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JUN 24 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
3

No. 28922-2-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

SHERMAN I. PULLEY,

Appellant.

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

The Honorable Ellen Clark

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT1

B. ASSIGNMENTS OF ERROR1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR1

D. STATEMENT OF THE CASE.....2

E. ARGUMENT.....3

Issue 1: Whether the court erred by denying the motion to terminate legal financial obligations because (a) Mr. Pulley has already satisfied the debt owed or, (b) Mr. Pulley’s indigent status will not change and, thus, the legal financial obligations should be terminated.....3

(a) Mr. Pulley has paid three times his actual legal financial obligations debt, yet the Department erroneously continues to confiscate Mr. Pulley’s funds to satisfy a debt of an “unlimited” amount.....3

(b) Alternatively, the court erred by denying the motion to terminate legal financial obligations because Mr. Pulley’s indigent status and ongoing financial hardship will never change – he is incarcerated without possibility of parole.....7

F. CONCLUSION.....8

TABLE OF AUTHORITIES

Washington Supreme Court

Anderson v. State, Dept. of Corrections, 159 Wn.2d 849,
154 P.3d 220 (2007).....5

In re Personal Restraint of Sappenfield, 138 Wn.2d 588,
980 P.2d 1271 (1999).....5

State v. Enstone, 137 Wn.2d 675, 974 P.2d 828 (1999).....3

Washington Courts of Appeals

State v. Baldwin, 63 Wn. App. 303, 818 P.2d 1116 (1991).....3

State v. Hayes, 56 Wn. App. 451, 783 P.2d 1130 (1989).....8

State v. Johnson, 54 Wn. App. 489, 774 P.2d 526 (1989).....6

State v. Murray, 118 Wn. App. 518, 77 P.3d 1188 (2003).....3

Utter v. State, Dept. of Social and Health Services, 140 Wn. App. 293,
165 P.3d 399 (2007).....4, 8

Statutes

RCW 7.68.035(1)(a).....4

RCW 9.94A.120 (recodified as RCW 9.94A.505).....5

RCW 9.94A.7605(1)(a).....7

RCW 10.01.160.....4, 7

RCW 72.09.111(a)(a)(iv).....5

RCW 72.09.480(2), (8).....5

RCW 72.11.010(1).....5

RCW 72.11.020.....5

RCW 72.11.030(1).....5

Other Authorities

13 WAPRAC §4813.....4, 7

A. SUMMARY OF ARGUMENT

Sherman Pulley was convicted of first-degree burglary in 1998 and is serving a life sentence without possibility of parole. He moved pro se to terminate his legal financial obligations on the basis that the Department and court lacked jurisdiction to continue its enforcement.

Mr. Pulley is correct in that there is no jurisdiction to continue the enforcement. He has already satisfied the debt. The Department of Corrections incorrectly listed his legal financial obligations as “unlimited” on its accounting statement despite the fact that the actual debt was only \$610. As of February 2010, Mr. Pulley has paid nearly three times the debt owed, less interest. There is no legal authority for the Department to continue its debt collection efforts. This matter should be reversed and remanded because (1) (a) the debt has been satisfied or (b) ongoing enforcement works a financial hardship and the defendant’s indigent status is unlikely to change.

B. ASSIGNMENTS OF ERROR

1. The court erred by denying defendant’s motion to terminate legal financial obligations.
2. The court erred by finding that the defendant had not established manifest hardship. FF 4.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether the court erred by denying the motion to terminate legal financial obligations because (a) Mr. Pulley has already

satisfied the debt owed or, (b) Mr. Pulley's indigent status will not change and, thus, the legal financial obligations should be terminated.

- (c) Mr. Pulley has paid three times his actual legal financial obligations debt, yet the Department erroneously continues to confiscate Mr. Pulley's funds to satisfy a debt of an "unlimited" amount.
- (d) Alternatively, the court erred by denying the motion to terminate legal financial obligations because Mr. Pulley's indigent status and ongoing financial hardship will never change – he is incarcerated without possibility of parole.

D. STATEMENT OF THE CASE

Sherman Pulley was convicted in 1998 of first-degree burglary and sentenced to life without the possibility of parole. CP 1-10. At that time, the court ordered him to pay the required \$500 victim assessment and \$110 court costs for a total of \$610 in legal financial obligations plus interest¹. CP 4.

As of February 2010, Mr. Pulley has paid at least \$453.47 specifically toward the victim assessment and over \$1,385 toward general legal financial obligations. CP 28, 42-43. Moreover, deductions from Mr. Pulley's funds continue to be made every month for these legal financial obligations and the victim's assessment, because the Department of Corrections Trust Account Statement has listed these debts as "unlimited."
Id.

¹ It is unclear from the Trust Account Statement what amounts paid went toward interest and what amounts went toward principle, and this should be clarified on remand.

Mr. Pulley moved pro se to terminate his legal financial obligations, but the court denied his motion on March 4, 2010. CP 13. This appeal timely followed. CP 45.

E. ARGUMENT

Issue 1: Whether the court erred by denying the motion to terminate legal financial obligations because (a) Mr. Pulley has already satisfied the debt owed or, (b) Mr. Pulley's indigent status will not change and, thus, the legal financial obligations should be terminated.

As a threshold matter, a lower's court's determination of a defendant's resources and ability to pay legal financial obligations is discretionary and reviewed under the clearly erroneous standard. *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991). On the other hand, whether legal authority existed to sustain the enforced obligation is subject to de novo review. *See generally State v. Murray*, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003). Here, there was no legal authority to subject Mr. Pulley to "unlimited" legal financial obligations. Furthermore, the court's denial of the motion to terminate legal financial obligations based on financial hardship was manifestly unreasonable and exercised on untenable grounds. *See State v. Enstone*, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999).

- (a) Mr. Pulley has paid three times his actual legal financial obligations, yet the Department erroneously continues to confiscate Mr. Pulley's funds to satisfy a debt of an "unlimited" amount.

Contrary to the Department of Corrections' accounting statement, legal financial obligations like those in this case, including the victim's assessment, are not debts of "unlimited" amount. The victim's assessment is specifically set by statute at \$500, and the court costs in this case totaled \$110, for a specific limited amount of \$610 plus interest. The court erred by denying Mr. Pulley's motion to terminate legal financial obligations; the Department has erroneously collected three times the debt owed (less interest) and continues its collection efforts in order to satisfy legal financial obligations of an improper unlimited amount.

When a person has been convicted of a felony, the court imposes a mandatory \$500 victim's assessment fee, also known as the crime victim compensation account. RCW 7.68.035(1)(a); 13 WAPRAC §4813. The court may also require reimbursement for court costs, but these "shall be limited to expenses specially incurred by the state in prosecuting the defendant..." RCW 10.01.160; *Utter v. State, Dept. of Social and Health Services*, 140 Wn. App. 293, 302-03, 165 P.3d 399 (2007). The total sum of money that a court orders a defendant to pay for the victims compensation fee, court costs and other financial obligations that were not

ordered in this case constitutes the total “legal financial obligation” of the defendant. RCW 72.11.010(1).² See CP 1-10.

The secretary of the Department of Corrections is authorized to hold an inmate’s funds and disburse them to the appropriate party pursuant to a specific schedule in order to satisfy the inmate’s debts. RCW 72.11.020. Where the inmate is held without possibility of release, the secretary will make payments on the inmate’s debts in pre-determined percentages, including five percent toward the state general fund, 20 percent toward the cost of incarceration, 20 percent “for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court,” and 20 percent toward any child support owing. RCW 72.09.111(a)(a)(iv) (distribution from inmate work income); RCW 72.09.480(2), (8) (distribution from inmate’s non-work funds); *Anderson*, 159 Wn.2d at 852-866. In this payment hierarchy, legal financial obligations generally take priority. RCW 72.11.030(1).³

² See also *Anderson v. State, Dept. of Corrections*, 159 Wn.2d 849, 852, 154 P.3d 220 (2007) (“A court-ordered LFO is an obligation imposed by the superior court, usually at the time of sentencing, which can include victim restitution, crime victims' compensation fees, court costs, court appointed attorney fees and costs, fines, payment to a county or interlocal drug fund, or any other LFO assessed as a result of the felony conviction.”). And see RCW 9.94A.120 (recodified as RCW 9.94A.505(4) (authorizing imposition of legal financial obligations));

³ Legal financial obligations may be enforced at any time up to 10 years from the date of the judgment and sentence or 10 years from the inmate’s release from confinement, whichever is later. RCW 9.94A.760(4) (emphasis added); *In re Personal Restraint of Sappenfield*, 138 Wn.2d 588, 980 P.2d 1271 (1999). This period may be extended an additional 10 years for payment of legal financial obligations including crime victim’s

Here, legal financial obligations were set by the superior court at an amount of \$500 for the victim assessment (also known as crime victim compensation) and \$110 in court costs for a total legal financial obligation of \$610 plus interest. CP 4. As of February 2010, Mr. Pulley has paid about three times the debt owed, and the Department of Corrections continues to collect because it has listed on its accounting statement that the amount owing is “unlimited.” CP 28, 42-43. This is both untrue and inconsistent with well established authority.

In fact, Mr. Pulley’s legal financial obligations were not unlimited. His legal financial obligations totaled \$610. In law, it is clear that the victim assessment fee is set at \$500, not some unlimited amount, and court costs are specifically limited to those expenses specially incurred by the State in prosecuting the defendant. The Department of Corrections has exceeded its authority by continuing its collection efforts. Jurisdiction is lost once the debt has been satisfied. *State v. Johnson*, 54 Wn. App. 489, 491, 774 P.2d 526 (1989). In this case, the debt has been satisfied thrice over. This case should be remanded for a determination as to what amounts were paid toward principle verses interest and whether any amounts erroneously taken from Mr. Pulley to satisfy an “unlimited” debt should be returned to the defendant by the State as overpayment.

assessments. *Id.* As Mr. Pulley is incarcerated without the possibility of release, this statute is of no moment here.

(b) Alternatively, the court erred by denying the motion to terminate legal financial obligations because Mr. Pulley's indigent status and ongoing financial hardship will never change – he is incarcerated without possibility of parole.

The Department of Corrections has erroneously continued taking Mr. Pulley's funds to satisfy a debt of an unlimited amount rather than ceasing its garnishment once the actual legal financial obligation of \$610 plus interest was satisfied. The court erred by failing to terminate the erroneous ongoing legal financial obligation. Regardless, the court further erred by failing to terminate the legal financial obligation because Mr. Pulley is indigent with no chance of that status changing.

Even where court costs were authorized by the superior court, repayment cannot be mandatory. 13 WAPRAC §4813. "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." RCW 10.01.160 (4). *See also* RCW 9.94A.7605(1)(a) (offender can file motion to quash, modify or terminate payroll deduction if the deduction causes extreme hardship or substantial injustice). In general, recoupment of costs against a defendant is subject to the following guidelines:

“(1) Repayment must not be mandatory;

(2) Repayment may be imposed only on convicted defendants;

(3) Repayment may only be ordered if the defendant is or will be able to pay;

(4) The financial resources of the defendant must be taken into account;

(5) A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;

(6) The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion;

(7) The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.”

Utter, 140 Wn. App. at 303-04 (emphasis added). *See also State v. Hayes*, 56 Wn. App. 451, 783 P.2d 1130 (1989).

Here, Mr. Pulley has very little personal property, no real property, a wage of only \$1.60 per hour and unlimited debt according to the Department of Corrections. CP 48. His current indigent status is unlikely to change because he is presently serving a life sentence without possibility of parole. Since there is no likelihood of the defendant's indigency ending, the “repayment obligation may not be imposed.” *Utter*, 140 Wn. App. at 304.

F. CONCLUSION

The court erred by denying Mr. Pulley's motion to terminate legal financial obligations. He has already satisfied the debt and the

Department lacks jurisdiction to pursue an “unlimited” debt that is both contrary to law and Mr. Pulley’s actual judgment and sentence. Furthermore, Mr. Pulley is incarcerated without the possibility of parole. His indigent status is not likely to change. Thus, the repayment obligation cannot be imposed.

Wherefore, Mr. Pulley respectfully requests that the matter be reversed and remanded for a hearing to determine what portion he has paid toward principle verses interest and whether the State is obligated to return any of the wrongfully obtained funds.

Respectfully submitted this 22 day of June, 2010.


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