

NO. 44271-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

KRISTINA CAWYER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The sentencing court erred by requiring Kristina Cawyer to pay restitution of \$2,707.56 to the Clallam County Prosecutor's Office.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

The superior court may order a felony offender to pay restitution only as authorized by statute. Kristina Cawyer pled guilty to two counts of custodial interference and was ordered to pay restitution to the Clallam County Prosecutor's Office for the costs of extradition from another state. RCW 9.94A.753(3) limits restitution to expenses incurred by victims as a result of the criminal offense, and RCW 9A.40.080(1) authorizes restitution for expenses incurred in locating or returning the child.

1. Where the prosecutor's office was not a victim and did not incur expenses as a result of Ms. Cawyer's offenses, must the restitution order requiring Ms. Cawyer to pay the prosecutor's office for the extradition costs be vacated?

2. Should this Court uphold the restitution award as a court cost in the absence of any applicable statutory authority to order an offender to pay extradition costs to the government?

C. STATEMENT OF THE CASE

Kristina and Samuel Cawyer are the divorced parents of two minor children. CP 34; RP 30-31. When Ms. Cawyer moved out of state with the children, she did not comply with family court orders requiring her to facilitate the children's time with their father. CP 34. As a result, she was charged in Clallam County Superior Court with two counts of custodial interference in the first degree, RCW 9A.40.060(2)(a), (c). CP 31-32.

Ms. Cawyer entered an guilty plea to both counts, agreeing the court could review the police report and/or statement of probable cause in determining the factual basis for her plea. CP 16-27; RP 8. As recommended by both parties, the court sentenced Ms. Cawyer to 30 days in jail with credit for time served without community supervision. CP 8; RP 9-10, 14.

At the subsequent restitution hearing, the court ordered Ms. Cawyer to pay restitution of \$2,707.56 to the Clallam County Prosecutor's Office for the costs of extradition. CP 4; RP 50-51; Ex. 3. The court also ordered Ms. Cawyer to reimburse Mr. Cawyer \$2,827.14 for the costs of unused airline tickets he purchased to fly the two children

from North Carolina to Washington as well as his expenses for one trip to North Carolina.¹ CP 3, RP 33, 36, 38, 40, 45.

D. ARGUMENT

The Sentencing Reform Act does not authorize restitution to the prosecutor's office for extradition costs.

Kristina Cawyer plead guilty to two counts of custodial interference in the first degree and was ordered to pay restitution to the prosecutor's office for the cost of extraditing her from another state. The restitution statute, however, does not authorize a restitution award for expenses that were not incurred as a result of the crime. No other statute permits the superior court to order extradition costs in Ms. Cawyer's case. The award of \$2,707.56 to the prosecutor's office for extradition costs must be vacated.

a. The superior court may only require an offender to pay restitution authorized by the SRA. The superior court's power to order restitution is statutory, not inherent. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). When the defendant is convicted of a felony, the court's authority to impose restitution is derived from the Sentencing

¹ Although some of the expenses were incurred after the charging period, Ms. Cawyer agreed to pay restitution for charged and uncharged offenses as part of her plea agreement. CP 29; compare CP 31-32 with CP 3 and Ex. 2.

Reform Act (SRA). The SRA requires the trial court to order restitution when the defendant is convicted of an offense that resulted in injury to a person or damage to property. RCW 9.94A.753(5).

Restitution must be based upon “easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury.” RCW 9.94A.753(3). In addition, restitution is limited to loss “‘causally connected’ to the crimes charged.” Griffith, 164 Wn.2d at 965-66 (quoting State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)).

A challenge to a restitution order requires this Court to review whether the trial court exceeded its statutory authority in ordering restitution. State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003); State v. Burns, 159 Wn. App. 74, 78, 244 P.3d 988 (2011). The interpretation of a statute is an issue of law reviewed de novo. Id.; State v. Veliz, 176 Wn.2d 849, 866, 298 P.3d 75 (2013). In interpreting a statute, the appellate court tries to discern the legislature’s intent, looking first at the statute’s “plain language and its ordinary meaning.” J.P., 149 Wn.2d at 450. The plain meaning may be found in the language of the statute itself as well as related statutes. Id.; Veliz, 176 Wn.2d at 866.

b. RCW 9.94A.753 does not authorize restitution for the prosecutor's costs in extraditing a defendant. The crime of custodial interference in the first degree may be committed by “being a parent and keeping the child from the other parent who has a right to time with the child.” State v. Kirwin, 166 Wn. App. 659, 662, 271 P.3d 310 (2012); see RCW 9A.40.060(2); CP 31-32. The custodial interference statute is designed to protect both parents and children by proscribing conduct that deprives a parent of his time with a child. State v. Pesta, 87 Wn. App. 515, 552, 942 P.2d 1013 (1997), rev. denied, 135 Wn.2d 1002 (1998). The victims of the crime who may be entitled to restitution are thus parents and children, not the prosecuting attorney. See, State v. Wootten, 170 Vt. 485, 756 A.2d 1222, 1227 (noting several states have recognized that both children and parents are victims in cases of custodial interference), cert. denied, 531 U.S. 934 (2000).

“[C]osts that a victim incurs as the result of the defendant's crimes have been deemed a loss of property under the restitution statute.” Tobin, 161 Wn.2d at 526-27. Thus, a crime victim's costs of investigating an offense may ordered as restitution if they are reasonably and rationally related to the crime. Tobin, 161 Wn.2d at

526-27 (affirming restitution order requiring payment for the investigative and administrative costs of state Fish and Wildlife agents and detectives where the victims were the State and three tribes); State v. Smith, 119 Wn.2d 385, 389-90, 831 P.2d 1082 (1992) (funds spend by victim bank to unload surveillance camera and purchase new film were property lost as a result of burglary).

In contrast, the prosecutor's office did not request restitution for investigating these offenses or locating and returning the children. The prosecutor's office was not injured by Ms. Cawyer's crimes and the cost of extraditing her from another state was not caused by offenses. The trial court thus lacked statutory authority to order Ms. Cawyer to pay restitution to the prosecutor's office for the extradition expenses.

c. The restitution award may not be upheld as a court cost. The trial court specifically ordered Ms. Cawyer to pay for the extradition costs as restitution and not as a court cost.² CP 3-4; RP 50-51. If this Court agrees that the extradition costs are not restitution, it should not uphold the ruling on the alternative ground that the extradition costs could be awarded as court costs.

² Ms. Cawyer argued the State was entitled to \$100.00 for the costs of preparing and serving a warrant for failure to appear pursuant to RCW 10.01.160. RP 47.

As with restitution, the superior court's sentencing authority is established by statute, in this case the SRA. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782, 784 (2007). The SRA authorizes the superior court to impose legal financial obligations. RCW 9.94A.505(4); RCW 9.94A.760(1). "Legal financial obligations" are broadly defined to include "court costs" and "any other financial obligation assessed as the result of a felony conviction." RCW 9.94A.030(30). The SRA, however, does not authorize the trial court to require the defendant to pay extradition costs.

RCW 9.94A.505(4) authorizes the court to order court costs as provided in RCW 9.94A.760. RCW 9.94A.760, however, authorizes the court to order legal financial obligations including "restitution, costs, fines, and other assessments required by law." RCW 9.94A.760(1) (emphasis added). Costs were not known at common law, and a statute authorizing a court to impose costs is thus strictly construed. State v. Smits, 152 Wn. App. 514, 519, 216 P.3d 1097 (2009). No statute authorizes the superior court to order an offender in Ms. Cawyer's position to pay extradition costs.

RCW 10.01.160 permits the superior court to require a defendant to pay special costs incurred by the State in prosecution,

including the costs of “preparing and serving a warrant for failure to appear.” RCW 10.01.160(1), (2)

Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administrating the deferred prosecution program under 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 and fifty dollars. Costs for administering a pretrial supervision may not exceed one hundred and fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed two hundred fifty 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 order the defendant to pay more than one hundred and fifty dollars per day for the cost of incarceration. . . .

RCW 10.01.160(2).

The costs of prosecuting a case are those necessary to “institute and pursue a criminal action” against a person. Utter v. Department of Social and Health Services, 140 Wn. App. 293, 305, 165 P.3d 39 (2007) (quoting Black’s Law Dictionary 1258 (8th ed. 2004)).

Extraditing a criminal defendant is separate from the criminal action against him. Strictly construed, the cost of prosecuting a defendant

does not include extradition from another jurisdiction. Otherwise, the Legislature would not have had to make a special provision for the costs of serving warrants for failure to appear. RCW 10.01.160(2).

In addition, when a statute specifically includes items to which it applies, the legislature is presumed to have excluded items that are not mentioned. Clark County Public Utility Dist. No. 1 v. Dept. of Revenue, 153 Wn. App. 737, 747, 222 P.3d 1233 (2009) (referring to doctrine of expressio unius est exclusio alterius). Because RCW 10.01.160 specifically mentions the court's option to require a convicted defendant pay the costs of serving a warrant for failure to appear but does not mention the costs of extradition, extradition costs are not authorized by the statute. Thus, RCW 10.01.160 provides no authority to order Ms. Cawyer to pay for the costs of extradition.

No other statutes fill this void. RCW 9A.40.080 specifically requires the court to order a person convicted of custodial interference to pay for expenses incurred in locating or returning the child, but does not mention extradition costs. RCW 9A.40.080(1); State v. Vineyard, 50 Wn. App. 888, 891, 751 P.2d 339 (1988). The Uniform Extradition Statute, RCW 10.88, also does not include a provision authorizing the

court to order a person who is extradited to Washington and subsequently convicted of a crime to pay for the costs of extradition.

The Legislature is aware of extradition and has provided authority to the superior court to require a defendant to repay extradition costs in some circumstances. RCW 9.92.060 provides that the superior court may require an offender to pay “the costs of extradition if return to this state by extradition was required” as part of a suspended sentence. RCW 9.94.060(2). Using the same phrase, RCW 9.95.210(2) permits the superior court to order the offender to pay extradition costs as a condition of probation. RCW 9.95.210(2). Ms. Cawyer, however, did not receive a suspended sentence and was not on probation. Her sentence was governed by the SRA, which does not authorize the court to require a defendant to pay extradition costs.

Language permitting the court to order an offender to pay extradition costs was eliminated from RCW 9.94A.505 by the Legislature in 1989, demonstrating a legislative intention not to require felony offenders to pay extradition costs. Laws of 1989 ch. 252 § 4. If the Legislature intended to require payment of extradition costs, it would have included that language in the SRA as it did in other statutes. See, Auburn v. Gauntt, 174 Wn.2d 321, 331-32, 274 P.3d

1033 (2012) (Legislature knows how to grant concurrent jurisdiction to municipal courts and would have done so explicitly if it wanted to). This Court may not uphold the superior court order on the basis that extradition costs may be awarded as court costs in the absence of statutory authority.

d. The order awarding restitution to the Clallam County Prosecutor's Office must be vacated. Because the prosecutor's office did not suffer any damage as a result of Ms. Cawyer's offenses, it was not entitled to restitution. This Court must vacate the portion of the restitution order requiring Ms. Cawyer to pay \$2,707.56 to the Clallam County Prosecutor's Office and remand for the entry of an amended restitution order. Vineyard, 50 Wn. App. at 894 (reversing portion of restitution order not causally connected to offense); State v. Lewis, 57 Wn. App. 921, 926, 791 P.2d 250 (1990) (reversing portion of restitution order not authorized by restitution statute).

E. CONCLUSION

The \$2,707.56 restitution award to the Clallam County Prosecutor's Office must be vacated because the restitution statute does not authorize restitution for extradition costs. The order may not be upheld on alternate grounds, because no applicable statute authorizes the superior court to require payment of extradition expenses.

DATED this 28th of June 2013.

Respectfully submitted,



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 44271-0-II
)	
KRISTINA CAWYER,)	
)	
Appellant.)	

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[X] KRISTINA CAWYER 1329 CHEROKEE ST BLACKSBURG, SC 29702	(X) () ()	U.S. MAIL HAND DELIVERY _____

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