

No. 44441-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

WILLIE LEE JOYNER V,

Appellant.

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

The Honorable John M. McCarthy, Judge

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BRIEF OF APPELLANT

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Victoria J. Lyons  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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## **A. ASSIGNMENTS OF ERROR**

The trial court erred in making a finding that Mr. Joyner was able to meet the ordered legal financial obligations.

## **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Courts may impose legal financial obligations on defendants only if a finding that they have a present or future ability to pay is made. A finding of ability to pay must be supported by the evidence. Though no evidence of Mr. Joyner's ability to pay was presented, the court entered a generic finding that he had the present or future ability to pay. Did the sentencing court err in ordering legal financial obligations for Mr. Joyner?

## **C. STATEMENT OF THE CASE**

Willie Lee Joyner V was convicted by a jury of two counts of assault in the fourth degree, both gross misdemeanors.<sup>1</sup> 01/18/2013 RP 2. He received a suspended sentence of two years less 125 days for credit for

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<sup>1</sup> Mr. Joyner was charged by information filed in Pierce County Superior Court on September 17, 2012, with assault in the second degree (domestic violence), count I, one count of felony harassment (domestic violence), count II, and one count of assault in the fourth degree, count III, contrary to RCWs 9A.36.021(1)(g), 10.99.020, 9A.46.020(2)(b), and 9A.36.041(1), (2). CP 1-2. Mr. Joyner was found not guilty of the assault in the second degree and felony harassment. The incident arose out of an altercation between Mr. Joyner and his girlfriend and mother of his son, Rosalie Asis. CP 166-69.

time served while awaiting trial, restitution by later order of the court, \$500 in mandatory fees under RCW 7.68.035, \$200 in court costs and \$1500 DCA recoupment, for a total legal financial obligation of \$2200. CP 98-99; 01/18/2013 RP 9. The only written order in regards to Mr. Joyner's financial ability to pay entered by the court is the boilerplate language included on the Conditions of Suspended Sentence form:

Attorney fees as reimbursement for a portion of the expense of his/her court appointed counsel provided by the Pierce County Department of Assigned Counsel. The court finds that the defendant is able to pay said fee without undue financial hardship.

CP 99.

There is no evidence in the record establishing that the trial court took into account Mr. Joyner's ability to pay the fees, with undue financial hardship or not. 01/18/2013 RP 9-10.

#### **D. ARGUMENT**

1. THE RECORD DOES NOT SUPPORT THE TRIAL COURT'S FINDING AS TO MR. JOYNER'S PRESENT OR FUTURE ABILITY TO PAY HIS LEGAL FINANCIAL OBLIGATIONS (LFOS) AND MUST THEREFORE BE STRICKENT.

At sentencing Mr. Joyner was ordered to pay a total of \$2,200 in legal financial obligations. CP 99; 01/18/2013 RP 9. As of the date of sentencing restitution was to be determined. CP 99. There was a written boilerplate finding that Mr. Joyner was financially able to pay these costs,

but there is no evidence in the record to support this finding and therefore it must be stricken.

A challenge to a trial court's factual findings in sentencing should be reviewed under the clearly erroneous standard. State v. Baldwin, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991). Although Mr. Joyner did not make these arguments at sentencing, an illegal or erroneous sentence may be challenged for the first time on appeal. State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999), State v. Calvin, No. 67627-0-1, slip op., Wash. App., LEXIS 1276, ¶ 46 (March 28, 2013). Sentencing has long been held to be a critical stage in criminal proceedings. Allowing defendants to challenge erroneous sentences on appeal helps to ensure conformity in sentencing and compliance with current sentencing statutes. State v. Ford, 137 Wn.2d 472, 478, quoting State v. Paine, 69 Wn. App. 873, 884, 850 P.2d 1369, (1993).

a. The power to impose LFOs is limited by RCW 10.01.160.

RCW 10.01.160 allows for imposition of LFOs on a defendant but

(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.

It is this language that provides a safeguard to a defendant's constitutional rights under Fuller v. Oregon, 417 U.S. 40, 40 L. Ed. 2d 642, 94 S. Ct. 2116 (1974). If this provision is not followed a defendant's constitutional rights may be compromised. Id. at 56.

In State v. Calvin, appellant challenged the trial court's imposition of court costs under RCW 10.01.160 based on an insufficient showing in the record as to his ability to pay the amount. Much like the present case, the defendant in Calvin was ordered by the trial court to pay a total of \$1,300 in mandatory and discretionary legal financial obligations and a boilerplate language was used to find the appellant did indeed have the present or future ability to pay. State v. Calvin, ¶ 45.

The court of appeals affirmed that a trial court is not required "to enter formal, specific findings" in regards to a defendant's ability to pay. See State v. Curry, 118 Wn.2d 911, 916, 829 P.2d 166 (1992). However, "repayment may only be ordered if the defendant is or will be able to pay." State v. Barklind, 87 Wn.2d 814, 557 P.2d 314 (1976), RCW 10.01.160(3).

It is necessary that the record from the court below be sufficient enough for review as to whether or not the defendant's financial resources into account. State v. Bertrand, 165 Wn. App. 393, 404, 267 P.3d 511 (2011). The argument that the record lacks any evidence to show that

defendant will be unable to pay in the future is inadequate. The analysis centers on whether or not the evidence supports the actual finding. State v. Calvin, ¶ 48. It was found in State v. Calvin that trial court's finding was not supported and that the record did not show that the defendant's financial resources and ability to pay were taken into account. Id.

b. The imposition of LFOs on Mr. Joyner violated RCW 10.01.160 and resulted in an erroneous sentence.

Mr. Joyner was subject to the same type of boilerplate finding as to his present or future ability to pay his mandatory and discretionary court costs as the defendant in State v. Calvin. There is also nothing in the trial court's record to support such a finding. The record is in fact silent as to Mr. Joyner's financial situation and ability or lack thereof to pay any restitution or ordered LFOs. 01/18/2013 RP 9-10. Even when there was some minimal discussion in the record as to the defendant's financial state the record was found to be insufficient to support boilerplate findings allowing LFOs to be imposed. State v. Calvin, ¶ 48. Mr. Joyner's trial record does not even provide this negligible support.

c. Absent evidence supporting Mr. Joyner's ability to pay the imposed LFOs must be stricken.

As is the situation in the present case, when the record provides no support for a finding of a defendant's ability to pay ordered LFOs the



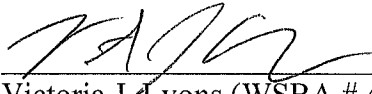
remedy is to remand to the trial court for the baseless finding to be stricken. State v Bertrand, 165 Wn. App. 393, 405.

**E. CONCLUSION**

Due to the lack of evidence in the record demonstrating the trial court's finding that Mr. Joyner had the present or future ability to pay his legal financial obligations the finding must be stricken.

Dated this 12<sup>th</sup> day of June 2013.

Respectfully submitted,

  
Victoria J. Lyons (WSBA # 45531)  
Washington Appellate Project  
Attorney for Appellant

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RESPONDENT,	)	
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v.	)	NO. 44441-1-II
	)	
WILLIE LEE JOYNER,	)	
	)	
APPELLANT.	)	

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 12<sup>TH</sup> DAY OF JUNE, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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PIERCE COUNTY PROSECUTOR'S OFFICE	(X)	E-MAIL VIA COA PORTAL
930 TACOMA AVENUE S, ROOM 946		
TACOMA, WA 98402-2171		
[X] WILLIE LEE JOYNER	(X)	U.S. MAIL
8815 S D ST	( )	HAND DELIVERY
TACOMA, WA 98444	( )	_____

**SIGNED** IN SEATTLE, WASHINGTON THIS 12<sup>TH</sup> DAY OF JUNE, 2013.

x \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, Washington 98101  
☎(206) 587-2711

# WASHINGTON APPELLATE PROJECT

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