

92380-9

No. 72043-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

TED J. GRIMES

Plaintiff/Appellant

v.

STATE OF WASHINGTON

Defendant/Respondent

FILED
OCT 19 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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NOTICE OF APPEAL

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON

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IDENTITY OF PETITIONER

The petitioner is Ted James Grimes, appellant.

CITATION TO COURT OF APPEALS DECISION

Appellant Grimes appeals the Court of Appeals unpublished opinion filed on September 14, 2015 with the Cause No. 72043-1-1 where the STATE OF WASHINGTON is Respondent and TED J. GRIMES is Appellant.

ISSUES PRESENTED FOR REVIEW

Appellant Grimes presents the following issues for review under Rule 13.4(b)(1) where the decision by the Court of Appeals (COA) is in conflict with State statutes, decisions of the Washington State Supreme Court and the U.S. Supreme Court:

1. The COA erroneously refers to Appellant Grimes' state pensions and Grimes' reliance on RCW's in defending his position.
2. Both the Superior Court and the COA erroneously included Sherian Grimes' income, as Ted Grimes spouse, when calculating Appellant Grimes monthly restitution payment in violation of State statute.
3. Both the Superior Court and the COA erroneously found Grimes' income was about \$3,000 per month and calculated the restitution amount due each month at \$700 based on the 25% maximum authorized payment per statute.
4. The COA erroneously declined to accept a large portion of Grimes' argument stating Grimes failed to provide a complete appellant record of the issues.
5. The COA erroneously referenced case law in its' analysis that did not pertain to

the issue(s) in Grimes' case, thus arriving at an incorrect conclusion.

6. The COA erroneously argued that there was no "execution, levy, attachment [and] garnishment" against Grimes' federal pensions as there were no "formal procedures" used to compel Grimes to pay the court ordered restitution. The COA ignored the obvious court order.

STATEMENT OF THE CASE

Appellant Grimes was convicted of 8 counts of theft in 1999 and subsequently ordered to pay restitution in the approximate amount of \$616,000 plus interest at 10% per annum. With interest the first year of \$61,600, which exceeded Grimes' total gross income, the restitution order was a negative amortization situation. Combined with Grimes' lack of income while incarcerated, the current balance is near a whopping \$1,600,000. With interest now at about \$160,000 per year and Grimes gross income at about \$33,000 per year the outstanding restitution balance will never be paid in full. The issue then becomes 'what is Grimes obligated to pay under the law toward restitution.' Grimes argues that the \$700 per month ordered by the Court greatly exceeds the statutory amount he is required to pay. The State argues otherwise.

What Appellant Grimes is obligated to pay each month is clearly defined by statute. Grimes is obligated to pay a maximum of twenty-five percent (25%) of the disposable (not gross) earnings of the offender. RCW 9.94A.7603. The Superior Court erred in setting an incorrect amount. The Court of Appeals erred in affirming the Superior Court incorrect amount.

ARGUMENT

1. The Court of Appeals erroneously refers to Appellant Grimes' state pensions and Grimes' reliance on RCW's in defending his position. UNPUBLISHED OPINION, p 1,3.

Appellant Grimes has no state pensions, only Federal pensions consisting of his Social Security payment, his US Army retirement payment and a Boeing Company ERISA retirement plan. Grimes relies on Federal statutes and State and US Supreme Court case law in defending his position.

2. BOTH THE SUPERIOR COURT AND THE COURT OF APPEALS ERRONEOUSLY INCLUDED SHERIAN GRIMES' INCOME, AS TED GRIMES SPOUSE, WHEN CALCULATING APPELLANT GRIMES MONTHLY RESTITUTION PAYMENT.

The Superior Court pulled Appellant Grimes annual income figure off the Ted and Sherian Grimes joint filing Income Tax Return. Exhibit #164 Exhibit List, Exhibit #1-1120 Tax Return. The gross income figure used includes income from both Ted and Sherian Grimes.

All real and personal property belonging to any married person at the time of his or her marriage, and all which he or she may have acquired subsequently to such marriage, or to which he or she shall hereafter become entitled in his or her own right, and all of his or her personal earnings, and all the issues, rents and profits of such real property, shall be exempt from execution, attachment, and garnishment upon any liability or judgment against the other spouse . . .
RCW 6.15.040.

3. BOTH THE SUPERIOR COURT AND THE COURT OF APPEALS ERRONEOUSLY FOUND GRIMES' INCOME WAS ABOUT \$3,000 PER MONTH AND CALCULATED THE RESTITUTION AMOUNT DUE EACH MONTH AT \$700 BASED ON THE 25% MAXIMUM AUTHORIZED PAYMENT PER STATUTE.

Grimes' gross income, without any exemptions, was about \$2,000 per month which would calculate to a monthly restitution payment of only \$500 per month at the

maximum allowable rate of 25%. Further, those income figures are gross income and not "disposable earnings" as specified in RCW 9.94A.7601.

The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. RCW 9.94A.7601.

The total amount to be withheld from the offender/employee's earnings each month, or from each earnings disbursement, shall not exceed twenty-five percent of the disposable earnings of the offender. RCW 9.94A.7603. The total amount to be withheld from the defendant's earnings each month, or from each earnings disbursement shall not exceed twenty-five percent of the disposable earnings of the defendant. RCW 9.94A.7703

4. THE COURT OF APPEALS ERRONEOUSLY DECLINED TO ACCEPT A LARGE PORTION OF GRIMES' ARGUMENT STATING GRIMES FAILED TO PROVIDE A COMPLETE APPELLANT RECORD OF THE ISSUES.

Although Grimes did not provide a complete appellate record of the issues the State did provide sufficient appellate records of the issues for the Court to verify the facts argued for both appellant and respondent. Providing duplicate records would be redundant, a waste of resources and environmentally unsound. SUPPLEMENTAL [DESIGNATION OF CLERK'S PAPERS], dated 4/24/2015; [SECOND SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS], dated 4/30/2015.

5. THE COURT OF APPEALS ERRONEOUSLY REFERENCED CASE LAW IN ITS' ANALYSIS THAT DID NOT PERTAIN TO THE ISSUE(S) IN GRIMES' CASE, THUS ARRIVING AT AN INCORRECT DECISION.

The COA references Anthis v. Copland as an authority for the State exempting

pension benefits both before and after deposit into the recipient's personal bank account. OPINION, p6. Anthis pertains to State law enforcement and firefighter pension benefits. Grimes receives no State retirement benefits of any kind. He is not entitled to any law enforcement or firefighter retirement benefits.

The COA cites In re Estate of McPherson Federal code does not shield assets from exempt benefits after beneficiary's death. OPINION, p7. Grimes is the beneficiary of his Federal retirement programs and he (I) am not yet dead. The issues presented in In re Estate of McPherson do not apply in this instance.

In Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler, OPINION, p8. the Court of Appeals presents an issue supposedly in support of their position which actually confirms Grimes' position regarding the attachment of Grimes' Federal retirement funds. This position is argued in Issue 6 below.

The COA also cites In re Guardianship of Knutson, OPINION, p8, another instance where Social Security benefits did not violate the antiattachment provisions. This case is a guardianship issue where the Social Security benefits end up going to the beneficiary through the guardian so the proper party still receives the benefit. This case also does not apply in this instance.

6. THE COURT OF APPEALS ERRONEOUSLY ARGUED THAT THERE WAS NO "EXECUTION, LEVY, ATTACHMENT [AND] GARNISHMENT" AGAINST GRIMES' FEDERAL PENSIONS AS THERE WERE NO "FORMAL PROCEDURES" USED TO COMPEL GRIMES TO PAY THE COURT ORDERED RESTITUTION.

All three of Grimes' federal pensions - his Social Security benefits, his US Army retirement benefits (not National Guard) and his ERISA Boeing Company retirement plan have essentially the same restrictions on those funds.

The right of any person to any future payment under this title [Social Security Act] shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. Section 207 [42 U.S.C. 407](a)

Payments of benefits due or to become due under any law administered by the Secretary [of Defense] shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. Sec. 5301(a)(1).

ERISA's anti-alienation provision reflects a policy choice on the part of Congress "to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them" Patterson v Shumate, 504 U.S. 753,765. The court looked to the United States Supreme Court, which has explained that 'it is not appropriate for a court to approve any generalized equitable exception to an antigarnishment provision even for criminal misconduct, despite a 'natural distaste for the result'" Anthis v Copland, 173 Wn.2d 752 (2012). To that end, the anti-alienation provision requires that every pension plan include a prohibition on assigning or alienating benefits provided under the plan. The Treasury Regulations, [1056(d)(1)] under the plan, which interpret this provision and are entitled to deference under Chevron U.S.A., Inc. v Natural Resources Defense Council, 467 U.S. 837. define the

terms "assignment" and "alienation" as including any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.

ERISA Section 514(a) pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. Sec. 1144(a).

The Court [U.S. Supreme Court] first noted that the terms "execution, levy, attachment [and] garnishment" as used in 42 U.S.C. section 407(a) were legal terms of art that "refer to formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and **generally involve some form of judicial authorization.**" (emphasis added) OPINION, p.8 . . . the phrase "other legal process" must be construed restrictively in the context of 42 U.S.C. section 407(a):

Thus, "other legal process" should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and **at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism**, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability. (emphasis added)

Keffeler, 537 U.S. at 384-385. OPINION, p.8

Appellant Grimes is under court order to pay restitution. It should be obvious then that his court order is some form of judicial authorization and some form of judicial or quasi-judicial mechanism. Therefore Grimes Social Security benefits, his US Army pension and his ERISA pension are, indeed, exempt from execution, levy,

attachment, garnishment and any "other legal process" whatsoever.

State law does not preempt Federal law in this instance. The preemption doctrine is based on the Supremacy Clause of the United States Constitution. "Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law." State law is preempted if Congress passes a statute that expressly preempts it, Congress occupies an entire field of regulation, state law conflicts with federal law, making compliance with both an impossibility, or state law presents an obstacle to accomplishing the federal purpose. State v Grimes, COA No. 45289-4-1 (consolidated with 46534-1-1. Congress occupies the entire field of regulation for the Social Security Act. Congress occupies the entire field of regulation for the U.S. Military. ERISA pre-empts "any and all state laws." 29 U.S.C. Sec. 1144(a).

CONCLUSION

Appellant Grimes is not challenging his restitution order, he is challenging the court's determination of his monthly payment, which he argues exceeds statutory limits.

It is clear on their face that the Social Security and US Military pensions are exempt from any kind of alienation. It is clear by statute that ERISA pensions are exempt from alienation. All are backed by established case law.

The Superior Court has exceeded its' authority by ordering a restitution payment schedule well above what is prescribed by statute. The Court of Appeals erred in affirming the Superior Court decision.

The Supreme Court should accept review of this case to hear the arguments in their entirety ultimately with the restitution monthly payment schedule remanded back to the Superior Court for determination of the proper payment based on Grimes' disposable earnings, exempting his Social Security benefits, Army pension and ERISA pension from his gross earnings.

A handwritten signature in black ink, appearing to read 'TJ Grimes', written over a horizontal line.

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APPENDIX A

copy of Court of Appeals Unpublished Opinion

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

STATE OF WASHINGTON,)	No. 72043-1-I
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
TED J. GRIMES,)	
)	
Appellant.)	FILED: September 14, 2015

SCHINDLER, J. — Ted J. Grimes appeals the trial court order setting his monthly restitution payment. Grimes contends the trial court erroneously considered his exempt state and federal pension benefits. But the trial court properly took Grimes' pension benefits into account when determining his overall financial circumstances. Grimes also fails to demonstrate the order setting the amount of the restitution payment was comparable to execution, levy, attachment, or garnishment, or compelled him to make restitution payments from exempt funds. We affirm.

FACTS

In 1998, the State of Washington charged Ted J. Grimes with eight counts of theft in the first degree and one count of theft in the second degree.

Grimes managed three related Federal Way companies: Pacific Coast Escrow Inc. (PCE); Pacific Coast Data Services Inc. (PCDS), which facilitated 26 U.S.C. section

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1031 tax deferred real estate exchanges; and Pacific Coast Financial Services Inc. (PCFS). Grimes was responsible for all transactions at the three companies.

Grimes loaned money from PCDS's section 1031 exchange accounts to PCFS. PCFS, in turn, used those funds to make commercial loans at high interest rates. Grimes used the proceeds from the loans to pay for the construction of his new home and for other personal and business expenses. Grimes also made unauthorized withdrawals from PCE's escrow accounts. Grimes used false entries to the computerized accounting system to conceal his thefts.

The shortfall in PCE's accounts eventually exceeded \$630,000 and PCE declared bankruptcy. After Safeco Insurance Company paid the policy limits of a \$500,000 fidelity bond, PCE still owed clients \$116,102. Grimes' clients lost more than \$780,000 including taxes and consequential damages.

The jury found Grimes guilty of seven counts of theft in the first degree and one count of theft in the second degree. The court sentenced Grimes to a concurrent 60-month exceptional sentence. The court also ordered Grimes to pay restitution of \$116,102 to the clients and \$500,000 to Safeco for the bond funds paid to the victims. Grimes' judgment and sentence set minimum restitution payments as a percentage of his gross monthly income.

This court affirmed Grimes' convictions and the restitution order on appeal. State v. Grimes, 111 Wn. App. 544, 547-48, 46 P.3d 801 (2002), review denied, 148 Wn.2d 1002 (2003).

In 2000, the Department of Corrections set Grimes' monthly restitution payments at \$633. Grimes began serving his sentence in 2003. Upon release in 2005, Grimes

initially paid \$100 monthly toward restitution. He later reduced his monthly payment to \$25.

In 2007, the Superior Court King County Clerk's Office (Clerk's Office) issued a "Notice of Violation" alleging Grimes had failed to comply with the restitution payment schedule and was uncooperative in providing accurate employment and financial information. Following a hearing in 2008, the trial court ordered the State to subpoena complete financial information from Grimes.

In January 2014, the Clerk's Office issued a second Notice of Violation alleging Grimes was in violation of his restitution payment schedule and had failed to disclose his complete financial situation. The Clerk's Office further alleged that Grimes' recent tax returns indicated that he could pay substantially more toward his restitution than the \$25.00 per month he had paid since 2008. Based on the restitution payment schedule in the judgment and sentence, the Clerk's Office asked the court to order Grimes to pay at least \$775.02 per month. At the time of the second violation notice, Grimes had paid a total of \$26,642.49 in restitution. The outstanding balance was \$1,564,245.74 of which \$974,216.61 was interest on restitution.

The trial court conducted a hearing over the course of several days in March and April 2014. Both Grimes and a King County legal financial obligations officer testified at the hearing. Grimes argued the trial court could not consider his federal and state pension income and that his monthly restitution payment should be no more than \$100. The trial court found Grimes' monthly income was about \$3,000 and set the monthly restitution payment at \$700.

The court entered an "Order on Failure to Pay" on May 14, 2014. The court also ordered Grimes to provide the Clerk's Office with an updated financial status report twice a year for the first year. The court declined to impose any sanctions on Grimes for the amount of his past restitution payments.

ANALYSIS

On appeal, Grimes contends that the trial court erred in setting a monthly restitution payment of \$700 based on income from exempt sources. Grimes argues under state and federal statutes, his monthly Social Security benefits, military pension, and Boeing Co. pension are all exempt from seizure or attachment to pay his restitution obligation. Although Grimes offers several different calculations, he asserts the exempt monthly payments constitute at least \$2,700. Based on the trial court's finding of a monthly income of \$3,000, Grimes appears to claim that his restitution payment must be based on a monthly income of not more than \$300.

Under the Sentencing Reform Act of 1981, chapter 9.94A RCW, the trial court has broad statutory authority to order restitution. State v. Ashenbener, 171 Wn. App. 237, 248, 286 P.3d 984 (2012). After ordering restitution, the trial court must then "set a minimum monthly payment that the offender is required to make towards the restitution that is ordered." RCW 9.94A.753(1). Under RCW 9.94A.753(4), the trial court retains authority to modify the portion of the sentence related to restitution

as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount.

We generally review the trial court's imposition of restitution for an abuse of discretion. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999).

Preliminarily, we note our review of the arguments Grimes makes on appeal is hampered by his failure to provide a complete appellate record. As the appellant, Grimes bears the burden of providing this court with all portions of the record necessary to review the issues raised on appeal. Story v. Shelter Bay Co., 52 Wn. App. 334, 345, 760 P.2d 368 (1988). Grimes prepared a partial verbatim report containing only a portion of his own testimony and a limited discussion of the exemption issue. The record indicates the parties relied primarily on written briefs submitted to the trial court. Grimes did not include the briefs as part of the record on appeal. Consequently, we cannot determine the precise legal arguments Grimes raised in the trial court.

Moreover, Grimes' arguments rest on his extensive factual allegations about the history of the case and his financial circumstances. But in violation of the Rules of Appellate Procedure, Grimes does not support these factual allegations with any meaningful reference to the record. See RAP 10.3(a)(5), (6) (statement of the facts and legal argument require references to relevant parts of the record). An appellate court has no obligation to search the record for evidence supporting a party's arguments. See Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992).

On appeal, Grimes relies primarily on RCW 6.15.020(2). RCW 6.15.020(2) states, in pertinent part:

Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution,

attachment, garnishment, or seizure by or under any legal process whatever.

Grimes also contends the antiattachment provision of the Social Security Act, 42 U.S.C. section 407(a),¹ and the Veterans Benefits Administration antialienation statute, 38 U.S.C. section 5301(a)(1),² prohibit the trial court from considering his monthly Social Security benefits and military pension benefits when determining the amount of restitution payments.

Our Supreme Court reviewed Washington exemption statutes in Anthis v. Copland, 173 Wn.2d 752, 270 P.3d 574 (2012). The court notes that unlike other exemption statutes, RCW 6.15.020(2) and certain federal statutes contain express language exempting pension benefits from attachment both before and after deposit into the recipient's personal bank account. Anthis, 173 Wn.2d at 758-61 (exemption in RCW 41.26.053(1) for law enforcement officer and firefighter retirement system pension benefits does not continue once pension funds are deposited into personal account of the beneficiary); see also First-Citizens Bank & Trust Co., 181 Wn. App. 595, 601, 326 P.3d 808 (2014) (exemption under 25 U.S.C. section 410 for money derived from lease

¹ 42 U.S.C. section 407(a) provides:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(Emphasis added.)

² 38 U.S.C. section 5301(a)(1) provides, in pertinent part:

Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

(Emphasis added.)

of Indian trust land extends to money deposited in personal bank account); In re Estate of McPherson, 170 Wn. App. 411, 417-18, 283 P.3d 1135 (2012) (42 U.S.C. section 407(a) and 38 U.S.C. section 5301 do not shield assets derived from exempt benefits after beneficiary's death).

But even if we assume that RCW 6.15.020(2) and the other cited federal statutes apply to Grimes' claimed pension income both before and after deposit into his bank account, Grimes makes no showing that the trial court could not consider that income when setting the restitution payment. To determine a minimum monthly payment for restitution, the trial court "should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have." RCW 9.94A.753(1). For purposes of the statutes governing restitution and legal financial obligations, RCW 9.94A.7601 defines "earnings" as follows:

[C]ompensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type.^{3]}

Nothing in RCW 6.15.020(2) or the federal exemption statutes preclude the trial court from considering pension benefits when assessing the defendant's overall financial circumstances for purposes of setting the amount of restitution payments.

Further, Grimes has not established that the trial court's order setting a restitution payment constituted "execution, attachment, garnishment, or seizure by or under any

³ Emphasis added.

legal process whatever.” RCW 6.15.020(2). In Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003), the United States Supreme Court addressed a similar provision of the Social Security Act, 42 U.S.C. section 407(a). The Court first noted that the terms “execution, levy, attachment [and] garnishment” as used in 42 U.S.C. section 407(a) were legal terms of art that “refer to formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involve some form of judicial authorization.” Keffeler, 537 U.S. at 383. The Court concluded that under the interpretative canons of *noscitur a sociis* and *eiusdem generis*, the phrase “other legal process” must be construed restrictively in the context of 42 U.S.C. section 407(a):

Thus, “other legal process” should be understood to be process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.

Keffeler, 537 U.S. at 384-85 (department’s use of Social Security benefits to offset cost of care for foster children did not violate antiattachment provision of 42 U.S.C. section 407(a)); see also In re Guardianship of Knutson, 160 Wn. App. 854, 871, 250 P.3d 1072 (2011) (order directing estate guardians to use Social Security benefits to pay incapacitated adult’s cost of care did not violate antiattachment provision of 42 U.S.C. section 407(a)).

Grimes cites no authority suggesting that the order setting the amount of his restitution payment involved a legal process comparable to execution, levy, attachment, or garnishment.

Grimes' arguments also assume the trial court's order required him to pay his restitution obligation with exempt funds. The record does not support his arguments.

Grimes testified he had borrowed \$150,000 after his release from prison without telling the bank about the restitution obligation. Grimes acknowledged he always makes the \$1,550 monthly payment on the loan and a voluntary monthly payment of \$1,358 to his sister for a "moral obligation." The monthly loan payment and voluntary payment alone exceeded Grimes' claimed monthly income of \$2,800. The record also shows that Grimes always pays his credit card statements. And as the trial court noted, his monthly expenses included "luxuries" such as \$200 for a cell phone and \$125 for cable television. On the record before us, Grimes fails to make any showing that the trial court's order compelled him to pay his \$700 restitution obligation with the allegedly exempt funds. The trial court did not abuse its discretion in setting Grimes' monthly restitution payment at \$700.

For the first time on appeal, Grimes contends the trial court violated his Fourth Amendment right to privacy and his Fifth Amendment right against self-incrimination by requiring intrusive twice-yearly financial reports. Grimes claims the financial reports improperly compelled him to provide information "regarding his daily whereabouts and financial activities."

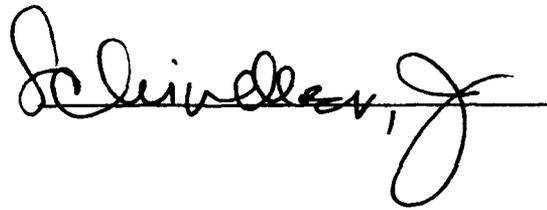
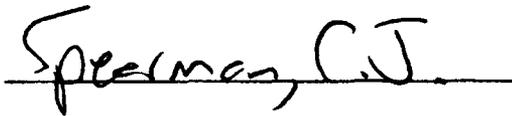
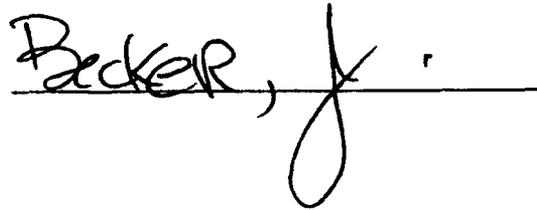
Generally, this court will not address issues that are not first presented to the trial court. RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995).

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In any event, Grimes' arguments are too conclusory to warrant consideration. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

We affirm.

WE CONCUR:

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