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Supreme Court No.: 95634-1
Court of Appeals No.: 49504-0-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CANDACE RALSTON,

Petitioner.

PETITION FOR REVIEW

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A. SUMMARY OF ARGUMENT

This Court remanded Candace Ralston’s case to the trial court because it failed to conduct the required individualized inquiry before imposing \$39,211.58 in discretionary legal financial obligations against her. On remand, the trial court disregarded this Court’s directive and once again failed to apply the correct statutory standard. It improperly determined Ms. Ralston could pay all previously imposed financial obligations, by then totaling \$43,456.87, because Ms. Ralston was able-bodied. Because the trial court failed to adhere to this Court’s directive and the relevant legal standard, this Court should accept review.

B. IDENTITY OF PETITIONER AND THE DECISION BELOW

Candace Ralston requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division Two, in *State v. Candace Ralston*, No. 49504-0-II, filed February 6, 2018. A copy of the opinion is attached in Appendix A. For the Court’s convenience, the trial court order at issue is attached in Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Pursuant to RCW 10.01.160(3), a court must consider “the nature of the burden that payment of the costs will impose” before ordering a defendant to pay discretionary legal financial obligations. This

Court remanded Ms. Ralston's case so that the trial court could conduct this analysis, but the trial court failed to apply the correct statutory standard and instead ordered Ms. Ralston to pay "all previously ordered LFOs," which included \$43,456.87 in discretionary legal financial obligations, based on its finding that Ms. Ralston was not disabled. Should this Court grant review because the trial court failed to apply the correct standard in contravention of this Court's explicit directive?

2. Ms. Ralston had the constitutional right to the effective assistance of counsel at her legal financial obligations hearing. An attorney's performance fails to satisfy this constitutional requirement when he does not alert the court to the applicable law. At Ms. Ralston's hearing defense counsel failed to direct the trial court to the correct statutory standard or the relevant facts of her case. Where counsel's performance was deficient and prejudiced Ms. Ralston, should this Court grant review?

D. STATEMENT OF THE CASE

Candace Ralston pled guilty to charges of first degree theft and forgery. CP 41. Based on her offender score of one, the standard range for the theft charge was two to six months imprisonment and the standard range for the forgery charge was zero to 90 days imprisonment. CP 28. However, Ms. Ralston stipulated that her crimes constituted a major

economic offense and the trial court found an exceptional sentence was justified by multiple aggravating circumstances. CP 38, 49. She was sentenced to 96 months in prison on the theft conviction and 36 months on the forgery conviction. CP 30.

In addition to the significant prison sentence, the trial court ordered Ms. Ralston to pay \$294,115.73 in restitution. CP 24. Ms. Ralston had stolen from her former employer and the restitution order was designed primarily to reimburse the insurance company that covered the employer's losses. CP 24-25. In addition to this restitution, the trial court initially ordered Ms. Ralston to pay \$5,678.50 in legal costs, which included a discretionary filing fee of \$200 and \$4,878.50 in discretionary sheriff service fees. CP 12. The trial court later imposed an additional \$34,133.85 in defense costs, which consisted of fees for Ms. Ralston's court appointed attorney and a defense expert. CP 146.

The Court of Appeals affirmed Ms. Ralston's judgment and sentence but this Court ruled the trial court failed to follow the governing law when imposing the discretionary legal financial obligations (LFOs). CP 20, 22. It remanded Ms. Ralston's case to the trial court and directed the court to engage in an individualized inquiry of Ms. Ralston's ability to pay these fees and costs. CP 22. Despite granting review on this issue, Ms. Ralston was required to pay an additional \$4,244.52 in appellate costs

under the prior court rules. CP 4. After her appeal, the total amount in discretionary LFOs owed by Ms. Ralston was \$43,456.87.

On remand, the trial court determined Ms. Ralston was able-bodied and could therefore return to work upon her release from prison. RP 7. Based solely on its assessment of Ms. Ralston's physical ability to gain employment upon her release, it determined she would eventually be able to pay her LFOs. RP 7.

Only after reaching this decision did the trial court question the parties about Ms. Ralston's resources and determine the actual amount of discretionary LFOs previously imposed. RP 8-9. The court's written order states the previously imposed LFOs will remain in place because it found Ms. Ralston will be "employable" upon release and the court was "presented with no information that she is not otherwise able to find and engage in gainful employment." CP 19.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

- 1. The trial court violated this Court's directive and RCW 10.01.160(3) when it ordered Ms. Ralston to pay discretionary legal financial obligations without considering Ms. Ralston's financial resources and the nature of the burden payment would impose.**

Before ordering a defendant to pay discretionary costs, courts are required by statute to consider a defendant's financial resources, and the

nature of the burden payment of those costs will impose upon the defendant. RCW 10.01.160(3). The legislature demands that courts:

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).

Despite this unambiguous statutory language, courts continued to impose discretionary LFOs against indigent individuals that they had no ability to pay. *See State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). As this Court recognized, the imposition of a lifelong debt presents a considerable barrier to reentry into the community from prison, as it decreases the individual's chances of finding stable housing and employment. *Id.* at 837. In addition, imposing this kind of debt is both pointless, because the state will not receive money from an individual who cannot pay, and arbitrary, because some counties act to impose higher LFOs on defendants than others. *Id.*

Following its recognition of the devastating effects the imposition of LFOs may have on indigent individuals in *Blazina*, this Court has repeatedly remanded cases to the trial court where the trial court failed to conduct the inquiry required by RCW 10.01.160(3), and this is what the Court did here. CP 22; *State v. Ralston*, noted at 185 Wn.2d 1025, 377

P.3d 724 (2016). However, the trial court failed to adhere to this Court's directive and its obligations under the statute.

- a. Before imposing discretionary LFOs, RCW 10.01.160(3) and *Blazina* requires more than a finding that the individual is able to be gainfully employed.

When it remanded Ms. Ralston's case, this Court determined the trial court failed to comply with RCW 10.01.160(3) at Ms. Ralston's sentencing and directed the court to conduct the individualized inquiry as required under the statute. CP 22. Despite this Court's order, the trial court failed to comply with RCW 10.01.160(3) on remand. CP 22. Instead, the trial court presided over a perfunctory hearing in which it did not consider the amount of LFOs it was being asked to impose, or the nature of the burden payment of those LFOs would impose against Ms. Ralston. RP 8-9.

At the remand hearing the State claimed Ms. Ralston had the future ability to pay the LFOs because no physical disabilities prevented her from gaining employment upon her release. CP 3-4. The State relied, in part, on the fact that Ms. Ralston had no difficulty finding work before being convicted of the two felonies in this case and being sentenced to 8 years in prison. RP 4. It claimed that although the crimes were committed against Ms. Ralston's employer, this would not hinder her ability to obtain a different job where she had no access to company funds. RP 4.

The trial court wrongly adopted the State’s argument, finding that while Ms. Ralston did not have the ability to pay LFOs during her incarceration, she had the future ability to pay them because she was “employable.” The court stated:

With the information that’s been provided today, the Court is making a [sic] individualized determination, first of all, of her ability to currently pay, which I’ve done, and consider the future ability to pay. Once she is released, the Court finds that she is employable. It may not be in a similar type of employment, in that an employer would be advised that Ms. Ralston has had a conviction for – of this nature, which would limit her employment in her current or past line of work. But, the Court has not been made aware of any physical limitation or any limitation on her general skills and intelligence and ability to work.

So, the Court does find that, even though she may not be able to work in her chosen profession, which was in some way to handle other people’s money, she does have the ability to obtain employment and work, therefore pay towards the legal financial obligations.

RP 7.

The court then paused to note it had not been informed of whether she had additional resources, such as a house. RP 7. Defense counsel explained the family home was foreclosed on and Ms. Ralston was in the process of a divorce, leaving her with “no financial resources that she’ll be able to draw on upon her release.” RP 8. The trial court did not acknowledge this new information, instead reiterating that it had made the

necessary “individualized inquiry” and moving on to determine the amount of LFOs previously imposed against Ms. Ralston. RP 8-9.

At that point, the trial court narrated its review of the record, during which it discovered the initial imposition of \$5,678.50 in fees and costs and then the restitution order in the amount of \$294,115.73. RP 8-9. The court questioned whether the order regarding attorney’s fees had been reduced, but then located the supplemental order regarding costs and noted Ms. Ralston was required to pay an additional \$34,133.85 in attorney’s fees and other defense costs. RP 9, CP 146. At no point did the court recognize that appellate costs in the amount of \$4,244.52 were also previously imposed. CP 6-7.

The court gave no consideration to the large amount of LFOs previously imposed before determining Ms. Ralston had the ability to pay them. It simply stated again that it had made a finding Ms. Ralston had the ability to work and found that she could make payments of \$25 per month beginning sixty days after her release from confinement. RP 9-10.

The Court of Appeals disregarded the court’s failure to take into Ms. Ralston’s financial resources and the nature of burden the LFOs would impose upon Ms. Ralston, labeling the court’s erroneous oral ruling as merely “preliminary.” Slip Op. at 6. But, as Ms. Ralston explained in

her opening brief, the trial court's written order reflected the court's erroneous oral ruling. It stated in relevant part:

the court further finds that upon release the defendant will be employable, albeit likely in a different line of work, and the court has been presented with no information that she is not otherwise able to find and engage in gainful employment, therefore, all previously ordered LFOs remain imposed, provided further, that payments previously ordered shall commence 60 days after release.

CP 19.

This written finding was insufficient under RCW 10.01.160(3) and *Blazina*, as the court re-imposed \$43,456.87 in discretionary LFOs based solely on the fact it found Ms. Ralston able to “find and engage in gainful employment.” CP 19. This is the not the appropriate standard under the statute.

A court's “individualized inquiry” of a defendant's ability to pay discretionary LFOs must include a consideration of important factors relevant to the determination, such as whether the individual must also pay restitution. *Blazina*, 182 Wn.2d at 838. Here it was impossible to adequately evaluate the “nature of the burden” the discretionary LFOs imposed without considering the amount of discretionary LFOs at issue and Ms. Ralston's other financial obligations. Yet the trial court did not even notice the amount of LFOs previously imposed, including the \$294,115.73 award of restitution, until *after* it found Ms. Ralston had the

ability to pay, and the written findings do not reflect the amount at issue factored into the court's decision at all. RP 9.

In addition, when the court acknowledged Ms. Ralston would only be able to make payments of \$25 each month it effectively determined she was actually unable to pay the full amount of the discretionary LFOs imposed, as interest continues to accrue indefinitely at a rate of twelve percent annum. CP 33, RP 11; RCW 10.82.090; RCW 4.56.110(4); RCW 19.52.020(1). Simply finding an individual can pay a low monthly amount is "unjustly punitive" because the individual's LFOs will only increase over the long term. *City of Richland v. Wakefield*, 186 Wn.2d 596, 607, 380 P.3d 459 (2016). Thus, this Court has disapproved of imposing LFOs when the defendant will not be able to pay off the principal amount. *Id.*

When the trial court imposed \$43,456.87 in discretionary LFOs based on its determination she was able bodied and therefore capable of engaging in gainful employment, it did not apply the correct standard under RCW 10.01.160(3).

b. This Court should accept review.

The amount of LFOs previously imposed against Ms. Ralston totaled \$338,172.60. CP 7, 12, 146; RP 9. At the 12 percent interest rate, Ms. Ralston will owe an *additional* \$40,580.71 in one year, and every year

thereafter. In the first year alone, this will raise the total amount she owes to \$378,753.31. Payment at a rate of \$25 per month, as the trial court assumed Ms. Ralston will be able to satisfy upon her release, would reduce this burden by \$300 each year, permitting her total debt to accrue by approximately \$40,280.71 each year.

Ms. Ralston will be approximately 53 years old at the time she fulfills her eight year sentence. CP 26, 36. Her home has been foreclosed upon and she is in the process of divorcing her husband. RP 8. As the trial court acknowledged, she will not be able to return to her career in bookkeeping. RP 7. Even if, despite her felony convictions for having stolen from her employer, she was able to secure a job paying more than minimum wage, it is absurd to suggest that she is likely to have the ability to pay \$338,172.60 and the additional annual interest of approximately \$40,580.71.

Indeed, even without the discretionary LFOs, Ms. Ralston is required to pay restitution in the amount of \$294,115.73 and mandatory fees in the amount of \$600. CP 12, 24. This is a considerable burden for any non-wealthy individual, much less someone with two felony convictions, a prison record, and no resources waiting for her upon her release from prison.

This Court recently accepted review in *State v. Ramirez* to determine how much deference should be afforded a trial court's decision to impose discretionary LFOs. 1 Wn. App. 2d 1001, 2017 WL 4791011 (Oct. 24, 2017) (review accepted as to LFO issue only on March 7, 2017, No. 95249-3). Here, the trial court committed reversible error because it failed to consider or apply the correct statutory standard. *See Wakefield*, 186 Wn.2d at 605 (reversing because trial court failed to consider whether paying the costs would cause the petitioner "manifest hardship," in violation of the standard for remission of LFOs).

This is the second time the trial court has made this error. Because the trial court has repeatedly failed to apply the correct standard before imposing discretionary LFOs on Ms. Ralston this Court should accept review.

2. Ms. Ralston was denied the effective assistance of counsel at her LFO hearing because her attorney was unfamiliar with the correct legal standard and the facts of Ms. Ralston's case.

A person accused of a crime has a constitutional right to the effective assistance of counsel. U.S. Const. amend. VI; Const. art. I, § 22; *United States v. Cronin*, 466 U.S. 648, 654, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); *State v. Khan*, 184 Wn.2d 679, 688, 363 P.3d 577 (2015). An attorney renders constitutionally inadequate representation when he or she

engages in conduct for which there is no legitimate strategic or tactical basis. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1998).

At Ms. Ralston's LFO hearing, defense counsel indicated the attorney of record was "hoping to retire very soon" and unable to appear in court on Ms. Ralston's behalf. RP 3. Defense counsel, as an associate of the attorney of record, indicated he had met Ms. Ralston and "seen the Mandate" and was prepared to go forward. RP 2-3. Despite this representation to the court, the record demonstrates defense counsel was ill-prepared for the hearing, as he was unfamiliar with both the applicable law and the relevant facts of Ms. Ralston's case.

In response to the State's argument that the discretionary LFOs should be imposed because Ms. Ralston was physically able to work, defense counsel appropriately responded that Ms. Ralston is indigent and that, given her convictions, she would not be able to return to her prior work "handling finances." RP 5-6. However, this was the sum of defense counsel's argument.

When the State replied that "[w]here there's a will there's a way," arguing that surely Ms. Ralston could find another job that would allow her to pay back the LFOs, defense counsel responded only by saying:

I would ask that you waive any – I meant to say this earlier – that you waive anything discretionary that you can in the fines and fees. I do believe, under the circumstances, that

that would be appropriate. Any future ability is, as yet, undetermined.

RP 6.

Defense counsel did not direct the trial court to the applicable statute and failed to explain why it would be appropriate to “waive” the discretionary LFOs. When the trial court immediately issued its ruling based solely on the fact that Ms. Ralston was able-bodied, defense counsel still did not cite the correct standard or discuss the amount of LFOs previously imposed. Instead, he left it to the court to track down the amount at issue. RP 8.

In addition, at no point did defense counsel direct the court’s attention to the fact that Ms. Ralston was required to pay \$294,115.73 in restitution. He also never alerted the trial court to the fact that its order regarding “all previously ordered LFOs” included discretionary appellate costs in the amount of \$4,244.52. *See* CP 4.

“An attorney’s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*.” *State v. Estes*, 193 Wn. App. 479, 489, 372 P.3d 163 (2016) (quoting *In re Pers. Restraint of Yung-Cheng Tsai*, 183 Wn.2d 91, 102, 351 P.3d 138 (2015)) (other internal citations omitted). Similarly, when a

defense attorney fails to alert the court to the applicable law, his representation is deficient. *State v. McGill*, 112 Wn. App. 95, 102-03, 47 P.3d 173 (2002) (finding defense counsel ineffective where the attorney failed to cite the relevant case law to the trial court at sentencing or use the law to argue for an exceptional sentence down).

Here, defense counsel demonstrated his unfamiliarity with both the law and the facts of the case. He failed to direct the trial court to the controlling statute, RCW 10.01.160(3), and failed to explain that the court should not impose discretionary LFOs because the nature of the burden that payment of the LFOs would impose was enormous, given both the restitution order and the unusually high amount of discretionary LFOs at issue. Defense counsel's failure to identify the applicable law and relevant facts for the trial court was unreasonable. *See Estes*, 193 Wn. App. at 491. His representation of Ms. Ralston was deficient.

Prejudice was also established. *Strickland*, 466 U.S. at 694; *Khan*, 129 Wn.2d at 688. This Court granted review and remanded Ms. Ralston's case solely for the trial court to conduct the proper inquiry under RCW 10.01.160(3) and its decision in *Blazina*, 182 Wn.2d at 839. Had defense counsel provided the court with the information it required to conduct the correct inquiry, the court would have employed the appropriate standard and likely reached a different result. For, as explained above, once the

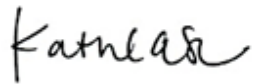
actual amounts at issue are considered, it would be absurd to find that Ms. Ralston will be able to pay the discretionary LFOs, even if she returns to work following prison. This Court should grant review.

E. CONCLUSION

For all of the reasons stated above, this Court should grant review of the trial court's ruling imposing \$43,456.87 in discretionary LFOs based on its determination Mr. Ralston was able-bodied and therefore capable of obtaining "gainful employment."

DATED this 8th day of March, 2018.

Respectfully submitted,



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APPENDIX A

COURT OF APPEALS, DIVISION TWO OPINION

February 6, 2018

February 6, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CANDACE L. RALSTON,

Appellant.

No. 49504-0-II

UNPUBLISHED OPINION

WORSWICK, P.J. — Following a remand order from our Supreme Court to reconsider the imposition of discretionary legal financial obligations (LFOs) as part of Candace Ralston’s sentence for her convictions of first degree theft and forgery, the sentencing court ordered that the \$39,012.35 in previously imposed discretionary LFOs would remain in place. Ralston appeals from the sentencing court’s order on remand, asserting that (1) the sentencing court failed to make an adequate individualized inquiry of her ability to pay the discretionary LFOs as required under RCW 10.01.160(3), and (2) her counsel was ineffective for failing to present an adequate argument for waiving discretionary LFOs at the remand hearing. We affirm.

FACTS

Ralston pleaded guilty to first degree theft and forgery. As part of her guilty pleas, Ralston stipulated that her crimes constituted major economic offenses. The sentencing court imposed an exceptional sentence of 96 months of incarceration based on the major economic

offense aggravators. The sentencing court also imposed discretionary LFOs that included a \$4,878.50 sheriff service fee, \$7,709.23 for a court appointed expert and other defense costs, and \$26,424.62 for court appointed attorney fees. Additionally, Ralston was ordered to pay \$800 in mandatory LFOs and \$294,115.73 in restitution. Ralston appealed her sentence, and we affirmed in an unpublished opinion. *State v. Ralston*, No. 45883-7-II, slip op. at *1 (Wash. Ct. App. Dec. 15, 2015) (unpublished). Our Supreme Court accepted review and remanded to the sentencing court, stating in its order:

[T]he superior court in imposing discretionary legal financial obligations on [Ralston] in connection with her criminal conviction did not adequately address her present and future ability to pay based on consideration of her financial resources and the nature of the burden that the payment of discretionary costs would impose, as required by RCW 10.01.160(3) and this court's decision in *State of Washington v. Nicholas Peter Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). Pursuant to that decision, the superior court must conduct on the record an individualized inquiry into [Ralston's] current and future ability to pay in light of such nonexclusive factors as the circumstances of her incarceration and her other debts, including nondiscretionary legal financial obligations, and the factors for determining indigency status under GR 34. Accordingly,

IT IS ORDERED:

That the Petition for Review is granted only on the issue of imposition of discretionary legal financial obligations and the case is remanded to the Superior Court to reconsider the imposition of the discretionary legal financial obligations consistent with the requirements of [*Blazina*].

Clerk's Papers (CP) at 22-23. Our Supreme Court thereafter imposed on Ralston \$4,244.52 in appellate fees, noting in its clerk's ruling on costs that appellate fees are not subject to its decision in *Blazina*.

At the remand hearing, the State asserted that it was "not aware of any physical or skills-related impediments that this defendant has to being gainfully employed." Report of

Proceedings (RP) at 3-4. The State argued that the only limitation on Ralston finding employment after serving her incarceration term was “her criminal behavior, not from her physical abilities, and as such, I would ask that her own behavior not work to her benefit in limiting her obligations.” RP at 4.

Defense counsel argued that Ralston would likely not be able to find employment in her former field of handling finances due to her criminal conviction. Defense counsel also stated that the sentencing court had previously found Ralston to be indigent and requested the sentencing court to “take a very close look at any future ability to pay” under the guidance of GR 34, as noted in *Blazina*. RP at 5. In reply, the State argued:

Where there’s a will there’s a way, and there is such a thing as retraining yourself or tapping into a different resource and ability. And just because you can’t keep your money off somebody else’s—your hands off somebody else’s money in the profession that you chose doesn’t mean that you can’t be gainfully employed somewhere else.

RP at 5. The sentencing court thereafter found that Ralston did not have a current ability to pay discretionary LFOs based on her incarceration. Regarding Ralston’s likely future ability to pay discretionary LFOs, the sentencing court stated:

With the information that’s been provided today, the Court is making a[n] individualized determination Once she is released, the Court finds that she is employable. It may not be in a similar type of employment, in that an employer would be advised that Ms. Ralston has had a conviction for—of this nature, which would limit her employment in her current or past line of work. But, the Court has not been made aware of any physical limitation or any limitation on her general skills and intelligence and ability to work.

So, the Court does find that, even though she may not be able to work in her chosen profession, which was in some way to handle other people’s money, she does have the ability to obtain employment and work, therefore pay towards the legal financial obligations.

RP at 7. The sentencing court then inquired about Ralston's current financial resources.

Defense counsel stated that Ralston's home had been foreclosed upon, she was in the process of dissolving her marriage, and she had no other financial resources upon which to rely when released from incarceration. The sentencing court then reviewed the LFOs that had been previously imposed on Ralston. After reviewing the previously imposed LFOs, the sentencing court found that Ralston's previously imposed minimum payment of \$25 per month would remain in place, but modified its previous order to allow her 60 days from release of confinement to begin making payments. The sentencing court's written order regarding Ralston's discretionary LFOs stated in relevant part:

[T]he court finds that, while the defendant is presently confined, she has no ability to pay towards her LFOs with the exception of the DOC imposed payments based upon a percentage of funds in her account at DOC [T]he court further finds that upon release the defendant will be employable, albeit likely in a different line of work, and the court has been presented with no information that she is not otherwise able to find and engage in gainful employment, therefore all previously ordered LFOs remain imposed, provided further, that payments previously ordered shall commence 60 days after release.

CP at 19. Ralston appeals.

ANALYSIS

I. RCW 10.01.160(3)

Ralston first contends that the sentencing court failed to comply with the statutory requirements of RCW 10.01.160(3) and *Blazina* in assessing her likely future ability to pay discretionary LFOs as directed by our Supreme Court in its remand order. We disagree.

We generally review a sentencing court's compliance with a statute de novo. *State v. Stone*, 165 Wn. App. 796, 806, 268 P.3d 226 (2012); *State v. Johnson*, 96 Wn. App. 813, 816, 981 P.2d 25 (1999). We review a sentencing court's decision to impose discretionary LFOs for an abuse of discretion. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015). RCW 10.01.160(3) 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.

In *Blazina*, our Supreme Court emphasized the importance of an on-the-record individualized inquiry into a defendant's ability to pay discretionary LFOs. 182 Wn.2d at 838. The *Blazina* court stated that "[t]he record must reflect that the trial court made an individualized inquiry" and that the trial court "must . . . consider important factors . . . such as incarceration and a defendant's other debts, including restitution" when making this determination. 182 Wn.2d at 838. The *Blazina* court further noted that where, as here, a defendant meets the indigency standard of GR 34, the sentencing court should look to the GR 34 comments for guidance, and "should seriously question" that person's ability to pay LFOs. 182 Wn.2d at 839.

Ralston argues that the sentencing court failed to conduct the required inquiry under RCW 10.01.160(3) because it did not "consider the amount of LFOs it was being asked to impose, or the nature of the burden payment of those LFOs would impose against [her]." Br. of Appellant at 8. Ralston's argument relies on the sentencing court's oral pronouncement that it would find Ralston had a likely future ability to pay discretionary LFOs, which pronouncement was made before it had reviewed her financial resources, restitution order, and the amounts of

her previously ordered LFOs. Although the trial court made this pronouncement prior to reviewing Ralston's financial resources and obligations, as a preliminary oral ruling the pronouncement was "no more than an expression of its informal opinion at the time it [was] rendered. It has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment." *State v. Collins*, 112 Wn.2d 303, 306, 771 P.2d 350 (1989) (quoting *State v. Mallory*, 69 Wn.2d 532, 533-34, 419 P.2d 324 (1966)). And, prior to concluding the remand hearing and entering its final LFO order, the sentencing court inquired about Ralston's financial resources and considered the amount of requested discretionary LFOs and previously imposed mandatory LFOs, including the order of restitution.

Because the sentencing court's on-the-record inquiry reveals that it "[took] account of the financial resources of the defendant and the nature of the burden that payment of costs [would] impose" in determining Ralston's likely future ability to pay discretionary LFOs, her claim that the sentencing court failed to comply with RCW 10.01.160(3) lacks merit.¹

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, Ralston contends that her counsel was ineffective for failing to make adequate arguments at the LFO remand hearing. Again, we disagree.

To establish ineffective assistance of counsel, Ralston must show both that (1) defense counsel performed deficiently and (2) the deficient performance resulted in prejudice. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). To demonstrate prejudice, Ralston must

¹ Ralston does not argue that the trial court abused its discretion in setting the *amount* of the LFOs; she argues only that it failed to comply with RCW 10.01.160.

No. 49504-0-II

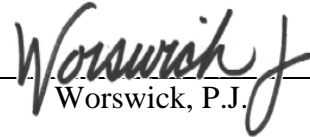
show that, but for counsel's purportedly deficient performance, the outcome of the proceedings would have differed. *Reichenbach*, 153 Wn.2d at 130. If Ralston fails to establish either prong of the ineffective assistance of counsel test, we need not inquire further. *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726 (2007). Ineffective assistance of counsel claims present mixed questions of law and fact, which we review de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

Ralston claims that her counsel was deficient for failing to apprise the sentencing court of the amount of her previously imposed LFOs, failing to direct the sentencing court to the requirements under RCW 10.01.160(3), and erroneously suggesting that the amount of the attorney fees award against Ralston had been reduced. Assuming without deciding that Ralston's counsel performed deficiently in this manner, she cannot demonstrate any resulting prejudice.

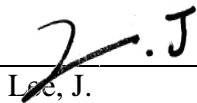
Before entering its final discretionary LFO order, the trial court considered all of Ralston's financial obligations, including the correct amount of imposed attorney fees. And, as addressed above, in doing so the sentencing court complied with the requirements of RCW 10.01.160(3). Because the sentencing court properly considered all relevant information regarding Ralston's financial resources and obligations before entering its final discretionary LFO order, she cannot show that its decision would have differed had her counsel not performed deficiently. Accordingly, Ralston's ineffective assistance of counsel claim cannot succeed, and we affirm the sentencing court's LFO order.

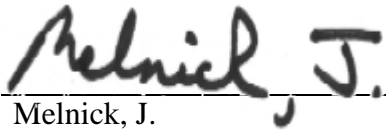
No. 49504-0-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, P.J.

We concur:


Lee, J.


Melnick, J.

APPENDIX B

TRIAL COURT'S LFO ORDER

September 2, 2016

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SEP 02 2016

Ginger Brooks, Clerk of the Superior Court of Mason Co. Wash. *cy 1*

SUPERIOR COURT OF WASHINGTON
COUNTY OF MASON

In re:

STATE OF WASHINGTON
PLAINTIFF
Petitioner,

and

CANDACE L. RASTON
DEFENDANT
Respondent.

No. 11-1-00126-1

ORDER RE LFO'S

[OR]

THIS MATTER having come before the Court upon the motion of remand from ~~an order~~ the Court of Appeals and Supreme Court; and the Court having reviewed the records and files herein and being fully advised;

IT IS HEREBY ORDERED that the court finds that, while the defendant is presently confined, she has a ability to pay towards her LFO's*, provided, however, the court further finds that upon release the defendant will be employable, albeit likely in a different line of work, but and the court has been presented with no information that she is not otherwise able to find and engage in gainful employment, there (is),

DATED: 9-2-2016

Toni A. Sheldon
JUDGE / COURT COMMISSIONER
TONIA. SHELDON

340

Presented by:

Frederick P. Schwegel
Signature #9870
Print Name

Approved for entry. Notice of presentation waived:

JDL
Signature WSPA 40558
Print Name JAMES LAUKOVEN

* with the exception of the DOC imposed payments based upon a percentage of funds in her account at DOC;

ORDER

OR

a/c previously ordered LFO's remain imposed, provided further, that all payments previously ordered shall commence 60 days after release.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 49504-0-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

- respondent Timothy Higgs
[timh@co.mason.wa.us]
Mason County Prosecuting Attorney
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: March 8, 2018

WASHINGTON APPELLATE PROJECT

March 08, 2018 - 4:25 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49504-0
Appellate Court Case Title: State of Washington, Respondent v. Candace L. Ralston, Appellant
Superior Court Case Number: 11-1-00126-1

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