

August 18, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANTHONY FEOLA,

Appellant.

No. 53199-2-II

UNPUBLISHED OPINION

LEE, C.J. — Michael A. Feola appeals, arguing that his judgment and sentence has a scrivener’s error regarding the amount of his legal financial obligations (LFOs). The State concedes the error. We accept the State’s concession and remand for the trial court to correct the scrivener’s error in Feola’s judgment and sentence.

FACTS

After a jury trial, Feola was convicted of attempted first degree rape of a child (Count I), attempted second degree rape of a child (Count II), attempted commercial sexual abuse of a minor (Count III), and communication with a minor for immoral purposes (Count IV). At the sentencing hearing, the trial court imposed a mandatory fine required under RCW 9.68A.105 against Feola because he was convicted of attempted commercial sexual abuse of a minor. .

The trial court determined that Feola was indigent and stated, “I am going to utilize my discretion . . . to reduce by two-thirds the \$5,000 fine.” Verbatim Report of Proceedings (VRP) (Apr. 8, 2019) at 52-53. However, when the trial court entered the judgment and sentence, it listed

the amount of the fine as “\$3,300 mandatory fine for Commercial Sexual Abuse of a Minor pursuant to RCW 9.68A.105.” Clerk’s Papers at 151.

Feola appeals.

ANALYSIS

Feola argues that his judgment and sentence has a scrivener’s error that does not correspond with the trial court’s intention. Feola contends that the trial court intended to reduce the \$5,000 fine “by two-thirds,” but the judgment and sentence reflects a one-third reduction; thus, the fine should be reduced to \$1,667, rather than the \$3,300 that was listed on the judgment and sentence. Br. of Appellant at 3. The State concedes and agrees that the fine should be \$1,667. We accept the State’s concession.

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 App. 471, 478, 248 P.3d 121 (2011), *superseded by statute on other grounds as recognized in In re Postsentence Review of Combs*, 176 Wn.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).

RCW 9.68A.105 states that

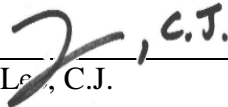
(1)(a) . . . an adult offender who is . . . convicted . . . as a result of an arrest for violating RCW 9.68A.100 [commercial sexual abuse of a minor] . . . shall be assessed a five thousand dollar fee.

(b) The court may not reduce, waive or suspend payment of all or part of the fee assessed unless it finds, on the record, that the adult offender does not have the ability to pay in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

Here, consistent with RCW 9.68A.105, the trial court stated its intention to reduce the \$5,000 fine by “two-thirds.” VRP (Apr. 8, 2019) at 53. Reducing \$5,000 by two-thirds would bring the fine

down to \$1,667, not \$3,300. Thus, the \$3,300 amount is a scrivener's error in the judgment and sentence. Accordingly, we remand to the trial court to correct the scrivener's error.

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.

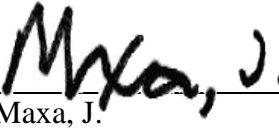


Lewis, C.J.

We concur:



Worswick, J.



Maxa, J.