

NO. 44441-1-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

WILLIE LEE JOYNER, V,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. The court must inquire into Mr. Joyner's financial circumstances and determine if he has the present or likely future ability to pay attorney's fees and court costs.

- a. The Court may review the sentencing court's imposition of legal financial obligations for the first time on appeal.

At sentencing, the court ordered Mr. Joyner to pay \$1,500 in attorney's fees, court costs of \$200 and \$500 in mandatory fees, for a total of \$2,200. CP 98-99; 1/18/13 RP 9. The sentencing court cannot order a defendant to pay court costs or attorney's fees without considering the defendant's ability to pay. RCW 10.01.160(3); *State v. Barklind*, 87 Wn.2d 814, 817, 557 P.2d 314 (1977).

The State argues, that Mr. Joyner may not challenge the imposition of these fees and costs because he did not object at the time of sentencing. Resp. Br. at 4. This Court should reject the State's argument, as Washington permits appeals from improper sentencing orders. *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). Mr. Joyner is not required to show that the sentencing error meets the RAP 2.5(a) requirement of manifest constitutional error. Appellate courts normally address issues that were raised in the trial courts, but have the

discretion to address other issues as well. RAP 2.5(a); *State v. Ford*, 137 Wn.2d at 477.

In Washington, erroneous or illegal sentences may always be addressed for the first time on appeal. *Ford*, 137 Wn.2d at 477-78 (criminal history); *State v. Mendoza*, 165 Wn.2d 913, 919-20, 205 P.3d 113 (2009) (criminal history); *State v. Hunter*, 102 Wn. App. 630, 633-64, 9 P.3d 872 (2000) (drug fund contribution), *rev. denied*, 142 Wn.2d 1026 (2001); *State v. Paine*, 69 Wn. App. 873, 884, 850 P.2d 1369 (State's appeal of sentence below standard range), *rev. denied*, 122 Wn.2d 1024 (1993) (and cases cited therein).

Sentencing is a critical stage in a criminal proceeding. Permitting defendants to challenge an illegal sentence on appeal helps ensure that sentences are in compliance with the sentencing statutes. *Mendoza*, 165 Wn.2d at 920. Moreover, the rule inspires confidence in the criminal justice system and is consistent with the Sentencing Reform Act's goal of uniform and proportional sentencing. *Id*; *Ford*, 137 Wn.2d at 478-79, 484; RCW 9.94A.010(1)-(3).

- b. The sentencing court was required to take Mr. Joyner's ability to pay into account before imposing attorney's fees and court costs.

The State argues the trial court took into account Mr. Joyner's current or future ability to pay based on the boilerplate language used in its finding. "The court finds that the defendant is able to pay said fee without undue financial hardship." Resp. Br. at 8; CP 100. There are cases in which the record supports the trial court's finding that a defendant has the present or future ability to pay imposed LFO's. In *State v. Lundy*, __ Wn. App. __, __ P.3d. __, 2013 WL 4104978, the record reflected that prior to his court troubles Mr. Lundy made over \$100,000 a year annually and he anticipated that his wife would be at the sentencing hearing to write a check to pay all of the fees. Mr. Joyner's case is far different and is easily distinguishable from *State v. Lundy*.

In Mr. Joyner's case, the State argues that his assertion regarding a desire to support his child and his apparent lack of physical impairment and youth establish his present or future ability to pay legal financial obligations. Resp. Br. at 8. A desire to find future employment, however, does not equal a current or future ability to do so. If anything, this is proof that Mr. Joyner was indeed not employed

at the time of the sentencing, nor going to be in the near future. Any future prospects Mr. Joyner had for earning income are entirely speculative and only further diminished with this felony conviction.

The State's argument also ignores the purpose of the statute. The sentencing court is required to take into account the defendant's financial circumstances when imposing court costs and attorney's fees. RCW 10.01.160(3); *Barklind*, 87 Wn.2d at 817. The record must reflect the judge had knowledge of the defendant's financial situation. *State v. Williams*, 65 Wn. App. 456, 460, 829 P.2d 166 (1992). An assertion by trial counsel as to Mr. Joyner's desire to take care of his child and be reunited with his family does not establish that the court took into account his ability to pay LFO's. Resp. Br. at 8; 1/18/13 RP 7. The record simply does not support the trial court's decision to impose LFOs. *State v. Calvin*, __ Wn. 2d. __, 302 P.3d 509, 521 (2013); *State v. Baldwin*, 63 Wn. App. 303, 312, fn. 27, 818 P.2d 1116 (1991).

The court's imposition of court fees was clearly erroneous and the State must take no action to collect the financial obligations until the court has specifically inquired into Mr. Joyner's financial situation


and determined he has the present or likely future ability to pay the court-ordered financial obligations.

B. CONCLUSION

For the reasons stated above and in his opening brief, Mr. Joyner respectfully asks this Court to reverse his sentence and remand for a new sentencing hearing.

DATED this 6th day of September 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'V. Lyons', is written over a horizontal line. The signature is fluid and cursive.

VICTORIA J. LYONS (WSBA 45531)
Washington Appellate Project
Attorneys for Appellant

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

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