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Supreme Court No. 101512-7

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON MICHAEL RAMOS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITIONER'S ANSWER TO STATE'S CROSS-PETITION

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A. INTRODUCTION

Jason Ramos filed a petition for review asking this Court to accept review of his challenges to restitution, interest, and the victim penalty assessment under the Excessive Fines Clause. The State filed a cross-petition asking this Court to review the Court of Appeals's consideration of Mr. Ramos's claims that were raised for the first time on appeal.

This Court should deny the State's cross-petition. The Court of Appeals correctly concluded the issues were properly before it under RAP 2.5(c)(1) because the trial court conducted a complete sentencing hearing. The Court of Appeals also properly exercised its discretion under RAP 2.5(a)(3) after concluding the issues Mr. Ramos raised were manifest constitutional error. The State's cross-petition fails to present any issue meriting this Court's review. *See* RAP 13.4(b). This Court should grant Mr. Ramos's petition for review and deny the State's cross-petition.

B. ARGUMENT

This Court should deny the State's cross-petition because the Court of Appeals properly exercised its discretion to consider Mr. Ramos's arguments.

At Mr. Ramos's 2021 sentencing, the trial court held a full sentencing hearing and exercised its independent judgment to impose a new term of confinement and financial penalties.

The Court of Appeals properly considered Mr. Ramos's arguments under RAP 2.5. *State v. Ramos*, ___ Wn. App. 2d ___, 520 P.3d 65, 71 (2022). The State fails to demonstrate any reason for this Court to review that decision

1. The trial court conducted a complete sentencing hearing, and its decisions to impose restitution, interest, and the victim penalty assessment are properly before the appellate courts under RAP 2.5(c)(1).

The Court of Appeals correctly concluded Mr. Ramos's arguments were properly before it under RAP 2.5(c)(1) because the trial court reviewed those issues at his new sentencing hearing. *Ramos*, 520 P.3d at 71. After this Court's decision in

State v. Blake,¹ Mr. Ramos was entitled to a new sentencing hearing because his offender score included a conviction under the unconstitutional drug possession statute. *See In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 868, 50 P.3d 618 (2002) (Any punishment imposed “based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice.”).

The trial court held a complete, new sentencing hearing. It considered arguments from both counsel regarding the term of confinement. RP 16-28. It considered community custody and conditions. RP 37, 40. It also considered arguments regarding the restitution and interest, and it assessed other legal financial obligations. RP 37-40. The court then issued a new judgment and sentence where it imposed a term of confinement, community custody and conditions, restitution, and the victim penalty assessment. CP 444-54. It expressly did not order Mr.

¹ 197 Wn.2d 170, 481 P.3d 521 (2021).

Ramos to pay the \$100 DNA collection fee, in recognition of a change in the law. RP 39-40; CP 446; *see* Laws of 2018, ch. 269, § 18.

The Court of Appeals correctly concluded “the trial court conducted a complete resentencing hearing” and “[a]ny legal ruling the trial court made” was appropriately before it. *Ramos*, 520 P.2d at 71. Contrary to the State’s assertion, this was not a partial resentencing. State’s Answer and Cross-Petition at 20. Even though portions of the sentence remained the same, the trial court exercised its independent judgment to impose financial penalties, and those issues are appealable. *See State v. Barberio*, 121 Wn.2d 48, 50, 846 P.2d 519 (1993). The trial court’s decisions to impose restitution, interest, and the victim penalty assessment are properly before the appellate court under RAP 2.5(c)(1).

This Court should not consider the State’s untimely argument that Mr. Ramos’s challenge is a time-barred collateral attack. State’s Answer and Cross-Petition at 14-19. The State

raised this argument for the first time at oral argument, and the Court of Appeals properly declined to address it. *Ramos*, 520 P.3d at 71 n.7 (citing RAP 12.1(a)).

In addition, Mr. Ramos's argument is not a collateral attack, and the State is wrong to argue it is. Contrary to the State's argument, the trial court did not merely correct his offender score and standard range and leave all other portions of the prior judgment and sentence undisturbed. State's Answer and Cross-Petition at 14-16. Rather, the trial court exercised independent judgment and conducted a complete sentencing hearing: it entered a new judgment and sentence, imposed a new term of confinement, and imposed restitution, interest, and the victim penalty assessment. CP 444-54. In fact, it explicitly elected to *not* impose certain financial obligations it had previously imposed. *See* RP 39-40. The trial court reviewed and ordered financial penalties, and those decisions are appealable. *Barberio*, 121 Wn.2d at 50.

The State also unsuccessfully challenges the Court of Appeals's consideration of Mr. Ramos's claims based in part on his prior, pro se motion challenging his legal financial obligations. State's Answer and Cross-Petition at 21-23. While the Court of Appeals was correct to note the trial court had ruled on Mr. Ramos's prior motion, this was dicta. Statements in an opinion that "are unnecessary to decide the case constitute obiter dictum, and need not be followed." *In re Pers. Restraint of Domingo*, 155 Wn.2d 356, 366, 119 P.3d 816 (2005) (citations omitted). The Court of Appeals properly concluded the trial court had ruled on the issues at the new sentencing hearing and they were properly before it under RAP 2.5(c)(1). Its comments regarding the prior motion are of no consequence.

2. The issue is manifest constitutional error, and Mr. Ramos's arguments are properly before the appellate courts under RAP 2.5(a)(3).

The Court of Appeals also properly concluded the issue is "manifest error affecting a constitutional right." *Ramos*, 520 P.3d at 72 (quoting RAP 2.5(a)(3)). Under RAP 2.5(a)(3), an

appellate court has discretion to review issues raised for the first time on appeal where (1) the error is of constitutional dimension and (2) it is manifest. *State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

Mr. Ramos's claims meet both requirements. First, this issue implicates Mr. Ramos's constitutional right to not face disproportionate punishment. The Court of Appeals concluded his argument "certainly implicates a constitutional interest," and the State does not contest this. *Ramos*, 520 P.3d at 72.

Second, the error is "manifest" because the trial court ordered an amount that Mr. Ramos cannot pay and the error is exacerbated as the debt accumulates interest. The Court of Appeals concluded this demonstrates "practical and identifiable consequences" and the constitutional error is manifest. *Id.* (quoting *O'Hara*, 167 Wn.2d at 99).

The issue is manifest constitutional error, and the Court of Appeals properly exercised its discretion to consider Mr. Ramos's claims. Indeed, this Court has held that imposing fines

on those who cannot pay is an important issue that can be raised for the first time on appeal. *See State v. Duncan*, 185 Wn.2d 430, 437, 374 P.3d 83 (2016); *State v. Blazina*, 182 Wn.2d 827, 830, 344 P.3d 680 (2015).

3. The State presents no issues warranting this Court's review, and this Court should deny its cross-petition.

This Court will accept review only where the issue meets the criteria under RAP 13.4(b). The State presents no argument the Court of Appeals's decision to review Mr. Ramos's claims warrants this Court's review. This Court should deny the State's cross-petition and accept review of Mr. Ramos's claims as articulated in his petition for review.

C. CONCLUSION

Based on the preceding and the reasons stated in his petition for review, Mr. Ramos respectfully requests this Court grant review of his petition and deny the State's cross-petition pursuant to RAP 13.4(b).

I certify this brief contains 1,569 words and complies with RAP 18.17.

Respectfully submitted this 17th day of January 2023.



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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 101512-7**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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