

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 66355-1-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
KIMBERLY MARIE LINDBERGH,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 2, 2012

PER CURIAM. Kimberly Lindbergh appeals the restitution imposed following her guilty plea to misdemeanor driving while under the influence and reckless driving. Lindbergh contends the court lacked authority to amend the judgment and sentence four months after its entry to add restitution. The State counters that the court had authority to add restitution under CrR 7.8(b)(1), which allows amendments to correct mistakes or inadvertence in a judgment. The State acknowledges that restitution was not ordered at sentencing, but contends sentencing documents made it clear that restitution was requested and that the State was waiting for further information regarding the amount. The State concludes the trial court had authority to amend the judgment under CrR 7.8 because it “inadvertently failed to order restitution at the time of the sentence.” Lindbergh has not responded to the State’s arguments or addressed CrR 7.8.

No. 66355-1-1/2

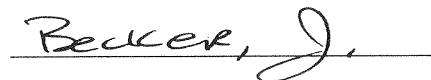
The record is ambiguous as to whether the court intended, but inadvertently failed, to impose restitution at sentencing. The court did not check the box next to “Restitution is not ordered.” But it also did not check boxes for ordering restitution or setting a restitution hearing. At the restitution hearing, the court confirmed that documents before it at sentencing indicated that the State was awaiting further information on the restitution amount. Thus, the omission of restitution from the judgment and sentence may have been inadvertent.

It appears, however, that the court did not consider its authority to correct such an omission under CrR 7.8 because it erroneously believed that restitution was mandatory under RCW 9.94A.753 and that it had the power and duty to amend the judgment to include it. That statute applies to felonies and is therefore inapplicable to Lindbergh’s misdemeanor offenses. See State v. Ring, 134 Wn.App. 716, 720, 141 P.3d 669 (2006); State v. Shannahan, 69 Wn.App. 512, 518, 849 P.2d 1239 (1993).

We remand for the court to clarify whether it intended, but inadvertently failed, to order restitution at sentencing, or whether restitution was simply not considered at that time. If the omission was inadvertent, then the trial court had authority under CrR 7.8(b)(1) to amend the judgment and sentence.

Remanded for proceedings consistent with this opinion.

For the court:

A handwritten signature in cursive script, reading "Becker, J.", written over a horizontal line.

No. 66355-1-1/3

~~Speckman, A.C.~~

~~Schiveller, J~~