90034-5

NO. 44739-8-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

Vs.

Andrew Michael Flores,

Petitioner,

PETITION FOR REVIEW

ANDREW Michael Flores, Petitioner
974029
AIRWAY HEIGHTS CORRECTION CENTER
P.O. BOX 2049
Airway Heights Washington 99001

A. IDENTITY OF PETITIONER

Andrew Flores asks this court to accept review of the decision designated in Part B of this motion.

B. DECISION

Petitioner seeks review of the entire decision of the Court of Appeals affirming imposition of Legal Financial Obligations, entered in the Superior Court of Washington For Clark County. A copy of the Commissioner's decision is attached to this Motion. **EXHIBIT A.**

C. ISSUES PRESENTED FOR REVIEW

A. IS THE COMMISSIONER'S RULING CONTRARY TO IT'S OWN CIRCUIT PRECEDENT, AND CONTRARY TO ESTABLISHED SUPREME COURT PRECEDENT.?

B. IS THE COMMISSIONER'S DECISION CONTRARY TO STATUTE OF RCW 10.01.160 ET SEQ.?

D. STATEMENT OF THE CASE

Petitioner first filed a Motion to terminate his LFO's on **March 12, 2012.** The state did not respond.

Petitioner filed a Writ of Mandamus on **January 7, 2013.** This Supreme Court ordered the State to respond.

The State responded to petitioner's motion on **February 7, 2013** arguing "defendants sentence was final on April 17, 2003" When in fact, petitioner's judgment and sentence was finalized on April 3, 2001, The State further argued the issue was not ripe, because petitioner did not allege that the State is not seeking to enforce collection.

On **February 20, 2013** Petitioner filed a response to the States' brief, submitting evidence that WDOC is collecting for the State, additionally evidence was provided that monies were sent from WDOC specifically to Clark County Superior Court Clerk. **SEE EXHIBIT B**

On **April 2, 2013** Judge Daniel Stahnke, denied petitioner's motion to terminate LFO's ruling "the defendant has failed to allege or provide evidence that Clark County is attempting or seeking enforcement/collection action on this obligation".

Petitioner filed a notice to appeal and the Court of Appeals accepted review and appointed John A. Hays, attorney at law, 1402 Broadway St. Longview WA. 98632-3714 to represent petitioner. Counsel Hays filed a Brief of Appellant on**August 17, 2013**, arguing the trial court erred when it denied the defendants motion to terminate his LFO's because the defendant met the criteria for relief set in **RCW 10.01.160(4)**

The State responded on **October 17, 2013.**

On **December 23, 2013,** Eric Schmidt, div. 2 Court Commissioner denied petitioner's motion to terminate LFO's, ruling "the appeal is clearly without merit". **EXHIBIT A**

On **December 27, 2013,** Counsel Hays filed a Motion to Modify Order Granting Motion on the Merits.

The Court of Appeals division II denied the motion to modify without opinion **EXHIBIT C,division II decision.,**

This timely petition for review now follows.

E. STANDARD OF REVIEW

State v Baldwin, 63 Wn.app. 303, 312, 818 P.2d 1116 (1991), Held:

> The trial court's determination "as to defendant's resources and ability to pay is essentially factual and should be reviewed under the **Clearly erroneous standard**.....emphasis added

Baldwin, 63 Wn.app. at 312

Petitioner assigns err to the trial courts imposition of LFO's ie. court costs, fines and sheriff process service fees, which are

discretionary in nature, additionally petitioner argues the ripenesss finding should not apply to petitioner's challenge to the trial court's factual findings and/or lack of findings and this court should review this challenge under the 'CLEARLY ERRONEOUS STANDARD" citing **State v Curry, 118 Wn.2d at 916, 829 P.2d 166 (1992) En banc.**

Additionally, pursuant to **RAP 13.5(b),(1),(2)** which reads in relevant part:

(b), consideration governing acceptance of review. Discretionary review of an interlocutary decision of the Court of Appeals will be accepted by the Supreme Court only;

(1) if the court of appeals has committed probable error which render further proceedings useless; or

(2) if the court of appeals has committed probable error and the decision of the court of appeals substantially alters the status quo or substantially limits the freedom of a party to act.

Petitioner argues the Court of Appeals Commissioner's decision is an misinterpretation of the plain language of Statute **RCW 10.01.160(3) & (4) SEE EXHIBIT C**

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Petitioner cites **State v Curry, 118 Wn.2d 911, 829 P.2d 166(1992) En banc.** and the five factor's this court instituted, which reads in relevant part:

1. Repayment must not be mandatory,
2. Repayment may be imposed only on convicted defendant's,
3. **Repayment may only be ordered if the defendant is or will be able to pay,**
4. **The financial resources of the defendant must be taken into account,**
5. **A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigence will end.**

Curry, 118 Wn.2d at 916, En banc 1992 Emphasis added

State v Haller, citing **Curry**, ruled in regard to the victim penalty assessment, because in that case, the court remanded the court's costs and recoupment. Slip op. at 6 (unpublished opinion)

In the present case, the commissioner's ruling is contrary to established Washington Supreme Court precedent in **Curry**, in that the Judgment and sentence rendered from the Superior Court only held boilerplate language that the court had "considered the total amount owning, the defendant's past, present and future ability to pay [LFO's], including the defendant's financial resources and the likelihood that the [defedant's] status will change".

However, the record did not include any explicit finding that petitioner, had the ability, past, present or future, to pay LFO'S, The record of the sentencing hearing does not reveal the presentation or consideration of any information about petitioner's ability to pay.

It is evident that the Superior Court violated **Curry** factor's No. 3, No. 4

Insufficient evidence supports petitioner's claims that the trial courts findings that he has the current, or future likely ability to pay LFO's was not supported by the record and under **Curry** and **State v Bertrand, 165 Wn.app. 393, 405, 267 P.3d 511 (2011) remand is appropriate** to strike the trial court's ability to pay findings (fees imposed under 10.01.160(3) are discretionary) as in petitoner's case.

PETITIONER'S INDIGENT'S WILL NEVER CHANGE BECAUSE PETITIONER RECEIVED A LIFE WITHOUT PAROLE SENTENCE.

Pursuant to **Curry** factor No. 5, which reads in relevant part: "A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end" **118 Wn.2d at 915-16**

Division 2 in **State v Lundy, 308 P.3d 755 (2013)** cited **Bertrand**, Where the court stated "The record, did not just reveal that the trial court failed to consider whether the defendant could pay legal financial obligations But, to the contrary, should that "in light of bertrands disability, her ability to pay [LFO'S] now or in the future is arguably in question""" 165 Wn.app. at 404 n.15, 267 P.3d 511

Petitioner is not physically incapacitated, however incapacitated nonetheless due in large part to his LWOP sentence.

The **Bertrand** court stated "essentially, the obligation in **Bertrand**--an obligation set to be imposed while the defendant was still incarcerated--Potentially violated the **Fifth** factor of the **Curry** test; " A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end""" **118 Wn.2d at 915 Curry**

Petitioner is under a disability of 'essentailly' a slow death sentence. Reviewing this issue logically, it would stand to reason my ability, just like Bertrands, to a pay LFO's now or in the future is arguably in question. Petitioner's incarceration will be into the unforeseeable future and therefore will violate the fifth **Curry** factor, indigency for petitioner will be present for his nature life.

The court commissioner's ruling is contrary to established Washington State Supreme Court precedent.

THE COMMISSIONER'S RULING IS CONTRARY TO IT'S OWN DIVISION PRECEDENT.

State v Lundy, 308 P.3d 755 (div. 2, 2013) opinioned "If a court intends on imposing **discretionary** legal financial obligations as a sentencing condition, such as court costs and fees, It must consider the defendant's present or likely future abiltiy to pay."" As explained in **Curry** The " salient features of a **Constitutionally** permissble costs

, and fees structure" must meet the **Five Curry factors** Additionally the **Lundy** court added:

No. 6 The convicted person must be permitted to petition the court for remission of the payment of costs or nay unpaid portion,

No. 7 The convicted person cannot be held in contempt for failure to repay.

118 Wn.2d at 915-16, 829 P.2d 166

as to No.6, petitioner did petition the court for remission, however the commissioner and prosecuting attorney claims the issue is not ripe, which is contrary to NO.6 of the **Curry** Test.

Petitioner will distinguish between mandatory and discretionary LFO's, as Judge Hunt stated in **Lundy** this an important distinction because for mandatory LFO's, the legislature has divested courts of the discretion to consider a defendants ability to pay, When imposing these obligations; victim restitution, victim assessments, DNA fees and criminal filing fees, further stating the Legislature has directed expressly that a defendant's ability to pay **SHOULD NOT** be taken into account.

That ruling is contrary to Supreme Court precedent in **Curry** and **RCW 10.01.160 (3) & (4)**

However if this court accepts the premise and argument of the **Lundy** court, then petitioner's **discretionary** LFO's are in err, consisting of $110.00 criminal filing fees; $500.00 fine, and $ 10.50 sheriff service fees

Moreover the record is devoid of a factual finding of the trial court's decision that petitioner had a present or future ability to pay these fees as per **RCW 10.01.160(3), Curry & Lundy**

Majority of the cited cases were ruled upon "victim assessment" and/or restitution.

Petitioner's case is arguably distinguished, in that petitioner's argument is an argument concerning 'discretionary' LFO's imposed and the trial courts lack of findings, on the record, of petitioner's present or future ability to pay and remission of those above mentioned LFO's by Statute and Precedent and remission of costs upon petitioner, correction of his J & S reflecting those remissions is the proper remedy.

2. THE COMMISSIONER'S RULING IS CONTRARY TO STATUTE

Citing **State v Johnson, WL 70549 (En banc. 2014)** " In interpreting a statute, our fundamental objective is to ascertain and carry out the Legislature's intent" **State v Gray, 174 Wn.2d 920, 926, 280 P.3d 1110 En banc 2012** "To properly understand a statute, we look to it's plain meaning, discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question" dissent at 2 quoting **Dep't of Ecology v Campbell and Gwinn, LLC., 146 Wn.2d 1, 11, 43 P.3d 4 (2002)**

RCW 10.01.160(3) reads in relevant part:

> "The court **SHALL NOT** (shall meaning mandatory) order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court **SHALL** (again meaning mandatory) take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose... EMPHASIS ADDED

RCW 10.01.160(3)

RCW 10.01.160(4) reads in relevant part:

> "A defendant who has been ordered to pay costs and who is not in contumacious default in the payment therof may at any **TIME** petition the sentencing court for remission of the payment portion thereof...in relevant part, emphasis added

RCW 10.01.160(4)

SEE EXHIBIT C

Petitioner contends the statutes are not ambiguous, however present and past appellate court decisions are contrary to RCW 10.01.160(3) & (4). The statute unambiguously states "The court SHALL NOT order a defendant to pay costs unless the defendant is or will have the ability to pay them" and "Petitioner can at any TIME petition the court for remission of the payment portion thereof..."

In other words, how is the court to determine, If a defendant has the present or future ability to pay LFO's, without first conducting some sort of hearing, findings or any sort of investigation, as to the defendants ability to pay LFO's, present or future, and it has been well settled that those findings' must be on the record.

Court of Appeals division II went as far as to distinguish between 'discretionary and non discretionary' LFO's. In **Lundy** and **State v Kuster, 175 Wn.app. 420 306 P.3d 1022 div. 3 2013** that court went even further by ruling that because of 'dicsretionary' and 'non-discretionary' LFO's, the trial court was **not required** to consider defendant's past, present or future abiltiy to pay"". Which is contrary to RCW 10.01.160(3)

Those two ruling reflect the conflict for acceptance of review pursuant to RAP 13.4(1) and (2) as well as constitutional considerations.

This Supreme Court ruled in **State v Curry, 118 Wn.2d 911, 829 P.2d 1992** "That this provision does not require the trial court to enter formal specific findings, RATHER, it is only necessary that the **RECORD** is sufficient for the court to review whether the trial court took the defendant's financial resources into account"" emphasis added. Court of Appeals in **State v Bertrand, 165 Wn.app 393, 404, 267 P.3d**

511 (2011) review denied, 175 Wn.2d 1014, 287 P.3d 10 (2012) held "Where trial court DOES NOT ENTER a finding, IT MUST BE SUPPORTED BY THE RECORD"" emphasis added.

At present, there is no evidence that the trial court took defendant's financial resources into account, contrary to **CUrry, 118 Wn.2d at 915-16** but because the trial court in this instance did not enter ANY finding, informal or formal, the record substantiates petitioner's claim because the decision of the trial court was not supported by evidence.

Petitioner further contends the inquiry really should be 'Whether the record revealed that the trial court took petitioner's financial resources into account and the 'Burden' it would impose on petitioner, as required by RCW 10.01.160(3)

IS RCW 10.01.160 ET SEQ NOW AMBIGUOUS BY PAST AND PRESENT APPELLATE COURT RULINGS?

In **State v Crook, 146 Wn.app. 24, 189 P.3d 811(div 3 2008)** that court stated under RCW 10.01.160. " A court may [order] a [criminal] defendant to pay costs...incurred by the [S]tate in prosecuting the defendant."". **RCW 10.01.160(1) & (2)** Inquiry into the defendants ability to pay is appropriate only when the defendants ability to pay is only when the State enforces collection under the judgment and sentence or imposes sanctions for non-payment""

RCW 10.01.160 in it's entirety specifically does not contain the language that court used to make it's ruling. If this court accepts div 3 premises in **Crook** then it will render **RCW 10.01.160 AMBIGUOUS.**

According to **RCW 10.01.160**, either the court **SHALL** make a determination that a defendant can pay or the defendant can not, either

discretionary or non-discretionary, If **SHALL** is mandatory language, then the Appellate court commissioner's ruling is contrary to Statute, established Supreme Court Precedent and it's own circuit rulings, rendering in this case **RCW 10.01.160** AMBIGUOUS or the Commissioner committed probable error contrary to Law and Statute, moreso in light of the record lacking any finding of petitioner's ability to pay.

When viewed in it's totality and Supreme Court rulings giving WDOC authority to deduct 45% of any monies sent or earned by petitioner, whereas, 20% specifically are for LFO's, 20% for cost of incarceration and 5% for crime victims compensation, those percentages are for life without parole inmates, non LWOP's are being deducted at 55%-95% actual deductions and the Legislature in RCW 72.09 111 vested the DOC with the authority to deduct LFO's and TAXES.

Therefore any argument that the State is not enforcing collection is absurd. either the WDOC is collecting by Statute or it is not.

IS RCW 43.43.754 DISCRETIONARY OR NON DISCRECTIONARY?

Accordingly, **RCW 10.01.160** reads, "the court **SHALL** not order, **RCW 7.68.035** (penalty assessment) "There **SHALL** be imposed by the court" **RCW 43.43.754** "every sentence imposed for a crime **MUST** include a fee.

With that being said, according to the language, **RCW 10.01.160** is then ambiguous, because of the Legislative language used to denote strict compliance, **SHALL** meaning mandatory.

Washington courts have ruled **RCW 7.68.035**(penalty assessment) mandatory because of the language **SHALL** then impermissbly changes the Legislative intent of **RCW 43.43.754**, when it specifically

states **MUST** and not **SHALL** on the other hand **RCW 10.01.160** clearly states **"SHALL NOT IMPOSE".**

Petitioner contends this issue is ripe for this court to exercise it's discretion and rule on the ambiguity or nonambiguity of **RCW 10.01.160 and** RCW 43.43. 754

DOES THE IMPOSITION OF INTEREST CREATE AN MANIFEST HARDSHIP UPON PETITIONER THAT HE WILL NEVER BE ABLE TO ERADICATE HIMSELF FROM?

Petitioner contends the imposition of interest upon the principal of the imposed LFO's will keep petitioner at an poverty level that he will never be able to eradicate himself from.

Petitioner's original LFO's were at $110.00 criminal filing fee, $500.00 victim assessment, $500.00 fine, and $10.50 sheriff services fee for an amount of $1,120.50 coupled with petitioner's incarceration for life without parole and the past 14 years it now amounts to approximately $2,700.00 and builds exponentially every month every year, that burden of poverty will never change, perpetual indigence.

This court in State v Curry **"a repayment obligation WILL NOT be imposed if it appears there is no likelihood the defendant's INDIGENCE will end""** Id at 118 Wn.2d at 916, emphasis added, **Curry** factor NO. 5.

Accordingly, by precedent since the imposition of LFO's are not valid, it stands to reason the interest should not apply in this particular case.

The proper remedy is to strike the imposition of LFO's and interest, remand to trial court to correct petitioner's judgment and sentence.

G. CONCLUSION

Petitioner prays this court accepts review grants him relief.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

dated this 4TH day of March, 2014

Andrew M. Flores, pro se.,

SUBSCRIBED AND SWORN to before me this 4th day of March, 2014

NOTARY PUBLIC in and for the State of Washington, residing at Spokane

my commission expires 4/30/14

RACHAEL SHOOK NOTARY PUBLIC COMMISSION EXPIRES 04-30-16 STATE OF WASHINGTON

EXHIBIT A.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ANDREW MICHAEL FLORES, Appellant.	No. 44739-8-II RULING AFFIRMING ORDER DENYING MOTION TO TERMINATE LEGAL FINANCIAL OBLIGATIONS

Andrew Flores appeals from the denial of his motion to terminate the legal financial obligations (LFOs) imposed following his conviction on two counts of first degree child molestation. He argues that the trial court erred in denying his motion because he does not have the current ability to pay the LFOs and would not have the future ability to pay the LFOs. The State filed a motion on the merits to affirm under RAP 18.14. Finding that his appeal is clearly without merit, this court grants the State's motion and affirms the order denying Flores's motion to terminate his LFOs.[1]

[1] Notwithstanding the holding in *State v. Smits*, 152 Wn. App. 514, 524-25, 216 P.3d 1097 (2009), that an order denying a motion to terminate LFOs is not appealable as a matter of right, this court elects to address the merits of Flores's appeal.

In 2000, along with sentencing Flores to life imprisonment without the possibility of parole, the trial court imposed the following LFOs: $110 criminal filing fee, $500 victim assessment, $500 fine and $10.50 sheriff service fees. In 2002, Flores's judgment and sentence were affirmed. In 2004, his personal restraint petition was denied. In 2012, he filed a motion to terminate his LFOs under RCW 10.01.160(3) and (4). In support of that motion, Flores filed an affidavit averring that he was indigent at the time of his arraignment and has remained indigent since, with only $7.06 in his prison account. The trial court denied his motion, ruling that:

> The Defendant has failed to allege or provide evidence that Clark County is attempting or seeking enforcement/collection action on this obligation. As such IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant's request to terminate legal financial obligations for Clark County Cause Number 00-1-01036-2 is DENIED.

Clerk's Papers (CP) at 79.

First, Flores argues that the trial court erred in denying his motion to terminate the LFOs because he had satisfied the requirements of RCW 10.01.160(4), which provides:

> A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

But a motion to terminate LFOs is ripe only when the State seeks to collect the LFOs. *State v. Bertrand,* 165 Wn. App. 393, 405, 267 P.3d 511 (2011), *review denied,* 175 Wn.2d 1014 (2012); *State v. Baldwin,* 63 Wn. App. 303, 310, 818 P.2d 1116 (1991), *amended*, 837 P.2d 646 (1992). Flores did not present any evidence that the State was

seeking to collect his LFOs. On appeal, Flores contends that the State was "uniquely positioned to know that the Department of Corrections is currently deducting money from the defendant's prison account" and should have so informed the trial court, even though Flores did not. Br. of Appellant at 8. But he presents no authority in support his contention that the State had a duty to supplement his motion to terminate his LFOs with information regarding collection of those LFOs. Flores had the same access to the documentation regarding his prison account as the State had. It was his duty to provide it to the court. Further, he did not present any evidence that payment of the LFOs would impose a manifest hardship on him or his immediately family. He merely noted that he is serving a life sentence and is indigent.

Second, Flores argues that the "current enforcement" requirement of *Bertrand* and *Baldwin* is contrary to the legislative intent underlying RCW 10.01.160(4). He notes that RCW 10.01.160(4) provides that the defendant can move to terminate his LFO's "at any time." And he notes that RCW 10.01.160(4) contemplates motions to terminate LFOs before collection because it allows termination of LFOs if collection "will impose" a manifest hardship. In light of *Bertrand*'s recent reliance upon *Baldwin*'s requirement of collection of the LFOs before a motion to terminate LFOs can be granted, Flores's arguments are unpersuasive.

An appeal is clearly without merit when the issue on review is clearly controlled by settled law. RAP 18.14(e)(1)(a). Because his challenge to the denial of his motion to terminate his LFOs is clearly controlled by settled law, Flores's appeal is clearly without merit. Accordingly, it is hereby

ORDERED that the motion on the merits to affirm is granted and the order denying Flores's motion to terminate his LFOs is affirmed. He is hereby notified that failure to move to modify this ruling terminates appellate review. *State v. Rolax*, 104 Wn.2d 129, 135-36, 702 P.2d 1185 (1985).

DATED this 23rd day of December, 2013.

E B Schmidt

Eric B. Schmidt
Court Commissioner

cc: John A. Hays
Anne M. Cruser
Hon. Daniel Stahnke
Andrew M. Flores

Exhibit B

A15

Department of Corrections

Ack#: 2320949 - 1

Legal Financial Obligations Withdrawal Acknowledgement

Facility: AP1

For the period 7/1/2012 through 9/30/2012, Payment Dates: 7/24/2012 and 10/15/2012

Location: P01RA15L

DOC#: 974029, Flores, Andrew

County Paid	Cause#	LFO Balance	Withdrawls	Payments	Refunds
Clark County Clerk	001010362	$2,667.25			
Total Paid To: Clark County Clerk				$20.00	
Withdrawal Acknowledgement Summary			**$20.00**	**$20.00**	**$0.00**

The County Clerk maintains the official LFO payment record. For proof of receipt of money by the county, send a self addressed stamped envelope to the County Clerk. Some counties may charge copy fees for a payment history.

EXHIBIT C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ANDREW MICHAEL FLORES,

Appellant.

No. 44739-8-II

ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner's ruling dated December 23, 2013, in the above-entitled matter. Following consideration, the court denies the motion.

Accordingly, it is

SO ORDERED.

DATED this 13th day of February, 2014.

PANEL: Jj. Lee, Johanson, Worswick

FOR THE COURT:

Worswick J
CHIEF JUDGE

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Exhibit C

APPENDIX

RCW 10.01.160
Costs – What constitutes – Payment by Defendant – Procedure – Remission – Medical or Mental Health Treatment or Services

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed two hundred fifty dollars. Costs for administering a pretrial supervision may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs unless the

defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute.

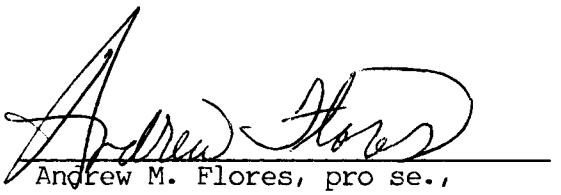
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed this Petition for Review to the Supreme Court Clerk by depositing it into the institution mail, marked Legal Mail, postage prepaid to the following address:

RONALD CARPENTER
SUPREME COURT CLERK
TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA WASHINGTON 98504-0929

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746

dated this 11 day of March ,2014



Andrew M. Flores, pro se.,