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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON CRF

No. 91397-8
Court of Appeals No. 44813-1-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN J. THOMAS,

Petitioner.

PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
and the Superior Court of Pierce County

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A. IDENTITY OF PETITIONER

Benjamin Thomas, appellant below, petitions this Court to grant review of the unpublished decision of the court of appeals designated in section B.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(3) and (4), Petitioner asks this Court to review the decision of Division Two of the Court of Appeals, issued under No. 44813-1-II, State v. Thomas, on February 9, 2015 (filed herewith as Appendix B), in which Division Two affirmed the ruling of a Commissioner of the same court, issued December 15, 2014, pursuant to a court's Motion on the Merits under RAP 18.14.¹

C. ISSUES PRESENTED FOR REVIEW

1. Is a case controlled by “clearly settled case law” for the purposes of a motion on the merits under RAP 18.14 when this Court has granted review of the case law in question, State v. Blazina, 174 Wn. App. 906, 91-11, 301 P.3d 492, review granted, 178 Wn.2d 1010 (2013), in order to address the same issues?
2. In State v. Rolax, 104 Wn.2d 129, 134, 702 P.2d 1185 (1985), this Court upheld the motion on the merits procedure set forth in RAP 18.14 as constitutional under Article 1, section 22, of the state constitution, because the decision made by the unelected Commissioner is subject to

¹A copy of the Commissioner's ruling on the Motion is filed herewith on Appendix A.

a motion to modify, after which a panel of court of appeals judges are required to give the appeal the same consideration as any other and apply de novo review.

Did Division Two fail to follow this procedure in violation of the requirements of Rolax and Petitioner's rights under Article 1, section 22, by issuing an "Order Denying Motion to Modify" which simply declares, "[f]ollowing consideration, the court denies the motion" to modify without providing any reasoning or support for that decision?

Should this Court review this issue under RAP 13.4(b)(3), because Division Two's failure to fully consider Thomas' case as required is not only in conflict with the mandates of Rolax but also has significant impact on the constitutional rights to appeal of all those currently subjected to the motion on the merits procedure, as Division Two is the only division of our state's courts of appeals which still uses the RAP 18.14 procedure?

3. Does a preprinted, boilerplate finding of "ability to pay" satisfy the requirements of RCW 10.01.160(3) that a court must find a defendant's ability to pay before imposition of legal financial obligations on that defendant?
4. Is imposition of legal financial obligations which begin to collect interest immediately authorized under RCW 10.01.160 against an indigent defendant with no inquiry into his ability to shoulder such a crushing debt?

Further, should this Court reexamine the requirements for imposition of such debt upon defendants in light of the immediate and long-term impacts and new evidence that the "remission" process for indigents is not working as this Court assumed in reaching its decision in State v. Blank, 131 Wn.2d 230, 237, 930 P.2d 1213 (1997)?

D. STATEMENT OF THE CASE

1. Procedural facts

In 2013, Petitioner Benjamin Thomas was charged by information with first-degree assault with a deadly weapon enhancement but convicted of the lesser offense of second-degree assault without the enhancement. CP 1-2, 108-10; RCW 9A.36.011(1)(a); RCW 9.94A.530; RCW 9.94A.533; RCW 9.94A.825.² He was ordered to serve a standard-range sentence and appealed. CP 231-49; RP 416.

On December 15, 2014, Commissioner Eric B. Schmidt of Division Two issued a decision affirming on the merits under RAP 18.14. App. A. Thomas filed a Motion to Reconsider which was denied on February 9, 2015. App. B at 1-2. This Petition follows.

2. Relevant facts

At sentencing, the prosecutor asked the court to impose a number of “legal financial obligations” against Mr. Thomas, as follows:

²The enhancement was not submitted to the jury. See CP 108-10. The verbatim report of proceedings will be referred to as follows:

the volume containing the proceedings of January 1, 2013, as “1RP;”

February 1, 2013, as “2RP;”

February 8, as “3RP;”

the chronologically paginated volumes containing the proceedings of February 25-27, March 4-6 and April 19, 2013, as “RP;”

the closing argument of March 5, 2013, as “4RP;”

a sentencing continuance on April 5, 2013, as “5RP.”

[T]he State asks the Court to impose \$500 for crime victim penalty assessment, \$200 court costs. Because this matter went to trial, it would be a \$1500 DAC recoupment and \$100 DNA sample fee[.]

RP 411. In imposing the sentence, the court followed the prosecutor's recommendations and ordered Thomas to pay the requested costs. RP 415-16.

In a pre-printed portion of the judgment and sentence, the document provided:

ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

CP 240-41. Boilerplate language also imposed interest "from the date of the judgment until payment in full." CP 241.

On appeal in Division Two, Mr. Thomas challenged the imposition of those costs, arguing that the trial court had acted without statutory authority under RCW 10.01.160(3) in ordering him to pay these costs without making findings specific to him, that the boilerplate findings were not sufficient and that the issue was preserved despite counsel's failure to object below, because it involved the trial court acting outside its statutory

authority. Brief of Appellant (“BOA”) at 6-12.

A court Commissioner affirmed on the merits under RAP 18.14, finding that Thomas was precluded from raising the issue for the first time on appeal under Blazina, *supra*. App. A at 3. In *dicta*, the Commissioner also held that a trial court will “affirm a trial court’s finding of current or likely future ability to pay legal financial obligations unless that finding is clearly erroneous.” App. A at 3. The Commissioner did not address Thomas’ argument that the boilerplate finding was insufficient as a matter of law under RCW 10.01.160(1) and (3). App. A at 3. Instead je just said that it was only the time of collection at which “ability to pay” was important. App. A at 3.

The Commissioner concluded that the appeal was “clearly without merit when the issue on review is clearly controlled by settled law” and the challenge to Thomas’ legal financial obligations met those requirements. App. A at 3.

Thomas made a motion to modify, arguing that this Court had granted review in Blazina, consolidated under 89028-5, and thus the issues presented were not “clearly controlled by settled law.” Motion to Modify (MTM at 2-3). On February 9, 2015, a panel of Division Two issued an Order denying the motion to modify which declared only that “[f]ollowing

consideration,” the court was denying Thomas’ motion to modify. App. B.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. THE COURT SHOULD GRANT REVIEW TO ADDRESS WHETHER A CASE IS GOVERNED BY CLEARLY SETTLED LAW AS REQUIRED TO AFFIRM ON THE MERITS UNDER RAP 18.14 WHEN THIS COURT HAS GRANTED REVIEW TO ANSWER THE SAME QUESTIONS AND WHETHER DIVISION TWO IMPROPERLY APPLIED THE RAP 18.14 MOTION ON THE MERITS PROCEDURE IN VIOLATION OF THE STATE CONSTITUTIONAL RIGHT TO APPEAL UNDER ROLAX

In our state, defendants in a criminal case have a constitutional right to appeal under Article 1, section 22. Rolax, supra, 104 Wn.2d at 134. In Rolax, this Court addressed the motion on the merits procedure of RAP 18.14, used by Division Two in this case. 104 Wn.2d at 134-35. The Rolax defendants argued that the procedure violated their Article 1, section 22, right to appeal by allowing a non-elected commissioner to decide the appeal from their criminal case. 104 Wn.2d at 134-35. This Court looked at the procedure and concluded that it did not violate the right to appeal or a statute requiring appeals to be heard by a panel of at least three judges, in large part because an appellant need only make a motion to modify in order to be entitled to de novo review of the commissioner’s ruling, on the merits. 104 Wn.2d at 135.

Put simply, this Court found the motion on the merits procedure did not violate the defendant's rights to an appeal, because a motion to modify can be filed and "the appellate court must consider a motion to modify as carefully as any other appeal," rather than just reviewing the commissioner's ruling to see if it met the RAP 18.14(e) requirements. Rolax, 104 Wn.2d at 135.

In this case, instead of issuing a decision with reasoning and explanation of its ruling as in any other appeals, the panel of three judges deciding the motion to modify simply denied the motion "[f]ollowing consideration." App. B.

This Court should grant review under RAP 13.4(b)(3) to address whether this is sufficient, under Rolax and in light of Thomas' Article 1, section 22, right to appeal. Rolax made it clear that the de novo review of a case by a panel of judges is a required component of the motion on the merits procedure - one which is a significant reason the procedure does not violate Article 1, section 22. Rolax, 104 Wn.2d at 135.

Further, because the state "has provided a constitutional right to appeal and has established appellate courts as an integral part of the criminal justice system, an appeal must comport with due process." State v. Burton, 165 Wn. App. 866, 877, 269 P.3d 337 (2012). Due process may

be violated on appeal if the defendant is deprived of adequate, meaningful review of the issues he has raised. See, e.g., State v. Larson, 62 Wn.2d 64, 66, 381 P.2d 120 (1963) (right to sufficient record for such review).

Here, the panel of Division Two judges provided absolutely no indication whatsoever that they complied with the requirements for de novo review as described in Rolax when they declared that they were denying Thomas' motion to modify "[f]ollowing consideration." App. B. The panel has thus given no hint of whether it independently considered the case on de novo review as required. This failure to provide any information about its reasoning is itself an affront to Thomas' right to a meaningful appeal, forcing Thomas to simply assume that the panel's decision is an effective adoption of the Commissioner's ruling, in order to be able to challenge it in this Court.

If the panel had performed de novo review, however, it would certainly have noted the impropriety of the Commissioner's holding that the case was controlled by clearly settled case law and RAP 18.14 applies even though the case law in question, Blazina, is on review in this Court on the *very same issue as presented in Thomas' case*. Under RAP 18.14(e)(1), a motion on the merits to affirm should only be granted in whole or in part "if the appeal or any part thereof is determined to be

clearly without merit.” Further, there are specific requirements governing the commissioner’s decision:

In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues are **(a) clearly controlled by settled law**, (b) are factual and supported by evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court[.]

RAP 18.14(e)(1) (emphasis added).

The Division Two Commissioner cited no authority and Thomas can find none holding that an issue meets the requirements of RAP 18.14(e)(1)(a) and is “clearly controlled by settled law” when the state’s highest court has accepted review in order to pass on the same issues. See App. A at 1-4.

Yet here, this Court granted review of Blazina, to address a conflict between that decision and the decision of Division One in State v. Calvin, 176 Wn. App. 1, 302, P.3d 509 (May 28, 2013), which was changed on reconsideration, 316 P.3d 496 (October 22, 2013), to follow Blazina. The question in those cases was whether the appellate court is precluded from considering the improper imposition of LFOs until the prosecution tries to enforce the resulting debt, or whether the issue is statutory and thus properly raised for the first time on appeal. That is the issue in this case,

as well as the subsequent question of whether the preprinted boilerplate finding of “ability to pay” satisfies the requirements of RCW 10.01.160(3) and whether that statute requires that the court actually make a finding specific to the defendant and his case before saddling him with a debt which will mount every day he is serving his sentence, because he is immediately liable for not only the amount ordered by the astronomical interest rate of 12%. CP 241; see RCW 10.82.090.

Under RAP 13.4(b), this Court does not grant review of a decision of the court of appeals unless it is 1) in conflict with this Court’s precedent, 2) in conflict with a decision from another division of the court of appeals, 3) presents such a significant question of constitutional law that this Court should rule on it or 4) presents an issue of such substantial public interest that the Court should pass upon it. RAP 13.4(b)(1)-(4).

Thus, the fact that this Court has granted review of Division Two’s decision in Blazina has a legal effect, contrary to the Commissioner’s ruling. A grant of review means that the holding of Blazina may or may not be affirmed. It also means that this Court has found that the very issues in this case, raised by Mr. Thomas and Mr. Blazina alike, meet the standards for this Court to exercise its discretion to grant review, obviously, because it has, in fact, done so.

The court of appeals panel's decision to simply deny the motion to modify under these circumstances is unfathomable. At the least, the panel should have acknowledged the serious legal question of when caselaw is "clearly settled" for the purposes of RAP 18.14. It should also have explained why the Commissioner's holding on this point could be deemed correct, so that Thomas could then present argument regarding the propriety of the panel's holding.

This Court should grant review in order to address whether caselaw can be deemed "clearly settled" for the purposes of granting a court's motion under RAP 18.14 under these circumstances. Failure to clarify the true scope of the RAP 18.14 motion on the merits procedure and when law is "clearly settled" could result in increased improper application of that procedure, in violation of defendant's rights under Article 1, section 22, casting doubt on the procedure under Rolax.

Further, this Court should grant review to address whether the cursory Order denying a motion to modify such as used by Division Two in this case is sufficient to meet the requirements of Rolax and to ensure that the motion on the merits procedure is constitutionally proper under Article 1, section 22.

It is especially important for the Court to grant review in this case

because of the disproportionate impact of Division Two in this area of the law. Division Two is now the only Division which continues to use the motion on the merits procedure. See General Orders, Division Three, Court of Appeals of the State of Washington: *In re Motions on the Merits under RAP 18.14* (February 9, 2015); General Orders, Division One, Court of Appeals of the State of Washington: *In re Motions on the Merits under RAP 18.14* (August 18, 2014).

As a result, Division Two's cursory and constitutionally insufficient procedure is being applied to appellants in criminal defense cases only in that Division. Division Two is thus of extreme importance in defining the appellate rights of criminal defendants under Article 1, section 22, in this state - at least for those who, by happenstance, are subject to review in the only Division still using the motion on the merits procedure.

The court of appeals Commissioner erred in concluding that Thomas' "challenge to his legal financial obligations is clearly controlled by settled law" under Blazina because Blazina was pending with review granted on the very issues present in this case. App. A at 3. This Court should grant review and so hold. The panel should also have ruled on the merits, applying de novo review, and this Court should further grant

review to so hold. As argued, *infra*, review should also be granted on the merits of the issues presented in Thomas' case.

2. THIS COURT SHOULD ALSO GRANT REVIEW TO ADDRESS WHETHER A SENTENCING COURT COMPLIES WITH THE REQUIREMENTS OF RCW 10.01.160(3) BY INCLUDING A PRE-PRINTED BOILERPLATE FINDING ON EVERY JUDGMENT AND SENTENCE AND FURTHER WHETHER THE REQUIREMENT OF FINDINGS SPECIFIC TO THE INDIVIDUAL IS REQUIRED GIVEN OUR NEW UNDERSTANDINGS OF THE FAILURES OF THE REMISSION PROCESS

This Court should also grant review under RAP 13.4(b)(4), because the Commissioner was wrong in following Blazina and holding that Thomas could not raise the sentencing court's statutory authority under RCW 10.01.160 and the requirements of (1) and (3) before the imposition of legal financial obligations, and the panel erred in upholding that decision.

This Court has held that, when a sentencing court acts outside its statutory authority, that issue may be raised for the first time on appeal. See State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Where a defendant claims a violation of the statutory requirements, the issue is properly before the court, because sentencing courts do not have "inherent" authority to impose sentences but may only act within the limits

of the authority set forth in statute. See, State v. Paine, 69 Wn. App. 873, 884, 950 P.2d 1369, review denied, 122 Wn.2d 1024 (1993). This Court has held that where, as here, the issues raised on appeal are primarily legal, do not require further factual development and involve a final decision of the Court, those issues may be raised for the first time on appeal. See Bahl, 164 Wn.2d at 751.

Thus, in Bahl, where the sentencing court imposed a condition of community custody which was improper in light of the defendant's First Amendment rights, that issue was properly before the appellate court. 164 Wn.2d at 751.

Under RCW 10.01.160(1), the trial court has the authority to order someone convicted of a felony to repay court costs as part of a judgment and sentence. Under RCW 10.01.160(3), however,

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.

RCW 10.01.160(3).

In this case, the lower court did not make any specific findings that Mr. Thomas, who was indigent, "is or will be able" to pay the \$2300 (plus

interest) before ordering him to do so. See CP 238-49. Instead, the only such alleged “finding” was the pre-printed “boilerplate” finding, apparently included on every judgment and sentence in the county. See CP 238-39.

That finding, however, does not withstand review. A finding of fact must be supported by “substantial evidence in the record.” See State v. Echevarria, 85 Wn. App. 777, 782, 934 P.2d 1214 (1997). “Substantial evidence” is evidence sufficient to convince a rational, fair-minded trier of fact of the truth of the declared premise. Id. There is no evidence whatsoever that the court “considered the total amount owing, the defendant’s past, present and future ability to pay legal financial obligations, including the defendant’s financial resources and the likelihood the defendant’s status will change” before entering the costs. Nor was there anything in the record showing an ability or likely future ability to pay.

The Commissioner, in *dicta*, declared that ability to pay need not be inquired into until later. App. A at 2-3. But he did not address the concerns raised by Thomas about the boilerplate finding. Nor did he address his concerns about whether this Court’s holding that imposition of costs is constitutional retains currency given recent developments in our

understanding of the effectiveness of “remission” procedures for such costs. See BOA at 6-9; App. A at 1-4.

In Blank, supra, this Court found that recoupment of costs against an indigent defendant was constitutional because trial court is required to consider ability to pay and procedures for modification or “remission” of the obligation exist for those who cannot pay. 131 Wn.2d 230 at 242-43 (RCW 10.73 provision for appellate costs). Further, this Court noted its understanding that “ability to pay (and other financial considerations) must be inquired into before enforced payment or imposition of sanctions for nonpayment.” 131 Wn.2d at 246-47.

Now, however, we know that, in fact, the remission process is broken, as are many of the protections for indigents detailed in Blank. The imposition of costs and their substantial impact on the lives of indigents has recently been detailed at length by the ACLU, which discovered that lower courts in several counties of this state are requiring people to give up public assistance and other public monies given to cover their basic needs and even imprisoning poor people for failure to pay on such debt. *See* ACLU/Columbia Legal Services Report: Modern-Day Debtors’ Prisons: The Ways Court-Imposed Debts Punish People for Being Poor

(February 2014).³ An NPR investigation found that, over a four-month period in 2013, in Benton County, Washington, one out of four people in jail on any given day have been put there for nonpayment of legal financial obligations. See Joseph Shapiro, *As Court Fees Rise, the Poor are Paying the Price* (National Public Radio; 5/19/2014).⁴

Similarly, a study from the Washington State Minority and Justice Commission examined the impact of such costs, finding that the imposition of them reduces income, worsens credit ratings, makes it more difficult to secure stable house, hinders “efforts to obtain employment, education, and occupational training” and has other serious effects “which in turn prevents people from restoring their civil rights” and becoming full members of society. See Washington State Minority and Justice Commission, *The Assessment and Consequences of Legal Financial Obligations in Washington State* (2008).⁵

Imposition of legal financial obligations is not a minor, clerical event. It is an event which can reduce the rest of the defendant’s life to a

³ Available at <http://www.aclu-wa.org/news/report-exposes-modern-day-debtors-prisons-washington>.

⁴ Available at: <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

⁵ Available at http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.

cycle of poverty and prevent them from ever becoming a productive member of society. Interest of 12% begins to compound the moment the judgment and sentence is entered, regardless whether the defendant can afford that rate. And our system of remission is not preventing indigent defendants from being jailed for failure to pay.

This Court should grant review in this case. Not only were Thomas' rights to appeal violated by the improper motion on the merits procedure used in this case, and by the improper interpretation of RAP 18.14 and when law is clearly settled, the issue of whether sentencing courts are imposing legal financial obligations without following statutory requirements is an issue of substantial public import upon which this Court should rule.

F. CONCLUSION

For the foregoing reasons, this Court should accept review of the decision of Division Two of the court of appeals.

DATED this 10th day of March, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel via the upload portal at the Court of Appeals, Division Two, at their official service address, pcpatcecf@co.pierce.wa.us, and petitioner by depositing the same in the United States Mail, first class postage pre-paid, as follows: Mr. Benjamin Thomas, 19149 108th Lane S.E., Renton, WA. 98055-6417.

DATED this 10th day of March, 2015.

/s Kathryn Russell Selk
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DIVISION II
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STATE OF WASHINGTON
BY:
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN JEROME THOMAS,

Appellant.

No. 44813-1-II

RULING AFFIRMING
JUDGMENT AND SENTENCE

Benjamin Thomas appeals from the sentence imposed following his conviction for second degree assault, arguing that the trial court erred in imposing legal financial obligations against him without considering whether he had the current or likely future ability to pay them. This court considered his appeal as a motion on the merits to affirm under RAP 18.14. Finding that his appeal is clearly without merit, this court affirms Thomas's judgment and sentence.

Following the State's recommendation, and without objection from Thomas's counsel, the trial court imposed the following mandatory legal financial obligations: \$500 crime victim assessment, \$200 court costs, and \$100 DNA collection fee. It imposed a non-mandatory obligation of \$1,500 for Thomas's court-appointed attorney. The court made the following pre-printed finding:

The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

Clerk's Papers at 240.

Thomas argues that the court erred in imposing the legal financial obligations because it did not comply with RCW 10.01.160(3), which provides:

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.

Thomas contends that the record does not support the trial court's "boiler-plate" finding that he has the ability or likely future ability to pay legal financial obligations that the court imposed. *State v. Bertrand*, 165 Wn. App. 393, 404, 267 P.3d 511 (2011), *review denied*, 175 Wn.2d 1014 (2012). Before making such a finding, the trial court must take "into account the financial resources of the defendant and the nature of the burden" imposed by the legal financial obligations. *Bertrand*, 165 Wn. App at 404 (quoting *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991), *amended by*, 837 P.2d 646 (1992)).

The State responds that Thomas did not challenge the trial court's imposition of legal financial obligations at sentencing and cannot do so for the first time on appeal. *State v. Blazina*, 174 Wn. App. 906, 910-11, 301 P.3d 492, review granted, 178 Wn.2d 1010 (2013). Thomas responds that the failure to follow statutory authority at sentencing can be raised for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). However, Thomas's efforts to distinguish *Blazina* do not succeed. Thomas cannot challenge his legal financial obligations for the first time on appeal.

Further, even if Thomas could raise his challenge for the first time on appeal, this court will affirm a trial court's finding of current or likely future ability to pay legal financial obligations unless that finding is clearly erroneous. *Bertrand*, 165 Wn. App at 404; *Baldwin*, 63 Wn. App. at 312; *State v. Lundy*, 176 Wn. App. 96, 105, 308 P.3d 755 (2013). Thomas does not show that the finding is clearly erroneous. While he did not have a current ability to pay, the fact that at the time of his crime he could afford to be shooting pool in a bar indicates a likely future ability to pay. Finally, under *Baldwin*, "the meaningful time to examine the defendant's ability to pay is when the government seeks to collect the [legal financial] obligation[s]." 63 Wn. App. at 310. As the State has not sought to collect Thomas's legal financial obligations, his challenge to them is not ripe. *Bertrand*, 165 Wn. App. at 405; *State v. Calvin*, 176 Wn. App. 1, 24-25, 316 P.3d 496 (2013).

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 his legal financial obligations is clearly controlled by settled law, Thomas's appeal is clearly without merit. Accordingly, it is hereby

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ORDERED that the motion on the merits to affirm is granted and Thomas's judgment and sentence are 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 15th day of December, 2014.



Eric B. Schmidt
Court Commissioner

cc: Kathryn Russell Selk
Jason Ruyf
Hon. Frank Cuthbertson
Benjamin Thomas

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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| STATE OF WASHINGTON, Respondent, v. BENJAMIN JEROME THOMAS, Appellant. |
|--|

No. 44813-1-II
ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner’s ruling dated December 15, 2014, in the above-entitled matter. Following consideration, the court denies the motion.

Accordingly, it is

SO ORDERED.


DATED this 9th day of February, 2015.

PANEL: Jj. Maxa, Lee, Melnick

FOR THE COURT:



 PRESIDING JUDGE

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 COURT OF APPEALS
 DIVISION II
 2015 FEB -9 AM 10:31
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cc: Kathryn A. Russell Selk
Jason Ruyf

RUSSELL SELK LAW OFFICES

March 10, 2015 - 4:56 PM

Transmittal Letter

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Case Name: State v. Thomas

Court of Appeals Case Number: 44813-1

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Motion: _____

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Statement of Additional Authorities

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Personal Restraint Petition (PRP)

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Petition for Review (PRV)

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Comments:

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