

FILED
Jan 06, 2016
Court of Appeals
Division I
State of Washington

NO. 73500-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

TANIS COLEMAN,

Appellant.

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

The Honorable Julie Spector, Judge

REPLY BRIEF OF APPELLANT

JENNIFER J. SWEIGERT
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ARGUMENT IN REPLY

THE COURT EXCEEDED ITS STATUTORY AUTHORITY BY ORDERING RESTITUTION MORE THAN 180 DAYS AFTER SENTENCING.

The State does not dispute that a restitution order must generally be filed within 180 days of sentencing to be valid. Brief of Respondent at 7. Nor does the State dispute that the restitution order in this case was filed 188 days after sentencing. Brief of Respondent at 1. The disputed issue is whether either of the exceptions to the general rule applies in this case. No exception applies because the court failed to weigh the reasons for the delay against the possibility of prejudice to the defendant and the order was not a mere modification of the previous order.

a. The Court Did Not Expressly Find Good Cause for the Final Delay, Nor Did It Consider Prejudice to Coleman.

This Court should reject the State's argument that the court exercised its discretion to extend the deadline for good cause before the time expired. Brief of Respondent at 7-9. A valid exercise of discretion should require at a minimum that the Court consider the factors discussed in State v. Tetreault, 99 Wn. App. 435, 438, 998 P.2d 330 (2000). In that case, the court explained that the purpose of requiring a request for an extension before expiration of the 180 days is so that the Court can consider "(1) the length of the delay, (2) the reason for delay, (3) the defendant's assertion of his or her

right to speedy sentencing, and (4) the extent of prejudice to the defendant.”

Id. The court should also consider the State’s diligence in producing its evidence. Id.

In this case, during the discussion of the final delay that brought the order beyond the 180-day deadline, the court did not mention the words “good cause” and did not mention any of the Tetreault considerations. 3RP 17-19, 25. The previous findings of good cause were in order to permit briefing and witness testimony that had already occurred; thus, this “good cause” had ceased to exist. 2RP 17-18; CP 99-114. The court merely told the parties to submit findings “when you get back.” 3RP 25. Even assuming the State is correct that this was a reference to the various other obligations of both attorneys and the judge, see Brief of Respondent at 6, n. 4 (discussing 3RP 17-19), this does not amount to a valid exercise of discretion. The State argues there was no prejudice to Coleman from the delay, but there was no discussion or consideration of prejudice at the time. Brief of Respondent at 8; 3RP 17-19, 25.

The court failed to exercise its discretion in extending the 180-day deadline because it failed to consider any of the factors discussed in Tetreault or conclude that there was good cause in light of the defendant’s right to speedy sentencing and any potential prejudice. Tetreault, 99 Wn. App. at 438; 3RP 17-19, 25.

b. The Challenged Restitution Order Involved a Separate Victim, a Separate Charged Count, and a Separate Hearing.

The second exception to the 180-day deadline also does not apply because the second restitution order was not a mere modification of the first. State v. Chipman, 176 Wn. App. 615, 309 P.3d 669 (2013), discusses three reasons why the second order in that case was not a modification of the first: 1) the second order involved a different victim; 2) the second order involved a different count and charge; and 3) the second order was the product of a separate hearing. Id. at 621-22. On these facts, the court concluded there was no modification of the earlier order “even though the charges here arose from the same general incident and were part of the same criminal prosecution.” Id. at 622.

All three of these reasons also exist in this case. The second restitution order involving Washington Federal involved a different victim: the estate of Coleman’s father instead of the bank. CP 46, 48. The dates of the withdrawals from Washington Federal also match up to the dates alleged for the theft charged in count I, while the dates of the withdrawals from Wells Fargo match up to the dates alleged for the identity theft charged in count II. CP 5-6, 9-10; 50-51. And the first restitution order arose out of agreement in the plea bargain, whereas the second arose out of a contested hearing that took place several months later. CP 30, 48-52.

The court's authority to enter a restitution order is limited to that expressly contained in the restitution statutes. State v. Gray, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). Those statutes require a restitution order be entered within 180 days of sentencing unless one of the exceptions applies. Chipman, 176 Wn. App. at 619 (discussing RCW 9.94A.753 and Gray, 174 Wn.2d at 926-28). Neither exception applies in this case. The court's assumption that the statute was tolled and its prior finding of good cause to extend time to submit briefing did not justify the final delay after the briefs and hearing were complete. Additionally, the resulting restitution order was not a mere modification of the earlier agreed order involving a different victim, different charge, and different hearing. Therefore, the restitution order entered 188 days after sentencing must be vacated. Chipman, 176 Wn. App. at 622.

B. CONCLUSION

For the foregoing reasons and for the reasons stated in the opening Brief of Appellant, Coleman requests this Court vacate the restitution order.

DATED this 6th day of January, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER J. SWEIGERT

WSBA No. 38068

Office ID No. 91051

Attorney for Appellant