RECEIVED
OCT 16 2018
Washington State
Supreme Court

NO: 95117-7

STATE v. CHRISTINO SHAWN RENION, COA. NO. 34835-1-DIV III.

THE SUPREME COURT OF THE STATE OF WASHINGTON

DIVISION III.

STATE OF WASHINGTON, Respondent,

vs.

CHRISTINO S. RENION, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

-Legal Mail-

Mr. Christino S. Renion. # 718523

Coyote Ridge Corrections Center

P.O. Box 769, GA-19,

Connell, Washington 99326.

A. IDENTITY OF PETITIONER.

Comes now Christino Shawn, Renion, by and through himself, Pro-se and lacking in most education of criminal law, legal litigation, but will attempt-drafting this discretionary Review. In addition Petitioner request this court respectfully bare with him with any, possible err'rs in the legal language of this Petition for review. And comes to this court respectfully request this court to accept review of the decision in part of the decision designated in Part B of this motion

B. DECISION IN PART.

On March 15, 2018, The Washington Court of Appeals, Div. III entered in part their decision affirming count (1) counting predicate misdemenors domestic violence conviction when it calculated his offender-score, see, state v. Renion, 2018 Wash. App 582, (COA, 2018) Unp. Op. at p. 1, ¶. 1.

On April 13, 2018 Mr. Renion was granted an extension of time to file a petition for review, Indicating Motion granted, the petition for review should be served and filed by May 31st. 2018.

On June 1st. 2018 Mr. Renion, request another extension for time. This court granted it as well. Indicating. The petition for review should be served and filed by July 2nd. 2018.

On July 11th. 2018, Mr. Renion, requested an additional extension of time, Motion was granted by the Supreme Court Deputy Clerk. Indicating the petition for review should be served and filed by August 1, 2018.

Again, on August 8th, 2018, Due to institutional Legal reserch restriction and lack of Legal education as an inmate, Mr. Renion requested another extension of time motion was granted. the petition for review should be served and filed by August 31st, 2018.

Following continued institutional restrictions, and continuing lack of sufficient Legal assistance, Mr. Renion filed a fifth request for an extension of time motion. The court declared, This is Mr. Renion's fifth motion for an extension of time to file his petition for review. Because of the circumstances described in the motion. His motion was granted. However, it is unlikely that any further extensions will be granted.

Which brings us to the decision Mr. Renion is asking respectfully for this court to review as Mr. Renion disagree's. with that decision at State v. Renion, 2018 Wash. App 582, Unp. Op. at ¶. 2. Suggesting the state charged Renion with three counts of felony violation of a protected order against his former girlfriend.

The charges arose from allegations that he texted the girlfriend on three separate days. Where the court of appeals indicated, that at trial, the state allegedly introduced evidence of three prior misdemenor convictions served as the predicate offenses to prove the felony charges.

During deliberations, the jury sent an inquiry to the trial court asking what would happen in the event it could agree on one count but not two others.

Record showed the trial Judge was unavailable, so another judge presided over the brief hearing. Mr. Renions public defender suggested that the Judge respond by telling the jury to re-read the instructions and to contact the bailiff if it could not make a decision.

The State agreed. The Judge answered the jury's inquiry in accordance with the parties' agreed response. The Jury resumed its deliberations and found Renion guilty of all three counts.

At sentencing, the trial judge accepted Mr. Renions public defender's argument that the three predicate misdemenor convictions should not count toward his offender score, and calculated Mr. Renion's offender score as a 4.

The court of appeals div III, Analysed their decision as followed: at Id. ¶. 7-12. p.p. 3-5.

Renion contend that under the maxim of expressio unius est exclusio alterious, predicate misdemenor offenses that elevate a protection order violation to a felony should not be included in the offender score. In making his argument, he noted that predicate offenses are expressely counted in RCW 9.94A.525(2)(e). for felony driving while under the influence, whereas predicate offenses are not expressly counted in RCW 9.94A.525(21) for felony domestic violence.

Citing the Court of Appeals reviews calculations of an offender score de novo, State v. Bergstorm, 162 Wn.2d 87, 92, 169, P.3d 816 (2007). It declared, statutory interpretation also is subject to be de novo review. State v Rice, 180 Wn. App 308, 313, 320, P.3d 723 (2014).

The goal of statutory interpretation is to determine and give effect to the legislator's intent. State v. Evans, 177 Wn.2d 186, 192, 298 P.3d 724 (2013).

To determine legislative intent, this court first looks to the plain language of the statute considering the text of the provision in question, the context of the statute, and the statutory scheme as a whole. Id. If after a plain meaning review the statute is susceptible to more than one interpretation, the statute is ambiguous. Rice at 313.

To interpret an ambiguous statute this court relies on statutory construction, legislative history, and relevant case law to determine legislative intent." Id.

Former RCW 9.94A.525(21)(2013) provided:

'If the present conviction is for a felony domestic violence offense where domestic violence offense as defined in RCW 9.94A.030, ~~where domestic~~ was plead and proven, count priors as in subsection (7) through (20) of this section; however, count points as follows:'

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violense as defined in RCW 9.94A.030, was plead and proven after August, 1st, 2011.

Renion does not cite to 'Rodriguez,'! In Rodriguez, the court considered the plain language of RCW 9.94A.525(21). Rodriguez, 183 Wn. App. at 957-58. The court held that the plain language of the statute did not qualify "repetitive domestic violense offenses," and required any such offenses to be counted towards the offender score, Id at 958. Because, the statutory language was unambiguous, we did not resort to maxims of statutory construction.

Renion did not dispute that his three predicate offenses qualify as "repetitive domestic violence offenses." Because, RCW 9.94A.525(21) unambiguously required that Renion's predicate offenses be counted for calculating his offender score, we do not resort to maxims of statutory constrution. To do so would be improper. Rice, 180 Wn. App. at 313. The trial court did not err when it counted Renion's predicate offenses when calculating his offender score.

C. ISSUE PRESENTED FOF REVIEW.

Whether Renion used '(cites)' the Rodriquez case or not should not matter. Fact's are both the Court of Appeals and the state of Washington recognize the need to explain for purposes of their decision's, see, Ex's, A, and B, attached.

The court incorrectly calculated the sentence for Mr. Renion. Rodriguez was not on point and did not address whether predicate offenses should be calculated in the offender score. The position of the defense was never whether or not a non predicate gross misdemenor repetitive domestic violence conviction counts as a point under the Sentencing Reform Act. As this matter had been sufficiently litigated.

In state v. Rodriguez,, Rodriguez was charged on Nov. 13, 2012, with one count of felony domestic violence protection order violation and one count gross misdemenor domestic violence protection order violation arising from the same incident, Id. at 950, She pleaded guilty to both offenses on Dec. 14th, 2012 and was sentenced to both charges on Dec, 21st, 2012, Id.

The court counted the gross misdemenor violation as a point under the Sentencing Reform Act, Id. at 951, Prior to this case, Rodriguez, had no prior criminal history. Id. at, 955. Given those facts, one can infer that the facts at issue were that Rodriguez, contacted two people whom she was prohibited from contacting and assaulted one, which resulted in a felony charge and a gross misdemenor charge. No predicate protection orders are at issue in the Rodriguez case,

Mr. Renion disagrees that the predicate protection order convictions should included in the offender score. The statute is silent on this issue. However, the Court should look to the portion of the statute that refers to the laws regarding DUI predicates, a similar issue where prior non felony DUI's are added to change a non-felony DUI into a felony DUI, for guidance:

"If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502 (6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)). all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score"!...

RCW 9.94A.525(2)(g) (emphasis added). In the same statute, the legislature does not include that language in the subsection where it discusses scoring domestic violence felony convictions:

"If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was pledd [pleaded] and proven, count priours as in subsection (7), through (20) of this section"..

Pursuant to RCW 9.94A.525(21). The entire statute is silent as to whether domestic violence predicate crimes should be included in the offender score.

When the legislature takes the time to put language into one subsection clarifying that predicate crimes are to be included in the offender and is silent in another section, the court should infer that the legislature did not mean to have the predicate offenses for the felony domestic violense crimes to be counted toword the offender score or they would have included the language found in RCW. 9.94A.525(2)(g).

Even if the court construes this statute as ambiguous then "the rule of lenity required the State and Court of Appeals to interpret the statute in favor of Mr. Renion absent legislative intent to the contrary." see, City of Seattle v. Winebrenner, 167 Wn.2d 451, 462, 219 P.3d 686 (2009). "The rule states that an ambiguous criminal statute cannot be interpreted to increase the penalty imposed."

The Supreme Court of Washington ended up ruling in the Winebrenner case that the legislator's failure to include specific language as to what amounted to a 'Prior offense', made the statute ambiguous and the rule of lenity applied. Id.

Mr. Renion thus is being prejudiced in his sentencing, scoring were his score should have remained '4' and not '7', the court of appeals, based on Winebrenner should have requested the Superior Courts, ruling; adding an additional 3 points. Mr. Renions 3 prior misdemenor's should not have been used to further punish Mr. Renion on issues he has already completed the punishment for.

Where unlike in Rodriguez. There is no alleged victim of physical injury or assault, Renions 3 prior's were. Simply phone conversation initiated by the ex-girlfriend.

As the three current alleged violations (text Message's) (Cell Phone) conversations. Were not proven to have been made by Mr. Renion, or even if the phone's were his.

In addition to the three prior non-physically violent phone conversations and the current three non-physically violent, conversations illustrated on the part of the ex-girlfriend. Who obviously had a problem with renion, and choose to continue calling him, knowing it could put Mr. Renion in violation of his restraint order. An issue Renions public defender should have stratigically applied to Mr. Renions defense against the three phone conversation's. One has to ask why did'nt the ex-girlfriend report the first one instead of waiting until she had three conversations with Mr. Renion. As record's show, Mr. Renion has no criminal past history.

D. STATEMENT OF THE CASE.

The State charged Mr. Renion with three counts of felony violation of a protective order against his former girlfriend. The charges arose from allegations that he texted his ex-girlfriend on three seperate days.

At trial, the state introduced evidence of Renion allegedly contacting this same ex-girlfriend, that caused three prior misdemenor- convictions not conected to any violent physical assault. For violating a protective order. Where the state for purposes of conviction, established them as two separate cause number's.

The evidence presented was "Well lets see he called her three times in the past, so he must be guilty and the ex-girlfriend must be telling the truth. "Past Tence." No current evid was presented to the current three charges that would prove if in fact the phone's suggested as evidence; were in fact Mr. Renions. or if he was the allaged perpetrator, on the more recently described conversation's.

Before sentencing. Renion filed a sentencing memorandum arguing that the misdemenor offenses that serves as predicates to the felony conviction should not be included in his offender score.

The sentencing court agreed, and sentenced Renion to 29 months' imprisonment based on a score of 4.

Following convictions on the three counts of felony violation of a protected order, the trial court resentenced Mr. Renion to a term of 48 months' incarceration based on an offender score of now 7 points.

In calculating the score, the trial court erroneous counted as one point each Renions three prior misdemenor convictions for violating a protective order that also served as a predicate offenses for the felony conviction's.

Mr. Renion appealed his sentence challenging the trial court err'ed in including, Renion's misdemenor convictions in his offender score when those convictions served as the predicate offenses that elevated the current offenses from misdemenor's to felony's. The court of appeals without review of the claim affirmed the trial courts ruling, and decided in favor of the State.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

RCW 9.94A.525 Offender Score (2)(f), Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030.(20), (Shall not be included in the offender score)!

RCW 10.99.020.(5)(R), Domestic violence includes but is not limited to any of the following crimes especally (R), when committed by one family or household member against another.

(R). Violations of the provisions of a restrainting order, no contact, order, or protective order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within a specified distance of a location.

All of which Mr. Renion honored and did not violate.

see,

RCW 10.99.040; 10.99.050; 26.09.300; 26.10.220; 26.26.138; 26.44.063; 26.44.150; 26.50.060; 26.50.010(3); 26.50.070; 26.50.130; 26.52.070; or 74.34.145).

RCW 26.50.010(3). "Domestic violence 'means': (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b). sexual assault on family or household member of another; (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

Of which, the record supports Mr. Renion never visited the above charges. His violation was simply three non-violent or physically restraining violent assaults. Just three Phone conversations State alleged Mr. Renion did, because he had 3 prior misdemenor convicted allegations made by the same ex-girlfriend. The state court erronuously increase Mr. Renions calculated offender score, with out authorty. as the Court of Appeals, followed into their erronuous actions. to deprive and individual of his rights, to due process of his calculation of his offender score to be processed accordingly to the statutory and legal sceme, that legislation intended it to be.

An Appellate court had an obligation to correctly review Mr. Renions calculations of his offender score under the statutory sceme of RCW 9.94A.525 de novo.

As statutory interpretation is a question of law an Appellate Court must review the sceme de novo.

The Appellate court employ's statutory interpretation to determine and give effect to the legislature's intent. To determine legislative intent, the Appellate court had to first look to the plain language of a statute, Considering the text of a provision in question, The context of the statute, and A a statutory scheme as a whole. No as a part as this case shows did against Mr. Renion.

In determining legislative intent, the Appellate court, should have first looked to the plain language of the statute considering the text of the provisions in question, the context of the statute and the statutory scheme as its whole, in this case, it did not.

In determining the 'plain meaning' the Appellate court should have considered the text of the provision in question, the context of the statute in which the provision was found, Related provisions and the statutory scheme as a whole. The Division III, Wash St, Court of Appeals, did not do a complete plain meaning Review as a whole

Only if the statute was still susceptible to more than one interpretation after the Appellate court conducts a Plain Meaning Review in whole, ~~the the~~ Then the statute is ambiguous and only then can the Appellate court rely on the statutory construction, legislative history and the relevant case law to determine legislative intent.

The provisions governing Mr. Renions calculations of his offender-score under RCW 9.94A.525 are unique. As in Renions case they are analysed of a silent interpretation. And because They must be applied within the complex framework of the Sentencing Reform Act of 1981. Statutes are interpreted to give effect to all languag in a statute and to render no portion meaningless or superflaous. Even when examining the plain language of the statute, a court must consider the text of a provision, not create a silent one, that is in question, the context of the statute in which the provision was found related provisions, and most importently a statutory scheme as a whole.

Wherea record supports the appellate court did here in Mr. Renions Appeal, at, State v. Renion 2018 Wash.App. 582 (COA.2018).

When an offender is sentenced on a felony, RCW 9.94A.505 (2)(a)(i), requires that a trial court impose a standard range sentence unless another term of confinement applies, and Washingtons RCW 9.94A.530 dictating that an offender's standard sentencing range, is determined by using a seriousness level of an offense for which the offender is being sentenced and an offender score for the offense for which the offender is being sentenced.

To be counted as one point for the purpose of calculating a defendants' offender score on his felony domestic violence violation of a no contact order a gross misdemenor must be a prior conviction under under RCW 9.94A.525 (1)

and a Repetitive domestic violence offense as defined in RCW 9.94A.030 (41).

Mr. Renion's prior three non-violent convictions, violating a restraint order, were not, neither did they meet the requirement of a "gross-misdemener," as record shows they were simple non-violent misdemenor's.

The Sentencing Reform act of 1981 (SRA), does not apply to Misdemenor's much less gross-misdemenors, under RCW 9.94A.010. The purpose of the act, is to make the criminal Justice system accountable to the public by developing a system for the sentencing of violent felony offender's.

Although, the SRA generally does not use non-violent misdemenor or for that non-violent gross-misdemenors in calculating an offender score. It does have rules that allow violent misdemenors and gross misdemenors to be counted towards a felony offender's, offender score. When that offender is being sentenced for a particularly violent crime.

These rules allow violent misdemenor and gross-misdemenors, to be used to calculate the offender's score on a felony offense to which the SRA offender score rules apply; However, the do not impermissibly make the SRA applicable to non-violent misdemenors or non violent gross mesdemenors.

The trial court and the affirming action of the Appellate court, see State v. Renion 2018 Wash. App 582 (COA, 2018), Div. III, This court in the interest of statutory due process of law, should consider review of the trial court's erroneous ruling pursuant to 2.3(b), for a review of Mr. Renions trial court decision extending his sentencing beyond its standard range using, a silent erroneous application of the plain language of the statory scheme RCW 9.94A.525.

And in addition to the above information the same should be applied to the erroneously affirming conviction applied by the Wash State Court of Appeals, Dev. III, sean in State v. Renion, 2018 Wash. App 582, unp. op. CoA. 34835-1-III, pursuant to rule 13.5 (b). (for a review of the decision of the Court of Appeals.).

Mr. Renions convictions in all (whole), were non-violent aligations. Under RCW 9.94A.525 (21)(c), each prior adult conviction for a "Repetitive domestic (VIOLANT) offense" is counted as one point toward an offenders score.

RCW 9.94A.030 (41), defines "Repetitive domestic violant violation of a no-contact order that is not a felony, a domestic violant violation assault that is not a felony. A violation of a protection order that is not a felony. Domestic violant harassment that is not the felony and Domestic Violant stalking that is not the felony.

9.94A.030 (41) does not qualify a definition of 'Repetitive Domestic Violent Offense'! with anything other than its type of offense.

The plain language of the statutory scheme of RCW 9.94A.525 pursuent to Rodriguez. Present's to us and this Supreme court.

Mr. Renion had and still remains to have, a right to challenge a sentence imposed in excess of statutory authority for the first time on appeal because Mr. Renion. can not agree to punishment in excess of that which the legislature established.

Where Mr. Renion agrees with City of Seattle v. Winebrenner, 167 Wn.2d 451. 462, 219 P.3d 686 (2009) The rule states that an ambiguous criminal statute cannot be interpreted to increase the penalty imposed." Id, The Supreme Court "this court"! ended up ruling in the Winebrenner case that the legislature's failure to include specific language as to what amounted to a "prior offense" made the statute ambiguous and the rule of lenity applied.

This court should reverse the court of appeals decision and review the erronuous ruling that was perpretrated to impose an excessive sentence. without having to apply the Whole plain meaning of the statutory language. of RCW. 9.94A.525.

F. CONCLUSION.

This court should accept review for the reasons indicated in part-E, and direct the trial court, if review is granted to return Mr. Renions offender score of '7' to its original offender score of '4' to reduce his sentence, from the erronuous 48 month's pursuant to the offender point status of '7'; too its original sentencing status of 28 months pursuant to his standard range of 4 point's as originally sentenced to.

In the alternative, for this court to return the case back to its trial court for recentencing as indicated in part-E.

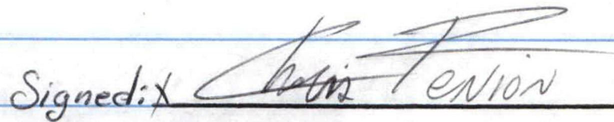
In addition to the filing of this motion for discretionary review. and pursuant to this courts directed time restraint's. and to the CRCC's facility restrictions of Legal research. Appendex of athorties attached will follow.

Petition also request this court respectfully to return a copy of this motion back to Mr. Renion upon filing. to the following address "Legal Mail."!!

Thank you. →

'Coyote Ridge Corrections Center'
Christino Shawn. Renion, #718523
P.O. Box 769, GA-19-4L
Connelle. Washington 99326.

Respectfully Submitted this day x 11 x OCT, 2018

Signed: x 

Christino Shawn, Renion, Petitioner. # 718523
Petitioner is Represented Pro-se.

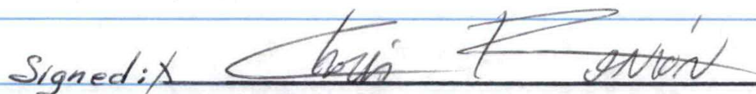
DECLARATION OF SERVICE

I, Christino Renion, hereby declare that on the date listed below, I caused to be served a true and correct copy of Petitioners Discretionary Review request upon the following Court in interest by depositing them in the U.S. Legal Mail at Coyote Ridge Corrections Center. P.O. Box 769, Connell, Wash. 99326. addressed as follows:

The Supreme Court of the State of Wash.
Temple of Justice
P.O. Box 40929
OLYMPIA, Wa. 98504-0929

I declare under penalty of purjury under the laws of this state of Washington that the forgoing is true and correct.

Signed this x 11 day of Oct, 2018 in Connell, Washington.

Signed: x 

FILED
MARCH 15, 2018
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. 34835-1-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
CHRISTINO SHAWN RENION,	)	
	)	
Appellant.	)	

LAWRENCE-BERREY, J. — Christino Shawn Renion appeals his sentence following his conviction for three counts of felony violation of a protection order. He argues the trial court erred by (1) counting predicate misdemeanor domestic violence convictions when calculating his offender score, and (2) assessing discretionary legal financial obligations (LFOs) without conducting an adequate *Blazina*[1] inquiry. He raises two additional arguments in his statement of additional grounds for review (SAG). We reverse the imposition of Renion's discretionary LFOs, but otherwise affirm.

FACTS

The State charged Renion with three counts of felony violation of a protection order against his former girlfriend. The charges arose from allegations that he texted the

[1] *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

girlfriend on three separate days. At trial, the State introduced evidence of three prior misdemeanor convictions for violating a protection order. The State argued to the jury that the three convictions served as the predicate offenses to prove the felony charges.

During deliberations, the jury sent an inquiry to the trial court asking what would happen in the event it could agree on one count but not two others. The trial judge was unavailable so another judge presided over the brief hearing. Defense counsel suggested that the judge respond by telling the jury to re-read the instructions and to contact the bailiff if it could not make a decision. The State agreed. The judge answered the jury's inquiry in accordance with the parties' agreed response. The jury resumed its deliberations and found Renion guilty of all three counts.

At sentencing, the trial judge accepted Renion's argument that the three predicate misdemeanor convictions should not count toward his offender score, and calculated Renion's offender score as a 4. The trial court next inquired into Renion's ability to pay discretionary LFOs. The trial court asked Renion about his employment history, if he could work in a similar capacity after he served his sentence, and if he had equity in real property or vehicles. Renion told the court he had worked as a prep cook, and he probably could return to similar work after being released from prison, but that he did not have any equity in real property or vehicles. The trial court did not ask Renion about the

nature and the extent of his debts. The trial court assessed discretionary LFOs totaling $1,350. Renion did not object.

The State moved for reconsideration of the offender score calculation. The State cited to *State v. Rodriguez*, 183 Wn. App. 947, 335 P.3d 448 (2014), which had not been cited earlier to the trial court. The trial court granted the State's motion for reconsideration and increased Renion's offender score to a 7.

Renion timely appealed.

ANALYSIS

PRIOR CONVICTIONS FOR REPETITIVE DOMESTIC VIOLENCE OFFENSES ARE COUNTED TOWARD THE OFFENDER SCORE FOR A PERSON CONVICTED OF A FELONY DOMESTIC VIOLENCE OFFENSE

Renion contends that under the maxim of *expressio unius est exclusio alterius*, predicate misdemeanor offenses that elevate a protection order violation to a felony should not be included in the offender score. In making his argument, he notes that predicate offenses are expressly counted in RCW 9.94A.525(2)(e) for felony driving while under the influence, whereas predicate offenses are not expressly counted in RCW 9.94A.525(21) for felony domestic violence.

This court reviews calculation of an offender score de novo. *State v. Bergstrom*, 162 Wn.2d 87, 92, 169 P.3d 816 (2007). Statutory interpretation also is subject to de novo review. *State v. Rice*, 180 Wn. App. 308, 313, 320 P.3d 723 (2014).

The goal of statutory interpretation is to determine and give effect to the legislature's intent. *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013). To determine legislative intent, this court first looks to the plain language of the statute considering the text of the provision in question, the context of the statute, and the statutory scheme as a whole. *Id.* If after a plain meaning review the statute is susceptible to more than one interpretation, the statute is ambiguous. *Rice*, 180 Wn. App. at 313. To interpret an ambiguous statute this court relies on "statutory construction, legislative history, and relevant case law to determine legislative intent." *Id.*

Former RCW 9.94A.525(21) (2013) provided:

> If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:
>
> . . . .
>
> (c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

Renion does not cite to *Rodriguez*. In *Rodriguez*, we considered the plain language of RCW 9.94A.525(21). *Rodriguez*, 183 Wn. App. at 957-58. We held that the plain language of the statute did not qualify "repetitive domestic violence offense[s]," and required any such offenses to be counted toward the offender score.[2] *Id.* at 958. Because the statutory language was unambiguous, we did not resort to maxims of statutory construction.

Renion does not dispute that his three predicate offenses qualify as "repetitive domestic violence offenses." Because RCW 9.94A.525(21) unambiguously requires that Renion's predicate offenses be counted for calculating his offender score, we do not resort to maxims of statutory construction. To do so would be improper. *Rice*, 180 Wn. App. at 313. The trial court did not err when it counted Renion's predicate offenses when calculating his offender score.

DISCRETIONARY LFOS

Renion next contends the trial court erred when it assessed discretionary LFOs against him without conducting a sufficient inquiry into his current and likely future ability to pay. The State argues this court should not review the unpreserved issue, but

[2] An exception, however, would be if the repetitive domestic violence offense washed out pursuant to RCW 9.94A.525(2)(f).

without conceding the issue, agrees to strike discretionary LFOs in the event this court does grant discretionary review. Br. of Resp't at 24. For the reasons discussed below, we accept review of the unpreserved error.

RAP 2.5(a) provides that an "appellate court may refuse to review any claim of error which was not raised in the trial court." For this reason, a defendant who does not object to the imposition of discretionary LFOs at sentencing is not automatically entitled to review. *Blazina*, 182 Wn.2d at 832.

In *Blazina*, our Supreme Court exercised its discretion in favor of reviewing an unpreserved error of great public importance. Prior to *Blazina*, trial courts routinely imposed discretionary LFOs against indigent defendants convicted of felonies. Intermediary appellate courts routinely countenanced this practice despite RCW 10.01.160(3), which provides:

> The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court *shall* take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(Emphasis added.) The *Blazina* court stated, as a general rule, "shall" is an imperative that creates a duty. *Id.* at 838. The *Blazina* court further held:

> Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. *Within this inquiry, the court must also consider important factors . . . such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.*
>
> Courts should also look to the comment in court rule GR 34 for guidance. This rule allows a person to obtain a waiver of filing fees and surcharges on the basis of indigent status, and the comment to the rule lists ways that a person may prove indigent status.

Id. (emphasis added).

Here, although the trial court attempted a proper *Blazina* inquiry, it failed to inquire into Renion's debts. Had it inquired, it would have learned the information now before us: Renion has substantial debts, including child support, which exceed $47,000. We have no doubt that had the trial court learned of Renion's debts, it would not have imposed any discretionary LFOs.[3]

---

[3] The dissent notes various inconsistencies in Renion's filings and raises a valid concern that Renion may have overstated his debts. This valid concern does not lessen the trial court's duty to make an adequate *Blazina* inquiry.

Criminal appeals to this division often include an assignment of error that the trial court failed to conduct an adequate *Blazina* inquiry. Often, the trial court's inquiry was not meaningful. Occasionally, such as here, the inquiry was meaningful but inadequate. By reviewing these errors, we hope to reduce their occurrence and thus our need to review them.

Renion's attorney is not guiltless in the trial court's mistake. Renion's attorney should have discussed his client's debts with him before sentencing and should have objected to the trial court's failure to inquire into his client's debts. Such an objection would have resolved the problem currently before us.

But blame is shared. The *Blazina* court makes clear that trial courts have a *duty* to make an adequate inquiry, which includes consideration of debts. Courts, even appellate courts, are in the business of enforcing duties. Were we to not accept review of the unpreserved error, we would be perpetuating the problem the *Blazina* court sought to remedy. We, therefore, accept review of the unpreserved error and remand to the trial court for a proper *Blazina* inquiry. If the State, as it suggests, requests the trial court to strike the discretionary LFOs, no new sentencing hearing is required.

SAG ISSUE #1: JURY INQUIRY

Renion argues the court's response to the jury inquiry was error because the judge who assisted in answering the jury inquiry was not the trial judge and did not know how to answer the jury's question. We disagree.

First, defense counsel, not the court, suggested how to respond to the jury's inquiry. Second, the State agreed to the response. Third, the response was neutral and is the typical response when a jury sends an inquiry to the court.

SAG ISSUE #2: INEFFECTIVE ASSISTANCE OF COUNSEL

Renion contends he received ineffective assistance of counsel when his attorney failed to object to the court's response to the jury inquiry. We disagree.

A criminal defendant has a Sixth Amendment to the United States Constitution right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal." *State v. Kyllo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). The claim is reviewed de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To establish ineffective assistance of counsel, a defendant must prove the following two-pronged test:

> (1) [D]efense counsel's representation was deficient, *i.e.*, it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, *i.e.*, there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different.

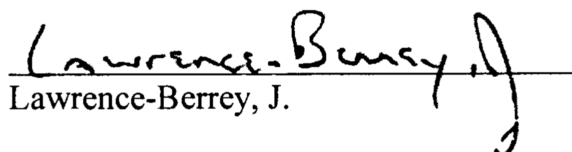
State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)). We strongly presume trial counsel was effective. *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). When this court can characterize counsel's actions as legitimate trial tactics or strategy, we will not find ineffective assistance. *Id.*

Here, the jury appeared close to acquitting Renion of two of the three counts and not being able to agree to the third. Had defense counsel successfully requested the court to declare a mistrial, the result could have been a new trial on all three counts. Such a strategy would be a poor tactic, given that the jury seemed close to acquitting on two counts. We, therefore, reject Renion's ineffective assistance of counsel claim.

Because neither party substantially prevailed, we deny appellate costs.

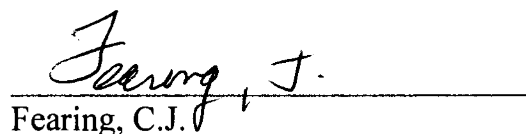
Affirmed in part, reversed in part, and remanded.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Lawrence-Berrey, J.

I CONCUR:



Fearing, C.J.

SIDDOWAY, J. (Dissenting in part)—I would not remand for a second inquiry into Christino Renion's ability to pay the legal financial obligations (LFOs) imposed by the trial court.

Before Mr. Renion's sentencing, the trial court had received sentencing memoranda from the State and the defense, both of which recognized that Mr. Renion had never been convicted of a felony and was eligible for a first time offender waiver, although the State argued that it should be denied. As Mr. Renion pointed out in his sentencing memorandum, he had "never been sentenced to more than 30 days for any of his other prior domestic violence crimes," which consisted of telephone harassment and violation of no contact orders relating to his former girlfriend. Clerk's Papers (CP) at 264.

The sentencing occurred over a year and a half after our Supreme Court decided *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), so both the court and counsel were surely aware of the relevance of Mr. Renion's ability to pay LFOs. Given the opportunity to allocute, Mr. Renion told the court that since being in jail, "I've worked for the kitchen. I've worked in maintenance. I've be a feeder. [sic] I'm now commissary." Report of Proceedings (RP) at 175.

The trial court then questioned Mr. Renion about his ability to pay LFOs:

> [THE COURT]: Mr. Renion, have you been employed before? Had you been holding down a job, sir?
> MR. RENION: Yes, sir.

> THE COURT: And what were you doing?
> MR. RENION: I was a fry cook or a prep cook.
> THE COURT: A what? I'm sorry.
> MS. DALAN: A prep cook.
> THE COURT: A cook. Okay. So you've got skills as a cook?
> MR. RENION: Yes, sir.
> THE COURT: When you get out, do you think you'll be able to resume your cooking at restaurants?
> MR. RENION: Maybe.
> THE COURT: Maybe. But it's a skill set you can take and offer to various restaurants that might want to hire you as a cook?
> MR. RENION: Yes, sir.
> THE COURT: Okay. I'm asking you some questions for legal purposes and not to embarrass you.
> Do you have any assets set aside, any bank accounts with any sums of money in them, sir?
> MR. RENION: No, sir.
> THE COURT: Okay. Do you own any real property or vehicles that you might have any equity in, sir?
> MR. RENION: No.
> THE COURT: All right.

RP at 178-79. Based on Mr. Renion's responses, the trial court capped the costs of incarceration, reduced the cost of the Department of Assigned Counsel to $400, and struck the provision of the judgment and sentence making Mr. Renion responsible for any medical costs incurred while incarcerated. It then imposed the LFOs that Mr. Renion now appeals, but did not challenge at the time.

RAP 2.5(a) states the general rule applicable to issues raised for the first time on appeal: we do not review them. If Mr. Renion had a problem with the adequacy of the trial court's *Blazina* inquiry, he should have raised it in the trial court.

The majority nonetheless remands for a second inquiry because "[h]ad [the court] inquired, it would have learned the information now before us: Renion has substantial debts, including child support, which exceeds $47,000." Majority at 7. I doubt it. No debts were disclosed in the declaration for an order authorizing the defendant to appeal at public expense that was filed a few days after the sentencing hearing, even though the declaration form asks about any "substantial debts or expenses." CP at 285.

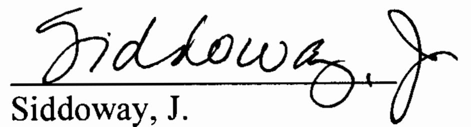
The majority relies, however, on the report as to continued indigency that Mr. Renion filed with this court, the reliability of which I question. The report does reveal that Mr. Renion, age 42, has completed his GED. But it then provides the following information about debts, all, uncommonly, in round numbers:

Credit cards, personal loans, or other installment debt:	$ 8,000
Legal financial obligations (LFOs):	$10,000
Medical care debt:	N/A
Child support arrears:	$4,000
Other debt:	$25,000

Report as to Continued Indigency at 1 (Wash. Ct. App. Dec. 5, 2016) (docketed Mar. 20, 2017). Recall that this defendant with a reported $10,000 in LFOs was eligible for a first time offender waiver. Recall that his declaration in support of an order authorizing appeal at public expense failed to identify any substantial debts or expenses. Note that elsewhere on the report as to continued indigency, Mr. Renion provides no estimate of his monthly debt payments (answering "?" instead) and indicates "N/A" when it comes to his

financial responsibility for any dependents, including children, despite reporting $4,000 in child support arrears. *Id.* at 2.

If Mr. Renion truly has $47,000 in liabilities that had not come up in the court's questioning of his ability to pay, his trial lawyer should have brought that fact to the trial court's attention or objected to the trial court's failure to inquire sufficiently. In a case like this, I would point out to Mr. Renion that he can file a timely personal restraint petition, provide evidence of his liabilities, and raise an ineffective assistance of counsel claim. On this record, I would not remand with directions to the court to conduct a *Blazina* inquiry a second time.


Siddoway, J.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

March 15, 2018

E-mail
Tamara Ann Hanlon
Joseph Anthony Brusic
Yakima County Prosecuting Attorney's Office
128 N 2nd St Rm 329
Yakima, WA 98901-2621

Andrea Burkhart
Two Arrows, PLLC
PO Box 1241
Walla Walla, WA 99362-0023
Andrea@2arrows.net

CASE # 348351
State of Washington v. Christino Shawn Renion
YAKIMA COUNTY SUPERIOR COURT No. 161008254

Counsel:

Enclosed please find a copy of the opinion filed by the Court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion (unless filed electronically). If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:pb
Enc.

c: **E-mail** Hon. Douglas Federspiel
c: Christino Shawn Renion
#718523
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

Log Number: U-058
Oral Argument Date:

DO NOT CITE. SEE GR 14.1(a).

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 34835-1
Title of Case: State of Washington v. Christino Shawn Renion
File Date: 03/15/2018

SOURCE OF APPEAL

Appeal from Yakima Superior Court
Docket No: 16-1-00825-4
Judgment or order under review
Date filed: 10/21/2016
Judge signing: Honorable Douglas L. Federspiel

JUDGES

Authored by Robert Lawrence-Berrey
Concurring: George Fearing
Dissenting: Laurel Siddoway

COUNSEL OF RECORD

Counsel for Appellant(s)
Andrea Burkhart
Two Arrows, PLLC
Po Box 1241
Walla Walla, WA, 99362-0023

Counsel for Respondent(s)
Joseph Anthony Brusic
Yakima County Prosecutor's Office
128 N 2nd St Rm 329
Yakima, WA, 98901-2621

Tamara Ann Hanlon
Yakima County Prosecuting Attorney's Off
128 N 2nd St Rm 329
Yakima, WA, 98901-2621

OPINION FACT SHEET

Case Name: State v. Renion
Case Number: 348351

1. TRIAL COURT INFORMATION:

   A. SUPERIOR COURT: Yakima; Judgment; Douglas Federspiel; Filed 10/21/16; Amended Judgment filed 12/9/16

2. COURT OF APPEALS INFORMATION:

   Disposition:

   ( ) Affirmed
   ( ) Affirmed as Modified
   ( ) Affirmed in Part/Remanded**
   ( ) Affirmed/Reversed-in part and Remanded**
   ( ) Affirmed/Vacated in part
   (X) Affirmed/Reversed in part
   ( ) Denied (PRP, Motions, Petitions)
   ( ) Dismissed
   ( ) Granted/Denied in part
   ( ) Granted (PRP, Motions, Petitions)
   ( ) Other
   ( ) Reversed and Dismissed
   ( ) Remanded**
   ( ) Remanded with Instructions**
   ( ) Reversed in part
   ( ) Reversed and Remanded**
   ( ) Reversed
   ( ) Reversed, Vacated and Remanded**
   ( ) Vacated and Remanded**
   * These categories are established by the Supreme Court
   ** If remanded, is jurisdiction being retained by the Court of Appeals? () YES
   (x) NO

3. **SUPERIOR COURT INFORMATION:**
   (IF THIS IS A CRIMINAL CASE, CHECK ONE)

   Is further action required by the superior court?

   (x) YES
   ( ) NO

RLB

Authoring Judge's Initials

1215

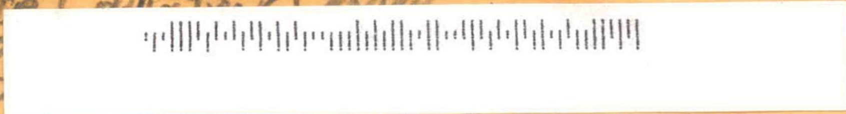
10-11-18 C/o Wise

US POSTAGE
$01.63⁰
Mailed From 99326
10/12/2018
0005181466

urt of the State of Washington
Justice
40929
504-0929

LEGAL MAIL

Coyote Ridge Corrections Center
Christino
G/A-19-4L
P.O. Box 769
Connelle, Washington 99326



TO: The Supreme Co
Temple o
P.O. Box
OLYMPIA WA. 98

LEGAL MAIL