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NO. 86148-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

COA NO. 66631-2-I

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CITY OF SEATTLE,

Respondent,

v.

DONALD FULLER,

Petitioner.

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PETITIONER'S REPLY BRIEF

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ORIGINAL

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**I. THE CITY IGNORES THE WELL-ESTABLISHED RULE THAT THE AUTHORITY TO IMPOSE RESTITUTION MUST BE EXPRESSLY PROVIDED BY STATUTE.**

“Where judicial administration is concerned, the power delegated to the municipal court must be exercised in the manner specified by the legislature.” *Municipal Court of Seattle ex rel. Tuberg v. Beighle*, 28 Wn.App. 141, 145, 622 P.2d 405, 408 (1981) *aff’d*, 96 Wn.2d 753, 638 P.2d 1225 (1982) (municipal court officers cannot be removed except as specified by the legislature); *see also* Wash. Const. art. IV, § 12 (granting the legislature sole authority over the powers of district and municipal courts). Likewise, the authority to impose restitution is not an inherent power of a court; such authority to must be granted by the legislature. *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991).

The City’s brief argues a number of sources of restitution authority for Seattle Municipal Court, but none of those contain the required express legislative grant.

The City argues that RCW § 9.92.060(2) and § 9.95.210(2) (granting superior courts the authority to impose restitution as a term of probation or a suspended sentence) are applicable to Seattle Municipal Court by way of the general grant of authority in RCW 35.20.010(1) and the authority to impose conditions of probation conferred in RCW

35.20.255. The City claims the absence of an express grant of restitution authority in RCW 35.20 and RCW Title 3 “suggests that the legislature intended RCW 9.92.060(2) and 9.95.210(2) to apply to both district and municipal courts, as well as superior courts.” Respondent’s Brief at 4. The City further asserts, “because there is no prohibition against the imposition of restitution, the legislature intended that municipal courts would have authority to impose the same.” Respondent’s Brief at 5.

The City’s position is not only contrary to the well-settled rule that the authority to impose restitution requires an express legislative grant, but also ignores the fact that the Legislature has granted restitution authority to courts separate from and in addition to their other sentencing powers. Petitioner’s Brief at 5-6 (RCW 9.92.060(1) confers power to impose a suspended sentence and 9.92.060(2)(b) confers power to impose restitution as a condition of that sentence). *See also State v. J.P.*, 149 Wn.2d 444, 69 P.3d 318 (2003) (construing the restitution authority of the superior court in juvenile dispositions pursuant to RCW 13.34); *Davison, supra*, 116 Wn.2d at 920-21 (construing the restitution provisions of the Sentencing Reform Act, RCW 9.94A). The Legislature knows how to explicitly grant restitution authority and has done so in a detailed manner in other contexts. If the Legislature had granted Seattle Municipal Court such power, it would have done so explicitly. *See e.g., City of Auburn v.*

*Gauntt*, --- P.3d ---, 2012 WL 1356326 (April 19, 2012), slip op. at 11 (“[T]he legislature knows how to explicitly grant municipal courts concurrent jurisdiction . . . . If it wished to grant concurrent executive authority, we believe it would have done so explicitly.”) The grant of authority to set the terms of a suspended sentence or probation falls short of the explicit grant of authority to impose restitution.

The City’s position also requires this Court to read the word “superior” out of RCW § 9.92.060(2) and § 9.95.210(2). As previously noted, Petitioner’s Brief at 12-14, the insertion of the word “superior” before “court” in 1996 limited the grant of those powers to superior courts. *See* Laws of 1996, Ch. 298, s 5. To ignore that limitation now would render the 1996 amendment superfluous. *State v. Bash*, 130 Wn.2d 594, 602, 925 P.2d 978 (1996) (statutes should be construed so that all of the language is given effect). This court should not adopt a reading of these statutes that renders the phrase “superior court” meaningless. *State v. Osman*, 168 Wn.2d 632, 638, 229 P.3d 729 (2010).

Similarly, the City errs in arguing that the concurrent jurisdiction statute at RCW § 35.20.250 grants Seattle Municipal Court the authority to impose restitution. The City acknowledges that the concurrent jurisdiction statute does not “convert Seattle Municipal Court into a superior court, nor render all statutes referring to superior courts

[applicable] to Seattle Municipal Court.” Response Brief at 6. The City goes on to argue that Seattle Municipal Court should have the same power to impose restitution as district courts. The City’s argument is fatally flawed. As Petitioner noted in his opening brief, Petitioner’s Brief at 4, footnote 2), and the City acknowledges, Respondent’s Brief at 4, “there is no specific provision in RCW Title 3 granting district courts or other courts of limited jurisdiction authority to order restitution. . . .” Courts of limited jurisdiction are creatures of statute and the powers of such courts must be enumerated by the legislature.

Finally, the City argues, because RCW 35.20.255 limits the length of probation, the Seattle Municipal Court’s probation authority is otherwise unlimited, citing the rule “when a statute lists the things upon which is operates, we presume the legislature intended the omission.” Respondents’ Brief at 5. The City’s application of the rule would grant the court all powers not specifically proscribed. A significantly less strained reading of the omission of restitution powers in RCW 35.20.255 is that the legislature intended to omit what it did, in fact, omit. Courts of limited jurisdiction are not presumed to have restitution authority unless proven otherwise, as the City suggests.

**II. THE CITY DOES NOT REBUT THE ANALYSIS THAT SHANNAHAN WAS INCORRECTLY DECIDED OR**

**THAT RCW 9A.20.030 LIMITS RESTITUTION *IN LIEU OF A FINE*.**

In its brief, the City relies on *State v. Shannahan*, 69 Wn.App. 512, 849 P.2d 1239 (1993), but offers no rebuttal to Fuller's argument that *Shannahan* was decided without legal authority.

It also appears that the City agrees with Fuller that Seattle Municipal Court had no authority to impose *both* a fine and restitution, as RCW § 9A.20.030 allows for restitution only in lieu of a fine. Because a fine was imposed in Fuller's case, the court did not have the authority to impose restitution as well.

**III. BECAUSE RESTITUTION IS A CREATURE OF STATUTE, THE CITY'S POLICY ARGUMENTS ARE INSUFFICIENT TO CONFER RESTITUTION AUTHORITY.**

The City also relies heavily on the policy reasoning in *Shannahan*, noting that "restitution is an integral part of the Washington system of criminal justice for both felonies and misdemeanors." *Id.* 69 Wn.App. at 517. But the policy arguments in *Shannahan* are premised upon the court's (erroneous) holding that RCW 9A.20.030 authorized restitution in the first place.

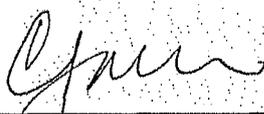
The City's policy arguments are similar to those rejected by this Court in *State v. J.P.*, 149 Wn.2d 444, 69 P.3d 318 (2003). In that case, the juvenile court sought to impose restitution to pay for counseling costs

incurred by a victim in a non-sex-offense case, where the relevant statute permitted such restitution only for sex offenses. *Id.* This court reversed.

Although we may wish that the legislature had not said what it did say, we cannot simply wish away the legislature's specific statement that restitution "shall be limited to ... costs of the victim's counseling reasonably related to the offense *if the offense is a sex offense...*" If restitution is to be available to victims of juvenile crimes that are not sex offenses, the legislature, not the courts, must delete this statutory language that says otherwise.

*Id.* at 457 (emphasis in original). See also *State v. Mark*, 36 Wn.App. 428, 433, 675 P.2d 1250 (1984) ("Though the court in *Barr* states there is a broad rehabilitative purpose to the restitution requirement, restitution must conform to the statutory language. It is for the legislature to define the authority within which the trial court's discretion will be exercised in imposing restitution . . ."). Regardless of what the City believes the law ought to be, the courts are not at liberty to ignore the plain language of the statutes which confer the power to impose restitution only to superior courts or for offenses committed prior to July 1, 1984.

Respectfully submitted this \_\_\_\_ day of May, 2012.



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