

66126-4

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No. 66126-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

SHANE WATSON,

Appellant.

2011
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION.

The court ordered Shane Watson to pay court fees and costs in three cases, an amount which grew to well over \$10,000 due to compounding interest. Watson is poor, without property, assets, or income. He has serious health problems and no job. Because Watson did not pay the court fees he was assessed, the court sentenced him to 60 days in jail. The court made no finding that Watson's failure to pay was willful, or that he had the ability to pay the court fees he owed. This court should reverse because Watson's imprisonment violates due process.

B. ASSIGNMENTS OF ERROR.

1. The imposition of a jail sanction absent the court's determination that Watson's failure to pay his legal financial obligations was willful violates due process of law and is contrary to the governing statutes.

2. The court erred by disregarding evidence that Watson was not willfully evading paying his court fees that he had an ability to pay.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Under the right to due process of law and by statute, a court may not imprison someone for failing to pay court costs

without finding that the failure to pay is willful. The superior court did not conclude Watson's failure to pay his courts fees was willful and repeatedly left blank the box it would have checked had it found Watson's failure to pay was willful. Did the court violate Watson's right to due process of law by sentencing him to jail due to a failure to pay court costs when it did not conclude that he had the ability to pay these court costs and willfully failed to do so?

2. This court may decide an issue on appeal even when it may appear moot because the person has served the sentence imposed. Watson has served the jail sentence imposed as punishment but he continues to owe substantial legal financial obligations. The court's finding regarding Watson's failure to pay his court costs will affect future determinations of whether he is refusing to pay court costs. Due to Watson's indigence, the issue is likely to recur but will evade review. The payment of court costs and expenses of jail sanctions are issues of substantial public importance. Should this court address the issue because of its on-going adverse affect on Watson as well as the likelihood it will recur and the substantial public interest at stake?

D. STATEMENT OF THE CASE.

In 1995, the court imposed a total of \$317 in court fees on Shane Watson as part of his sentence in two separate cases. CP 31, 64. In 1998, the court imposed \$500 in mandatory court fees as part of the sentence in another case. CP 123. After Watson lost his appeal from the 1998 convictions, the court imposed an additional \$3,941.52 in appellate costs. CP 103. By 2010, the compounding interest had raised the sum Watson owed to over \$10,000.¹ RP 1; RCW 10.82.090 (requiring financial obligations to accrue interest at rate used for civil judgments). The State accused Watson of failing to pay his legal financial obligations in these three cases and asked the court to sentence Watson to a jail term as punishment. RP 1, 4.

Watson explained that he had no money, no job, and no assets. RP 3-4. He had not had a place to live or held a steady job in years. Id. He had spent much of the time in custody on these and other matters. RP 3.

¹ The record does not list the precise amount of legal financial obligations owed, but the bail setting orders entered in each case appears to set a cash-only bond based on the amount owed in each case, which totals \$17,732.00. Supp. CP __, sub. no. 152 (No. 94-1-01710-6); Supp. CP __, sub. no. 98 (No. 95-1-00658-7); Supp. CP __, sub. no. 205 (No. 98-1-012638).

He hoped to get his mechanics tools back and begin to work. RP 4. However, he also owed \$19,000 in child support. RP 4. He explained that he “never intentionally neglected to pay any of these” fees, but he had been unable to do so. RP 5.

The State did not dispute Watson’s claim of poverty. RP 4. The court discounted Watson’s explanation that he thought he had been forgiven from paying the legal financial obligations and ruled, “I’m going to impose a sanction of 20 days on each cause number, for a total of 60 days in the Snohomish County Jail, with credit for time served.” RP 7. The court did not find that Watson’s failure to pay his legal fees was willful or that he had any resources from which he could pay these fees. RP 6-7.

Watson filed a motion to reconsider further explaining his dire financial circumstances. CP 8, 47, 90. He suffered from untreated Hepatitis C and serious back injuries, making his life expectancy short and nullifying his ability to work. Id. He owned no “assets which I could use for cash,” owned “barely any clothes” and had “no place to keep them.” Id. The court denied the pro se motion to reconsider because it was filed more than 10 days after the court’s decision contrary to a local court civil rule. CP 1, 40, 83.

E. ARGUMENT.

IMPRISONING WATSON DUE TO HIS NON-
WILLFUL POVERTY DENIES HIM LIBERTY FOR
IMPERMISSIBLE REASONS

1. The trial court may not imprison someone for failing to pay court costs when it does not find that the person's failure to pay is willful. "Due process precludes the jailing of an offender for failure to pay a fine if the offender's failure to pay was due to his or her indigence." State v. Nason, 168 Wn.2d 936, 945, 233 P.3d 848 (2011) (citing Bearden v. Georgia, 461 U.S. 660, 672-73, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983); Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 111, 52 P.3d 485 (2002)). It is only when "the probationer has willfully refused to pay the fine or restitution when he has the means to pay," that the State may use imprisonment as a sanction to enforce collection. Smith, 147 Wn.2d at 111-12 (quoting Bearden, 461 U.S. at 668).

In Smith, our Supreme Court held that the trial court was required "to find that Smith's failure to pay her fines was willful" before imprisoning her as a sanction. Id. at 112. As the Smith Court explained, "Washington law" requires "the court to find that a defendant's failure to pay a fine is intentional before remedial sanctions may be imposed." Id.

A requirement to pay a legal financial obligation is a sentence condition subject to the penalties for noncompliance. RCW 9.94A.760(10). RCW 9.94B.040(c) and (d) authorize the court to impose a jail sanction for the failure to pay legal and financial obligations only if the court finds the failure to pay is willful, similar to the requirements of contempt. Smith, 147 Wn.2d at 111-12. It is only where a person is capable of paying but willfully refuses to pay that a person may be imprisoned for failing to pay legal fees. Nason, 168 Wn.2d at 945.

Washington further authorizes a jail sanction “only when no reasonable or effective alternatives are available.” Smith, 147 Wn.2d at 112 (internal citations omitted). “[T]he record must show that ‘all less restrictive alternatives . . . failed.’” Id. (quoting In re Pers. Restraint of King, 110 Wn.2d 793, 802, 756 P.2d 1303 (1988); State v. Norlund, 31 Wn.App. 725, 729, 644 P.2d 724 (1982)).

2. The court did not find Watson willfully refused to pay his court costs. The court entered three orders imposing jail sanctions on Watson. CP 9-11; 48-50; 91-93. Each document imposed 20 days of jail, consecutive to the other sanctions. CP 10, 49, 92. Yet none of the orders find that Watson’s failure to pay was willful.

Each order leaves unchecked the box in which the court would have indicated a finding of willfulness had the court made one:

II. FINDINGS

2.1 The defendant has failed to comply with the requirements or conditions of sentence as follows:

1. FAILURE TO MAKE PAYMENTS ON LEGAL FINANCIAL OBLIGATIONS.

and the failure to comply

was willful on Violation(s) _____

was not willful on Violation(s) _____

CP 9, 48, 91. The omission could not be inadvertent given its repetition in the three orders imposing sanctions for failing to pay fees. Id. The court's oral ruling did not include a finding that Watson willfully failed to pay his fines. RP 6-7. The court's failure to make a finding, particularly when its attention it directly drawn to the need for such a finding, is interpreted as a finding against the party with the burden of proof. State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

The court did not dispute or contest Watson's poverty. Instead, once it decided that Watson knew of his obligation to pay court costs, it punished him for failing to pay. RP 7.

Watson explained that he had been "fully out of work" and had not had a steady job in 28 years. RP 3. Watson had not had a

home or place to live. RP 4. He owned no possessions of value or “any assets which I could use for cash.” CP 8, 47, 90. He did not have a car. Id. He said, “I barely have any clothes and I have no place to keep them.” Id. He used food stamps and owed child support. Id. He had serious health problems including untreated Hepatitis C and back injuries that made it difficult to work. Id. He had been in custody during the majority of the time and had paid money toward his LFOs when in DOC custody. RP 3; CP 8, 47, 90. He did not understand why the court fees did not reflect the money he had paid toward them while in prison when DOC subjected his earnings to mandatory withdrawal for payment of court costs. CP 8. 47, 90. In short, he did not have the present or likely future ability to pay court costs. His inability to pay was not because he was shirking his duties, but because he had been impoverished for many years. The court violated Watson’s right to due process of law by imposing a 60-day jail sanction for Watson’s failure to pay these costs without finding his failure to pay was willful.

3. The issue should be addressed even if Watson has completed his 60-day jail sentence. The possibility of potential future consequences, such as the effect an issue may have on a

future sentencing judge, renders an appeal not moot even when the express relief sought is no longer available. Monohan v. Burdman, 84 Wn.2d 922, 925, 530 P.2d 334 (1975). The petitioner in Monohan challenged the prison's early release calculation but he had been paroled by the time the court reviewed his case. The court found the issue was not moot because the initial decision regarding eligibility for early release could impact future release hearings or even subsequent sentencing determinations in the event he was arrested for another crime. Id. Similarly, the court's finding that Watson failed to pay his legal financial obligations in this instance is likely to impact future decisions about Watson's failure to pay the court costs he owes.

This Court may review an issue "that is likely to recur, and also is likely to evade review because of the relatively short-lived duration of each case." In re Pers. Restraint of Liptrap, 127 Wn.App. 463, 470, 111 P.3d 1227 (2005). Watson continues to owe substantial court fees, at least \$10,000 with accumulating interest that compounds at a rate of 12 percent. RP 1; see RCW 10.82.090 (requiring interest, accruing from date of imposition of order, as set by RCW 4.56.110(4)). He is unlikely to be able to pay these ever-rising costs considering his poverty and his inability to

pay them thus far. The court imposed a \$20 monthly payment scheme effective immediately, even though it was simultaneously ordering that Watson serve 60 days in jail, thereby guaranteeing that Watson would be in arrears before he left the jail. CP 10, 49, 92; see CP 6, 45, 88 (Watson explaining impossibility of making payments in timeframe ordered by court)

The maximum jail sanction a court may impose for failing to pay court costs is 60 days. RCW 9.94B.040. The time inherent in the appellate review process means the issue would necessarily evade review when it arises again.

Additionally, a court may decide a technically moot case if it involves matters of continuing and substantial public interest. Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). The court's imposition of jail sanctions as a punishment for failing to pay legal financial obligations by a person who is so poor as to have no income and no property, without concluding that the failure to pay was willful, raises an issue of substantial public importance. Not only does the continued incarceration of someone due to his indigence cost the public money for jail fees, it denies a person his liberty without just cause. See Liptrap, 127 Wn.App. at 270 (community safety and due process rights of prisoners are

matters of continuing and substantial public interest); see also Katherine A. Beckett, et al, Washington State Minority and Justice Commission, The Assessment of Legal Financial Obligations in Washington State, 74 (2008) (study by Supreme Court Commission explaining societal costs from imposition of financial obligations upon indigent offenders).

Thus, the issue in this case is one of substantial and continuing public interest. It is likely to recur and evade review. And Watson is likely to be adversely affected by the court's finding that he failed to pay his court costs when the issue arises in the future. This Court should accept review and remand the case due to the court's failure to conclude that Watson was willfully refusing to pay court fees for a reason other than his inability to afford them.

F. CONCLUSION.

For the reasons stated above, Mr. Watson respectfully asks this Court to reverse the order modifying his sentence due to the failure to pay court costs.

DATED this ^{25th} day of March 2011.

Respectfully submitted,



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

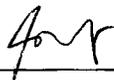
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 66126-4-I
)	
SHANE WATSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 25TH DAY OF MARCH, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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