw his guilty plea. Hamilton filed a notice of appeal with this court on September 9, 2019. Hamilton later filed a motion for supplemental briefing, which we accepted as a motion for reconsideration based on *Blake*.

ANALYSIS

Hamilton argues that "the court must modify Leonard Hamilton's judgment and sentence to eliminate interest accrual on the non-restitution legal financial obligations." Br. of Appellant at 4. The State concedes that the provision in Hamilton's judgment and sentence that orders interest to accrue on all LFOs is in error. We agree.

RCW 10.82.090(1) states, "[R]estitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of June 7,

2018, no interest shall accrue on nonrestitution legal financial obligations.” We review the trial court’s imposition of LFOs for an abuse of discretion. *State v. Ramirez*, 191 Wn.2d 732, 741-42, 426 P.3d 714 (2018).

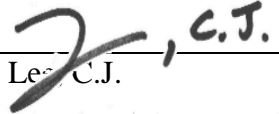
Here, Hamilton’s judgment and sentence was entered on August 28, 2018. Hamilton was ordered to pay a \$500 crime victim assessment fee and a \$15 violation of a domestic violence protection order fee, both of which are nonrestitution LFOs. Because the judgment and sentence was entered after June 7, 2018, and Hamilton was ordered to pay interest accrual on nonrestitution LFOs, the trial court erred. RCW 10.82.090(1).

Hamilton’s offender score included two convictions for possession of a controlled substance. “[A] prior conviction which has been previously determined to have been unconstitutionally obtained or which is constitutionally invalid on its face may not be considered” as part of a defendant’s offender score. *State v. Ammons*, 105 Wn.2d 175, 187-88, 713 P.2d 719, *as amended by* 105 Wn.2d 175 (1986), *cert. denied* 479 U.S. 930 (1986). In *Blake*, our Supreme Court held that RCW 69.50.4013(1), the statute criminalizing simple possession, is unconstitutional. 197 Wn.2d at 186. Therefore, the statute is void. *Id.* at 195. Because RCW 69.50.4013(1) is void, Hamilton’s prior convictions for simple possession are unconstitutional on their face and should not be included in Hamilton’s offender score.

We remand to the trial court for resentencing under *Blake*. Hamilton’s judgment and sentence should not include any interest accrual provision for nonrestitution LFOs from Hamilton’s judgment and sentence.

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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.

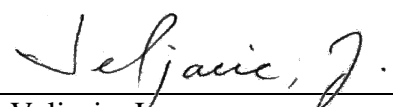
 , C.J.

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We concur:



Worswick, J.



Veljacic, J.