IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. A.M.K., Appellant.	No. 40103-7-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A.M.K.,[1] born on September 9, 1993, entered into a deferred disposition with the Pierce County Juvenile Court for the charge of second degree taking a motor vehicle without permission. The deferred disposition required her, among other things, to write a letter of apology, pay a crime victim fine, and make restitution. When she did not do so, the juvenile court revoked the deferred disposition. She appeals, arguing that she received ineffective assistance of counsel because her attorney failed to interview her family before the revocation hearing to determine how they could make payments toward the restitution. Concluding that her argument fails, we affirm.[2]

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[1] Under RAP 3.4, this court changes the title of the case to the juvenile's initials. The ruling uses initials for the juvenile and his family to protect the juvenile's rights to confidentiality.

[2] A commissioner of this court initially considered A.M.K.'s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

On April 15, 2008, A.M.K. was a passenger in a vehicle that was involved in a high speed police chase, during which the driver lost control and crashed into a house. The driver and A.M.K. abandoned the vehicle, but police used a K-9 track to find them.

On August 28, 2008, A.M.K. entered into a deferred disposition for a charge of second degree taking a motor vehicle without permission. The juvenile court ordered A.M.K. to one day of house arrest and to complete 60 hours of community service. The court ordered A.M.K. to pay a $100 crime victim penalty assessment fine, to pay restitution to the victim, to write a letter of apology to the victim within 14 days to be delivered to probation, and to have no contact with the victim.

At the time the deferred disposition was entered, the restitution estimate was $19,000 to $20,000. The court expressed concern that A.M.K. could not pay such a large amount. A.M.K.'s attorney, Patrick Cooney, responded that A.M.K.

> will get a job and she can contribute as much as she can every month with the support of her family. There's also possibly other sources from the family's point of view to pay for this, depending on whether the restitution increases here or not.

Report of Proceedings (RP) at 7. Later, the court set the restitution amount, made joint and several with the driver, at $19,648.60.

On August 27, 2009, A.M.K. appeared before the court for a review hearing. The court found that A.M.K. had not completed all the requirements of the deferred disposition and scheduled a hearing to determine whether her deferred disposition should be revoked. A.M.K. completed her community service hours. But she failed to complete a letter of apology to the victim, failed to pay the crime victim penalty assessment, and failed to make restitution payments. At the revocation hearing on November 30, 2009, the prosecutor asked the juvenile court to

revoke the deferred disposition. Cooney had a conflict that day, so John Austin was present to represent A.M.K. Austin stated he believed A.M.K. had made a $20 payment. Austin stated that A.M.K. had brought a letter of apology to the victim with her that day to court, and he stated the restitution was an amount "they're not going to be able to afford." RP at 26. The juvenile court revoked the deferred disposition, from which A.M.K. appeals.

A.M.K. argues that she received ineffective assistance of counsel because Austin failed to consult her and her family before the revocation hearing about their means to pay and the circumstances behind why they did not pay. In her appellate brief, A.M.K. claims that she and her family had the means to pay the restitution and the crime victim penalty assessment fine. A.M.K. contends that Austin failed to exercise the customary skills and diligence that a reasonably competent attorney would have exercised under the circumstances by not consulting with them before the revocation hearing. *State v. Visitacion*, 55 Wn. App. 166, 173, 776 P.2d 986 (1989) (citing *State v. Sardinia*, 42 Wn. App. 533, 539, 713 P.2d 122, *review denied*, 105 Wn.2d 1013 (1986)).

We presume that counsel was effective. *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). The burden is on the defendant to show deficient representation. *McFarland*, 127 Wn.2d at 335. To prevail on a claim of ineffective assistance, the defendant must show (1) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness based on all the circumstances; and (2) the deficient performance prejudiced him because, had the errors not occurred, the result probably would have been different. *McFarland*, 127 Wn.2d at 334-35 (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)).

The defendant must satisfy both criteria in order to show that the conviction "resulted from a breakdown in the adversary process that renders the result unreliable." *State v. Garrett*, 124 Wn.2d 504, 518, 881 P.2d 185 (1994) (citing *Strickland*, 466 U.S. at 687).

A.M.K. relies on *Hawkman v. Parratt*, 661 F.2d 1161, 1165 (8th Cir. 1981), and *Visitacion*, 55 Wn. App. at 174. In *Hawkman*, the court held that the defendant had received ineffective assistance of counsel because, in part, his attorney failed to adequately investigate the facts prior to advising the defendant to plead guilty. In *Visitacion*, the court held that the defendant had received ineffective assistance of counsel when his counsel refused his request to call witnesses on his behalf that were identifiable from police reports.

But unlike in *Hawkman* or *Visitacion*, there is nothing in the record showing Cooney or Austin failed to discuss with A.M.K. or her family their financial situation or ability to pay the restitution amount. The record does show that at least some kind of interview took place between Austin and A.M.K. because Austin stated that A.M.K. brought the letter of apology to the revocation hearing. The record also reflects that A.M.K. or her family did know how to make payments toward the restitution award because a $20 payment was made. A.M.K. fails to show that her counsel's performance fell below an objective standard of reasonableness based on all the circumstances.

A.M.K. further argues that had Cooney or Austin known that she had the means to pay but not the knowledge of how to pay, they could have told her how to pay and the deferred disposition would not have been revoked. However, nothing in the record shows that A.M.K. or her family had the means to pay the restitution. Moreover, A.M.K. had failed to satisfy other requirements of the deferred disposition because she did not write a letter of apology to the victim

within 14 days of the order being entered or pay the crime victim assessment. Thus, A.M.K. has not shown that the result of her revocation hearing probably would have been different.

A.M.K.'s claims of ineffective assistance of counsel fail. We affirm her conviction.

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.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

PENOYAR, C.J.