

August 18, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

TANNER DAVID BARBER,

Appellant.

No. 53131-3-II

UNPUBLISHED OPINION

LEE, C.J. — Tanner D. Barber appeals his sentence, arguing that the trial court improperly imposed interest on nonrestitution legal financial obligations (LFO) and his judgment and sentence has two scrivener’s errors. The State concedes both errors. We accept the State’s concession and remand to the trial court to strike the interest on nonrestitution LFOs provision and correct Barber’s judgment and sentence.

FACTS

After a jury trial, Barber was convicted of two counts of second degree rape, four counts of first degree rape of a child, and five counts of first degree child molestation. At sentencing, the trial court ordered Barber to pay \$500.00 for a crime victim assessment and a \$100.00 DNA collection fee. The trial court also imposed interest on the LFOs.

Barber’s judgment and sentence states that the date of the crime for Count VI was “02/01/0 – 08/01/06.” Clerk’s Papers (CP) at 195. According to the amended information, the time period alleged for Count VI was between February 1, 2006 and August 1, 2006.

The judgment and sentence also states that the “[f]indings of fact and conclusions of law are attached in Appendix 2.4.” CP at 196. There is no Appendix 2.4 to the judgment and sentence. The findings of fact and conclusions of law regarding the exceptional sentence were entered by the trial court in a separate document.

Barber appeals.

ANALYSIS

Barber argues that the trial court erred in ordering interest on nonrestitution LFOs. Barber also argues that his judgment and sentence has two scrivener’s errors which do not correspond with the court’s ruling. The State concedes both errors. We accept the State’s concessions.

A. LFOs

Barber argues that the trial court erred by imposing interest on nonrestitution LFOs. The State concedes that the trial court erred.

RCW 10.82.090(1) states,

restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.

We review the trial court’s imposition of LFOs for an abuse of discretion. *State v. Ramirez*, 191 Wn.2d 732, 741-42, 426 P.3d 714 (2018).

RCW 10.82.090(1) prohibits interest on nonrestitution LFOs. Therefore, the trial court erred by imposing interest on nonrestitution LFOs. We remand to the trial court to strike the interest on nonrestitution LFOs provision from Barber’s judgment and sentence.

B. SCRIVENER'S ERRORS


Barber also argues that the trial court committed two scrivener's errors in his judgment and sentence. First, Barber contends that the trial court incorrectly listed the date range of Count VI with the start date of the offense as "02/01/0_" rather than the correct date for the start date of the offense as 02/01/06. Br. of Appellant at 5. Second, Barber contends that the trial court erred in stating that the court's findings of fact and conclusions of law related to the exceptional sentence were attached as Appendix 2.4 because the findings of fact and conclusions of law were actually entered by the court as a separate document. The State concedes both of these scrivener's errors.

A scrivener's error is a clerical mistake that, when amended, would correctly convey the trial court's intention, as expressed in the record at trial. *State v. Davis*, 160 Wn. App. 471, 478, 248 P.3d 121 (2011), *superseded by statute on other grounds as recognized in In re Postsentence Review of Combs*, 176 Wn. App. 112, 119, 308 P.3d 763 (2013), *review denied*, 182 Wn.2d 1015 (2015). The remedy for a scrivener's error in a judgment and sentence is to remand to the trial court for correction. *State v. Makekau*, 194 Wn. App. 407, 421, 378 P.3d 577 (2016).

The start of the date range for Count VI should be 02/01/06. Additionally, the judgment and sentence should note that the findings of fact and conclusions of law were entered in a separate document. Accordingly, we remand to the superior court to correct these two scrivener's errors in Barber's judgment and sentence.

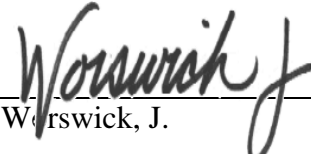
We remand to the trial court to strike the interest on nonrestitution LFOs provision and correct the two scrivener's errors in Barber's judgment and sentence.

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 in accordance with RCW 2.06.040, it is so ordered.




I. C.J.

We concur:



Worswick, J.



Maxa, J.