

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

GINGER JEAN HAWKINS,

Appellant.

No. 38823-5-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Ginger Jean Hawkins appeals the restitution order entered against her, arguing that it was not entered within the time required by the restitution statute. Concluding that the trial court did not err in entering the order, we affirm.¹

On January 14, 2008, Hawkins pleaded guilty to vehicular assault. On February 13, 2008, the trial court sentenced her and scheduled a restitution hearing for April 15, 2008. On April 15, 2008, the parties signed and the trial court entered a scheduling order rescheduling the restitution hearing to June 9, 2008. On June 9, 2008, the parties signed and the trial court entered a scheduling order rescheduling the restitution hearing to July 3, 2008. On July 3, 2008, the parties signed and the trial court entered a scheduling order rescheduling the restitution hearing to August 21, 2008. In that order, Hawkins’s counsel added the following: “Defendant authorizes counsel to waive 180[-day] right to restitution hearing to an additional 60 days to accommodate above dates.” Clerk’s Papers at 35. On August 19, 2008, the trial court entered a scheduling order rescheduling the restitution hearing to September 26, 2008. On September 26, 2008, the

¹ A commissioner of this court initially considered Hawkins’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

trial court conducted a contested restitution hearing in which the State presented evidence and counsel presented argument. The trial court requested briefing and took the matter under advisement. The State filed a brief on October 20, 2008. On January 23, 2009, the trial court entered its restitution order, requiring Hawkins to pay \$80,000 in restitution to the victim's health care insurer. She appeals.

Hawkins argues that the trial court failed to comply with RCW 9.94A.753(1), which requires the court to determine the amount of restitution within 180 days of sentencing. *State v. Tetreault*, 99 Wn. App. 435, 437, 998 P.2d 330, *review denied*, 141 Wn.2d 1015 (2000); *see also State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). She contends that neither her restitution hearing, held on September 26, 2008, nor her restitution order, entered on January 23, 2009, fell within the required 180-day period, so her restitution order should be vacated.

RCW 9.94A.753(1) provides that "the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days." It further provides that "[t]he court may continue the hearing beyond the one hundred eighty days for good cause." RCW 9.94A.753(1). A motion to continue the restitution hearing must be made before the time limit has expired. *State v. Halsey*, 140 Wn. App. 313, 326, 165 P.3d 409 (2007); *State v. Johnson*, 96 Wn. App. 813, 816-17, 981 P.2d 25 (1999). Hawkins's 180-day time limit would have expired on August 12, 2008. But on July 3, 2008, before that limit expired, she authorized a 60-day extension of the limit, making the time limit October 10, 2008.² The trial court conducted the

² In her reply brief, Hawkins argues that she only authorized an extension to the August 21, 2008 hearing date scheduled in that order and not to any other date. In the alternative, she argues that the waiver was vague and should be invalidated. But the waiver which her counsel drafted does not appear vague, so we do not invalidate it.

restitution hearing on September 26, 2008, within the time limit.

The trial court did not determine the amount of restitution until its January 23, 2009 order. But because Hawkins has not provided this court with a transcript of the September 26, 2008 hearing, we cannot evaluate her claim that the trial court did not have good cause to extend the time limit for ordering restitution. All she provided were journal entries indicating the request for briefing and the decision to take the matter under advisement. In the absence of an adequate record, we decline to reach the issue of whether the trial court had good cause to extend the time limit for ordering restitution. *State v. Wade*, 138 Wn.2d 460, 465, 979 P.2d 850 (1999). We, therefore, affirm the restitution order entered on January 23, 2009.³

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:

HOUGHTON, P.J.

HUNT, J.

³ In addition, by timely commencing the restitution hearing and then taking the matter under advisement pending the filing of briefing, the trial court appears to have tolled the time limit for ordering restitution, similar to the tolling that occurs under the time for trial rule, CrR 3.3, when the trial court timely commences a trial and then takes a recess.