

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 26230-8-III

Respondent,

)

)

) **Division Three**

v.

)

)

ETHEL GERALDINE FRANK,

) **UNPUBLISHED OPINION**

)

Appellant.

)

)

Kulik, C.J. — In February 1994, Ethel Frank entered an *Alford*¹ plea to one count of theft in the second degree by welfare fraud. Later, the court also ordered that Ms. Frank pay \$56,995.70 in restitution and extended the judgment for 10 years. Proceeding pro se, Ms. Frank appeals an order entitled, “Order Re: Extension of Judgment and Monthly Payments of Restitution.”² The order requires Ms. Frank to pay \$25 per month toward her restitution and to keep the clerk advised of her address. Ms. Frank appeals this order. We conclude that Ms. Frank’s appeal of the May 8, 2007 order is untimely.

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

² Clerk’s Papers (CP) at 94-95.

Ms. Frank also raises additional issues which are either beyond the scope of appeal or without merit. Thus, we dismiss the appeal.

FACTS

In February 1994, Ms. Frank entered an *Alford* plea to one count of theft in the second degree by welfare fraud. The court also ordered that Ms. Frank pay \$56,995.70 in restitution.

On April 12, 2007, Ms. Frank's attorney filed an "Affidavit of Ethel G. Frank" and a "Memorandum re: Extension of Judgment." Clerk's Papers (CP) at 62-66. On May 3, 2007, Ms. Frank's attorney filed a "Motion to Vacate Extension of Restitution." CP at 89. The State filed the "State's Memorandum re: Extension of Judgment" on May 1, 2007. CP at 87-88. The court considered the memoranda of the parties and held a hearing on May 8, 2007. The court issued a written order dated May 8, 2007, denying the motion to vacate the extension of judgment entered in 2004. This order was entitled, "Order Re: Extension of Judgment and Monthly Payments of Restitution." CP at 94-95.

ANALYSIS

Ms. Frank has elected to proceed pro se. Pro se litigants are held to the same rules of procedure and substantive law as attorneys. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

In her notice of appeal, Ms. Frank challenges a written order of the trial court dated May 8, 2007, denying a motion to vacate the extension of judgment entered in 2004. This order requires Ms. Frank to pay \$25 per month toward her restitution obligation. Ms. Frank does not list any other challenged orders in her notice of appeal. RAP 2.4(a) states, in part, that “[t]he appellate court will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal.” Significantly, RAP 2.4(a) provides that the appellate court will modify the decision which is the subject of review “only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.”

Here, the court need not modify the decision which is the subject of review. Ms. Frank identifies only one order in the notice of appeal, and we need not address challenges to any other orders because they are beyond the scope of the notice of appeal. Moreover, this court will not review issues that have been inadequately briefed or which have received only passing treatment. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 416, 120 P.3d 56 (2005) (quoting *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004)).

In her brief, Ms. Frank challenges the underlying judgment; however,

RCW 10.73.090(1) provides that “[n]o petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.” The one-year limit does not apply in the circumstances identified in RCW 10.73.100, none of which are applicable here.

Ms. Frank lists six assignments of error. In Ms. Frank’s first assignment of error, she contends that the court erred by extending the judgment in August 2004, without reviewing the record, and without argument as to why the judgment is incorrect and should not be extended. The challenge to this ruling is untimely and beyond the scope of the notice of appeal. Moreover, the transcript reveals that the court had read the file when it stated, “I think the file is replete with references to Ms. Frank.” Report of Proceedings (May 8, 2007) at 3. Ms. Frank contends that she was improperly served with a notice of hearing seeking extension of the judgment. However, notice of a request to extend a criminal judgment is not required. *State v. Hotrum*, 120 Wn. App. 681, 685-86, 87 P.3d 766 (2004).

In her second assignment of error, Ms. Frank argues that the court erred by extending the judgment in 2007, without the file being present. However, as demonstrated above, there is evidence that the court had read the file. Moreover, this

argument is beyond the scope of the notice of appeal.

In her third assignment of error, Ms. Frank contends there is a newly-discovered clerical error in the appeal in this case that is not harmless. She also argues that there was a clerical error in the transmission of documents, including the signed plea agreement, appendix C restitution, marked charged counts, and amended information. However, Ms. Frank fails to explain the clerical error or show how she was prejudiced by any clerical error. Additionally, this argument is untimely and beyond the scope of the notice of appeal.

Ms. Frank argues that this court should accept additional evidence pursuant to RAP 9.11. However, she does not explain how this evidence meets the requirements of RAP 9.11.

Ms. Frank contends that she received ineffective assistance of counsel. To establish ineffective assistance of counsel, Ms. Frank must show deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997). Prejudice occurs if, but for the deficient performance, there is a reasonable probability the outcome of the proceedings would have been different. *State*

v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). There is a strong presumption of effective assistance, and the defendant bears the burden of demonstrating the absence in the record of a strategic basis for the challenged conduct. *Id.* at 335-36. A stipulation of facts may represent a tactical decision by counsel. *State v. Mierz*, 127 Wn.2d 460, 476, 901 P.2d 286 (1995). Ms. Frank does not explain how she was prejudiced.

In her fourth assignment of error, Ms. Frank asserts that the appellate court erred by not preserving her rights of appeal in this case. She then argues that she did not know about the determination of indigency form but fails to explain why it was the court's responsibility to give her this information or how her failure to get this information prejudiced her ongoing appeal. This argument is beyond the scope of the notice of appeal.

In her fifth assignment of error, Ms. Frank contends that the trial court erred by entering the order of restitution for \$56,995.70. She maintains that she never made a false statement to the Department of Social and Health Services to attempt to obtain, or to obtain, public assistance and food stamps for which her family was ineligible. Any attack on this order is untimely and beyond the scope of the notice of appeal.

In her sixth assignment of error, Ms. Frank maintains that the State erred by not

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following its own policies and procedures before filing criminal charges and when determining overpayments leading to restitution for Ms. Frank. These claims are untimely and beyond the scope of the notice of appeal.

Based on the foregoing, we dismiss the appeal.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, C.J.

WE CONCUR:

Sweeney, J.

Korsmo, J.