

72043-1

72043-1

FILED  
April 30, 2015  
Court of Appeals  
Division I  
State of Washington

NO. 72043-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

---

STATE OF WASHINGTON,

Respondent,

v.

TED GRIMES,

Appellant.

---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SEAN P. O'DONNELL

---

**BRIEF OF RESPONDENT**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

LAURA PETREGAL  
Senior Specialist  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS .....	2
2. SUBSTANTIVE FACTS .....	4
C. <u>ARGUMENT</u> .....	7
1. THE COURT HAS THE AUTHORITY TO IMPOSE A PAYMENT SCHEDULE FOR RESTITUTION AND TO CHANGE THAT SCHEDULE AS NEEDED .....	7
2. THE TRIAL COURT CONSIDERED GRIMES' ENTIRE FINANCIAL SITUATION WHEN ORDERING HOW MUCH HE SHOULD PAY PER MONTH .....	10
3. THE TRIAL COURT DID NOT GARNISH OR ATTACH TO ANY OF GRIMES' INCOME .....	12
4. GRIMES OFFERS NO LEGAL BASIS THAT A TRIAL COURT IS REQUIRED TO IGNORE INCOME RECEIVED AS PART OF SOCIAL SECURITY OR PENSION BENEFITS WHEN IT DETERMINES MONTHLY RESTITUTION PAYMENTS .....	14
5. GRIMES IS UNDER THE JURISDICTION OF THE TRIAL COURT FOR PURPOSES OF RESTITUTION AND HAS NO FOURTH OR FIFTH AMENDMENT RIGHT TO CONCEAL HIS FINANCES .....	15
D. <u>CONCLUSION</u> .....	17

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Davison, 116 Wn.2d 917,  
809 P.2d 1374 (1991)..... 7, 8

State v. Enstone, 137 Wn.2d 675,  
974 P.2d 828 (1999)..... 8

State v. Griffith, 164 Wn.2d 960,  
195 P.3d 506 (2008)..... 8

State v. Tobin, 161 Wn.2d 517,  
166 P.3d 1167 (2007)..... 8

Constitutional Provisions

Federal:

U.S. Const. amend. IV ..... 1, 15

U.S. Const. amend. V ..... 1, 15

Statutes

Washington State:

RCW 6.15.020..... 12, 14

RCW 9.94A.753 ..... 8, 9, 10

RCW 9.94A.760 ..... 16

RCW 9.94A.7601 ..... 14

**A. ISSUES PRESENTED**

Ted Grimes is seeking review of the trial court's 2014 Order on Failure to Pay Hearing—Setting Monthly Payment Schedule. The trial court ordered that based upon the judgment and sentence, previously ordered restitution amounts, and Grimes' monthly income, Grimes should pay at least \$700 a month toward his outstanding restitution and submit six month financial reports to the clerk's office along with supporting documentation. The trial court did not impose a sanction.

Grimes contends that the trial court erred by: 1) considering income from social security and retirement benefits when determining how much he should pay each month; 2) requiring Grimes to report his daily whereabouts to the court every day for a year; and 3) requiring Grimes to provide financial information in violation of his Fourth and Fifth Amendment rights. Should this Court agree that the trial court properly consider all of Grimes finances and income when it enforced restitution?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

In July of 1999, Ted Grimes was convicted at jury trial of seven counts of Theft in the First Degree and one count of Theft in the Second Degree. CP 34-41. In September of 1999, the court sentenced him to an exceptional sentence of sixty months in prison. CP 34-41. In October of 1999, the court ordered restitution for the individual crime victims. CP 42-43. In March of 2000, the court ordered additional restitution for victim Safeco in the amount of \$500,000. CP 44-45. In 2002, Grimes appealed both his conviction and the court-ordered restitution and the Court of Appeals affirmed the conviction and the restitution order. CP 46-67.

Once Grimes was no longer under supervision by the Department of Corrections, collection of his legal financial obligations was assumed by the King County Clerk's Office. CP 70. In late 2007, the King County Clerk's Office notified the court that Grimes was in violation of his payment schedule and that he failed to provide true and accurate employment and financial information as requested. CP 70. In 2008, the trial court held a hearing to address Grimes' failure to pay restitution. CP 71. At that

hearing, the trial court ordered the State to subpoena Grimes' complete financial information. CP 71-72. The State completed a Subpoena Duces Tecum asking for all of Grimes' financial information including employment information, sources of income, copies of all business and personal bank account statements, and IRS tax returns. CP 73-74.

After the 2008 hearing, the clerk's office continued its collection efforts. CP \_\_\_\_ (Sub. 154). However, accurate information depended upon the cooperation of Grimes. CP \_\_\_\_ (Sub. 154). As a result, other than forms from the IRS, the clerk had no easy and accurate way of ensuring Grimes' total compliance with reporting his finances. CP \_\_\_\_ (Sub. 154).

In 2014, the trial court held another hearing on failure to pay. CP 1-4. The State again had to rely on documents from the IRS. CP \_\_\_\_ (Sub. 154). After the 2014 hearing, the trial court issued an order directing Grimes to pay at least \$700 a month toward restitution. CP \_\_\_\_ (Sub. 167). The court did not impose any sanction against Grimes. CP \_\_\_\_ (Sub. 167); RP 95.

## 2. SUBSTANTIVE FACTS

Grimes was an escrow officer and the president and manager of Pacific Coast Escrow ("PCE"). CP 10. In that capacity, Grimes exerted unauthorized control over escrow funds and Section 1031 funds belonging to others which had been entrusted to him for safekeeping. CP 10-33, 39. Grimes used these funds to make loans to third parties, to pay for his expenses in building a new house, and for other personal and business expenses. CP 10-33, 39. Grimes used false entries in the computerized accounting system of the pooled escrow account to cover up and avoid detection of his thefts which allowed him to commit additional thefts. CP 10-33, 39. The loss to the individual victims was over \$780,000. CP 10-33, 39. Some individual victims lost their life savings and some lost their homes. CP 39. Grimes' thefts also caused PCE to go out of business. CP 39. PCE had a fidelity bond with Safeco Insurance Company that protected PCE from loss due to dishonesty of an employee. CP 39. As a result, Safeco Insurance also lost \$500,000 because it had to pay out the full policy limit to PCE. CP 39, 44-45.

In committing these thefts, Grimes knowingly violated state escrow regulations designed to protect consumers. CP 39-40.

Grimes abused his position of trust and fiduciary responsibility. CP 39-40. The trial court imposed an exceptional sentence and ordered full restitution to the victims. CP 34-41, 42-45. In the judgment, the trial court ordered a payment schedule tied to Grimes' gross monthly income level. CP 34, 43. Paragraph 4.3 of the judgment and sentence and Appendix E Restitution reads that defendant shall pay:

- (i) 10% if defendant earns less than \$1,000 per month; or
- (ii) 15% if defendant earns \$1,000 per month or more, but less than \$3,000 per month; or
- (iii) 20% if defendant earns \$3,000 per month or more, but less than \$4,500 per month; or
- (iv) 25% if defendant earns \$4,500 per month or more.

CP 35, 43.

Prudence Brownell, a clerk with the King County Clerk's Office, has supervised the collection of restitution from Grimes. CP 70, \_\_\_ (Sub. 154). Brownell reported that Grimes continuously failed to pay restitution as required. CP 70, \_\_\_, (Sub. 154). Brownell reported that Grimes has repeatedly failed to be candid about his financial situation. CP \_\_\_ (Sub. 154). Brownell maintained that the defendant failed to disclose his true and

complete financial situation to the court because the more income he receives the more he is required to pay. CP \_\_\_\_ (Sub. 154).

In 2014, as a result of Grimes' lack of candor with the clerk and court, the clerk was forced to once again rely on the IRS tax returns received directly from the IRS to show some of Grimes' true income and establish that he could be paying a higher amount than he had been. CP \_\_\_\_ (Sub. 154). The tax documentation established that his earnings were as follows:

2009 \$32,639.00 monthly = \$2,719.91

2010 \$39,483.00 monthly = \$3,290.25

2011 \$30,817.00 monthly = \$2,568.08

2012 \$37,201.00 monthly = \$3,100.08

Therefore, according to the judgment, the clerk maintained that Grimes' payments should have been:

2009 monthly payment = \$407.98

2010 monthly payment = \$822.56

2011 monthly payment = \$385.21

2012 monthly payment = \$775.02

CP \_\_\_\_ (Sub. 154).

At the 2014 hearing, the State asked that based upon the IRS information and the inability to truly get any more credible

information out of Grimes, that the Court follow the restitution schedule as ordered in the judgment. CP \_\_\_ (Sub. 154); RP 76-82. The State also requested a sanction of 5 days jail converted to 40 community service hours for Grimes' failure to comply. RP 82.

The trial court incorporated its oral rulings and ordered that pursuant to the judgment and sentence, the previously ordered restitution amounts, and Grimes' monthly income, Grimes should pay at least \$700 per month. CP \_\_\_ (Sub. 167). The court also required that Grimes submit detailed and complete six month financial reports to the King County Clerk's Office for one year. CP \_\_\_ (Sub. 167). The trial court did not impose the sanction requested by the State. RP 95.

**C. ARGUMENT**

**1. THE COURT HAS THE AUTHORITY TO IMPOSE A PAYMENT SCHEDULE FOR RESTITUTION AND TO CHANGE THAT SCHEDULE AS NEEDED.**

A court's decision to impose restitution is generally within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). A court abuses its discretion only

when its order is manifestly unreasonable or untenable. State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999). The court's authority to impose restitution is statutory. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). The "language of the restitution statutes indicates legislative intent to grant broad powers of restitution." Davison, at 920. The restitution statutes require the defendant "to face the consequences of his or her criminal conduct." State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007). The restitution statutes are interpreted broadly to carry out the statutory goals, and the court "does not engage in overly technical construction that would permit the defendant to escape from just punishment." Id. at 524.

Under the SRA, if the offender is convicted of an offense that results in loss of property, the court must order restitution. RCW 9.94A.753(5). RCW 9.94A.753 also grants trial courts "broad power" to order and modify restitution. Enstone, at 679. Once a court has ordered restitution, it may modify its order "as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction." RCW 9.94A.753(4).

RCW 9.94A.753 states the offender shall remain under the jurisdiction of the court to enforce payment of restitution and the

court has the authority to modify the portion of the sentence related to restitution as to amount, term, and conditions. RCW 9.94A.753(4) states, in pertinent part:

For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. **The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.** The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount.

(Emphasis added.)

The trial court has the statutory authority to impose a payment schedule and to change that schedule as needed. In this case, the amount of restitution is no longer at issue, having been determined (and appealed) at a much earlier date. Neither is the initial payment structure at issue. The only issue before this Court is whether the trial court erred by abusing its discretion in ordering

Grimes to make \$700 monthly restitution payments based upon the information it received at the violation hearing in 2014.

RCW 9.94A.753(1) requires the court, after ordering restitution, to “set a minimum monthly payment that the offender is required to make towards the restitution that is ordered.” In setting the minimum monthly payment, “[t]he 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.” RCW 9.94A.753(1).

**2. THE TRIAL COURT CONSIDERED GRIMES’ ENTIRE FINANCIAL SITUATION WHEN ORDERING HOW MUCH HE SHOULD PAY PER MONTH.**

The trial court considered Grimes’ entire financial situation when it ordered an updated monthly payment amount. Grimes argued that his retirement and social security could not be considered in determining how much he needed to pay. The trial court determined Grimes’ ability to pay based upon IRS tax information that reflected income from Social Security, and retirement accounts. RP 92-93. However, the trial court also had additional information about Grimes’ financial situation including: (1) Grimes’ admission that he had borrowed \$150,000 despite

owing almost one million dollars in restitution and interest; (2) Grimes' admission that he never told the bank he owed this money at the time he borrowed it; (3) Grimes' admission that he always pays the \$1,550 on his \$150,000 loan per month and never misses a payment; (4) Grimes' admission that he always pays his credit cards and doesn't miss a payment; (5) Grimes' admission that he voluntarily pays his sister \$1,358 a month because it is his "moral obligation"; and (4) Grimes' admission that he limits the amount of financial information he provides the clerk's office because he has been involved in a "pissing contest" with them since 2007. RP 31-53.

The trial court referenced the victims who experienced significant financial loss as a result of Grimes' thefts. RP 90-91. The court took note that Grimes and his attorney candidly admitted that Grimes will never pay back what he owes the victims. RP 91. However, the trial court stated that Grimes can continue to pay toward what he owes. RP 91-92. That Grimes' obligation to the victims is a legal one. RP 94. The court also noted how discouraging it was to hear that Grimes has told the clerk that he will just wait out the jurisdiction so he won't have to pay. RP 92.

The trial court used the most reliable information it had, because Grimes was not forthcoming with additional financial information. The trial court simply looked at all the numbers when determining how much Grimes should pay. In fact, the trial court set a reasonable amount given that it could have also ordered the \$1,358 amount that Grimes paid to his sister each month to be paid to the victims instead. The court could have put Grimes in jail each time he failed to comply.

**3. THE TRIAL COURT DID NOT GARNISH OR ATTACH TO ANY OF GRIMES' INCOME.**

When the trial court ordered Grimes to pay \$700 a month, it was not enforcing a civil judgment but instead enforcing a criminal restitution order. The trial court addressed Grimes' argument that RCW 6.15.020 doesn't allow the court to consider social security or retirement funds when ordering what he should pay. The trial court held that it was not an attaching, garnishing, or seizing any of Grimes' income but was instead enforcing the restitution order. RP 92. The court stated that just because the money that Grimes has coming in is from retirement income, it doesn't exempt him from having to pay restitution to his victims. RP 92.

The trial court then determined what specific amount Grimes should be paying each month. The trial court was very clear that it was looking at all the income amounts Grimes was receiving including the social security, pension, and military benefits. The court specifically noted that the State's request, based upon IRS returns from 2013, and Grimes' own calculations were not far apart. RP 93-94. The trial court noted that the State was arguing that Grimes' income was \$3,100 a month and Grimes was arguing it was \$2,800 a month. RP 93-94. The court noted that this was only a \$300 difference. RP 93. The trial court found that Grimes' income was actually around \$3,000 and then ordered Grimes to pay \$700 a month. RP 93-94; CP \_\_\_ (Sub. 167).

Although the trial court did not agree to disregard income amounts from social security and pensions, it did not abuse its discretion in ordering a payment schedule that took those amounts into consideration. The trial court was clearly looking at Grimes' overall financial situation. It took notice that Grimes was voluntarily paying his sister a large lump sum each month. RP 97. The trial court also mentioned that Grimes was spending money on luxuries such as \$200 for a cell phone and internet, and \$125 for cable television. RP 98. The trial court told Grimes that he'd have to

adjust how he was spending his money in order to meet his legal obligations to the victims. RP 97-98.

**4. GRIMES OFFERS NO LEGAL BASIS THAT A TRIAL COURT IS REQUIRED TO IGNORE INCOME RECEIVED AS PART OF SOCIAL SECURITY OR PENSION BENEFITS WHEN IT DETERMINES MONTHLY RESTITUTION PAYMENTS.**

Grimes relies on RCW 6.15.020 for his argument that the court has no authority to consider any of his income amounts from social security, military retirement or Boeing Pension Plan in determining what he should have to pay per month toward restitution. However, RCW 6.15.020 only addresses personal property exceptions in the enforcement of civil judgments. Instead, RCW 9.94A.7601 addresses the definition of "earnings" under the restitution and legal financial obligation statutes and reads in part:

As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type. Earnings shall specifically include all gain derived from capital, from labor, or from both, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means

that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. The term "oblige" means the department, party, or entity to whom the legal financial obligation is owed, or the department, party, or entity to whom the right to receive or collect support has been assigned.

[RCW 9.94A.7601]

RCW 9.94A.7601 clearly provides authority for the trial to consider all of a defendant's income, assets, property and finances when collecting restitution ordering what he should pay a month.

**5. GRIMES IS UNDER THE JURISDICTION OF THE TRIAL COURT FOR PURPOSES OF RESTITUTION AND HAS NO FOURTH OR FIFTH AMENDMENT RIGHT TO CONCEAL HIS FINANCES.**

Grimes' argument that the monthly financial report violates his Fourth and Fifth Amendment rights is without merit. First, nowhere does the trial court order Grimes to report his daily whereabouts. CP \_\_\_\_ (Sub. 167). Second, once under the court's authority to pay restitution, the defendant's finances are relevant. RCW 9.94A.760 authorizes the county clerk to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(7)(b) specifically provides:

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. **During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.**

(Emphasis added.)

Once again, the trial court and clerk's office have the statutory authority to require a defendant to produce information about his finances while he is under the court's authority for restitution purposes.

**D. CONCLUSION**

Ted Grimes caused a significant financial loss to each of his victims. He has made very little effort to repay the restitution he owes them. Although Grimes would like this Court to find that his Social Security and pension benefits are immune from consideration by the trial court when enforcing restitution, he offers no legal basis for this argument. Instead, the restitution and legal financial obligation statutes give a trial court broad authority to consider all of a defendant's finances when enforcing restitution.

DATED this 30 day of April, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
LAURA PETREGAL, WSBA #26016  
Senior Specialist,  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Ted Grimes, at 1402 22<sup>nd</sup> Street NE, #215, Auburn, WA 98002, containing a copy of the Brief of Respondent, in State v. Ted James Grimes, Cause No. 72043-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 30<sup>th</sup> day of April, 2015.

U Brame

Name

Done in Seattle, Washington

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Ted Grimes, at 2908 14<sup>th</sup> Avenue South, Seattle, WA 98144 containing a copy of the Brief of Respondent, in State v. Ted James Grimes, Cause No. 72043-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 30<sup>th</sup> day of April, 2015.

U Brame

Name

Done in Seattle, Washington