

67123-5

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NO. 67123-5-1

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

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STATE OF WASHINGTON,

Respondent,

v.

SHANE L. WATSON,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

1. Whether the court has authority to enforce payment of legal financial obligations imposed as a condition of sentence?

2. Whether defendant's appeal should be dismissed as moot as it relates to cause number 08-1-02548-3?

## **II. STATEMENT OF THE CASE**

### **A. DEFENDANT'S UNDERLYING CONVICTIONS AND SENTENCES.**

**Cause Number 03-1-02328-5.** On February 16, 2005, defendant was convicted after jury trial of Court Order Violation—DV; the court entered judgment and sentence the same day. Defendant was sentenced to 60 months confinement, the statutory maximum. At the time of sentencing no community custody was imposed. On June 27, 2005, the court entered an order nunc pro tunc amending judgment and sentence as follows: "Community custody is imposed for up to the period of earned release if any. The prison commitment and community custody if any is imposed for period of earned release shall not exceed 60 months." [sic] CP 6-8, 42-54.

As part of his sentence defendant was ordered to pay \$1,500.00 in legal financial obligations and to make payments of \$25.00 per month with all payments made within 96 months of entry

of the judgment. Defendant appealed his conviction. The conviction was affirmed and costs were awarded against defendant. CP 17, 23-24, 45-46.

**Cause Number 08-1-02548-3.** On March 17, 2009, defendant was found guilty on plea to 4<sup>th</sup> Degree Assault; the court entered judgment and sentence the same day. Defendant was sentenced to 365 days confinement, the statutory maximum. No community custody was imposed. Defendant was ordered to pay \$1,000.00 in legal financial obligations and to make payments of \$25.00 per month with all payments made within 24 months of entry of the judgment. CP 77-81.

**B. DEFENDANT'S FAILURE TO MAKE PAYMENTS ON HIS LEGAL FINANCIAL OBLIGATIONS.**

On December 10, 2010, the Snohomish County Clerk requested a hearing to address defendant's failure to pay his legal financial obligations. The hearing was set for March 1, 2011. Defendant failed to appear for the hearing and bench warrants were authorized. On April 8, 2011, defendant was arrested on the warrants; he appeared in court on April 11, 2011. Defendant requested the matter be continued for his attorney to research whether defendant had served the statutory maximum on his

cases. CP 9-10, 11-13, 72-73, 74-76, 95-105; State's Designation of Clerk's Papers (SDCP) \_\_\_ sub# 48, Sheriff's Return on Bench Warrant, \_\_\_ sub# 49, Criminal Minute Entry, \_\_\_ sub# 432, Criminal Minute Entry.

### **C. THE VIOLATION HEARINGS.**

On April 25, 2011, Judge Castleberry addressed the alleged violations noted in the clerk's December 10, 2010 reports; defendant's failure to make payments on his legal financial obligations.

**Cause Number 03-1-02328-5.** Defendant claimed that he was not aware that he was supposed to be making payments because he thought the matter had been closed and that he did not have any further obligation after he served the maximum sentence. Defendant did not present anything to support his claim that he served the entire 60 months on this case. Defendant asked the court to give him an opportunity to make payments and eventually get some of the interest waived. He stated that he may be able to get some help making payments within the next month and asked the court to set payments at the lowest possible amount. Defendant claimed that he is disabled, but presented nothing in support of this claim. The court found that the violation was not

willful. The court entered an order modifying the sentence reducing defendant's monthly payment on his legal financial obligations to \$10.00 commencing on June 1, 2011. Defendant did not object to the order. The court also advised defendant to keep the clerk's office apprised of his address so a bench warrant is not issued for his failure to respond to a summons. CP 6-8; SDCP \_\_\_ sub# 436, Criminal Sentencing / CSV Minute Entry; RP (4/25/11) 3-7.

**Cause Number 08-1-02548-3.** The prosecutor informed the court that defendant had served all but one day on the matter.<sup>1</sup> The prosecutor recommended that the court give defendant credit for one day and close the case. The court followed the recommendation, gave defendant credit for serving the last day of his sentence, waived "all remaining LFO's and interest" and terminated the matter. Defendant did not object. CP 69-71; SDCP \_\_\_ sub# 53, Criminal Sentencing / CSV Minute Entry; RP (4/25/11) 2, 6-7.

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<sup>1</sup> Apparently, an addition error had been made in the June 30, 2009, Return of Commitment calculation of defendant's time served: 153 days served pre-sentence, plus 90 days served post sentence, plus 121 days good time credit equals 364, not 365 days. SDCP \_\_\_ sub# 41, Return of Commitment Judgment and Sentence.

### III. ARGUMENT

#### A. THE COURT HAS AUTHORITY TO ENFORCE PAYMENT OF LEGAL FINANCIAL OBLIGATIONS IMPOSED AS A CONDITION OF SENTENCE.

Defendant does not cite to anything in the record before the court to support his claim that he was confined for the maximum term for his felony conviction. Nonetheless, defendant argues: “Because he was confined for the maximum permissible term, the court lacked authority to impose conditions of community custody upon his release from prison or impose punishment for his failure to complete conditions of community custody.” Appellant’s Opening Brief at 5. The State agrees that the statutory maximum controls the length of community custody. See State v. Franklin, 172 Wn.2d 831, 842-843, 263 P.3d 585 (2011).

However, in the present case, defendant’s payment of legal financial obligation was not imposed as a condition of community custody. See CP 40, 48-49. Nor was defendant’s payment of legal financial obligation a crime-related condition. In Re Rainey, 168 Wn.2d 367, 375, 229 P.3d 686 (2010) (operative length of crime-related prohibitions is the statutory maximum for the crime); State v. Armendariz, 160 Wn.2d 106, 119, 156 P.3d 201 (2007) (crime-related conditions are limited to the statutory maximum for the

defendant's crime). See RCW 9.94A.505(5), (8). In the present case, defendant's payment of his legal financial obligation was part of his sentence, just like his term of imprisonment. CP 45-47.

In Washington a person convicted of a class C felony shall be punished "by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, or by both such imprisonment and fine." RCW 9A.20.021(1)(c). The statute clearly authorizes both imprisonment and fine. Five years is the maximum term of imprisonment, not a statute of limitation on when the term of imprisonment must be served or when the fine must be paid.

**1. The Court Has Authority To Order Payment Of Legal Financial Obligation As A Condition Of Sentence.**

"... Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. ..." RCW 9.94A.760(1). "The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance ... ." RCW 9.94A.760(10). This authority is separate from both conditions of

community custody governed by RCW 9.94A.701 through .740 and crime-related conditions governed by RCW 9.94A.505.

**2. The Court Has Jurisdiction Over The Offender Until The Legal Financial Obligation Is Completely Satisfied.**

Unlike crime-related prohibitions and conditions of community custody which can only be enforced up to the statutory maximum for the crime, compliance with payment of the legal financial obligations remains until the obligation is completely satisfied, regardless of the statutory maximum for the crime.

“For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. ... The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

RCW 9.94A.760(4). Defendant remains under the court's jurisdiction until the legal financial obligation of his sentence is satisfied.

**3. The Court Has Authority To Impose Sanctions For Violations Of The Conditions And Requirements Of Sentence.**

The court may impose up to sixty days confinement for each violation of sentence conditions or requirements. This authority applies to defendants who are not being supervised on community

custody. "If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333." RCW 9.94A.6332(6).

RCW 9.94A.6333(2)(c) provides: "If the court finds that a violation has been proved, it may impose the sanctions specified in RCW 9.94A.633(1)." RCW 9.94A.633(1)(a) provides: "An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation."

During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

RCW 9.94A.760(7)(b). In Washington the court may place the burden on the defendant to prove inability to pay. Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 112, 52 P.3d 485 (2002) (citing State v. Bower, 64 Wn. App. 227, 234, 823 P.2d 1171 (1992)). It was incumbent on defendant to provide verification of his claimed disability showing that he was unable to gain employment or obtain money to pay his legal financial obligations. Defendant

provided nothing to substantiate any of his claims. Defendant's inaction reflects "an insufficient concern for paying the debt he owes to society for his crime." Bearden v. Georgia, 461 U.S. 660, 669, 103 S.Ct 2064, 2071 (1983).

Defendant remains under the court's jurisdiction and may be sanctioned for his failure to make payments on his legal financial obligation if the court finds his failure to pay is a willful violation of a condition or requirement of his sentence. In the present case, defendant was not sanctioned.

**4. The Court Has Authority To Issue Bench Warrants Upon Notification Of A Violation Of A Condition Of Sentence.**

In the present case, the lower court was notified by the clerk that defendant was not making payments on his legal financial obligations and a hearing was set to address that issue. CP 11. Defendant's failure to make payment towards his legal financial obligation or to provide verification of his inability to pay constituted a violation of a condition or requirement of his sentence subjecting him to the penalties for noncompliance. RCW 9.94A.760(10). When defendant failed to appear for the hearing the court authorized bench warrants. CP 9-10. The court needs only a well-founded suspicion that a violation has occurred before it may issue

an arrest warrant. State v. Erickson, 168 Wn.2d 41, 50, 225 P.3d 948 (2010).

When defendant did appear, the lower court granted the relief he requested;<sup>2</sup> a reduction in the amount of defendant's monthly payment and more time to pay his legal financial obligations.

**B. AS IT RELATES TO CAUSE NUMBER 08-1-02548-3, DEFENDANT'S APPEAL SHOULD BE DISMISSED AS MOOT.**

"A case is moot if a court can no longer provide effective relief." Orwick v. Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). Defendant's claim as it relates to his misdemeanor, cause number 08-1-02548-3, is moot. The lower court's order gave defendant credit for serving the 365<sup>th</sup> day of his sentence, waived defendant's legal financial obligation, including the accrued interest, and terminated the case. As a result, defendant is no longer under restraint and is not facing the possibility of any restraint related to that case. There is no further relief for the court to provide.

The court does make an exception for moot cases involving "matters of continuing and substantial public interest." Orwick v.

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<sup>2</sup> Regarding defendant's desire to get some of the interest waived, once he has made a good-faith effort to pay his legal financial he can petition the court for relief on the accrued interest obligations under RCW 10.82.090.

Seattle, 103 Wn.2d at 253 (quoting Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). In cases where the facts and legal issues have been fully litigated by parties with a stake in the outcome of a live controversy, “it is a waste of judicial resources to dismiss an appeal on an issue of public importance which is likely to recur in the future.” Orwick v. Seattle, 103 Wn.2d at 253.

In his misdemeanor case, defendant did not object when the lower court gave him credit for completing his confinement, waived his legal financial obligations and terminated supervision. Defendant’s claim became moot when the court granted him this relief. Dismissal of defendant’s appeal related to his misdemeanor will avoid the danger of allowing defendant to litigate a claim in which he no longer has an existing interest. The issue is not one of public importance nor is it likely to recur. Dismissal will not cause a waste of judicial resources.

**IV. CONCLUSION**

For the reasons stated above the appeal should be denied.

Respectfully submitted on March 5, 2012.

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