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Court of Appeals
Division III
State of Washington

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WASHINGTON STATE
SUPREME COURT

93740-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 32839-2-III

STATE OF WASHINGTON, Respondent,

v.

JOSHUA JAMES CLARK, Petitioner.

PETITION FOR REVIEW

Andrea Burkhart, WSBA #38519
Burkhart & Burkhart, PLLC
6 ½ N. 2nd Avenue, Suite 200
PO Box 946
Walla Walla, WA 99362
Tel: (509) 529-0630
Fax: (509) 525-0630
Attorney for Appellant

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I. IDENTITY OF PETITIONER

Joshua James Clark requests that this court accept review of the decision designated in Part II of this petition.

II. DECISION OF THE COURT OF APPEALS

Petitioner seeks review of the decision of the Court of Appeals filed on September 8, 2016 and published in pertinent part. A copy of the Court of Appeals' opinion is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

Whether a trial court's imposition of discretionary legal financial obligations based on a boilerplate finding of ability to pay that is unsupported by evidence in the record warrants review as a matter of right under RAP 2.5(a)(2).

Whether failure to object to imposition of discretionary legal financial obligations without an inquiry into ability to pay constitutes ineffective assistance of counsel when the defendant already has outstanding legal financial obligation balances in excess of \$46,000.

IV. STATEMENT OF THE CASE

Conducting no inquiry into Clark's ability to pay legal financial obligations, the sentencing court imposed legal financial obligations

("LFOs") in excess of \$2,145.41 on the basis of boilerplate language in the judgment in sentence that Clark had the ability to pay them. CP 48; RP (Sentencing Hearing) 271-76. On appeal, Clark supplemented the record with JIS entries showing that he owed \$46,036.80 in outstanding LFOs in other matters. *Commissioner's Ruling*, Nov. 25, 2015; *Appendix to Appellant's Brief*. Despite the existing debt and the prison sentence imposed, Clark's attorney did not object to the imposition of discretionary LFOs without an inquiry into Clark's ability to pay. RP (Sentencing Hearing) 271-76.

On appeal, Clark contended that the LFOs were appealable as a matter of right under RAP 2.5(a)(2) because they were predicated upon a boilerplate finding of Clark's ability to pay that was not supported by evidence in the record. *Appellant's Brief* at 7-8. Clark also argued that his attorney's failure to object constituted ineffective assistance of counsel that prejudiced him, because a reasonable investigation and demand for the statutorily required inquiry would have revealed his existing outstanding LFO balances of \$46,036.80 and probably resulted in discretionary LFOs being waived. *Appellant's Brief* at 8. The Court of Appeals rejected the RAP 2.5(a)(2) argument, declined to exercise discretionary review of the LFO assessment, did not address Clark's

ineffective assistance of counsel argument, and affirmed Clark's judgment and sentence. *Opinion* at 9-10.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b)(3) and (4), review will be accepted if a significant question of law under the Constitution of the State of Washington or of the United States is involved, or if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Both factors are satisfied in the present case.

A. **Blazina acknowledged disparities and inequities in the administration of LFOs that disproportionately burden indigent defendants and undermine successful re-entry.**

This Court acknowledged the significant public interest in requiring trial courts to comply with RCW 10.01.160 in assessing LFOs due to the obstacles they present to successful re-entry into society in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 380 (2015). In *Blazina*, the Court responded to “[n]ational and local cries for reform of broken LFO systems,” recognizing that the administration of Washington’s LFOs frequently resulted in offenders owing more a decade after release than at sentencing, remaining subject to the jurisdiction of the court, and suffering from damaged credit and difficulty securing employment and housing.

182 Wn.2d at 836-37. These consequences result in disparities in punishment of indigent offenders, as well as minority defendants, male defendants, defendants who exercise their constitutional right to trial, and defendants from rural counties. *Id.* at 836, 838.

In acknowledging the scope and magnitude of the problems in administering LFOs, *Blazina* underscored that RCW 10.01.160 imposes a mandatory duty on trial courts to evaluate the financial circumstances of each defendant before imposing discretionary LFOs. *Id.* at 837-38. Mere reliance upon boilerplate language in the judgment and sentence does not satisfy the statutory obligation and contributes to the problems documented by the Washington State Minority and Justice Commission, the ACLU, and others. *Id.* at 838.

B. Disparate review of unpreserved *Blazina* error and lack of uniformity or predictability in granting discretionary review undermines *Blazina*'s call for LFO reform.

Despite *Blazina*'s directive to conduct the RCW 10.01.160 inquiry before imposing LFOs on indigent defendants, sentencing courts and parties continue to struggle to implement the ability to pay evaluation.¹

¹ See Table of Cases Post-*Blazina*, attached hereto as Appendix B. Pursuant to GR 14.1(a), the table includes unpublished opinions as indicated thereon. Such opinions are

Furthermore, appellate courts are failing to articulate and consistently apply standards determining acceptance of review, resulting in disparate outcomes where relief is dependent not upon merit, but may vary depending upon the jurisdiction, panel, success of other claims of error, amount of LFOs assessed, and so on. *See* Appendix B.

Ironically, the broad discretion afforded to the courts of appeal to determine whether to review *Blazina* error has contributed to the discrepancies identified in *Blazina* that significantly burden indigent defendants and society as a whole. To the extent *Blazina* calls us to take seriously the costs of Washington’s broken LFO system, the problems cannot be adequately addressed without recognizing the necessary roles of the court and defense counsel to ensure a fair sentencing proceeding.

RAP 2.5(a)(2) permits review of unpreserved errors as a matter of right due to “failure to establish facts upon which relief can be granted.” This provision has historically permitted initial challenges on appeal to sufficiency of the evidence supporting relief. *See, e.g., Stedman v. Cooper*, 172 Wn. App. 9, 24, 292 P.3d 764 (2012); *Batten v. Abrams*, 28 Wn. App. 737, 742, 626 P.2d 984 (1981). In *Stedman* and *Batten*, the legal and factual requirements to support a claim for monetary relief –

offered only for persuasive value and to demonstrate the disparate outcomes resulting from the exercise of discretion in reviewing *Blazina* error.

attorney fees and sanctions, respectively – were reviewable for the first time on appeal under RAP 2.5(a)(2). Here, the legal and factual requirements of RCW 10.01.160 require, as a condition to imposing discretionary LFOs, an inquiry into and a supported finding of the defendant’s ability to pay. When discretionary LFOs are imposed without the required inquiry or an evidentiary showing of ability to pay, the evidence is not sufficient to support the LFO assessment. Accordingly, under the rationale of *Stedman* and *Batten*, the relief – here, the LFO assessment – should be reviewable as a matter of right under RAP 2.5(a)(2) when insufficient evidence in the record supports the LFOs.

Review of the standards for appellate review of unsupported LFO assessments is of substantial public interest in light of the disparities in administration that continue to undermine *Blazina*’s goal of LFO reform. Accordingly, review of the applicability of RAP 2.5(a)(2) to LFO assessments should be granted under RAP 13.4(b)(4).

C. Effective enforcement of RCW 10.01.160 requires recognition of the responsibilities of the court and defense counsel

RCW 10.01.160(3), adopted in the 1975-76 legislative session, plainly states that the court “shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” Despite being the law of the

land for forty years, *Blazina* and its progeny have drawn attention to the systematic failures on the part of sentencing courts to conduct the inquiry and defense attorneys to hold the courts accountable to their statutory obligations. Where, post-*Blazina*, sentencing courts *still* impose discretionary financial obligations on defendants without regard for the long-term consequences and defense attorneys *still* allow the assessments to go unchallenged, neither is fulfilling the constitutional and statutory roles necessary for effective administration of the LFO system.

In *State v. Lyle*, 188 Wn. App. 848, 853, 355 P.3d 327 (2015), *remanded*, 184 Wn.2d 1040 (2016), Division II of the court of appeals regarded failure to object to the imposition of LFOs without an ability to pay inquiry as deficient performance by trial counsel. However, because the record did not contain precisely the kind of information that an adequate *Blazina* inquiry would have revealed, the *Lyle* court held that it could not conclude the outcome likely would have been different and, therefore, the deficient performance was not prejudicial. 188 Wn. App. at 853-54. This Court accepted review of *Lyle* and remanded for a *Blazina* inquiry, but did not reach the merits of the ineffective assistance of counsel claim. 184 Wn.2d 1040.

Since *Lyle*'s remand, the courts of appeal have hesitated to review *Blazina* error through the lens of ineffective assistance of counsel. See Appendix B. Indeed, courts have disputed even whether the failure to object constitutes a deficient performance at sentencing. *Id.* It is long established that the constitutional right to counsel exists to protect the fairness of the adversary proceeding. *Strickland v. Washington*, 466 U.S. 668, 684, 104 S. Ct. 205, 280 L. Ed. 2d 674 (1984). The right applies to all critical stages of a criminal prosecution, including sentencing. *State v. Robinson*, 153 Wn.2d 689, 694, 107 P.3d 90 (2005). Among counsel's duties is the responsibility to conduct an adequate investigation to permit meaningful decisions about how to proceed with the case. *State v. A.N.J.*, 168 Wn.2d 91, 111, 225 P.3d 956 (2010). Knowing that financial assessments will be considered at sentencing, and considering the detrimental effects of LFO assessments on defendants who are unable to pay them, a fair sentencing proceeding can only result when defense counsel conducts a reasonable investigation into the defendant's financial circumstances and protects the defendant from unfounded assessments by timely objection.

But even assuming deficient performance, the inability to demonstrate prejudice in the absence of the evidence a reasonable investigation would have uncovered is nearly always fatal to relief. Here,

Clark can show through the very type of information a nominal investigation would reveal – LFO account balances maintained in the statewide Judicial Information System ²- that counsel’s failure to look or to require the court to look into its own records likely resulted in the court imposing LFOs on a man who will have no realistic prospect of ever paying them. This case thus presents an appropriate and compelling vehicle for recognizing that fixing the broken LFO system called out in *Blazina* requires diligent performance of the roles already established in the statutory framework, and that failure to inquire into a defendant’s financial circumstances results in precisely the unfair, disparate consequences that *Blazina* sought to remedy.

Affirmatively recognizing the obligations of defense counsel to adequately investigate in preparation for sentencing and hold courts accountable for complying with RCW 10.01.160 is both an issue of substantial public interest, and a question of constitutionally effective counsel under the Sixth Amendment. Review is warranted and should be granted under RAP 13.4(b)(3) and (4).

² The Judicial Information System (“JIS”) “serves as a statewide clearinghouse for criminal history information, domestic violence protection orders and outstanding warrants.” <http://www.courts.wa.gov/jis/> (last visited October 9, 2016). It is available without charge to county and city government agencies for court business. RCW 2.68.010.

VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(3) and (4) and this Court should enter a ruling that (1) the imposition of discretionary LFOs without a factual basis of ability to pay is reviewable under RAP 2.5(a)(2), and (2) Clark's attorney was ineffective in failing to object to the imposition of discretionary LFOs without a *Blazina* inquiry.

RESPECTFULLY SUBMITTED this 10 day of October, 2015.


ANDREA BURKHART, WSBA #38519
Attorney for Petitioner

DECLARATION OF SERVICE

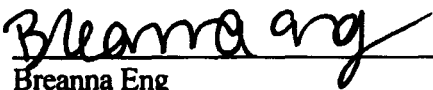
I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Petition for Review upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Steven Michael Clem
Douglas Prosecuting Attorney
PO Box 360
Waterville, WA 98858

Joshua J. Clark, DOC #852518
Airway Heights Corrections Center
PO Box 2049
Airway Heights, WA 99001

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 16~~th~~ day of October, 2016 in Walla Walla, Washington.


Breanna Eng

APPENDIX A

FILED
SEPT 8, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 32839-2-III
Respondent,)	
)	
v.)	
)	
JOSHUA JAMES CLARK,)	OPINION PUBLISHED
)	IN PART
Appellant.)	

KORSMO, J. — Joshua Clark claims a right to have his unchallenged legal financial obligations (LFOs) considered initially on appeal pursuant to RAP 2.5(a)(2). We reject that argument and, in the unpublished portion of this case, also reject his CrR 3.3 challenge to his convictions for attempting to elude and possession of a controlled substance.

FACTS

This action is a companion to *State v. Clark*, 191 Wn. App. 369, 362 P.3d 309 (2016) (published in part) (*Clark I*). As with this case, the issues presented on appeal in *Clark I* involved an LFO challenge and a time for trial claim. The *Clark I* trial and sentencing occurred after the trial and sentencing in this case. *Id.* at 371, 376. We noted

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that scant attention was paid to LFOs at the sentencing in *Clark I* as the parties focused on the question of concurrent or consecutive sentencing. *Id.* at 376.

The focus of this sentencing hearing was on the State's request for an exceptional sentence on the attempting to elude charge. The jury had returned a special verdict that others had been endangered by Mr. Clark's driving, resulting in a 12 month enhancement to the base sentence. The State's sentencing memorandum urged an exceptional sentence on the basis of the defendant's 24 unscored misdemeanor convictions. It also detailed the financial costs and fines it was seeking. The prosecutor reiterated at sentencing most of the costs and fines he was seeking.

Defense counsel then addressed the court on the financial matters and alerted the judge that his client had been assaulted in the jail and would have additional medical costs beyond the \$95.41 mentioned in the State's briefing; he suggested the State might need to set an additional hearing concerning the pending additional medical costs. Counsel agreed that the \$95.41 was currently owing for medical costs and then urged the court to impose a midrange sentence within the enhanced range resulting from the special verdict. Mr. Clark apologized for his behavior and asked for a treatment-based sentence if possible. The trial court imposed a 30 month sentence at the top of the enhanced sentence range rather than imposing an exceptional sentence. The court's oral remarks did not mention LFOs, but the judgment and sentence form imposed a total of \$2,145.41 in costs and fines, including the \$95.41 sought for medical expense reimbursement. The

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judgment and sentence form also contained pre-printed language indicating that the court had considered the defendant's "future ability to pay legal financial obligations, including the defendant's financial resources." Clerk's Papers at 46.

Mr. Clark timely appealed to this court. A panel considered the case without argument.

ANALYSIS

Mr. Clark asserts a right to have his LFO argument heard in this court as well as urging that we exercise our discretion to consider his claim. After first characterizing one of the LFOs imposed by the trial court, we ultimately conclude that RAP 2.5(a)(2) does not support Mr. Clark's argument and decline to exercise discretion to consider his claim.

As noted in *Clark I*, numerous appeals in recent years have addressed the imposition of LFOs without the record reflecting that the trial court first had undertaken its RCW 10.01.160(3) obligation to consider the offender's ability to pay those costs. 191 Wn. App. at 372-73. The statutory obligation only extends to the decision to impose costs other than those mandated by the legislature. *Id.* at 373. Costs that are required by statute are not subject to this obligation. Among the mandatory costs are restitution, the crime victim assessment, the DNA collection fee, and the criminal case filing fee. *Id.* Most other costs, including witness costs, collection costs, and recoupment of the cost of trial counsel, are discretionary. *Id.* at 374. *Clark I* also determined that fines authorized by RCW 9A.20.021 are not "costs" subject to the statutory inquiry. *Id.* at 374-76.

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Because the alleged error at issue in the LFO cases was the failure to comply with a statutory requirement, and in nearly all cases there was no objection in the trial court, the preliminary question was whether the belated challenge could even be raised on appeal in light of Washington's policy of not entertaining arguments that had not been presented to the trial court. RAP 2.5(a). All three divisions of this court concluded that they could not be considered. *Clark I*, 191 Wn. App. at 373. Subsequently, the Washington Supreme Court ruled the issue was not one that could be raised as a matter of right and that the appellate courts had discretion to review or decline to review the issue. *State v. Blazina*, 182 Wn.2d 827, 830, 344 P.3d 680 (2015).

With this backdrop, we consider Mr. Clark's latest LFO challenge. Initially, however, we need to resolve a preliminary question of how to characterize one of the financial obligations imposed by the court. There were \$800 in mandatory costs (filing fee, crime victim assessment, DNA fee) and a \$500 fine, thus placing \$1,300 of the assessments beyond reach of the statutory inquiry. Another \$495.41 (attorney fee recoupment, medical cost reimbursement) was assessed for clearly discretionary costs. It is unclear to us whether the \$250 jury demand fee is a mandatory or discretionary cost.¹

¹ Compare RCW 10.01.160(2), which indicates in relevant part that the jury fee "under RCW 10.46.190 may be included in costs the court may require a defendant to pay" with RCW 10.46.190, stating that "every person convicted . . . shall be liable to all the costs . . . including . . . a jury fee . . . for which judgment shall be rendered and collected." See also *State v. Diaz-Farias*, 191 Wn. App. 512, 524, 362 P.3d 322 (2015) (concluding jury demand fee could be imposed per RCW 10.01.160(2)) and *State v. Munoz-Rivera*, 190 Wn.

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As the parties do not directly address that fee in their briefing, we will assume for purposes of this opinion that it is a discretionary cost. The remaining assessment is the \$100 crime laboratory fee.

RCW 43.43.690(1) provides:

When a person has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted. Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.

(emphasis added). The proceeds from this assessment are forwarded to the general fund and are to be used only for the crime laboratories. RCW 43.43.690(3).

This assessment is mandatory if a laboratory analysis was conducted. Upon conviction, the court “shall levy” the fee. Only on a “verified petition” by the offender may the court suspend some or all of the fee if it determines there is no ability to pay. Unlike discretionary costs, the laboratory fee is assessed and, then, perhaps, revised if the defendant provides adequate proof. In contrast, the process is reversed under RCW 10.01.160(3). Under that provision, discretionary costs may only be imposed if the court has first determined ability to pay.

App. 870, 894, 361 P.3d 182 (2015) (defendant considered jury demand fee as mandatory cost).

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The crime laboratory fee is mandated by statute. Accordingly, \$1,400 of the LFOs assessed against Mr. Clark are not subject to initial challenge on appeal, while only \$745 is subject to our discretionary decision whether or not to review the argument.

Mr. Clark, however, argues that RAP 2.5(a)(2) provides a vehicle to mandate that we consider his challenges to the discretionary LFOs. That provision provides that “a party may raise the following claimed errors for the first time in the appellate court: . . . (2) failure to establish facts upon which relief can be granted.” This has long been the rule in Washington. *See O’Toole v. Faulkner*, 29 Wash. 544, 548, 70 P. 58 (1902) (failure to state a claim for relief could be raised for first time in the supreme court per statute). The current text was considered to more accurately reflect modern practice than the former “failure to state a claim” language. *See* RAP 2.5 cmt. a at 86 Wn.2d 1152 (1976).

Traditionally, this provision simply has been the basis for considering initially on appeal a challenge to the prevailing party’s evidence due to failure to establish some element of its case. Thus, in *Roberson v. Perez*, 156 Wn.2d 33, 39-40, 123 P.3d 844 (2005), a tort judgment for negligent investigation was reversed on appeal because the plaintiff had not been the subject of a police investigation nor to a harmful placement decision. Similarly, a claim of unlawful age discrimination failed under RAP 2.5(a)(2) when the defense pointed out on appeal that the plaintiff was too young to bring a claim under the statute. *Gross v. City of Lynnwood*, 90 Wn.2d 395, 400, 583 P.2d 1197 (1978). *Accord, In re Adoption of T.A.W.*, 188 Wn. App. 799, 808, 354 P.2d 46 (2015) (failure to

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prove compliance with Indian Child Welfare Act considered initially on appeal). RAP 2.5(a)(2) has not been applied in cases where the facts were unclear or agreed by the parties in the trial court. *E.g., Mukilteo Ret. Apts., L.L.C. v. Mukilteo Investors L.P.*, 176 Wn. App. 244, 310 P.3d 814 (2013) (party who agreed at trial contract was valid could not use RAP 2.5(a)(2) to argue lack of proof of element on appeal); *Cole v. Harveyland, L.L.C.*, 163 Wn. App. 199, 258 P.3d 70 (2011) (unclear facts and uncertain burden of proof).

However, this rule also has been cited as the basis for addressing other issues on appeal that had not been argued to the trial court. For instance, Division Two of this court used the rule to dismiss a case where the appellant failed to establish her standing to contest an adoption. *Mitchell v. Doe*, 41 Wn. App. 846, 848, 706 P.2d 1100 (1985). The rule also has been cited as the basis for considering on appeal a statute and a local court rule that were not cited to the trial court. *Stedman v. Cooper*, 172 Wn. App. 9, 24, 292 P.3d 764 (2012) (change in statute wrought by intervening supreme court decision was dispositive on whether appellant had proved her entitlement to fees under the statute); *Batten v. Abrams*, 28 Wn. App. 737, 742, 626 P.2d 984 (1981) (parties failed to comply with mandatory local court rule, leaving trial court unable to impose discovery sanctions).

With particular emphasis on *Stedman*, Mr. Clark argues that insufficient facts support the trial court's determination that he has the ability to pay his LFOs, thus leaving the trial court without statutory authority to impose them. Brief of Appellant at 7-8.

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While creative, this expansion of the rule's meaning is unjustified and distorts the purpose of the provision.

In each of the noted instances where RAP 2.5(a)(2) was applied, the "fact" in question was one that went to an element of the case such as the age of the complainant alleging age discrimination or the failure to comply with the Indian Child Welfare Act in the adoption of a native American child. *Gross*, 90 Wn.2d at 400; *T.A.W.*, 188 Wn. App. at 799. Even where the argument was rejected, the "fact" in question still went to an element of the cause of action. For instance, in *Cole* the fact in question was the number of employees working for the defendant, a statutory element of an exemption from the plaintiff's employment law claim. 163 Wn. App. at 205-12. In each of these instances, the "fact" was one essential to the survival of the cause of action.² The *Mitchell* ruling on standing similarly involved a "fact" essential to the ability to maintain the action—the appellant's ability to challenge the adoption. 41 Wn. App. at 846.

The case factually most supportive of Mr. Clark's position is *Batten*. Properly read, however, *Batten* is consistent with the other authorities. There the respondents had failed to confer with the appellant's attorney, as required under the local court rules,

² *Stedman* is consistent with this reading, but is best understood as a retroactivity case. The law changed while the case was on appeal, scrambling the "elements" of the cause of action by revising what could be considered in determining which party prevailed at a trial de novo following an arbitration award. The effect of the change in law was to leave the respondent with insufficient evidence to support part of the damages element of her case, a classic RAP 2.5(a)(2) concern. 172 Wn. App. at 24-25.

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before noting their motion for discovery sanctions. 28 Wn. App. at 742. Citing to *Gross*, this court concluded that RAP 2.5(a)(2) allowed appellant to raise the non-compliance argument despite failing to object in the trial court. *Id.* We viewed the rule as the cause of action for pursuing the discovery sanctions and concluded that respondents had failed to prove a critical fact necessary for their recovery. *Id.* at 742-43.

In contrast, the “fact” at issue here—whether the trial court complied with its statutory obligation before imposing the discretionary LFO component of the sentence—did not touch on the elements of the State’s cause of action for attempting to elude and possessing a controlled substance. It addressed a procedural question concerning the trial court’s statutory sentencing obligations. This situation is not a concern of RAP 2.5(a)(2).³

³ Our reading is consistent with that in *Mukilteo*. There, Division One of this court stated that the rule was “limited to circumstances wherein the proof of particular facts at trial is required to sustain a claim.” 176 Wn. App. at 246. At issue on appeal was the validity of the option contract, a fact that typically is an element of a breach of contract case. *Mukilteo* described its test in terms of whether relief could be granted in the absence of the challenged fact. *Id.* Although appellant had admitted in the pre-trial pleadings that the contract was a valid agreement, on appeal it tried to argue that respondents had not established the validity of the contract at trial. That concession rendered proof at trial of the contract’s validity unnecessary. *Id.* at 254-55, 259. While the pleadings may have eliminated that factual issue from the trial, the fact otherwise seems to fail the *Mukilteo* test because it normally would be necessary to establish the contract’s validity in order to obtain relief. We believe *Mukilteo* is better read as a case of the appellant waiving the proof requirement and, therefore, being unable to assert a right to review under RAP 2.5(a)(2).

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Here, the trial court's compliance with RCW 10.01.160(3) was not a component of the State's cause of action. Instead, it involved a procedural error that "is unique to these defendants' circumstances." *Blazina*, 182 Wn.2d at 834. It was for that very reason that the appellate courts are permitted, but not required, to consider an LFO issue on appeal. *Id.* The statutory right of the defendant to individualized LFO sentencing simply is not a requirement of the cause of action against the defendant. It is an independent obligation of the trial court.

RAP 2.5(a)(2) should not be read to permit a party as a matter of right to challenge on appeal each and every action that he did not challenge at trial. It should be read, as it was intended to be read, as applying solely to insufficient proof of an essential element of a party's case. That description does not apply to the trial court's actions, including its unchallenged failure to conduct an individualized inquiry on ability to pay discretionary LFOs in this case. RAP 2.5(a)(2) does not mandate that we consider Mr. Clark's belatedly raised LFO challenge.

We likewise decline to exercise our discretion to consider his challenge under these circumstances. His trial counsel spoke to, and did not contest, the discretionary costs relating to Mr. Clark's medical bills. He had the opportunity to address the other LFOs and chose not speak to them. Instead, he successfully focused his argument against the requested exceptional sentence. The LFOs were not a significant concern.

The judgment and sentence is affirmed.

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A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder having no precedential value shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Mr. Clark also argues that his CrR 3.3 time for trial rights were violated when his case was continued to a date along with another case of his that was set on the same day. As with his claim in the previous appeal, this argument fails on multiple grounds.

The facts relevant to this argument can be simply stated. Mr. Clark was arraigned on these charges and subsequently failed to appear for a hearing, leading to the issuance of an arrest warrant in both this case and in an unrelated, and separately charged, burglary case. He was brought back before the court on June 16, 2014 and maintained in custody on both files. Trial was then set on both matters for July 24, 2014, with the time for trial period expiring August 15, 2014. At the July 21 trial readiness calendar, the court was in the midst of a murder trial involving a different defendant. The parties requested that the July 24 trial dates be maintained in the event the murder trial was resolved by then, but also asked to be heard on new trial dates the following Monday, July 28, in the event the murder trial did not conclude.

The murder trial did not resolve itself early, so the parties were back before the court on July 28 to set new trial dates for Mr. Clark's cases. Trial on both files was rescheduled to August 14, 2014, an action that his counsel characterized as "necessary,"

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and both matters were set for trial readiness hearings on August 11. At the August 11 readiness hearing, the prosecutor indicated he preferred to take the burglary case to trial on the 14th. Defense counsel agreed and the trial judge set this case over to August 28, 2014.

Mr. Clark personally objected to the continuance of this case, even though his attorney agreed to the continuance. The trial judge explained that there was but one judge and one courtroom, so only one of Mr. Clark's cases could be tried on the 14th and one would have to be continued. The burglary case went to trial on August 14 and this case on August 28.⁴

We stated the basic principles of CrR 3.3 in *Clark I*:

In its most basic terms, CrR 3.3 requires trial within 60 days of arraignment if the defendant is held in custody on the pending charge(s) or 90 days if the defendant is not in custody on the pending charge. CrR 3.3(b), (c)(1). The same time periods apply if a new commencement date is required for any of several reasons listed in CrR 3.3(c)(2).

A timely written objection to a trial date scheduled outside the requirements of the rule must be brought to the court's attention by motion or the defendant loses the opportunity to object. CrR 3.3(d). Various factors also act to exclude time from the 60- or 90-day trial period, including proceedings on unrelated charges and continuances. CrR 3.3(e)(2), (3). Whenever any period of time is excluded, there is a 30-day minimum period of time within which to bring a case to trial. CrR 3.3(b)(5). Finally, even if the trial period passes without trial, a five day cure period may be invoked. CrR 3.3(g).

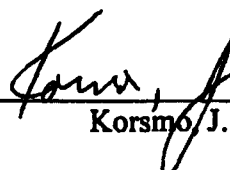
Clark, slip op. (unpublished portion) at 10.

⁴ Nothing in our record indicates the result of that trial. However, neither the judgment and sentence in this case nor in *Clark I* references any 2014 convictions relating to that charge.

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While we need not discuss the matter exhaustively, there are several reasons this CrR 3.3 challenge fails. First, our record shows no written objection, let alone a motion to reset the trial within the perceived time for trial period. Thus, the challenge was waived. CrR 3.3(d). Second, Mr. Clark was unavailable for trial on this case since he was in trial on his burglary charge on August 14, 2014. This period of time was properly excluded from the time for trial in this case. CrR 3.3(e)(2). Third, the unavailability of the defendant (and the judge, prosecutor, defense counsel, and the courtroom) also was a proper basis for a continuance, leading to this time period being excluded from the time for trial period pursuant to CrR 3.3(e)(3) and CrR 3.3(f). *State v. Flinn*, 154 Wn.2d 193, 200, 110 P.3d 748 (2005) (recognizing scheduling conflict as valid reason for continuing case beyond time for trial period). Fourth, even if the continuance to August 28 had not been justified, the “necessary” continuance to August 14 itself created a 30 day buffer period to get the case to trial, making the August 28 trial also timely. CrR 3.3(b)(5). For at least all of these reasons, there was no violation of CrR 3.3.

The convictions are affirmed.



Korsmo, J.

I CONCUR:



Siddoway, J.

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PENNELL, J. (dissenting in part) — I join all but the last substantive paragraph of the majority's published opinion, through which the court declines discretionary review of Mr. Clark's legal financial obligation (LFO) claims.

Trial courts have an affirmative obligation to inquire into a defendant's financial circumstances before imposing discretionary LFOs. RCW 10.01.160(3). This is not a trivial burden. It cannot be satisfied merely by signing off on a boilerplate form, indicating that the defendant has the present or future ability to pay. *State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). Instead, the trial court must consider each defendant's personal situation and individually analyze his or her financial prospects, including outstanding debts, obligations, and earning capacity. *Id.*

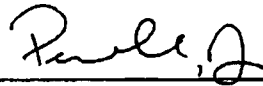
The trial judge undoubtedly failed to meet this statutorily-mandated duty. No individualized inquiry took place. There was no discussion on the record of Mr. Clark's financial obligations or what he might be able to do for a living after release from prison. In fact, the trial judge made no mention of LFOs during the entire sentencing proceeding. It was not until after the sentencing hearing, when the trial court entered a written judgment and sentence, that Mr. Clark was informed he had been assessed \$2,145.41 in mandatory and discretionary LFOs.

Despite the trial court's clear error, the majority declines Mr. Clark's request for relief because his attorney did not object. I would not deny review on this technicality. Our Supreme Court has made clear we have authority to review discretionary LFO

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decisions even when no objection was raised in the trial court. *Id.* at 835. In cases where defendants have had the fortune of receiving discretionary Supreme Court review, the court has consistently—and without limitation—remanded unpreserved LFO arguments for resentencing under *Blazina*. See *State v. Duncan*, 185 Wn.2d 430, 374 P.3d 83 (2016) (citing cases); see also *State v. Austin*, 185 Wn.2d 1025, __ P.3d __ (2016) (reversing discretionary denial of LFO claim and remanding under *Blazina*); *State v. Como*, 185 Wn.2d 1025, __ P.3d __ (2016) (same); *State v. Floyd*, 185 Wn.2d 1025, __ P.3d __ (2016) (same); *State v. Matheny*, 185 Wn.2d 1026, __ P.3d __ (2016) (same); *State v. Wilmer*, 185 Wn.2d 1025, __ P.3d __ (2016) (same).¹ Mr. Clark should be afforded equal consideration.

Based on the foregoing, I dissent from the majority opinion in part and would remand this case to the superior court for reconsideration of discretionary LFOs consistent with the requirements set forth in *Blazina*.



Pennell, J.

¹ Mr. Clark recently had a separate appeal before this court wherein he unsuccessfully raised an unpreserved LFO argument. *State v. Clark*, 191 Wn. App. 369, 362 P.3d 309 (2015). It appears he did not seek discretionary review of that decision as a mandate was issued on January 5, 2016.

APPENDIX B

TABLE OF POST-BLAZINA DECISIONS

Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
1	Unpublished	State v. Mason-Webb	187 Wn. App. 1005 (2015)	4/20/15	Discretion exercised and remanded
1	Unpublished	State v. Arnold	186 Wn. App. 1033 (2015)	3/23/15	Remanded
1	Unpublished	State v. Vanelslou	191 Wn. App. 1015 (2015)	11/16/15	Remanded
1	Unpublished	State v. Schneider	193 Wn. App. 1032 (2016)	4/25/16	Trial court exceeded statutory authority by imposing LFOs without findings, remanded
1	Unpublished	State v. Whitmore	194 Wn. App. 1028 (2016)	6/13/16	Discretion exercised and remanded
1	Unpublished	State v. Haller	194 Wn. App. 1043 (2016)	6/27/16	Discretion exercised and remanded
1	Unpublished	State v. Williams	2016 WL 4081709	8/1/16	Discretion exercised and remanded
1	Unpublished	State v. Thompson	2016 WL 4081175	8/1/16	Discretion exercised and remanded
1	Unpublished	State v. Sepeda	2016 WL 5200530	9/19/16	State conceded error, remanded
1	Unpublished	State v. Henderson	192 Wn. App. 1042	2/16/16	Discretion not exercised, affirmed
1	Unpublished	State v. Herrera-Pelayo	2016 WL 4081168	8/1/16	Discretion not exercised, affirmed
1	Unpublished	State v. Balderras-Lopez	2016 WL 4184344	8/8/16	Discretion not exercised, IAC argument rejected for lack of prejudice, affirmed
2	Published	State v. Lyle	188 Wn. App. 848, 355 P.3d 327 (2015); remanded, 184 Wn.2d 1040 (2016)	7/10/15	Discretion not exercised, deficient performance found but no prejudice, affirmed
2	Unpublished	State v. Newman	193 Wn. App. 1019 (2016)	4/12/16	IAC found, remanded
2	Unpublished	State v. Smith	189 Wn. App. 1029 (2015)	8/11/15	Discretion not exercised, but <i>Blazina</i> inquiry directed when remanded on other grounds
2	Unpublished	State v. Christopher	189 Wn. App. 1021 (2015)	8/4/15	Discretion not exercised, affirmed

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Unpublished	State v. Berrian	189 Wn. App. 1036 (2015)	8/18/15	Discretion not exercised, affirmed
2	Unpublished	State v. Gutierrez, Jr.	189 Wn. App. 1020 (2015)	8/4/15	Discretion not exercised, but <i>Blazina</i> inquiry directed when remanded on other grounds
2	Unpublished	State v. Chacon II	189 Wn. App. 1013 (2015)	7/28/15	Discretion not exercised, affirmed
2	Unpublished	State v. Cooley	188 Wn. App. 1062 (2015)	7/21/15	Discretion not exercised, affirmed
2	Unpublished	State v. Sorensen	188 Wn. App. 1052 (2015)	7/14/15	Discretion not exercised except as to expert cost not authorized by statute and conceded by State
2	Unpublished	State v. Hutchens	188 Wn. App. 1042 (2015)	7/7/15	Discretion not exercised, affirmed
2	Unpublished	State v. Proshold	188 Wn. App. 1004 (2015)	6/4/15	Discretion not exercised, affirmed
2	Unpublished	State v. Eaglespeaker	187 Wn. App. 1027 (2015)	5/12/15	Discretion not exercised, affirmed
2	Unpublished	In re. Pers. Restraint of Lar	187 Wn. App. 1009 (2015)	4/21/15	Discretion not exercised, but <i>Blazina</i> inquiry directed when remanded on other grounds
2	Unpublished	State v. Austin	190 Wn. App. 1014 (2015)	9/22/15	Discretion not exercised, affirmed
2	Unpublished	State v. Bowen	190 Wn. App. 1013 (2015)	9/22/15	Discretion not exercised, but <i>Blazina</i> inquiry directed when remanded on other grounds
2	Unpublished	State v. Cherry	191 Wn. App. 456 (2015), <i>review denied</i> , 185 Wn.2d 1031 (2016)	11/24/15	Discretion not exercised, affirmed
2	Unpublished	State v. Floyd	191 Wn. App. 1031 (2015), <i>review granted</i> , 185 Wn.2d 1025 (2016)	12/1/15	Discretion not exercised, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Unpublished	State v. Zain	191 Wn. App. 1033 (2015), <i>review granted</i> , 185 Wn.2d 1017 (2016)	12/1/15	Discretion not exercised, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
2	Unpublished	State v. Brinson	191 Wn. App. 1039 (2015)	12/8/15	Discretion not exercised, affirmed
2	Unpublished	State v. Thompson	191 Wn. App. 1046 (2015)	12/15/15	Discretion not exercised, affirmed
2	Unpublished	State v. Ralston	191 Wn. App. 1043 (2015), <i>review granted</i> , 185 Wn.2d 1025 (2016)	12/15/15	Discretion not exercised, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
2	Unpublished	State v. Argueta	191 Wn. App. 1046 (2015)	12/15/15	Discretion not exercised, affirmed
2	Unpublished	State v. Wilmer	191 Wn. App. 1045 (2015), <i>review granted</i> , 185 Wn.2d 1025 (2016)	12/15/15	Discretion not exercised, deficient performance found but no prejudice, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
2	Unpublished	State v. Falconer	191 Wn. App. 1051 (2015), <i>review granted</i> , 185 Wn.2d 1030 (2016)	12/22/15	Discretion not exercised, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
2	Unpublished	State v. Tolman	192 Wn. App. 1009 (2016), <i>review granted</i> , 2016 WL 5408283	1/12/16	Discretion not exercised, affirmed; remanded by Supreme Court with instructions to Court of Appeals to remand for <i>Blazina</i> inquiry if appropriate
2	Unpublished	State v. Highsmith	192 Wn. App. 1022, <i>review granted</i> , 185 Wn.2d 1033 (2016)	1/19/16	Discretion not exercised, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Unpublished	State v. Leland	192 Wn. App. 1031 (2016)	2/2/16	Discretion not exercised, deficient performance found but no prejudice, affirmed
2	Unpublished	State v. Bakke	192 Wn. App. 1037, <i>review denied</i> , 185 Wn.2d 1035 (2016)	2/9/16	Discretion not exercised, affirmed
2	Unpublished	State v. Marcum	192 Wn. App. 1037, <i>review granted</i> , 186 Wn.2d 1001 (2016)	2/9/16	Discretion not exercised, affirmed despite remand on other grounds; remanded by Supreme Court for <i>Blazina</i> inquiry
2	Unpublished	State v. Pena	192 Wn. App. 1037, <i>review denied</i> , 185 Wn.2d 1039 (2016)	2/9/16	Discretion not exercised, affirmed
2	Unpublished	State v. Naillon	192 Wn. App. 1068, <i>review granted</i> , 186 Wn.2d 1001 (2016)	3/8/16	Discretion not exercised, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
2	Unpublished	State v. Womer	192 Wn. App. 1076 (2016)	3/15/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
2	Unpublished	State v. Larisch	192 Wn. App. 1075 (2016)	3/15/16	Discretion not exercised, affirmed
2	Unpublished	State v. Harper	193 Wn. App. 1005 (2016)	3/22/16	Discretion not exercised, affirmed
2	Unpublished	State v. Fears	193 Wn. App. 1014 (2016)	4/5/16	Discretion not exercised, affirmed
2	Unpublished	State v. Applegate	193 Wn. App. 1037 (2016)	4/26/16	Discretion not exercised, affirmed
2	Unpublished	State v. Hanson	194 Wn. App. 1004 (2016)	5/17/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
2	Unpublished	State v. Larson	188 Wn. App. 1028, <i>review denied</i> , 184 Wn.2d 1015 (2015)	6/23/15	Discretion exercised, remanded

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Unpublished	State v. McElfish	190 Wn. App. 1038 (2015), <i>review denied</i> , 185 Wn.2d 1027 (2016)	10/20/15	Discretion exercised, remanded
2	Unpublished	State v. Richter	192 Wn. App. 1009, <i>review denied</i> , 185 Wn.2d 1031 (2016)	1/12/16	Discretion exercised, remanded
2	Unpublished	State v. Salters	192 Wn. App. 1023 (2016)	1/19/16	Discretion exercised, remanded, IAC issue not considered
2	Unpublished	State v. Guevara	2016 WL 917822, <i>review denied</i> , 185 Wn.2d 1042 (2016)	3/8/16	Discretion exercised because State conceded error, remanded to strike discretionary LFOs
2	Unpublished	State v. Leonard	2016 WL 917834, <i>review denied</i> , 185 Wn.2d 1042 (2016)	3/9/16	Discretion exercised because State conceded error in assessing jury demand fee, directed <i>Blazina</i> inquiry on remand as to remaining discretionary LFOs
2	Unpublished	State v. Vargas	188 Wn. App. 1040 (2015)	7/7/15	Discretion exercised, affirmed because pre-sentence investigation report provided adequate basis
2	Unpublished	State v. Balao	187 Wn. App. 1027 (2015)	5/12/15	Discretion exercised, affirmed because information about employment and education at sentencing provided adequate basis
2	Unpublished	State v. Hernandez	193 Wn. App. 1017 (2016)	4/12/16	Discretion exercised, <i>Blazina</i> inquiry directed when remanded on other grounds despite some evidence in record as to ability to pay

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Unpublished	State v. Fick	193 Wn. App. 1028 (2016)	4/19/16	Discretion exercised, remanded
2	Unpublished	State v. Carter	193 Wn. App. 1029 (2016), <i>review denied</i> , 2016 WL 5408311	4/19/16	Discretion exercised, remanded despite some evidence in the record as to ability to pay
2	Unpublished	State v. Olivas	193 Wn. App. 1029 (2016)	4/19/16	Discretion exercised, remanded
2	Unpublished	State v. Schechert	193 Wn. App. 1043 (2016)	5/3/16	Rejects <i>Lyle</i> approach in light of <i>Marks</i> , discretion exercised, remanded
2	Unpublished	State v. Holman	193 Wn. App. 1044 (2016)	5/3/16	Discretion exercised, remanded
2	Unpublished	State v. Eidsmoe	193 Wn. App. 1045 (2016)	5/3/16	Discretion exercised, remanded
2	Unpublished	State v. Sanabria	193 Wn. App. 1043 (2016), <i>review denied</i> , 2016 WL 5408314	5/3/16	State concedes error, remanded
2	Unpublished	State v. Naillon	193 Wn. App. 1045 (2016)	5/3/16	Discretion exercised, remanded
2	Unpublished	State v. Mabry	193 Wn. App. 1050 (2016)	5/10/16	State concedes error, remanded to strike discretionary LFOs
2	Unpublished	State v. Rubedew	193 Wn. App. 1050 (2016)	5/10/16	Defense counsel objected, remanded
2	Unpublished	State v. Brown	194 Wn. App. 1011 (2016)	5/24/16	Discretion exercised, remanded
2	Unpublished	State v. Channel	194 Wn. App. 1011 (2016)	5/24/16	Discretion exercised, remanded
2	Unpublished	State v. Harris	194 Wn. App. 1017 (2016)	6/1/16	Discretion exercised, State concedes error, remanded
2	Unpublished	State v. Lafrombois	194 Wn. App. 1018 (2019)	6/1/16	Discretion not exercised, but <i>Blazina</i> inquiry directed when remanded on other grounds
2	Published	State v. Cardenas-Flores	194 Wn. App. 496, 374 P.3d 1217 (2016)	6/14/16	Discretion exercised, remanded

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Published	State v. Tedder	194 Wn. App. 753, 378 P.3d 246 (2016)	6/28/16	Discretion exercised, remanded
2	Unpublished	State v. Graham	194 Wn. App. 1044 (2016)	6/28/16	Discretion exercised, remanded
2	Published in part, LFO portion unpublished	State v. Gaines	194 Wn. App. 892, __ P.3d __ (2016)	7/6/16	Discretion exercised, remanded
2	Unpublished	State v. Allen	195 Wn. App. 1001 (2016)	7/12/16	Colloquy at sentencing was not adequate when it addressed education, past employment, and future ability to work, remanded
2	Unpublished	State v. Tyler	195 Wn. App. 1006 (2016)	7/19/16	Discretion exercised, remanded
2	Unpublished	State v. Roussel	195 Wn. App. 1006 (2016)	7/19/16	Discretion exercised, remanded
2	Unpublished	State v. Hartfield	195 Wn. App. 1018 (2016)	7/26/16	Discretion exercised, remanded
2	Unpublished	State v. Waller	2016 WL 4248742	8/9/16	Discretion exercised, remanded
2	Published	State v. Hart	__ Wn. App. __, __ P.3d __, 2016 WL 4366948	8/16/16	State concedes error, remanded
2	Unpublished	State v. Miles	2016 WL 4366950	8/16/16	Discretion exercised, remanded
2	Unpublished	State v. Bowen	2016 WL 4366954	8/16/16	Discretion exercised, remanded
2	Unpublished	State v. Eckles, Jr.	2016 WL 4368247	8/16/16	Discretion exercised, information from pre-sentence investigation could be relied upon but conclusion of ability to pay was erroneous, remanded
2	Unpublished	State v. Nelson	2016 WL 4367528	8/16/16	Discretion exercised, remanded
2	Unpublished	State v. Ford	2016 WL 4658970	9/7/16	Discretion exercised, remanded

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Unpublished	State v. Smiley	2016 WL 5417411	9/27/16	Discretion exercised, remanded
2	Published in part, LFO portion unpublished	State v. Butler	194 Wn. App. 525, 374 P.3d 1232 (2016)	6/14/16	Discretion not exercised, affirmed
2	Unpublished	State v. Shabeeb	194 Wn. App. 1032 (2016)	6/14/16	Discretion not exercised, affirmed
2	Unpublished	State v. McCracken	194 Wn. App. 1050 (2016)	7/6/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
2	Unpublished	State v. Schwartz	2016 WL 4132796	8/2/16	Discretion not exercised, defense counsel affirmatively agreed to ability to pay, affirmed
2	Unpublished	State v. Churchill	2016 WL 4544515	8/30/16	Discretion not exercised, trial court made some inquiry into employment, affirmed
2	Published in part, LFO portion unpublished	State v. Ashley	187 Wn. App. 908, 352 P.3d 827 (2015), <i>reversed in part on other grounds</i> , 186 Wn.2d 32, 375 P.3d 673 (2016)	5/27/15	Discretion exercised, remanded
2	Unpublished	State v. Ackerson	192 Wn. App. 1056 (2016)	3/1/16	Objection raised, finding of ability to pay was not clearly erroneous even though defendant received disability income
2	Unpublished	State v. Rambur	194 Wn. App. 1012 (2016)	5/24/16	No express objection but defense represented there was a health condition that created a significant impairment to working, no abuse of discretion found

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
2	Published in part, LFO portion unpublished	State v. Houston-Sconiers	191 Wn. App. 436, 635 P.3d 177 (2015), <i>review granted</i> , 185 Wn.2d 1032, 377 P.3d 737 (2016)	11/24/15	Issue was preserved by asserting lack of ability to pay, no abuse of discretion found despite representation that defendant never worked and was "poor as a church mouse," affirmed
2	Published in part, LFO portion unpublished	State v. Schmeling	191 Wn. App. 795, 365 P.3d 202 (2015)	12/15/15	Issue preserved, inquiry into employment history was adequate, affirmed
2	Unpublished	State v. Bertling	191 Wn. App. 1038 (2015)	12/8/15	Objection to LFOs at sentencing preserved issue for review, defense counsel request to defray costs so defendant could get a job to pay off fines was not adequate inquiry, remanded
3	Unpublished	State v. Hamre	187 Wn. App. 1039 (2015)	5/28/15	Discretion not exercised, suggests only if LFOs exceed \$750 will discretion be exercised, affirmed
3	Unpublished	State v. Cooper	188 Wn. App. 1065 (2015)	7/21/15	Discretion not exercised but remanded for compliance with <i>Blazina</i>
3	Published	State v. Arredondo	190 Wn. App. 512, 360 P.3d 920 (2015), <i>review granted</i> , 185 Wn.2d 1024, 369 P.3d 502 (2016)	9/17/15	Discretion exercised because administrative cost of resentencing is outweighed by likelihood of different outcome when LFOs assessed were \$1.6 million, remanded
3	Unpublished	State v. Rieker	190 Wn. App. 116 (2015), <i>review denied</i> , 185 Wn.2d 1020, 369 P.3d 501 (2016)	9/24/15	Discretion exercised, remanded

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
3	Unpublished	State v. Kinsey	190 Wn. App. 1045 (2015)	10/27/15	Discretion exercised, discretionary LFOs vacated
3	Unpublished	State v. Long	192 Wn. App. 1005 (2016)	1/5/16	Discretion exercised, remanded
3	Unpublished	State v. Maria Gonzalez-Aguilar	192 Wn. App. 1011 (2016)	1/12/16	Discretion exercised, remanded
3	Unpublished	State v. Tutu	192 Wn. App. 1023, <i>review denied</i> , 185 Wn.2d 1037, 377 P.3d 741 (2016)	1/21/16	Discretion exercised, remanded
3	Unpublished	State v. Gunkel-Rust	192 Wn. App. 1043 (2016)	2/16/16	Discretion exercised, remanded
3	Unpublished	State v. Riojas	192 Wn. App. 1048 (2016)	2/25/16	Discretion exercised, remanded (Korsmo, J. dissenting)
3	Unpublished	State v. Ruiz-Martinez	193 Wn. App. 1001 (2016)	3/17/16	Discretion exercised despite small amount of discretionary LFOs assessed, acknowledges differences in panels as to when discretion should be exercised, remanded (Korsmo, J. dissenting)
3	Unpublished	State v. Purcell	193 Wn. App. 1016 (2016)	4/5/16	Discretion exercised, remanded (Korsmo, J. dissenting)
3	Unpublished	State v. Cliett	193 Wn. App. 1021 (2016)	4/14/16	Discretion exercised, inquiry found inadequate, remanded
3	Unpublished	State v. Sandvig	193 Wn. App. 1038 (2016)	4/26/16	Discretion exercised because court stated she would not likely be able to pay, so discretionary LFOs were clearly erroneous, remanded
3	Unpublished	State v. Gleim	193 Wn. App. 1046 (2016)	5/3/16	Discretion exercised, inquiry found inadequate, remanded
3	Unpublished	State v. Valdez	193 Wn. App. 1046 (2016)	5/3/16	Discretion exercised, pre-sentence investigation report inadequate, remanded

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
3	Published	State v. Weatherwax	193 Wn. App. 667, 376 P.3d 1150 (2016), review granted, 2016 WL 5408269	5/3/16	Discretion exercised, only mandatory LFOs imposed, affirmed
3	Published	State v. Malone	193 Wn. App. 762, 376 P.3d 443 (2016)	5/5/16	Discretion exercised, remanded (Korsmo, J. dissenting)
3	Unpublished	State v. Gyamfi	194 Wn. App. 1006 (2016)	5/19/16	Discretion exercised as to LFOs exceeding amount agreed to in plea bargain, IAC claim rejected, remanded
3	Published in part, LFO portion unpublished	State v. Johnson	194 Wn. App. 304, 374 P.3d 1206 (2016)	6/2/16	Discretion exercised, remanded
3	Unpublished	State v. Bone	194 Wn. App. 1040 (2016)	6/21/16	Discretion exercised, remanded to strike discretionary LFOs
3	Unpublished	State v. Arteaga	194 Wn. App. 1047 (2016)	6/30/16	Discretion exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Flett	195 Wn. App. 1020 (2016)	7/26/16	Discretion exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Mumm	2016 WL 4064077	7/28/16	Discretion exercised, remanded
3	Unpublished	State v. Vickers	2016 WL 4471393	8/23/16	Discretion exercised, remanded
3	Unpublished	State v. Collins	2016 WL 5107846	9/20/16	Discretion exercised, remanded
3	Unpublished	State v. Rivera, Jr.	2016 WL 5399720	9/20/16	Discretion exercised, remanded
3	Published in part, LFO portion unpublished	State v. Bates	2016 WL 5342415	9/22/16	Discretion exercised, remanded
3	Unpublished	State v. Fowler	189 Wn. App. 1039 (2015)	8/18/15	Discretion not exercised although discretionary LFOs were \$1,135, affirmed

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Division	Publication Status	Case Name	Citation	Date of Decision	Outcome
3	Unpublished	State v. Lee	189 Wn. App. 1034 (2015)	8/13/15	Discretion not exercised although discretionary LFOs were \$2,041.69, affirmed
3	Unpublished	State v. Mesecher	189 Wn. App. 1050 (2015)	9/1/15	Discretion not exercised although discretionary LFOs were \$1,150, affirmed
3	Unpublished	State v. Scantling	188 Wn. App. 1044 (2015)	7/7/15	Discretion not exercised, affirmed
3	Unpublished	State v. Austin	191 Wn. App. 1013 (2015)	11/10/15	Discretion not exercised where defendant testified about work history, affirmed
3	Unpublished	State v. Pearson	191 Wn. App. 1052 (2015)	12/22/15	Discretion not exercised where defendant testified about potential for work and was "close to getting his driver's license" and discretionary LFOs were \$750, acknowledged difficulty in developing consistent standard for review, affirmed (Korsmo, J. concurring)
3	Published	State v. Munoz-Rivera	190 Wn. App. 870, 361 P.3d 182 (2015)	10/29/15	Discretion exercised, remanded (Siddoway, J. concurring)
3	Unpublished	State v. Lloyd	189 Wn. App. 1052 (2015)	9/3/15	Discretion not exercised, affirmed (Fearing, J. and Lawrence-Berrey, J. concurring)
3	Unpublished	State v. Camacho	188 Wn. App. 1001 (2015)	6/2/15	Discretion not exercised, affirmed (Fearing, J. concurring)
3	Published	State v. Hart	188 Wn. App. 453, 353 P.3d 253 (2015)	6/18/15	Discretion exercised, remanded
3	Unpublished	State v. Nieves	190 Wn. App. 1034 (2015)	10/15/15	Discretion not exercised, defense counsel not deficient or prejudicial, affirmed
3	Unpublished	State v. Cruthers	190 Wn. App. 1046 (2015)	10/29/15	Discretion not exercised, inquiry into capacity to work was adequate, affirmed

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3	Unpublished	State v. Como, Jr.	191 Wn. App. 1028 (2015), <i>review granted</i> , 185 Wn.2d 1025, 377 P.3d 730 (2016)	11/24/15	Discretion not exercised despite nearly \$2000 in discretionary LFOs, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
3	Unpublished	State v. King	191 Wn. App. 1033 (2015)	12/1/15	Discretion exercised because remanding on other grounds, remanded
3	Unpublished	State v. Robertson	191 Wn. App. 1033 (2015)	12/1/15	Discretion not exercised, affirmed
3	Published	State v. Diaz-Farias	191 Wn. App. 512, 362 P.3d 322 (2015)	12/1/15	Discretion exercised because remanding on other grounds, remanded
3	Unpublished	State v. Matheny	192 Wn. App. 1012, <i>review granted</i> , 185 Wn.2d 1026, 377 P.3d 729 (2016)	1/12/16	Discretion not exercised despite recognizing inquiry was probably not adequate and discretionary LFOs were \$2,170, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
3	Unpublished	State v. Stoddard	192 Wn. App. 222 (2016)	1/12/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Kuhlman	192 Wn. App. 1024 (2016), <i>review denied</i> , 185 Wn.2d 1034, 377 P.3d 750 (2016)	1/21/16	Discretion not exercised although discretionary LFOs were \$1,156 because presentence investigation showed ability to pay, affirmed
3	Unpublished	State v. Furr	192 Wn. App. 1023 (2016), <i>review granted</i> , 185 Wn.2d 1040, 377 P.3d 760 (2016)	1/21/16	Discretion not exercised although discretionary LFOs were \$1,805.89, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
3	Unpublished	State v. Dalhaug	192 Wn. App. 1039 (2016)	2/11/16	Discretion not exercised because discretionary LFOs were < \$750, affirmed

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3	Unpublished	State v. Mitchell	192 Wn. App. 1058 (2016)	3/1/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Childs	193 Wn. App. 1001, <i>review granted</i> , 186 Wn.2d 1002, ___ P.3d ___ (2016)	3/17/16	Discretion not exercised even though remanding on other grounds, affirmed; remanded by Supreme Court for <i>Blazina</i> inquiry
3	Unpublished	State v. Loutzenhiser	193 Wn. App. 1007 (2016)	3/24/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Leviton	193 Wn. App. 146 (2016)	5/3/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Published	State v. Gonzalez-Gonzalez	193 Wn. App. 683, 370 P.3d 989 (2016)	5/3/16	Discretion not exercised because discretionary LFOs were < \$750, affirmed
3	Unpublished	State v. Belt	194 Wn. App. 1006 (2016)	5/17/16	Discretion not exercised because discretionary LFOs were \$750, IAC rejected because no prejudice, affirmed
3	Unpublished	State v. Burnley	194 Wn. App. 1014 (2016)	5/26/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Anderson	194 Wn. App. 1040 (2016)	6/21/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Jones	2016 WL 4939096	9/15/16	Discretion not exercised because discretionary LFOs were < \$750, IAC rejected because no prejudice, affirmed
3	Unpublished	State v. Bashaw	2016 WL 5398221	9/20/16	Discretion not exercised, only mandatory LFOs imposed, affirmed
3	Unpublished	State v. Vargas	2016 WL 5147466	9/27/16	Discretion not exercised even though discretionary LFOs were \$1,298 and defendant said she was employable, affirmed

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3	Published	State v. Clark	191 Wn. App. 369, 362 P.3d 309 (2015)	11/19/15	Holds fines are not discretionary LFOs requiring <i>Blazina</i> inquiry, discretion not exercised, affirmed