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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

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

After sentencing Kristina Cawyer for two counts of custodial interference, the superior court ordered Ms. Cawyer to pay restitution to the Cowlitz County Prosecutor's Office for the costs of extradition. CP 4. This Court should reject the State's arguments that extradition costs are recoverable as restitution and that this Court should uphold the restitution because extradition is a statutorily-authorized court cost.

1. The prosecutor's office is not entitled to restitution for the costs of extradition. The superior court's authority to order an offender to pay restitution is limited by statute. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); State v. Enstone, 137 Wn.2d 675, 682, 974 P.2d 828 (1999). In Ms. Cawyer's case, the relevant statutes are RCW 9A.40.080, which addresses restitution for the crime of custodial interference, and RCW 9.94A.753, which governs restitution for felony offenders. Ms. Cawyer argues the superior court lacked statutory authority to order her to pay restitution to the Cowlitz County Prosecutor's Office for extradition costs of $2,707.56. Brief of Appellant at 3-6 (hereafter BOA).

In response, the prosecutor argues that the State was a victim in this case and the prosecutor's office is therefore entitled to restitution for the cost of extraditing Ms. Cawyer. Brief of Respondent at 7-8 (hereafter BOR). The State provides no authority for the proposition that the prosecutor's office is a victim of the crime of custodial interference. This Court need not consider an argument without legal authority. See In re Marriage of Wallace, 111 Wn. App. 697, 705, 45 P.3d 1131 (2002). The State, however, agues that State v. Tobin, 161 Wn.2d 517, 166 P.3d 1167 (2007), sanctions the restitution award to the prosecutor.

Tobin does not support the State's argument. The Tobin Court addressed whether the State was entitled to restitution for investigative and other special costs in a prosecution for crimes related to the illegal harvesting of crab and geoduck from Puget Sound. Tobin, 151 Wn.2d at 519. It was uncontested that the victims of these crimes were three tribes and the state government – not the attorney general. Id. at 519. The lower court did not order Tobin to pay for the detectives' normal investigative costs, but did require him to pay restitution to the State and tribes for special investigative, administrative, and environmental costs. Id. at 522, 531-32. Because the prosecutor was not a victim of

the custodial interference charges, Tobin does not support the State's argument that the Cowlitz County Prosecutor's Office was a victim of the custodial interference charges.

The State also argues that this Court should review the imposition of extradition costs as restitution under the abuse of discretion standard. Brief of Respondent at 7 (citing Enstone, supra). The application of an incorrect legal analysis or other legal error may constitute an abuse of discretion. Tobin, 161 Wn.2d at 523. The issue here, however, is whether the sentencing court exceeded its statutory authority. This interpretation of the relevant statutes is reviewed de novo. State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

RCW 9A.40.080(1) authorizes restitution in custodial interference cases only for "reasonable expenses incurred in locating or returning a child." RCW 9.94A.753(3) authorizes restitution for "easily ascertainable damages for injury or loss of property, actual expenses for treatment for injury to persons, and lost wages resulting from injury." The prosecutor's costs in extraditing Ms. Cawyer to stand trial do not fall within the purview of either statute. The restitution order must be vacated. See State v. Lewis, 57 Wn. App.

921, 926, 791 P.2d 250 (1990) (reversing portion of restitution order not authorized by statute).

2. This Court should not uphold the restitution for extradition costs as a court cost. Ms. Cawyer argues the superior court's restitution award may not be upheld on the alternative basis that it is a court cost authorized by the SRA. AOB at 6-11. In response, the State is unable to point to any portion of the SRA that specifically authorizes this cost. BOR at 3-6.

The State concedes that amendments to RCW 9.94A.505 eliminated language that permitted the superior court to order an offender to repay the costs of extradition. BOR at 5; see Laws of 1989 ch. 252 § 4. RCW 9.94A.760 now permits the court to impose those costs or fines "authorized by law." RCW 9.94A.760(1). The only legal authority for court costs in found at RCW 10.01.160(2).

RCW 10.01.160(2) limits costs to "expenses specially incurred by the state in prosecuting the defendant or administering the deferred prosecution program," and excludes the expenses inherent in providing a jury trial. The statute specifically mentions serving warrants for failure to appear but does not include extradition costs. RCW

10.01.160(2). The cost of bringing Ms. Cawyer to Washington was not a special cost of prosecuting her.

The State's bold argument that the extradition costs are authorized by RCW 9.92.210 or RCW 9.95.210 is incorrect. BOR at 5-6. Neither statute applies to Ms. Cawyer's determinate SRA sentence. RCW 9.94A.505(1) ("When a person is convicted of a felony, the court shall impose punishment was provided in this chapter."); RCW 9.92.210 (addressing suspended sentences); RCW 9.94A.757 (abolishing suspended sentences for felonies under SRA except for the special sex offender sentencing alternative); RCW 9.95 (addressing sentences for felonies committed before July 1, 1984). Ms. Cawyer cited those statutes to show that Legislature was aware of extradition costs and their exclusion when the Legislature amended RCW 9.94A.505 was intentional. BOR at 9-10.

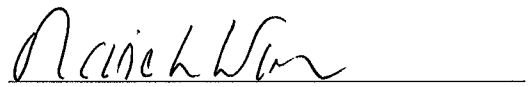
The restitution order requiring Ms. Cawyer to pay the prosecutor's office for the costs of extradition may not be upheld on the alternative ground that it is a court cost because no applicable statute authorizes the superior court to require payment of extradition expenses

B. CONCLUSION

For the reasons stated above and in the Brief of Appellant, the $2,707.56 restitution award to the Clallam County Prosecutor's Office must be vacated.

DATED this 9th of August 2013.

Respectfully submitted,



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