

64616-8

64616-8

NO. 64616-8-I

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

STATE OF WASHINGTON

Respondent

v.

JOSHUA J. ISLER,

Appellant

2011 APR 11 AM 10:22

CLERK OF COURT
JULIA M. HARRIS
CLERK

BRIEF OF RESPONDENT

MARK K. ROE
Prosecuting Attorney

KATHLEEN WEBBER
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

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I. ISSUES

1. Does a constitutionally valid guilty plea require knowledge of the specific nature of the financial assessments imposed when the defendant has been generally told the court may impose financial obligations as part of his sentence?

II. STATEMENT OF THE CASE

On March 17, 2006 the defendant, Joshua Isler, was charged in juvenile court with one count of theft third degree. 1 CP 43-44. On April 12, 2006. On April 12, 2006 the defendant pled guilty to the charge. 4-12-06 RP 5-7; 1 CP 35-42.

In the Statement of Juvenile on Plea of Guilty the defendant was informed that the standard sentencing range included 1-12 months of supervision, 0 -150 hours of community service, \$0-\$500 fine, 0-30 days of detention, \$100 crime victim compensation fee, and restitution as ordered by the court. 1 CP 36. The court reviewed the statement of juvenile on plea of guilty with the defendant including the possible punishment that may be imposed if the defendant pled guilty. 4-12-06 RP 6.

The defendant was sentenced on April 20, 2006. The Court ordered that the defendant be sentenced to a chemical dependency disposition alternative. 1 CP 24. The defendant was ordered to

serve 30 days in detention and was given credit for 30 days already served. 1 CP 25. The defendant was also ordered to pay \$100 crime victims penalty assessment, \$30 attorney fees and \$2.50 per day detention costs.¹ 1 CP 27.

III. ARGUMENT

A. THE DEFENDANT VOLUNTARILY PLED GUILTY TO THIRD DEGREE THEFT.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. State v. Barton, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980). In order to be a voluntary plea the defendant must be advised of all of the direct consequences of the plea. State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). The defendant argues that because he was not advised that he could be assessed attorney fees and detention costs his plea was involuntary, and therefore he is entitled to withdraw his plea.

The defendant ignores the information on the plea agreement which told him that the court could impose up to \$500 in fines and fees, \$100 crime victim's compensation and an amount of restitution to be determined. 1 CP 36. He provides no authority for the proposition that a voluntary plea necessarily requires that he be

¹ Detention costs totaled \$75.00

notified of the nature of the fund for which the financial obligation could be imposed. Rather he points out that restitution is a direct consequence of the plea citing State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981). He then draws a comparison between restitution and attorney fees and detention costs. He concludes that in the absence of specific information the latter two could be imposed his plea was involuntary.

In Cameron a defendant who pled guilty was told the court could impose a \$10,000 fine, but was not told the court could also impose restitution. At sentencing the court did not impose a fine, but did impose over \$24,000 in restitution. The defendant appealed from his sentence arguing his plea was not knowing and voluntary. The Court decided that restitution was a direct consequence of a guilty plea. The Court reasoned that since the court could convert the fine to restitution pursuant to RCW 9A.20.030, the possibility of restitution stemmed directly from the conviction of a crime that resulted in some pecuniary gain to the defendant or loss to the victim. Accordingly, if a defendant was not specifically informed he could be assessed restitution that portion of the plea agreement was involuntary. Cameron, 30 Wn. App. at 233-234.

Cameron does not answer the question presented here: when a defendant is told an amount he could face as a monetary penalty, is his plea involuntary because he was not told which funds would benefit from that monetary penalty? This appears to be a question of first impression in Washington. Under the circumstances of this case the Court should find the defendant was advised of all the direct consequences of his plea and therefore it was entered into knowingly, intelligently, and voluntarily.

The question presented is more analogous to the case where the court considered whether a plea was involuntary because the defendant had not been informed of the specifics of a restitution order. The Court rejected the argument that a defendant's plea was involuntary because he did not know that part of the restitution order would reimburse the crime victim's compensation fund and part would reimburse the victim's family directly in State v. Hurt, 107 Wn. App. 816, 830-831, 27 P.3d 1276 (2001). Here the uncertainty as to what the monetary penalty would be comprised of at the time of disposition similarly did not render the plea involuntary because the defendant was advised that he would be subject to a fine of up to \$500.

The defendant was clearly advised that he would be assessed a range of monetary penalty as a fine. A standard range sentence in juvenile court includes a fine. RCW 13.40.357 (option A), RCW 13.40.190. The statute does not define the term "fine". When a statutory term is not defined the court will give it its ordinary meaning, and may look to a dictionary definition to determine that meaning. State v. Gonzalez, 168 Wn.2d 256, 263-264, 226 P.3d 131 cert. denied, ___ U.S. ___, 131 S.Ct. 318, 178 L.Ed.2d 207 (2010). "Fine" is defined as a pecuniary punishment imposed by lawful tribunal upon a person convicted a crime. Black's Law Dictionary (West 5th Edition, 1979).

Certainly attorney fees and detention costs could fall within the definition of a fine. The defendant would not have been assessed either amount unless he had been convicted of the crime. RCW 13.16.085, RCW 13.40.145. The defendant was told that he could pay as much as \$500 in a fine. He was assessed much less than that when he was sentenced. Thus he was aware at the time that he could be responsible for some financial costs, which he was assessed. The characterization of the monetary penalty assessed does not affect the ultimate fact that he was told he could be ordered to pay some money at the time of sentencing.

IV. CONCLUSION

For the forgoing reason the State asks the Court to find the defendant's plea was knowing and voluntary, and deny his request to withdraw his guilty plea.

Respectfully submitted on April 7, 2011.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 
KATHLEEN WEBBER WSBA #16040
Deputy Prosecuting Attorney
Attorney for Respondent



**Snohomish County
Prosecuting Attorney**

Criminal Division
Joanie Cavagnaro, Chief Deputy
Mission Building
3000 Rockefeller Ave., M/S 504
Everett, WA 98201-4046
(425) 388-3333
Fax (425) 388-3572

April 7, 2011

Richard D. Johnson, Court Administrator/Clerk
The Court of Appeals - Division I
One Union Square
600 University Street
Seattle, WA 98101-4170

2011 APR 11 11:10:22
KATHLEEN WEBBER

**Re: STATE v. JOSHUA J. ISLER
COURT OF APPEALS NO. 64616-8-1**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

KATHLEEN WEBBER, #16040
Deputy Prosecuting Attorney

cc: Washington Appellate Project
Attorney(s) for Appellant

8th April 2011
Snohomish County Prosecutor's Office

Administration
Bob Lenz, Operations Manager
Admin East 7th Floor
(425) 388-3333
Fax (425) 388-7172

Civil Division
Jason Cummings, Chief Deputy
Admin East 7th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Admin East 6th Floor
(425) 388-7280
Fax (425) 388-7295

COURT OF APPEALS
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DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

JOSHUA J. ISLER,

Appellant.

No. 64616-8-1

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 8th day of April, 2011, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

WASHINGTON APPELLATE PROJECT
1511 THIRD AVENUE, SUITE 701
SEATTLE, WA 98101

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the Appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 8th day of April, 2011.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit