

IN THE SUPREME COURT, STATE OF WYOMING

2024 WY 26

October Term, A.D. 2023

March 6, 2024

EDGAR ALLEN STITZEL,

Appellant
(Defendant),

v.

THE STATE OF WYOMING,

Appellee
(Plaintiff).

S-23-0289

ORDER ON CONFESSION OF ERROR

[¶1] **This matter** came before the Court upon Appellee’s Motion Confessing Error, e-filed herein February 23, 2024. After a careful review of the motion and the file, this Court finds as follows.

[¶2] Appellant took this appeal to challenge the Albany County District Court’s October 3, 2023, Order of Split Sentence and Unsupervised Probation. Appellant entered an unconditional guilty plea to one count of failure to register as a sex offender. Wyo. Stat. Ann. §§ 7-19-302 and 7-19-307(c). As part of Appellant’s sentence, the district court, relying on Wyo. Stat. Ann. § 1-40-119, ordered Appellant to pay a \$250 surcharge to the Wyoming Crime Victim’s Compensation Fund.

[¶3] In his only issue in this appeal, Appellant challenges that surcharge, arguing it is not authorized by Wyo. Stat. Ann. § 1-40-119. That statute provides in pertinent part:

§ 1-40-119. Surcharge to be assessed in certain criminal cases; paid to account.

(a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, or is convicted of, the following criminal offenses shall be assessed a surcharge of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) for the offenses specified in paragraph (v) of this subsection, not less than one hundred fifty dollars (\$150.00) nor more than three hundred fifty dollars (\$350.00) for the first plea to or conviction of

offenses specified in paragraphs (i) through (iv) of this subsection, and not less than two hundred dollars (\$200.00) nor more than four hundred dollars (\$400.00) for each subsequent plea to or conviction of offenses specified in paragraphs (i) through (iv) of this subsection:

- (i) Any violation of W.S. 6-1-101 through 6-2-313 and 6-2-319 through 6-10-203;
- (ii) Any violation of W.S. 31-5-225, 31-5-229, 31-5-233 or 41-13-220(a);
- (iii) Any violation of W.S. 35-7-1001 through 35-7-1057;
- (iv) Any violation of W.S. 6-2-314 through 6-2-318;
- (v) Any violation of a municipal ordinance which has substantially similar elements to the criminal offenses specified in paragraphs (ii) through (iv) of this subsection or any other violation of a municipal ordinance which causes actual damage to persons or property.

[¶4] In its Motion Confessing Error, the State agrees with Appellant and confesses error. This Court agrees that Wyo. Stat. Ann. § 1-40-119 does not require or permit the district court to impose the surcharge when a defendant is convicted of failing to register as a sex offender pursuant to Wyo. Stat. Ann. § 7-19-302 and § 7-19-307(c). This Court also agrees the surcharge should be stricken. *Crosby v. State*, 2011 WY 44, ¶ 8, 247 P.3d 876, 878 (Wyo. 2011). It is, therefore,

[¶5] **ORDERED** that the Motion Confessing Error, e-filed herein February 23, 2024, be, and hereby is, granted. The \$250 surcharge to the Wyoming Crime Victim's Compensation Fund shall be stricken from Appellant's sentence. The Albany County District Court's October 3, 2023, Order of Split Sentence and Unsupervised Probation is otherwise affirmed. This Court retains no jurisdiction over this matter.

[¶6] **DATED** this 6th day of March, 2024.

BY THE COURT:

/s/

KATE M. FOX
Chief Justice