

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON, |) | No. 65367-9-I |
| |) | |
| Respondent, |) | DIVISION ONE |
| |) | |
| v. |) | |
| |) | |
| WILLIAM ADAM GRAY, |) | UNPUBLISHED |
| |) | |
| Appellant. |) | FILED: <u>June 6, 2011</u> |
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| |) | |

Cox, J. — William Gray challenges the trial court’s modification of its restitution order after the statutory 180-day deadline specified in RCW 9.94A.753, the restitution statute. He claims that the court was without authority to modify the restitution order to include additional funeral and burial costs after the expiration of the statutory time limit for seeking restitution. Because Gray remains under the jurisdiction of the court and the court made a timely modification of the original amount of restitution, we affirm.

Gray pled guilty to one count of first degree manslaughter for recklessly causing the death of Sanelive Hikila on November 5, 2006. Gray also pled guilty to another count not relevant to this appeal. The plea agreement provided, “Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts”¹

A sentencing hearing was held on June 5, 2009. At the hearing, the State requested that Gray pay restitution in an amount to be set at a later date, after the Prosecutor's Office's Victim Assistance Unit had computed the appropriate amount. The court agreed.

On June 10, 2009, an investigator with the Victim Assistance Unit sent a letter to Hikila's family, inquiring if the family sought any restitution reimbursement. The investigator did not receive a response. However, the investigator received information from the Crime Victims Compensation Program stating that \$6,730.82 for funeral expenses of Hikila had been expended from its funds.

On August 12, 2009, the court entered a restitution order requiring Gray to pay restitution to the Crime Victims Compensation Program in the amount of \$6,730.82. The documents in the record indicate that this amount was paid to the personal representative of Hikila's estate, Salame Hikila.

In early April 2010, Hikila's family contacted the Prosecutor's Office, indicating that they wished to seek additional restitution for Hikila's funeral and burial expenses in the amount of \$15,253.32. This included \$2,386.00 for the headstone, \$6,500.00 for items specific to cultural funeral rites, \$504.16 for a memorial and flower vase, and \$5,863.16 related to other internment expenses. These requests were supported by documentation indicating that they had been paid for by Salome Hikila. At this time, the family also indicated that they had

¹ Clerk's Papers at 23.

not received the June 10, 2009, letter from the Victim Assistance Unit.

On April 30, 2010, the State moved to modify the restitution award to add this additional \$15,253.32 in funeral and burial expenses. Gray opposed the motion, arguing that it was untimely because more than 180 days had elapsed since sentencing. The court granted the State's motion, amending the amount of restitution.

Gray appeals.

MODIFICATION OF RESTITUTION AMOUNT

Gray contends that the trial court erred by modifying the restitution order to increase the total amount of restitution. He argues that the modified restitution order is untimely and inconsistent with the supreme court's holding in State v. Gonzalez² because it was granted for expenses incurred prior to the entry of the original, timely restitution order. We disagree.

A sentencing court's power to impose restitution is statutory.³ "Whether a trial court has exceeded its statutory authority is an issue of law reviewed de novo."⁴ Interpretation of the restitution statute is also an issue of law that this court reviews de novo.⁵

² 168 Wn.2d 256, 226 P.3d 131, cert. denied, ___ U.S. ___, 131 S. Ct. 318, 178 L. Ed. 2d 207 (2010)).

³ State v. Burns, 159 Wn. App. 74, 78, 244 P.3d 988 (2010); RCW 9.94A.753.

⁴ Id. (citing State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003)).

⁵ Id. (citing Gonzalez, 168 Wn.2d at 263).

RCW 9.94A.753 governs the court's authority to impose and modify restitution. "When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days."⁶

The statute provides for modification of a restitution order as follows:

The portion of the sentence concerning restitution ***may be modified 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.^[7]

The supreme court recently addressed the modification provision of the restitution statute in Gonzalez. There, the trial court convicted Robert Bustmante Gonzalez of first degree assault and first degree robbery.⁸ Gonzalez's victim suffered extensive injuries to his face, was airlifted to Harborview Medical Center, and underwent reconstructive surgery.⁹ A court found Gonzalez guilty of first degree assault and first degree robbery.¹⁰

At the January 5, 2004, sentencing hearing, the trial court ordered Gonzalez to pay more than \$20,000 in restitution for expenses incurred as a result of the victim's medical treatment.¹¹ After this amount of restitution was

⁶ RCW 9.94A.753(1).

⁷ RCW 9.94A.753(4) (emphasis added).

⁸ Gonzalez, 168 Wn.2d at 259-60.

⁹ Id.

¹⁰ Id.

¹¹ Id.

ordered, the victim continued to accrue medical bills.¹²

On June 30, 2006, more than two years after sentencing, the State moved to amend the restitution order to add \$25,561.30 in additional medical expenses incurred after the initial restitution award.¹³ Gonzalez opposed the motion, arguing that the word “amount” in the statute is ambiguous because it may “mean either the total amount of restitution or the amount of the monthly payment” set by the court.¹⁴ Gonzalez also argued that the State’s motion was untimely because more than 180 days had elapsed since sentencing. The trial court granted the State’s motion, and amended the restitution order.¹⁵

The supreme court affirmed the trial court, holding that “RCW 9.94A.753(4) unambiguously **allows the total amount of restitution to be modified** ‘during any period of time the offender remains under the court’s jurisdiction.’”¹⁶

The supreme court also found that this plain language interpretation was consistent with the legislative intent of the restitution statute.¹⁷

When the legislature enacted the restitution statute, it clearly stated its intent that victims be afforded legal protections at least as strong as those given to criminal defendants. . . . **The**

¹² Id. at 260.

¹³ Id.

¹⁴ Id. at 263.

¹⁵ Id. at 260.

¹⁶ Id. at 266 (emphasis added).

¹⁷ Id. at 265.

legislature's amendments to the restitution statute demonstrate that the legislature has consistently sought to ensure that victims of crimes are made whole after suffering losses caused by offenders and to increase offender accountability. It established the monthly minimum payment system, for example, as part of its effort to "hold[] offenders accountable to victims . . . for the assessed costs associated with their crimes" and provide "remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." Thus, according to the statute's plain language and legislative history, **it is clear the statute is intended to ensure that defendants fulfill their responsibility to compensate victims for losses resulting from their crimes. The plain meaning of the modification provision of RCW 9.94A.753(4) advances this intent by allowing an amendment to restitution in order to compensate a victim for losses resulting from a defendant's [crime].**^[18]

Here, the sentencing court timely determined that \$6,930.82 was the proper original amount of restitution. The words of the statute are plain. "The portion of the sentence concerning restitution **may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction.**"¹⁹ It is undisputed that Gray was still subject to the court's jurisdiction at the April 10, 2010, hearing on the State's motion to modify the amount of restitution. The court properly increased the amount of restitution by the \$15,253.32 amount that the State requested.

Gray argues that a court may not modify a restitution award to include amounts that were incurred prior to the initial restitution award. This argument is unsupported either by the plain words of the statute or the cases on which he

¹⁸ Id. at 265-66 (emphasis added) (internal citations and quotations omitted).

¹⁹ RCW 9.94A.753(4) (emphasis added).

relies.

Gray does not point to any language in the statute to support this claim. Rather, he relies on his reading of Gonzalez. Specifically, Gray claims that the court's reference to ongoing expenses incurred after the entry of the initial restitution order somehow alters the plain words of the statute. It does not. While the Gonzalez court did discuss the reasons that modification was appropriate under the facts of that case, the holding is not limited to those facts. The court's primary analysis focuses on the appropriate interpretation of the plain words of the modification provision. Those plain words support the result here.

Moreover, that court specifically addressed the legislative intent behind the restitution statute and concluded that:

the statute is intended to ensure that defendants fulfill their responsibility to compensate victims for losses resulting from their crimes. The plain meaning of the modification provision of RCW 9.94A.753(4) advances this intent by allowing an amendment to restitution in order to compensate a victim for losses resulting from a defendant's [crime].^[20]

The court did not conclude, as Gray now argues, that this purpose was only relevant if the expenses were accrued after the entry of the initial restitution order.

Likewise, State v. Goodrich²¹ is also unpersuasive. There, the court merely held that restitution may not be ordered for expenses not yet incurred

²⁰ Gonzalez, 168 Wn.2d at 265-66.

²¹ 47 Wn. App. 114, 733 P.2d 1000 (1987).

and noted that the statute provides an alternative remedy.²² The State may seek to amend the amount of the award after the expenses are incurred.²³

Finally, Gray submitted a statement of additional authorities citing this court's recent decision in State v. Burns²⁴ for the proposition that Gonzalez does not apply where the amount of restitution could have been accurately determined within the 180-day deadline for seeking restitution. Burns does not support Gray's argument because it is factually distinguishable.

There, Burns pled guilty to one count of first degree theft, two counts of second degree theft, and one count of forgery.²⁵ Burns agreed to pay restitution in the amount of \$8,923.25 for the charged crimes.²⁶ "At the sentencing hearing, the court ordered restitution in this amount, 'plus any additional restitution' for several uncharged crimes."²⁷ The court did not hold a hearing to set the amount of restitution for the uncharged crimes until long after the expiration of the 180-day deadline.²⁸ At the hearing, the court ordered Burns to pay \$93,237.40 in restitution for the uncharged crimes.²⁹ Burns appealed, arguing that the

²² Id. at 116-17.

²³ Id.

²⁴ 159 Wn. App. 74, 244 P.3d 988 (2010).

²⁵ Id. at 77.

²⁶ Id.

²⁷ Id.

²⁸ Id.

additional restitution order for the uncharged crimes was not timely entered.

On appeal, the State argued that the additional order of restitution was merely a modification of the initial restitution order under RCW 9.94A.753(4), and as such, it was not subject to the 180-day deadline. We disagreed, concluding “the purpose of those hearings was not to modify the original restitution order; rather, it was to prove for the first time the amount of restitution Burns owed for his uncharged crimes. In other words, restitution for the uncharged crimes was not ‘determined’ until . . . more than 180 days after sentencing”³⁰ in violation of RCW 9.94A.753(1).

Here, the court timely determined the original amount of restitution. Therein lies the major distinction. Moreover, the modified award of restitution here was for the same crime, victim, and type of expense. The modification was proper.

We affirm the order modifying the amount of restitution.

Cox, J.

WE CONCUR:

²⁹ Id.

³⁰ Id. at 79-80.

Dupe, C. S.

Schiveller, J