

FILED
COURT OF APPEALS
DIVISION II
11 JUL 15 PM 12:36
STATE OF WASHINGTON
BY [Signature]
DEPUTY

NO. 41604-2-II
Cowlitz Co. Cause NO. 10-1-00501-1

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

DANIEL E. GRILE,

Appellant.

BRIEF OF RESPONDENT

SUSAN I. BAUR
Prosecuting Attorney
MICHELLE SHAFFER/ #29869
Chief Criminal Deputy Prosecuting Attorney
Attorney for Respondent

Office and P. O. Address:
Hall of Justice
312 S. W. First Avenue
Kelso, WA 98626
Telephone: 360/577-3080

11-01-11
MIM

TABLE OF CONTENTS

	PAGE
A. ANSWERS TO ASSIGNMENTS OF ERROR.....	1
B. STATEMENT OF THE CASE.....	1
C. ARGUMENT.....	2
1. THE TRIAL COURT DID NOT ERR IN ITS IMPOSITION OF COMMUNITY CUSTODY. 2	
2. THE STATE CONCEDES THAT THE TRIAL COURT EXCEEDED ITS AUTHORITY IN THE TOTAL CRIME LAB FEE IMPOSED.....	5
3. GRILE’S POST-JUDGMENT CHALLENGE TO THE REMAINING LEGAL FINANCIAL OBLIGATIONS IMPOSED BY THE TRIAL COURT IS PREMATURE.....	6
4. THE TRIAL COURT’S FINDINGS REGARDING GRILE’S ABILITY TO PAY OR LIKELY FUTURE ABILITY TO PAY HIS LEGAL FINANCIAL OBLIGATIONS ARE SUPPORTED BY THE RECORD.....	7
5. THE TRIAL COURT ACTED WITHIN ITS AUTHORITY IN ITS IMPOSITION OF THE REMAINING LEGAL FINANCIAL OBLIGATIONS.....	9
A. INCARCERATION FEE.....	10
B. COURT APPOINTED ATTORNEY FEE	11

C.	SHERIFF'S SERVICE FEE	13
D.	REMEDY.....	14
D.	CONCLUSION	15
APPENDIX A	.....	16
APPENDIX B	.....	18
APPENDIX C	.....	21
APPENDIX D	.....	22
APPENDIX E	.....	24
APPENDIX F	.....	25

TABLE OF AUTHORITIES

Page

CASES

<i>In re Personal Restraint of Brooks</i> , 166 Wn.2d 664, 211 P.3d 1023 (2009)	3
<i>State v. Baldwin</i> , 63 Wn.App. 303, 818 P.2d 1116 (1991).....	8
<i>State v. Hathaway</i> , -- Wn.App. --, 251 P.3d 253, 263 (2011)	6
<i>State v. Mahone</i> , 98 Wn.App. 342, 989 P.2d 583 (1999)	6
<i>State v. Mendoza</i> , 165 Wn.2d 913, 205 P.3d 113 (2009)	14
<i>State v. Smits</i> , 152 Wn.App. 514, 216 P.3d 1097 (2009).....	6

STATUTES

RCW 10.01.160	6, 8, 10, 11, 13, 22
RCW 43.43.690	5, 21
RCW 9.94A.530.....	9, 24
RCW 9.94A.701.....	2, 3, 4, 5, 16
RCW 9.94A.715.....	3, 4, 18
RCW 9.94A.760.....	1, 10, 11, 13, 25

OTHER AUTHORITIES

RAP 3.1.....	6
--------------	---

A. ANSWERS TO ASSIGNMENTS OF ERROR

1. The trial court did not err in its imposition of community custody.
2. The trial court acted within its authority in its imposition of legal financial obligations, with the exception of the amount of the crime lab fee.
3. The trial court did not violate RCW 9.94A.760.
4. There was a sufficient evidentiary basis for the court's findings regarding the ability to pay legal financial obligations.

B. STATEMENT OF THE CASE

The appellant Daniel Eugene Grile pled guilty to two counts of rape of a child in the third degree (domestic violence), stipulating to two aggravating factors for the purposes of a possible exceptional sentence. CP 11-23, 24-39; RP 31-38. The maximum for each offense is 60 months in prison, and Grile's standard sentencing "range" was 60 months in prison. CP 24-39. The trial court imposed a standard range sentence on count I of 60 months in prison. *Id.* On count II, the trial court imposed an exceptional sentence below the standard range: 24 months prison. *Id.* However, the trial court then imposed an exceptional sentence by ordering that the two prison sentences run consecutive to each other for a total of 84 months in prison. *Id.* The trial court also imposed 36 months of

community custody on each count, which would likewise run consecutive to each other, based upon the exceptional sentence. *Id.* Included in the judgment and sentence were the court's findings regarding Grile's ability to pay legal financial obligations (LFOs). *Id.* The LFOs imposed included an \$800 crime lab fee, a \$150 incarceration fee, a \$773.69 court appointed attorney fee and a \$240 sheriff's service fee. Grile filed a timely notice of appeal. CP 40.

C. ARGUMENT

1. The trial court did not err in its imposition of community custody.

The State agrees that a trial court only possesses the power to impose sentences provided by law. The State likewise agrees that RCW 9.94A.701(1)(a) authorizes a three-year term of community custody for each sex offense for which Grile was convicted.¹ *See Appendix A.* The State also agrees that the court is required to reduce the community custody term whenever the standard range term of confinement in combination with the community custody term exceeds the statutory

¹ RCW 9.94A.701 was later amended by LAWS 2009, ch. 375, §5 (the controlling version at the time of Grile's offense).

maximum for the offense. RCW 9.94A.701(8)². The State also agrees that Grile's offenses are class C felonies with a statutory maximum of five years in prison.

Grile argues that the trial court exceeded its authority by sentencing Grile to 60 months in prison plus 36 months community custody in count I. However, the judgment and sentence clearly orders that the "total incarceration time serve on count I plus community custody for count I are not to exceed the statutory maximum of 60 months" (capitalization omitted). CP 24-39.

Grile argues that the language included in the judgment and sentence was appropriate under former RCW 9.94A.715 (as approved by *In re Personal Restraint of Brooks*, 166 Wn.2d 664, 672, 211 P.3d 1023 (2009)). See *Appendix B*. Because RCW 9.94A.715 was repealed by LAWS 2008, ch.231, §57, and LAWS 2009, ch.28, §42 (effective August 1, 2009), Grile argues that the language in the judgment and sentence is no longer appropriate in light of the newly enacted RCW 9.94A.701. Grile is correct that the court in *Brooks* stated the new statute would control the

² Grile cites RCW 9.94A.701(9) for this proposition. However, that is the citation for the current version of the statute. See fn. 1.

issue in future cases (such as Grile's) since RCW 9.94A.715 was repealed. However, Grile's argument that provisions of RCW 9.94A.701 outlaw the language used in Grile's judgment and sentence is incorrect.

As Grile points out, RCW 9.94A.701(9) does require the court to reduce the term of supervision in cases where the total confinement time and supervision time exceed the statutory maximum. The language included in Grile's judgment and sentence is an appropriate exercise of this mandate. The language that orders Grile's total confinement time and supervision time to not exceed the statutory maximum takes into account what was considered in *Brooks*:

Under the current statutory scheme, the exact amount of time to be served can almost never be determined when the sentence is imposed by the court. The only thing that can be determined at the time of sentencing is the maximum amount of time an offender will serve in confinement and the maximum amount of time the offender may serve in totality. While the DOC was left the responsibility of ensuring Brooks did not serve more than 120 months of confinement and community custody, this responsibility stemmed from both the requirements of the SRA and the sentence that the court *imposed*. Here the court imposed a sentence that had both a defined range and a determinate maximum. It is the SRA itself that gave courts the power to impose sentences and the DOC the responsibility to set the amount of community custody to be served within that sentence.

Brooks, 166 Wn.2d 664, 674, 211 P.3d 1023. Likewise, in Grile's case, the trial court did in fact reduce the term of community custody as

required by RCW 9.94A.701(9). The length of that reduction is then determined by the Department of Corrections when it establishes his release date from prison, pursuant to the order of the trial court. Nothing about the language of the trial court's order in this case is inconsistent with RCW 9.94A.701 or *Brooks*. As such, the community custody imposed in court I should be affirmed.

2. The State concedes that the trial court exceeded its authority in the total crime lab fee imposed.

The State agrees that the crime lab fee imposed by the trial court is in excess of its statutory authority in that Grile was convicted of two offenses. RCW 43.43.690(1) allows the court to assess a crime lab fee at a rate of \$100 per offense for which a person has been convicted. *See Appendix C*. The State concedes that the crime lab fee should be reduced to \$200. The resulting total legal financial obligation would be \$2263.69 to be paid over a period of ten years, a reasonable obligation for an employable defendant.

3. Grile’s post-judgment challenge to the remaining legal financial obligations imposed by the trial court is premature.

Grile’s challenge to the remaining legal financial obligations (LFOs) is not properly before this court. Division One of this court addressed a related question in *State v. Smits*, 152 Wn.App. 514, 216 P.3d 1097 (2009). Smits sought review of the trial court's decision denying his RCW 10.01.160(4) motion to terminate his LFOs. *Smits*, 152 Wn.App. at 518–19, 216 P.3d 1097; see also *State v. Hathaway*, -- Wn.App. --, 251 P.3d 253, 263 (2011). See *Appendix D*. The *Smits* court held that the trial court's decision could not be appealed as a matter of right, but might be eligible for discretionary review, because it was not a final judgment “because the order to pay LFOs as part of the judgment and sentence is conditional, and RCW 10.01.160(4) allows a defendant to file a petition to modify or waive LFOs ‘at any time.’ ” *Smits*, 152 Wn.App. at 523, 216 P.3d 1097; see also *Hathaway*, -- Wn.App. at --, 251 P.3d at 263. The court also suggested that Smits's appeal was not ripe, and barred by RAP 3.1, because the government had not yet sought payment of the LFOs and, thus, Smits was not yet “ ‘aggrieved in a legal sense.’ ” *Smits*, 152 Wn.App. at 525, 216 P.3d 1097 (quoting *State v. Mahone*, 98 Wn.App. 342, 347–48, 989 P.2d 583 (1999)); see also *Hathaway*, -- Wn.App. at --,

251 P.3d at 263. Because the determination that the defendant either has or will have the ability to pay during initial imposition of court costs at sentencing is clearly somewhat “speculative,” the time to examine a defendant's ability to pay is when the government seeks to collect the obligation. *Smits*, 152 Wn.App. at 523-24, 216 P.3d 1097.

In Grile’s case, there is no evidence that the State has sought to enforce his LFOs, which include the challenged crime lab fee, incarceration fee, court appointed attorney fee and sheriff’s service fee and, based on *Smits*, his challenge is not properly before this court in this appeal as a matter of right.

4. The trial court’s findings regarding Grile’s ability to pay or likely future ability to pay his legal financial obligations are supported by the record.

In paragraph 2.5 of the judgment and sentence, the trial court made specific written findings regarding Grile’s ability to pay his LFOs:

The court has considered the total amount owing, the defendant’s past, present, and future ability to pay legal financial obligations, including the defendant’s financial resources and the likelihood that the defendant’s status will change. The court finds: That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. The defendant has the present means to pay costs of incarceration.

CP 30 (citations omitted). Grile did not object to these findings at sentencing. On appeal, he now argues that there is not sufficient evidence to support these findings.

The court's determination as to a defendant's resources and ability to pay is factual and should be reviewed under the clearly erroneous standard. *State v. Baldwin*, 63 Wn.App. 303, 312, 818 P.2d 1116 (1991). The inquiry is whether the court's determination is supported by the record. *Id.* at fn. 27.

RCW 10.01.160 requires the court to "take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." In Grile's case, the trial court did so. The bail study filed in this case indicates that Grile had been employed for three years as a union millwright but was currently receiving unemployment in the amount of \$460 per month. CP 3. He reported no chemical dependency and no mental health issues. *Id.* The amended pre-sentence report indicated that he had previously been sentenced to work crew and community service for other prior offenses. CP __. The report also contained the following statement:

Grile reports the highest grade he completed was the 10th. He did attend the 11th grade but did not complete/ He has not attended

college of any type. Grile did report he is a “millwright” with a local Union Hall (1707), but stated he obtained journeyman status by having a friend within the Union “sign” for him, which avided [sic] him from years of training requirements. Grile states he makes \$36.00 an hour when he works, but reports his work is sporadic.”

Id. Grile did not object to the assertions in the pre-sentence report at sentencing. RP 16-28. Pursuant to RCW 9.94A.530(2), information contained in the pre-sentence report may be used by the court if the defendant does not object to that information. *See Appendix E.* When the pre-sentence report establishes a factual basis for the defendant’s likely future ability to pay LFOs, and the defendant does not object, the requirement of inquiry into the ability to pay is satisfied. *Baldwin*, 63 Wn.App. 311, 818 P.2d 1116. As such, the trial court’s findings in the judgment and sentence regarding ability to pay are supported by the record; therefore, they are not clearly erroneous. The case should not be remanded on this issue.

5. The trial court acted within its authority in its imposition of the remaining legal financial obligations.

If this court chooses to address at this time the merits of Grile’s argument regarding the imposition of the incarceration fee, court

appointed attorney fee and sheriff's service fee, the State agrees that RCW 10.01.160(1) permits the imposition of costs on a defendant convicted of a crime. The State also agrees that a trial court errs when it imposes costs beyond those allowed by statute.

a. Incarceration fee

RCW 9.94A.760(2) allows the trial court to impose up to \$150 per day of actual incarceration in the county jail. *See Appendix F.* The trial court in Grile's case imposed a total of \$150 as an incarceration fee. CP 30. Grile did not object to the imposition of the incarceration fee at sentencing. RP 16-28. Grile argues on appeal that there was nothing in the judgment and sentence specifying that Grile spent any time in jail prior to sentencing and that there was no evidence before the trial court to establish the actual cost of incarceration. However, the clerk's minutes for each of Grile's ten court appearances reflect that he was in custody for each of them. CP 7, 9, 13-14, 23, 25. Furthermore, as the clerk's minutes and verbatim report of proceedings from Grile's change of plea on August 6, 2010, indicate, Grile was ordered to be held without bail pending sentencing. CP 23; RP 39-40. Even if he was out of custody on

non-court days prior to his change of plea, he served a minimum of four months and nine days in custody. A total incarceration fee of \$150 would average out, at most, to \$1.16 per day, a very minimal amount. While the local custom is to impose on most defendants a single \$150 incarceration fee if they serve local time, should this case be remanded for a hearing on the actual cost of Grile's actual incarceration time of more than six months, Grile would be facing the possibility of a much higher incarceration fee, up to \$150 per day per statute. Because Grile did not object to the imposition of this fee and because he clearly has the likely future ability to pay the fee over the course of ten years, the case should not be remanded on this issue.

b. Court appointed attorney fee

RCW 9.94A.760 and RCW 10.01.160 allow the trial court to impose costs on a convicted defendant for expenses specially incurred by the State in prosecuting the defendant. One such expense in Grile's case is for the cost of his court appointed attorney. Grile did not object to the imposition of the court appointed attorney fee at sentencing. RP 16-28.

On appeal, Grile argues that there is no evidence in the record that the actual cost of court appointed counsel in this case was \$773.69.

The decision to impose recoupment of an attorney fee requires the trial court to balance the defendant's ability to pay against the burden of his obligation. *Baldwin*, 63 Wn.App. at 312, 818 P.2d 1116. Such a judgment is reviewed for an abuse of discretion. *Id.* Grile's ability to pay is discussed *supra* at section (C)(4). The trial court is the source of the information regarding the costs of a court appointed attorney in Cowlitz County; as such, it is appropriate that the judgment and sentence reflect the amount the trial court provides. The burden of his court appointed attorney fee in this case is relatively minimal: \$773.69 for six months of representation in a case in which Grile was charged with three class C sex offenses and three class B sex offenses. Despite Grile's indigency at the time of sentencing due to his incarceration, the burden of that fee is minimal over the course of the ten years of repayment. Because Grile did not object to the imposition of this fee and because he clearly has the likely future ability to pay the fee over the course of ten years, the case should not be remanded on this issue.

c. Sheriff's service fee

Again, RCW 9.94A.760 and RCW 10.01.160 allow the trial court to impose costs on a convicted defendant for expenses specially incurred by the State in prosecuting the defendant. One of those expenses in Grile's case is for the cost of the sheriff's service of subpoenas on witnesses required for trial in Grile's case. Because Grile did not object to the imposition of this fee and because he clearly has the likely future ability to pay the fee over the course of ten years, the case should not be remanded on this issue.

It should be noted that the State has filed with the Superior Court, for the reviewing court's information, the returns of service provided to us during the pendency of Grile's case at the trial level. CP 48-53. These were not filed with the court at the time of sentencing because Grile did not object to this fee at that time. RP 16-28. Should the case be remanded for a hearing on the actual costs to the sheriff's office in serving the subpoenas to the lay witnesses in this case, the State would be relying on this information to support the court's imposition of the \$240 sheriff's service fee.

d. Remedy

Should this court find that the fees were imposed in error, it is the State's position that the case should be remanded for a new factual hearing on the costs incurred by the State in Grile's prosecution. Because Grile did not object to the imposition of the fees, the State should be allowed to offer new evidence to prove the costs incurred. The issue is analogous to proof at sentencing of a defendant's prior convictions. When a defendant raises a specific objection at sentencing and the State fails to respond with evidence of the defendant's prior convictions, then the State is held to the record as it existed at the sentencing hearing. *State v. Mendoza*, 165 Wn.2d 913, 930, 205 P.3d 113 (2009). However, when there is no objection at sentencing and the State consequently has not had an opportunity to put on its evidence, it is appropriate to allow additional evidence at sentencing. *Id.* In Grile's case, there was no objection to any fee at sentencing, and the sentencing court never had an opportunity to correct any errors. Thus, if the reviewing court finds error, the case should be remanded with a full opportunity for the State to prove the costs incurred in Grile's case.

D. CONCLUSION

For the reasons argued above, Grile's judgment should be affirmed with the exception that the judgment should be amended to reduce the amount of the crime lab fee from \$800 to \$200.

Respectfully submitted this 13th day of July, 2011.

SUSAN I. BAUR
Prosecuting Attorney

By:



MICHELLE L. SHAFFER
WSBA # 29869
Chief Criminal Deputy Prosecuting Attorney
Representing Respondent

Appendix A

Former RCW 9.94A.701 (as amended by LAWS 2009, ch. 375, §5). Community custody--Offenders sentenced to the custody of the department

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507; or

(b) A serious violent offense.

(c) A violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006, when a court sentences the person to a term of confinement of one year or less.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;

(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000; or

(4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(5) If an offender is sentenced under the special sex offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(7) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

(8) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

Appendix B

Former RCW 9.94A.715 (repealed by LAWS 2008, ch.231, §57, and LAWS 2009, ch.28, §42 (effective August 1, 2009)). Community custody for specified offenders—Conditions

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate, or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, or when a court sentences a person to a term of confinement of one year or less for a violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to

comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws. The department may impose electronic monitoring as a condition of community custody for an offender sentenced to a term of community custody under this section pursuant to a conviction for a sex offense. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be

enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

Appendix C

RCW 43.43.690. Crime laboratory analysis--Guilty persons to pay fee

(1) When a person has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted. Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.

(2) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of any criminal statute of this state and a crime laboratory analysis was performed, in addition to any other disposition imposed, the court shall assess a crime laboratory analysis fee of one hundred dollars for each adjudication. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee [if] it finds that the minor does not have the ability to pay the fee.

(3) All crime laboratory analysis fees assessed under this section shall be collected by the clerk of the court and forwarded to the state general fund, to be used only for crime laboratories. The clerk may retain five dollars to defray the costs of collecting the fees.

Appendix D

RCW 10.01.160. Costs--What constitutes--Payment by defendant--Procedure--Remission--Medical or mental health treatment or services

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed two hundred fifty dollars. Costs for administering a pretrial supervision may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a

warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute.

Appendix E

RCW 9.94A.530. Standard sentence range

- (3) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.510, (Table 1) and RCW 9.94A.517, (Table 3)). The additional time for deadly weapon findings or for other adjustments as specified in RCW 9.94A.533 shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.
- (2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537. On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.
- (3) In determining any sentence above the standard sentence range, the court shall follow the procedures set forth in RCW 9.94A.537. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the standard sentence range except upon stipulation or when specifically provided for in RCW 9.94A.535(3) (d), (e), (g), and (h).

Appendix F

RCW 9.94A.760. Legal financial obligations

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a

notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of 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 the

criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized 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.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department 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 department sets the monthly payment amount, the department may modify

the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes 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 department in order to prepare the collection schedule.

(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.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the

clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations.

COURT OF APPEALS, STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
)
 Respondent,)
)
 vs.)
)
 DANIEL EUGENE GRILE,)
)
 Appellant.)
 _____)

NO. 41604-2-II
Cowlitz County No.
10-1-00501-1

CERTIFICATE OF
MAILING

FILED
COURT OF APPEALS
DIVISION II
11 JUL 15 PM 12:38
STATE OF WASHINGTON
BY _____
DEPUTY

I, Michelle Sasser, certify and declare:

That on the 13th day of July, 2011, I deposited in the mails of the

United States Postal Service, first class mail, a properly stamped and
address envelope, containing Brief of Respondent addressed to the
following parties:

COURT OF APPEALS
950 BROADWAY, SUITE 300
TACOMA, WA 98402

GREGORY C. LINK
WASHINGTON APPELLATE PROJECT
701 MELBOURNE TOWER
1511 THIRD AVE.
SEATTLE, WA 98101

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

Dated this 13th day of July, 2011.


Michelle Sasser