

FILED

AUG 02, 2016
Court of Appeals
Division III
State of Washington

NO. 33857-6-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

DWAYNE MURRELL RANKIN, Appellant.

BRIEF OF RESPONDENT

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Attorney for Respondent

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I. ASSIGNMENTS OF ERROR

ISSUES PRESENTED BY THE ASSIGNMENTS OF ERROR

- A. May the only financial obligation remaining, restitution, be waived by the trial court?
- B. Did the trial court correctly rule that the legal financial obligation, restitution, was enforceable?
- C. Did the trial court correctly rule that the motion to sever the legal financial obligation, restitution, was not timely?

II. STATEMENT OF THE CASE

Rankin was sentenced on counts of second degree murder and second degree assault on February 16, 1996. CP 6. On August 21, 2003, the original judgment was vacated and the defendant pled guilty to first degree manslaughter and second degree assault. CP 6-8. Restitution was ordered in the amount of \$16,000 to Providence Medical Center. CP 13, 15. The court ordered that restitution was joint and several with the co-defendant. CP 13.

On August 2, 2013, the court entered an order granting an additional ten years to execute the judgment. CP 17. On July 15, 2015, Rankin filed a motion for an order terminating legal financial obligations. CP 18-26. A hearing was held on August 14, 2015. RP 2. Rankin appeared telephonically. RP 2, CP 31. At that hearing, the judge remitted payment on all fines, costs and assessments, leaving in place the

restitution obligation. RP 9. The court asked the prosecutor to draft and present an order based on the verbal ruling in the case, but a written order was never filed. RP 12.

On September 5, 2015, Rankin filed a motion for reconsideration. CP 32-8. The trial court entered a written order denying the motion for reconsideration on September 23, 2015. CP 3940. In that order, the court ruled that 1) the legal financial obligations were enforceable, and 2) that the motion to sever LFOs was not timely. A notice of appeal was filed on October 28, 2015. CP 41.

III. ARGUMENT

A. The only financial obligation remaining is restitution, which may not be waived by the trial court.

On August 14, 2015, a hearing was held on legal financial obligations and the court remitted payment on all fines, costs and assessments. The only thing remaining is restitution. Restitution is a mandatory financial obligation. RCW 9.94A.753. Trial courts must impose mandatory obligations regardless of a defendant's ability to pay. State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). Therefore, a trial court may not waive restitution based on inability to pay.

As such, all financial obligations that could be waived at the time of his sentencing have now been waived. The only thing left for the trial

court to do is enter a written order consistent with the decision on August 14, 2015.

In his motion for reconsideration that was filed with the trial court, Rankin also sought a certificate of discharge. However, the defendant is not entitled to a certificate of discharge because he has not paid all of the restitution. See State v. Gossage, 165 Wn.2d 1, 195 P.3d 525 (2008).

B. The trial court correctly ruled that the legal financial obligation, restitution, was enforceable.

RCW 9.94A.760 states:

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.

Here, the defendant was sentenced on August 21, 2003. CP 6-8.

Within ten years of that date, on August 2, 2013, the court entered an order granting an additional ten years to execute the judgment. CP 17. As such, the trial court correctly ruled that the legal financial obligation was enforceable.

C. The trial court correctly ruled that the motion to sever the legal financial obligation, restitution, was not timely.

On August 21, 2003, the court ordered that restitution was joint and several with the co-defendant. CP 13. On September 21, 2015, over 12 years later, Rankin asked the court to sever his financial obligations from his codefendant, Mark Johnson. CP 32. The trial court found that the motion to sever was untimely pursuant to court rule and the judgment and sentence. RP 40. The trial court was correct.

RCW 10.73.090(1) bars a collateral attack brought more than one year after a judgment and sentence becomes final if the judgment and sentence is valid on its face. Here, the judgment and sentence became final on August 21, 2003. Rankin failed to bring a collateral attack within the following one-year time period.

IV. CONCLUSION

For all the above reasons, the State asks that the case be remanded for entry of a written order consistent with the court's verbal ruling on August 14, 2015.

Respectfully submitted this 2nd day of August, 2016,

s/Tamara A. Hanlon
TAMARA A. HANLON WSBA 28345
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on August 2, 2016, I mailed a copy of BRIEF OF RESPONDENT, by depositing into the US Mail, to Mr. Dwayne Murrell Rankin at 33248 45th Way South in Federal Way, WA 98001.

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

DATED this 2nd day of August, 2016 at Yakima, Washington.

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