

No. 46093-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

Jason Hernandez,
Appellant.

Pierce County Superior Court
Cause No. 13-1-02943-1
The Honorable Judge Garold Johnson

Appellant's Supplemental Brief

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SUPPLEMENTAL ISSUE

If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Jason Hernandez is indigent, as noted in the Order of Indigency?

SUPPLEMENTAL FACTS

At this point in the appellate process, the Court of Appeals has yet to issue a decision terminating review. Neither the state nor the appellant can be characterized as the substantially prevailing party.

Nonetheless, the Court of Appeals has indicated that indigent appellants must object in advance to any cost bill that might eventually be filed by the state, should it substantially prevail. *State v. Sinclair*, 72102-0-I, 2016 WL 393719 (Wash. Ct. App. Jan. 27, 2016).¹

ARGUMENT

Appellate costs are “indisputably” discretionary in nature. *Sinclair*, 72102-0-I, 2016 WL 393719 at * 4. The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court’s discretionary decisions on appellate costs. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

¹ Division II’s commissioner has indicated that Division II will follow *Sinclair*.

The trial court found Jason Hernandez indigent at the beginning and end of the proceedings in superior court. That status is unlikely to change, especially with the addition of the felony conviction(s) at issue here, and considering the sentence given. The *Blazina* court indicated that courts should “seriously question” the ability of a person who meets the GR 34 standard for indigency to pay discretionary legal financial obligations. *Id.* at 839

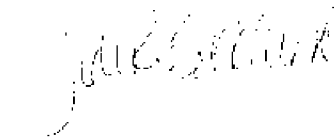
If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

CONCLUSION

If the state should substantially prevail on appeal, the Court of Appeals should deny any request for appellate costs.

Respectfully submitted on March 4, 2016.

BACKLUND AND MISTRY



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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

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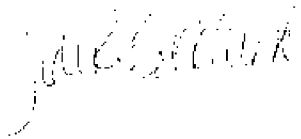
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Pierce County Prosecuting Attorney
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I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 4, 2016.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

March 04, 2016 - 1:36 PM

Transmittal Letter

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