

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON; DEPARTMENT  
OF CORRECTIONS,

Respondents,

v.

JOHN THOMAS ENTLER,

Appellant.

No. 38775-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — John Thomas Entler appeals the denial of his motion for a refund of legal financial obligations. We affirm.

**Facts**

In March 1990, Entler pleaded guilty to second degree theft in Cowlitz County cause no. 90-1-00077-7. The trial court sentenced him to four months in jail, with credit for time served, and imposed legal financial obligations. Entler was released from jail in June and served subsequent jail time for violating supervision conditions and failing to pay his legal financial obligations. In 1993, Entler again pleaded guilty to second degree theft and was ordered to pay legal financial obligations in Cowlitz County cause no. 93-1-00469-6. Entler is currently

incarcerated following his conviction of first degree murder, first degree kidnapping, first degree rape, and residential burglary in 1994.

During his incarceration, the Department of Corrections (DOC) has made deductions from Entler's prison wages to repay the legal financial obligations stemming from his 1993 and 1994 convictions. Former RCW 72.11.020 (1989). His financial obligations in cause no. 93-1-00469-6 were satisfied in August 2003 and, in September 2003, the Cowlitz County Clerk applied an additional \$122.24 collected under that cause number to his outstanding obligations in cause no. 90-1-00077-7.

In 2004, Entler sued the Cowlitz County Clerk in an attempt to obtain a refund of that September payment. The trial court granted the county's motion for summary judgment and dismissed the action.<sup>1</sup>

In 2008, Entler filed a motion on the criminal docket, seeking a refund of the September payment because its application to the 1990 cause number was untimely. The trial court denied the motion, apparently agreeing with the county that the 10-year period for enforcing the 1990 judgment had not lapsed because of Entler's continuing incarceration. Entler now appeals that denial.

#### Discussion

Entler argues that he is entitled to a refund of the legal financial obligations that the county applied to his 1990 cause number after the time for collecting those obligations expired.

The statute governing Entler's legal financial obligations explains the time limit on their

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<sup>1</sup> There is no order of dismissal in the record, but the parties agree that Entler's civil suit was dismissed on summary judgment.

collection:

[L]egal 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. . . . 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).<sup>2</sup>

The county argues here that because Entler was incarcerated on other cause numbers when it received the overpayment on the 1993 cause number, that incarceration tolled the 10-year period for collecting the financial obligations on his 1990 cause number. In other words, because Entler had not yet been released from total confinement, the collection period on his 1990 obligations had not expired and the county clerk was authorized to apply the overpayment on the 1993 cause number to his 1990 cause number.

Entler correctly responds, however, that the “release from total confinement” to which RCW 9.94A.760(4) refers is the release from jail or prison for the crime for which legal financial obligations were ordered. *See In re Pers. Restraint of Sappenfield*, 138 Wn.2d 588, 593, 980 P.2d 1271 (1999); *State v. Olson*, 148 Wn. App. 238, 244-45, 198 P.3d 1061 (2009) (addressing similar provision in restitution statute, RCW 9.94A.753(4)). Incarceration for subsequent offenses does not toll the 10-year collection period that applies to pre-July 2000 offenses. *See State v. Gossage*, 165 Wn.2d 1, 8, 195 P.3d 525 (2008) (legal financial obligations for pre-July

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<sup>2</sup> This statute was codified as RCW 9.94A.145(4) when Entler committed his offenses and recodified as RCW 9.94A.760(4) in 2001. As originally enacted, the statute contained substantially comparable language, and we cite the current codification for ease of reference.

2000 offenses expire after 10 years unless the superior court extends them for another 10 years before the first 10-year period expires), *cert. denied*, 129 S. Ct. 2842 (2009); *State v. Adams*, 153 Wn.2d 746, 108 P.3d 130 (2005) (10-year period for collecting legal financial obligations expired 10 years after release date, without reference to defendant's subsequent incarceration on new offenses). Nor does incarceration for probation and restitution violations related to the original crime toll the 10-year period. Because such incarceration is not for the crime for which financial obligations were ordered, it does not toll or affect the running of the 10-year period. *In re Pers. Restraint of Spires*, 151 Wn. App. 236, 244, 211 P.3d 437 (2009); *Olson*, 148 Wn. App. at 245.

Consequently, neither Entler's incarceration for violating his supervision conditions and refusing to pay his legal financial obligations nor his incarceration for new convictions extended the 10-year period during which the financial obligations for his 1990 cause number could be collected. The trial court did not extend the collection period before it expired, and the 1990 legal financial obligations became void in 2000. Thus, the county clerk improperly applied the overpayment to them in September 2003.

The more difficult issue is that of remedy. In his opening brief, Entler assumes that the county clerk has continued to apply payments to the 1990 cause number and that this court should order their cessation as well as their refund. The record shows, however, that the county clerk wrote off the remaining balance of the 1990 debt in 2004 because the accounts receivable were over ten years old. Consequently, only the single overpayment of \$122.24 that was applied to the 1990 cause number in September 2003 is at issue.

Entler provides no authority for the proposition that the trial court can or should refund this money to him seven years after its application to his 1990 cause number, and we have found none. It would appear that his remedy is a civil suit against the county, which he has already pursued. *See Sappenfield*, 138 Wn.2d at 595. Apparently, the action was dismissed on summary judgment because Entler did not first file a tort claim with the county. *See* RCW 4.96.010(1) (filing claim for damages within time allowed by law is condition precedent to any action against local governmental authority claiming damages). It appears that the three-year statute of limitations applicable to such a claim has expired. *See* RCW 4.16.080; *Crisman v. Crisman*, 85 Wn. App. 15, 19, 931 P.2d 163 (conversion claims are subject to three-year statute of limitations), *review denied*, 132 Wn.2d 1008 (1997).

The county argues that Entler's only recourse is a civil suit against DOC. We requested an additional respondent's brief from DOC in this case, but DOC argues that it should not be a respondent because Entler never filed a tort claim against it. *See* RCW 4.92.110 (no action shall be commenced against state employees for damages from tortious conduct until 60 days after claim is presented to risk management division). Moreover, DOC never collected any funds on the 1990 cause number, and it is the county and not DOC that applied the overpayment to the expired 1990 obligations. We agree that Entler has no recourse against DOC for the county's misallocation of legal financial obligations.

We may affirm a trial court for any reason the record supports. *State v. Frodert*, 84 Wn. App. 20, 25, 924 P.2d 933 (1996), *review denied*, 131 Wn.2d 1017 (1997). We affirm the order denying Entler's motion for a refund because the statute of limitations has run on the only course of action available for obtaining such relief.

No. 38775-1-II

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, J.

We concur:

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WORSWICK, A.C.J.

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CASEY, J.P.T.