

No. 46605-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

Zaida Cardenas-Flores,
Appellant.

Clark County Superior Court
Cause No. 14-1-00298-0
The Honorable Judge David Gregerson
Appellant's Supplemental Brief

Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

SUPPLEMENTAL ISSUE 3

SUPPLEMENTAL FACTS 3

ARGUMENT..... 3

CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 3, 4

State v. Sinclair, 72102-0-I, 2016 WL 393719 (Wash. Ct. App. Jan. 27, 2016)..... 3

OTHER AUTHORITIES

GR 34 4

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 Zaida Cardenas-Flores 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 Zaida Cardenas-Flores 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

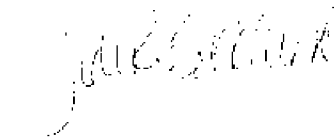
If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

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



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

CERTIFICATE OF SERVICE

I certify that on today's date:

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

Zaida Cardenas-Flores, DOC #376856
Washington Corrections Center For Women
9601 Bujacich Rd NW
Gig Harbor, WA 98332

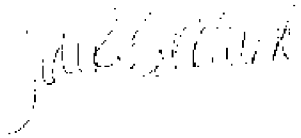
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney
prosecutor@clark.wa.gov

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 - 11:54 AM

Transmittal Letter

Document Uploaded: 3-466058-Supplemental Appellant's Brief~2.pdf

Case Name: State v. Zaida Cardenas-Flores

Court of Appeals Case Number: 46605-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief: Supplemental Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: backlundmistry@gmail.com

A copy of this document has been emailed to the following addresses:

prosecutor@clark.wa.gov