

FILED
SUPREME COURT
STATE OF WASHINGTON
10/1/2018 8:03 AM
BY SUSAN L. CARLSON
CLERK

No. 96020-8
COA #49773-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TINA MARIE HUGHES,

Petitioner/Appellant.

ON REVIEW FROM
THE COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION TWO
and
THE SUPERIOR COURT
OF THE STATE OF WASHINGTON,
KITSAP COUNTY

SUPPLEMENTAL PETITION FOR REVIEW
BASED ON INTERVENING AUTHORITY

KATHRYN RUSSELL SELK, No. 23879
Appointed Counsel for Petitioner

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RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

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A. SUPPLEMENTAL ISSUES PRESENTED FOR REVIEW

Legal financial obligations of a \$200 filing fee were improperly imposed on Petitioner Tina Hughes despite her indigence and she is entitled to relief under this Court's recent decision in State v. Ramirez, __ Wn.2d __, __ P.3d __ (No. 95249 -3) (2018 W L 4499761) (September 20, 2018). A copy of that decision is attached hereto as Appendix B.

B. SUPPLEMENTAL STATEMENT OF THE CASE

Ms. Hughes was found indigent prior to trial. CP 7. At sentencing, the court waived "all but the mandatory costs," imposing a \$500 victim's fund fee, a \$200 filing fee and a \$100 DNA fee. CP 72-73. Payments were ordered to commence immediately and to be made at a rate of \$100 per month, with 12 percent interest imposed. CP 72-73. The judgment and sentence also imposed a 50 percent "penalty" for "failure to pay" and imposed costs of collection. CP 73. A copy of the judgment and sentence is attached as Appendix A.

In her opening brief on appeal, Ms. Hughes argued that the trial court erred in ordering these legal financial obligations without complying with the requirements of RCW 10.01.160, as interpreted by this Court in State v. Blazina. 182 Wn.2d 827, 344 P.3d 680 (2015). See Brief of Appellant ("BOA" at 17-23). She assigned error to the "boilerplate" preprinted finding of "ability to pay" included on the judgment and sentence and further argued that appointed counsel at trial was ineffective in failing to present information about her

client's indigence at sentencing. BOA at 21-22.

In its unpublished opinion, regarding legal financial obligations, Division Two held that there is no requirement for a sentencing court to consider a defendant's "ability to pay" for "mandatory" LFOs under former RCW 10.01.160(3) (2015). App. A to Initial Petition for Review (Opinion) at 9.

On September 20, 2018, this Court decided Ramirez, supra. This Supplemental Petition follows.

C. SUPPLEMENTAL ARGUMENT REGARDING REVIEW

REVIEW SHOULD BE GRANTED AND THE CASE
REMANDED TO STRIKE THE LEGAL FINANCIAL
OBLIGATIONS UNDER RAMIREZ

In Ramirez, supra, this Court recently held that the changes to our state's legal financial obligation system made by the 2018 Legislature applied to all cases still pending on direct review. App. A at 2. In addition to the other grounds for review raised in her initial Petition for Review, this Court should also grant review and relief under Ramirez.

In that case, the Court held that the amendments made by the Legislature in Engrossed Second Substitute House Bill ("Bill") 1783 now "prohibit[] the imposition of certain LFOs on indigent defendants." App. A at 2, 6-7; see Laws of 2018, ch. 269. Further, the Court noted, the Bill eliminates the authority to impose a criminal filing fee of \$200 on an indigent defendant, eliminates "interest accrual" on all nonrestitution LFOs, "establishes that the DNA

database fee is no longer mandatory in some situations and provided new limits to remedies for failure to pay. App. A at 17-18.

In Ramirez, the defendant had raised a Blazina argument in the court of appeals and this Court had granted review on that issue when the Bill was passed. App. A at 6, 21. The unanimous Court held that the amendments wrought by the Bill, however, applied. App. A at 6, 21. The Court found that the “precipitating event” for a statute “concerning attorney fees and costs” such as LFOs was the termination of the defendant’s case - which meant the end of the appeal. App. A at 21-22 (citations omitted). Because the Bill’s amendments concerned “the court’s ability to impose costs on a criminal defendant following conviction,” and because Ramirez’ case was still on appeal as a matter of right and was “thus not yet final under RAP 12.7” when the Bill was enacted, the Court held, Ramirez was entitled to benefit from the statutory change. App. A at 21-22.

Similarly, here, Ms. Hughes is entitled to relief from the statutory changes of the Bill. Like Ramirez, Hughes was sentenced well before the Bill was enacted in 2018, and her case is still on direct appeal. Further, like Ramirez, Ms. Hughes was subjected to the \$200 filing fee. Hughes was also ordered to pay interest, which is no longer authorized under the Bill (Laws of 2018, ch. 269, § 1). This Court should grant review and should grant Ms. Hughes relief from the improperly imposed legal financial obligations under Ramirez.

D. CONCLUSION

For the reasons stated herein and in the original Petition for Review, this Court should grant review and grant Ms. Hughes relief.

DATED this 1st day of October, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE BY MAIL/EFILING

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel at Kitsap County Prosecutor's Office, @kcpa@co.kitsap.wa.us and to Tina Hughes, by depositing in U.S. mail, with first-class postage prepaid at the following address: 200 East Gills Cove Dr., Allyn, WA. 98525.

DATED this 1st day of October, 2018.



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APPENDIX A

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RECEIVED AND FILED
IN OPEN COURT
DEC - 9 2016
DAVID W. PETERSON
KITSAP COUNTY CLERK

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
)	No. 16 1 00709 9
Plaintiff,)	
)	JUDGMENT AND SENTENCE
v.)	
)	
TINA MARIE HUGHES,)	16-9-02272-1
Age: 50; DOB: 05/23/1966,)	
)	
Defendant.)	

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence.

The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following--

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>	RCW	Date(s) of Crime from to		The Special Allegations* listed below were pled and proved
I Possession of a Controlled Substance [Methamphetamine]	69.50.4013.Meth	05/27/2016	05/27/2016	

2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
No known felony history				

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type* Mo.		Total Standard Range (Mo.)	Maximum Term
I.	0	I	0 to 6	-	X				5 years

Defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533). DW=Deadly Weapon (9.94A.602,533):

JUDGMENT AND SENTENCE; Page 1
[Form revised May 3, 2016]



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SUB(43)

DV=Domestic Violence (10.99.020); **SZ**=School Zone (69.50.435,533); **SM**=Sexual Motivation (9.94A.835 and/or 9.94A.533); **VH**=Vehicular Homicide Prior DUI (46.61.520,5055); **CF**=drug crime at Corrections Facility (9.94A.533); **JP**=Juvenile Present at manufacture (9.94A.533,605); **P**=Predatory (9.94A.836); **<15**=Victim Under 15 (9.94A.837); **DD**=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); **CSG**=Criminal Street Gang Involving a Minor (9.94A.833); **AF**=Endangerment While Attempting to Elude (9.94A.834).

CONFINEMENT/STATUS

- 4.5-FIRST-TIME OFFENDER.** RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY**—The Court finds the Defendant has a chemical dependency that contributed to the offense(s).
- 4.5-PRISON-BASED DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE.** RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA.** RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7-WORK ETHIC CAMP.** RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.
- 2.4-EXCEPTIONAL SENTENCE**—Substantial and compelling reasons exist justifying a sentence above below the standard range, within the standard range for Count ___ but served consecutively to Count(s) ___, or warranting exceptional conditions of supervision for Count(s) _____. The Prosecutor did did not recommend a similar sentence. The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER**—The Defendant is a Persistent Offender and is sentenced to life without the possibility of early release. RCW 9.94A.570.

COURT'S SENTENCE: 180 days imposed with 178 days suspended, 2 days to serve.

COUNT <u>I 2</u> Days <input type="checkbox"/> Mo.	COUNT ___ Days <input type="checkbox"/> Mo.	COUNT ___ Days <input type="checkbox"/> Mo.
COUNT ___ Days <input type="checkbox"/> Mo.	COUNT ___ Days with ___ Days Suspended for ___ Years	
COUNT ___ Days <input type="checkbox"/> Mo.	COUNT ___ Days with ___ Days Suspended for ___ Years	
COUNT ___ 12 months + 1 day	COUNT ___ 12 months + 1 day	COUNT ___ 6 months + 1 day
PRISON-BASED DOSA- COUNT ___ Months Actual Time to be served- ___ Months		
PRISON-BASED DOSA- COUNT ___ Months Actual Time to be served- ___ Months		
PRISON-BASED DOSA- COUNT ___ Months Actual Time to be served- ___ Months		

IF MULTIPLE COUNTS—Total confinement ordered: ___ Days Months. (per DOSA sentence)
COUNTS SERVED— Concurrent Consecutive Firearm and Deadly Weapon enhancements served consecutive; the remainder concurrent. Sexual Motivation enhancements served consecutive; the remainder concurrent. VUCSA enhancements served consecutive concurrent; the remainder consecutive.

4.4-CONFINEMENT ONE YEAR OR LESS—Defendant shall serve a term of confinement as follows:

JUDGMENT AND SENTENCE; Page 2
 [Form revised May 3, 2016]



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- 1 **JAIL ALTERNATIVES/PARTIAL CONFINEMENT.** RCW 9.94A.030(31). If the defendant is found
- 2 eligible, the confinement ordered may be converted to—Work Release, RCW 9.94A.731 (*Note: the*
- 3 *Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail*
- 4 *or Peninsula Work Release*), Home Detention, RCW 9.94A.731, .190, or Supervised Community
- 5 Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.
- 6 **STRAIGHT TIME.** The confinement ordered shall be served in the Kitsap County Jail, or if
- 7 applicable under RCW 9.94A.190(3) in the Department of Corrections.
- 8 4.5—**CONFINEMENT OVER ONE YEAR**—Defendant is sentenced to the above term of total confinement in the
- 9 custody of the Department of Corrections.
- 10 **OTHER SENTENCES**—This sentence shall be served consecutive concurrent to sentence(s) ordered
- 11 in cause number(s) _____
- 12 **CREDIT FOR TIME SERVED.** RCW 9.94A.505. Defendant shall receive credit for time served prior to
- 13 sentencing solely for this cause number as computed by the jail unless specifically set forth—____ days.
- 14 4.3—**NO CONTACT ORDER**—Defendant shall abide by the terms of any no contact order issued as part of
- 15 this Judgment and Sentence.

SUPERVISION

- 16 4.6—**COMMUNITY CUSTODY – SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP.**
- 17 RCW 9.94A.505, .701, .702, .704, .706. Defendant shall be supervised for the longest time period
- 18 checked in the table below. Defendant shall report to DOC in person no later than 72 hours after
- 19 release from custody and shall comply with all conditions stated in this Judgment and Sentence,
- 20 including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or
- 21 DOC during community custody (and supervised probation if ordered). *First Offenders—RCW*
- 22 *9.94A.650.* If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 6
- 23 months; and if treatment is ordered, community supervision may include up to the period of treatment
- 24 but not exceed 1 year.

Community Custody Is Ordered for the Following Term(s):	
<u>For offenders sentenced to the custody of DOC (total term of confinement 12+ months or more):</u>	
<input type="checkbox"/> COUNT(S) _____	36 months for: Serious Violent Offenses; Sex Offenses (including felony Failure to Register as a Sex Offender if the defendant has at least one prior felony failure to register conviction);
<input type="checkbox"/> COUNT(S) _____	18 months for Violent Offense
<input type="checkbox"/> COUNT(S) _____	12 months for: Crimes Against Person; felony offenses under chapter 69.50 or 69.52 RCW; felony Failure to Register as a Sex Offender (if the defendant has no prior convictions for failure to register)
<u>For offenders sentenced to a term of one year or less :</u>	
<input checked="" type="checkbox"/> COUNT(S) <u> 1 </u>	12 months for: Violent Offenses; Crimes Against Persons; felony offenses under chapter 69.50 or 69.52 RCW; Sex Offenses; felony Failure to Register as a Sex Offender (regardless of the number of prior felony failure to register convictions).
<ul style="list-style-type: none"> • Community custody for sex offenders may be extended for up to the statutory maximum term. • For sex offenses, defendant shall submit to electronic home detention if imposed by DOC. 	



Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:

COUNT(S) _____ 12 months 24 months _____ months

4.6—WORK ETHIC CAMP—COMMUNITY CUSTODY. RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

4.6— PRISON-BASED DOSA—COMMUNITY CUSTODY. RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

4.7—ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS—If DOC finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.

4.7—ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM THE DOSA PROGRAM—If the defendant fails to complete, or is administratively terminated from, the drug offender sentencing alternative program, the court imposes a term of community custody under RCW 9.94A.701, to begin upon the defendant's release from custody, and during this term of community custody, the defendant shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC.

4.6—RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA—COMMUNITY CUSTODY. RCW 9.94A.660. The Defendant shall serve a term of community custody as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA, and all of the conditions and requirements included in the ADDENDUM are hereby imposed.

-ADDITIONAL CONFINEMENT UPON VIOLATION OF RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA SENTENCE CONDITIONS—If the court finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, the court may order the Defendant to serve a term of total confinement equal to one-half the midpoint of the standard range or a term of total confinement up to the top of the standard range. The court may also impose a term of community custody. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the



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Defendant's sentence. RCW 9.94A.714.

COMMUNITY CUSTODY VIOLATIONS. In any case in which community custody is imposed, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.



SUPERVISION SCHEDULE: The Defendant Shall-

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- STANDARD**
 - Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
 - Report to and be available for contact with assigned CCO as directed.
 - Obey all no-contact orders including any in this judgment.
 - Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
 - Notify CCO within 48 hours of any new arrests or criminal convictions.
 - Pay DOC monthly supervision assessment.
 - Comply with crime-related prohibitions.
- SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (non-DOSA)**
 - Work only at DOC-approved education, employment and/or community service.
 - Possess or consume no controlled substances without legal prescription.
 - Reside only at DOC-approved location and arrangement.
 - Consume no alcohol, if so directed by the CCO.
- FIRST OFFENDER**
 - Obey all laws.
 - Devote time to specific employment or occupation.
 - Pursue a prescribed secular course of study or vocational training.
 - Participate in DOC programs and classes, as directed.
 - Undergo available outpatient treatment for up to one year, or inpatient treatment not to exceed standard sentence range.
- FINANCIAL GAIN**
 - Commit no thefts.
 - Possess no stolen property.
 - Have no checking account or possess any blank or partially blank checks.
 - Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
 - Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
 - Possess no identification in any other name other than Defendant's true name.
 - Possess no credit cards or access devices belonging to others or with false names.
 - Cause no articles to be refunded except with the written permission of CCO.
 - Take a polygraph test as requested by CCO to monitor compliance with supervision.

- PSI CONDITIONS**-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.
- ALCOHOL/DRUGS**
 - Possess or consume no alcohol.
 - Enter no bar or place where alcohol is the chief item of sale.
 - Possess and use no illegal drugs and drug paraphernalia.
 - Submit to UA and breath tests at own expense at CCO request.
 - Submit to searches of person, residence or vehicles at CCO request.
 - Have no contact with any persons who are currently manufacturing or delivering controlled substances.
 - Install ignition interlock device as directed by CCO, RCW 46.20.710-.750.
- EVALUATIONS**- Complete an evaluation for:
 - substance abuse anger management mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.
- DOSA**
 - Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
 - Devote time to a specific employment or training.
 - Perform community service work.
- 4.8-OFF-LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:

- PROGRAMS / ASSAULT**
 - Have no assaultive behavior.
 - Successfully complete a certified DV perpetrators program.
 - Successfully complete an anger management class.
 - Successfully complete a victim's awareness program.
- TRAFFIC**
 - Commit no traffic offenses
 - Do not drive until your privilege to do so is restored by DOL.
- HAVE NO CONTACT WITH:**
- OTHER:**



FINANCIAL OBLIGATIONS

4.1-LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760. The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> \$500 Victim Assessment, RCW 7.68.035 [PCV]	\$ _____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
<input checked="" type="checkbox"/> \$1135 Court appointed attorney fees [PUB]	\$ _____ Witness Costs [WFR]
<input checked="" type="checkbox"/> \$200 Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$ _____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> \$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$ _____ Court-appointed defense fees/ other costs
<input checked="" type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Mandatory fine for drug crimes, RCW 69.50.430	<input checked="" type="checkbox"/> \$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.
\$ _____ Contribution to SIU-Kitsap County Sheriff's Office, RCW 9.94A.030, 9.94A.760.	<input checked="" type="checkbox"/> \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
\$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	\$100 Contribution-Anti-Profitereing Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82.110
Emergency Response Costs - DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$200 DUC-DUI/DP Account Fee - Imposed on any DUI, Physical Control, Vehicular Homicide, or Vehicular Assault. RCW 46.61.5054.

RESTITUTION-To be determined at a future date by separate order(s). If the defendant has waived his or her presence at any future restitution hearing, either through the terms of any applicable plea agreement in this case or by voluntary waiver indicated on the judgment and sentence, the court hereby accepts that waiver by the defendant.

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 \$50 \$25 _____ per month, unless otherwise noted- _____ RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160. **INTEREST WAIVED FOR TIMELY PAYMENTS**-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

4.2-HIV TESTING-The Defendant shall submit to HIV testing. RCW 70.24.340.

4.2-DNA TESTING-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law enforcement agency unless otherwise stated.

JUDGMENT AND SENTENCE; Page 7

[Form revised May 3, 2016]



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- 1 4.10--**COMPLIANCE WITH SENTENCE**--Defendant shall perform all affirmative acts necessary for DOC to
 2 monitor compliance with all of the terms of this Judgment and Sentence.
 3 **JOINT AGREEMENTS IN THE PLEA AGREEMENT**--Are in full force and effect unless otherwise stated in
 4 this judgment and sentence.
 5 **EXONERATION**--The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

6 **NOTICES AND SIGNATURES**

7 5.1--**COLLATERAL ATTACK ON JUDGMENT**--Any petition or motion for collateral attack on this judgment
 8 and sentence, including but not limited to any personal restraint petition, state habeas corpus petition,
 9 motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest
 10 judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW
 11 10.73.100, RCW 10.73.090.

12 5.2--**LENGTH OF SUPERVISION**--The court shall retain jurisdiction over the offender, for the purposes of the
 13 offender's compliance with payment of the legal financial obligations, until the obligation is completely
 14 satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

15 5.3--**NOTICE OF INCOME-WITHHOLDING ACTION**--If the Court has not ordered an immediate notice of
 16 payroll deduction, you are notified that the DOC may issue a notice of a payroll deduction without notice to
 17 you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the
 18 amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW
 19 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

20 5.5--**ANY VIOLATION OF JUDGMENT AND SENTENCE**--Is punishable by up to 60 days of confinement per
 21 violation. RCW 9.94A.633. The court may also impose any of the penalties or conditions outlined in RCW
 22 9.94A.633.

23 5.6--**FIREARMS**--You must immediately surrender any concealed pistol license and you may not own,
 24 use, or possess any firearm unless your right to do so is restored by a court of record.

25 **Clerk's Action Required**--The court clerk shall forward a copy of the Defendant's driver's license, identicard, or
 26 comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

27 **Cross off if not applicable--**

28 ~~5.7--**SEX AND KIDNAPPING OFFENDER REGISTRATION**, LAWS OF 2010, CH. 267 § 1, RCW 9A.44.130, 10.01.200.~~

29 ~~**1. General Applicability and Requirements:**~~

30 ~~Because this crime involves a sex offense or kidnapping offense involving a minor as defined in LAWS OF 2010,
 31 CH. 267 § 1 AND/OR RCW 9A.44.130, you are required to register.~~

~~If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington
 where you reside. You must register within three business days of being sentenced unless you are in custody, in which
 case you must register at the time of your release with the person designated by the agency that has jurisdiction over
 you. You must also register within three business days of your release with the sheriff of the county of the state of
 Washington where you will be residing.~~

~~If you are not a resident of Washington but you are a student in Washington or you are employed in Washington
 or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of
 employment, or vocation. You must register within three business days of being sentenced unless you are in custody,
 in which case you must register at the time of your release with the person designated by the agency that has
 jurisdiction over you. You must also register within three business days of your release with the sheriff of the county
 of your school, where you are employed, or where you carry on a vocation~~

~~**2. Offenders Who are New Residents or Returning Washington Residents:**~~

~~If you move to Washington or if you leave this state following your sentencing or release from custody but later
 move back to Washington, you must register within three business days after moving to this state. If you leave this state
 following your sentencing or release from custody but later while not a resident of Washington you become employed
 in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three
 business days after starting school in this state or becoming employed or carrying out a vocation in this state.~~

~~**3. Change of Residence Within State:**~~

~~If you change your residence within a county, you must provide, by certified mail, with return receipt requested or
 in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you
 change your residence to a new county within this state, you must register with the sheriff of the new county within~~



1 three business days of moving. Also within three business days, you must provide, by certified mail, with return
2 receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you
last registered.

3 **4. Leaving the State or Moving to Another State**

4 If you move to another state, or if you work, carry on a vocation, or attend school in another state you must
5 register a new address, fingerprints, and photograph with the new state within three business days after establishing
6 residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the
7 state, you must also send written notice within three business days of moving to the new state or to a foreign country to
8 the county sheriff with whom you last registered in Washington State.

9 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher
10 Education or Common School (K-12):**

11 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you
12 are required to notify the sheriff of the county of your residence of your intent to attend the institution within three
13 business days prior to arriving at the institution. If you become employed at a public or private institution of higher
14 education, you are required to notify the sheriff for the county of your residence of your employment by the institution
15 within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or
16 private institution of higher education is terminated, you are required to notify the sheriff for the county of your
17 residence of your termination of enrollment or employment within three business days of such termination. If you
18 attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are
19 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the
20 sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the
21 principal of the school.

22 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

23 Even if you do not have a fixed residence, you are required to register. Registration must occur within three
24 business days of release in the county where you are being supervised if you do not have a residence at the time of your
25 release from custody. Within three business days after losing your fixed residence, you must send signed written
26 notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than
27 24 hours, you will be required to register with the sheriff of the new county not more than three business days after
28 entering the new county. You must also report weekly in person to the sheriff of the county where you are registered.
29 The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business
30 hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff
upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level
and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

31 **7. Application for a Name Change:**

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of
your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If
you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of
your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

5.8-PERSISTENT OFFENDER-

“Three Strike” Warning You have been convicted of an offense that is classified as a “most serious offense”
under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the
first two convictions occurred in a federal or non-Washington state court, will render you a “persistent offender.”

“Two Strike” Warning In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,
rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child
molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the
first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second
degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in
the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW
9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,
federal court, or elsewhere, this will render you a “persistent offender.” RCW 9.94A.030(32).

Persistent Offender Sentence A persistent offender shall be sentenced to a term of total confinement for life
without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in
the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

5.8-DEPARTMENT OF LICENSING NOTICE-The Court finds that Count 1 is a felony in the
commission of which a motor vehicle was used. **Clerk's Action**-The clerk shall forward an Abstract



1 of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW
2 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular
3 Assault, or Vehicular Homicide (ACR information):**

- 4 BAC The defendant had an alcohol concentration of breath or blood within two hours after driving
or being in physical control of ____ ;
- 5 No BAC test.
- 6 BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- 7 Drug Related. The defendant was under the influence of or affected by any drug.
- 8 THC.
- 9 Mental Health.
- 10 Passenger under age 16. The defendant committed the offense while a passenger under the age of
sixteen was in the vehicle.
- 11 Vehicle Info: Commercial Vehicle Yes No; 16 Passenger Yes No; Hazmat Yes No.

12 5.9-TREATMENT RECORDS-If the Defendant is or becomes subject to court-ordered mental health or
13 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment
14 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

15 **Voting Rights Statement:**

16 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter
17 registration will be cancelled.

18 My right to vote will be provisionally restored as long as I am not under the authority of DOC (not serving a sentence
19 in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before
20 voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial
21 obligations or an agreement for the payment of legal financial obligations.

22 My right to vote may be permanently restored by one of the following for each felony conviction: a) A certificate of
23 discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the
24 right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050;
25 or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C
26 felony, RCW 92A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

27 Defendant's Signature: *[Handwritten Signature]*

28 **SO ORDERED IN OPEN COURT.**

29 DATED 12/9/16

30 JUDGE *[Handwritten Signature]* JEFFREY P. BASSETT

31 *[Handwritten Signature]*
32 Jennifer R. W., WSBA No. 42016
33 Deputy Prosecuting Attorney

[Handwritten Signature]
34 *[Handwritten Signature]*, WSBA No. 40881
35 Attorney for Defendant

36 Defendant has previously, through their plea agreement, waived
37 his or her presence at any future restitution hearing.

[Handwritten Signature]
38 TINA MARIE HUGHES
39 Defendant

40 If I have not previously done so, I hereby agree to waive my
41 right to be present at any restitution proceedings:
[Handwritten Signature] (initials)



1 **INTERPRETER'S DECLARATION** - I am a certified or registered interpreter, or the court has found me other
2 wise qualified to interpret, the _____ language, which the Defendant
3 understands. I interpreted this Judgment and Sentence for the Defendant into that language.

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

6 Translator signature/Print name- _____

7 Signed at Port Orchard, Washington, on _____, 201__ .

8 **IDENTIFICATION OF DEFENDANT**

9 Race: White Sex: Female DOB: 05/23/1966 Age: 50
10 D/L: HUGHETM341K3 D/L State: Washington SID: [s.i.d. number] Height: 504
11 Weight: 130 JUVIS: Unknown Eyes: Brown Hair: Brown
12 DOC: Unknown SSN: [social security number] FBI: [fbi number]

13 **FINGERPRINTS**-I attest that I saw the same Defendant who appeared in Court on this document affix his or
14 her fingerprints and signature thereto.

15 Clerk of the Court- _____, Deputy Clerk. Dated- **DEC - 9 2016**

16 **DEFENDANT'S SIGNATURE**- _____

17 Left 4 fingers taken simultaneously | Left Thumb | Right Thumb | Right 4 fingers taken simultaneously



28 Prosecutor's File Number-16-222457-2

29 **Prosecutor Distribution**-Original (Court Clerk); 1 copy (Prosecutor); 1 copy (DOC); 1 copy (Defense Atty); 1 copy (Pros Stat Keeper)

30 JUDGMENT AND SENTENCE; Page 11

31 [Form revised May 3, 2016]



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APPENDIX B



This opinion was filed for record at 8:00am on Sept 20, 2018

Susan L. Carlson
SUSAN L. CARLSON
SUPREME COURT CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID ANGEL RAMIREZ,

Petitioner.

NO. 95249-3

EN BANC

Filed SEP 20 2018

STEPHENS, J.—In *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015), we held that under former RCW 10.01.160(3) (2015), trial courts have an obligation to conduct an individualized inquiry into a defendant’s current and future ability to pay before imposing discretionary legal financial obligations (LFOs) at sentencing. This case provides an opportunity to more fully describe the nature of such an inquiry. An adequate inquiry must include consideration of the mandatory factors set forth in *Blazina*, including the defendant’s incarceration and other debts, and the court rule GR 34 criteria for indigency. *Id.* at 838. The trial court should also address what we described in *Blazina* as other “important factors” relating to

the defendant's financial circumstances, including employment history, income, assets and other financial resources, monthly living expenses, and other debts. *Id.*

The trial court in David A. Ramirez's case failed to conduct an adequate individualized inquiry before imposing LFOs on Ramirez. While this *Blazina* error would normally entitle Ramirez to a resentencing hearing on his ability to pay discretionary LFOs, such a limited resentencing is unnecessary in this case. Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783), which amended two statutes at issue and now prohibits the imposition of certain LFOs on indigent defendants, applies prospectively to Ramirez's case on appeal. We reverse the Court of Appeals and remand for the trial court to strike the improperly imposed LFOs from Ramirez's judgment and sentence.

FACTS AND PROCEDURAL HISTORY

A jury convicted Ramirez of third degree assault and possession of a controlled substance, and found by special verdict that he committed the assault with sexual motivation and displayed an egregious lack of remorse. Clerk's Papers (CP) at 63-66.

At sentencing, the State sought an exceptional sentence of 10 years based on Ramirez's prior record and offender score. 2 Verbatim Report of Proceedings (Mar. 7, 2016) (VRP) at 346. Following the State's argument for imposing an exceptional

sentence, Ramirez took the opportunity to directly address the trial court. Ramirez explained to the court that despite the State's representations, he "was doing everything right" before his arrest. *Id.* at 360. Ramirez shared that prior to his arrest, he was working a minimum wage job at Weyerhaeuser as part of a "temporary service team" and paying all his household bills, including a DirecTV subscription that included Seattle Seahawks games. *Id.* at 359-60, 362-63. Ramirez had opened a bank account for the first time in his life, was planning on getting his driver's license, and had moved into his own apartment with the help of his wife. *Id.* at 360, 362. Ramirez discussed these favorable aspects of his life in an effort to show that despite his criminal history, he did not deserve an exceptional sentence. Suppl. Br. of Pet'r at 3. He lamented that because of his drug relapse and arrest, "I missed out on all of that." VRP at 363.¹

The trial court sentenced Ramirez to five years for the third degree assault conviction and two years for possession of a controlled substance, to be served consecutively. *Id.* at 372-73. The trial court also imposed \$2,900 in LFOs, including a \$500 victim assessment fee, a \$100 DNA (deoxyribonucleic acid) collection fee, a \$200 criminal filing fee, and discretionary LFOs of \$2,100 in attorney fees, and set

¹ Ramirez's full statement was, "I missed out on all of that because I screwed up before even the first Seahawk game. That was the weekend that I screwed up. It was the Saturday before the first Seahawk game." VRP at 363.

a monthly payment amount of \$25. *Id.* at 375-76. After the court announced the sentence, Ramirez presented a notice of appeal and a motion for an order of indigency, which the court granted. *Id.* at 373; Suppl. CP at 1-4. According to the financial statement in his declaration of indigency, Ramirez had no source of income or assets and no savings, and owed more than \$10,000 at the time of sentencing (apparently previously imposed court costs and fees). Suppl. CP at 2-4.

Prior to imposing LFOs, the trial court asked only two questions relating to Ramirez's current and future ability to pay, both of which were directed to the State. First, the court asked, "And when he is not in jail, he has the ability to make money to make periodic payments on his LFOs, right?" VRP at 348. The State responded that Ramirez had the ability to pay his LFOs "[w]hen he's not in jail and when he is in jail," noting that Ramirez could work while incarcerated. *Id.* The trial court then asked the State to once more confirm that LFOs were appropriate in Ramirez's case: "But as far as you are concerned, the LFOs should be imposed." *Id.* The State answered, "Yes." *Id.*

The trial court did not directly ask Ramirez or his counsel about his ability to pay at any point during sentencing. The only statement made by Ramirez concerning his ability to pay came after the trial court announced its decision to impose discretionary costs. After finding that Ramirez had "the ability to earn money and

make small payments on his financial obligations,” the court listed the specific costs imposed and ordered Ramirez to pay “25 bucks a month starting [in] 60 days.” *Id.* at 375-76. Ramirez then asked, “How am I going to do that from inside?” *Id.* at 376. Ramirez’s counsel responded, “I will explain.” *Id.* The discussion then moved on to a different subject.²

On appeal, Ramirez argued that the trial court failed to make an adequate individualized inquiry into his ability to pay before imposing discretionary LFOs, contrary to *Blazina*, 182 Wn.2d at 837-38.³ In a 2-1 unpublished opinion, Division Two of the Court of Appeals affirmed the trial court, holding that the court “conducted an adequate individualized inquiry and did not err in imposing the discretionary LFOs.” *State v. Ramirez*, No. 48705-5-II, slip op. at 13 (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2048705-5-II%20Unpublished%20Opinion.pdf>. In reviewing the trial court’s decision to impose discretionary LFOs on Ramirez, the Court of Appeals majority applied an overall abuse of discretion standard; it cited the information

² Ramirez’s counsel made only one mention of LFOs, in correcting the trial court’s original estimate of the amount of attorney fees. The court initially stated that these discretionary costs totaled \$900, but Ramirez’s counsel clarified that \$2,100 was the correct amount. VRP at 375.

³ Ramirez’s appeal additionally raised several guilt-phase claims of error, which the Court of Appeals rejected. *State v. Ramirez*, No. 48705-5-II, slip op. at 7-11, 13-15 (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2048705-5-II%20Unpublished%20Opinion.pdf>. These issues are not before us.

offered by Ramirez in his statement to the trial court as sufficient grounds for finding Ramirez able to pay LFOs. *Id.* at 12-13.

In dissent, Chief Judge Bjorgen argued that the question of whether a trial court made an adequate inquiry into a defendant's ability to pay discretionary LFOs should be reviewed de novo, not for an abuse of discretion. *Id.* at 16 (Bjorgen, C.J., dissenting). Applying the de novo standard, Chief Judge Bjorgen concluded that the trial court's inquiry into Ramirez's financial status fell short of the *Blazina* standards. *Id.* at 19.

On March 7, 2018, we granted Ramirez's petition for review "only on the issue of discretionary [LFOs]." Order Granting Review, No. 95249-3 (Wash. Mar. 7, 2018). On March 27, 2018, just weeks after we granted Ramirez's petition, House Bill 1783 became law. LAWS OF 2018, ch. 269. House Bill 1783's amendments relate to Washington's system for imposing and collecting LFOs and are effective as of June 7, 2018. House Bill 1783 is particularly relevant to Ramirez's case because it amends the discretionary LFO statute to prohibit trial courts from imposing discretionary LFOs on defendants who are indigent at the time of sentencing. *Id.* at § 6(3).

ANALYSIS

This case concerns Washington's system of LFOs, specifically the imposition of discretionary LFOs on individuals who lack the current and future ability to pay them. State law requires that trial courts consider the financial resources of a defendant and the nature of the burden imposed by LFOs before ordering the defendant to pay discretionary costs. *See* RCW 10.01.160(3).

We addressed former RCW 10.01.160(3) in *Blazina* and held that the statute requires trial courts to conduct an individualized inquiry into the financial circumstances of each offender before levying any discretionary LFOs. 182 Wn.2d at 839. As Ramirez's case demonstrates, however, costs are often imposed with very little discussion. We granted review in this case to articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs.

After we granted review, the legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h). According to Ramirez's motion for an order of

indigency, which the trial court granted, Ramirez unquestionably qualified as indigent at the time of sentencing: Ramirez had no source of income or assets and no savings, and owed more than \$10,000 at the time of sentencing. Suppl. CP at 3-4.

This case presents two issues. The primary issue is whether the trial court conducted an adequate individualized inquiry into Ramirez's ability to pay, as required under *Blazina* and former RCW 10.01.160(3). A separate but related issue is whether House Bill 1783's statutory amendments apply to Ramirez's case on appeal.

I. The Trial Court Did Not Conduct an Adequate Individualized Inquiry into Ramirez's Current and Future Ability To Pay LFOs

The threshold issue in this case is whether the trial court performed an adequate inquiry into Ramirez's present and future ability to pay before imposing discretionary LFOs. In addressing this issue, we must decide what standard of review applies to a trial court's decision to impose discretionary LFOs. The Court of Appeals was seemingly split on this question, with the majority applying an overall abuse of discretion standard and the dissenting judge applying de novo review. We address the proper standard of review before turning to the merits of Ramirez's argument.

A. *The Adequacy of the Trial Court's Individualized Inquiry into a Defendant's Ability To Pay Discretionary LFOs Should Be Reviewed De Novo*

As Ramirez correctly points out, the question of whether the trial court adequately inquired into his ability to pay discretionary LFOs involves both a factual and a legal component. Suppl. Br. of Pet'r at 16. On the factual side, the reviewing court determines what evidence the trial court actually considered in making the *Blazina* inquiry. Chief Judge Bjorgen aptly observed that the factual determination can be decided by simply examining the record for supporting evidence.⁴ *Ramirez*, slip op. at 17 (Bjorgen, C.J., dissenting). On the legal side, the reviewing court decides whether the trial court's inquiry complied with the requirements of *Blazina*. Both the majority and dissenting opinions below recognized that this legal inquiry merits de novo review. *See id.* at 13 n.4 (“[w]hether or not a trial court makes an individualized inquiry is reviewed de novo”), 17 (Bjorgen, C.J., dissenting) (describing this as “an unalloyed legal question”).

⁴ Ramirez criticizes Chief Judge Bjorgen for embracing a “clearly erroneous” standard of review for factual determinations, based on prior appellate decisions. *See* Suppl. Br. of Pet'r at 17 & n.6. Ramirez insists that “substantial evidence” is the correct Washington standard, while “clear error” applies in federal courts. *Id.* We believe the distinction is semantic in this context. The very case Ramirez cites as identifying different state and federal standards says, “[W]e review [factual findings] for substantial evidence, which is analogous to the ‘clear error’ test applied by the federal courts.” *Steele v. Lundgren*, 85 Wn. App. 845, 850, 935 P.2d 671 (1997).

Given their shared recognition that de novo review applies to the question of whether the trial court complied with *Blazina*, the split in the Court of Appeals may be more a difference in emphasis than in substance. *Blazina* establishes what constitutes an adequate inquiry into a defendant's ability to pay under state law, and the standard of review for an issue involving questions of law is de novo. *State v. Hanson*, 151 Wn.2d 783, 784-85, 91 P.3d 888 (2004). Ramirez is correct that the *Blazina* inquiry is similar to other inquiries trial judges make that are subject to de novo review. See Suppl. Br. of Pet'r at 16-17 (citing *State v. Vicuna*, 119 Wn. App. 26, 30-31, 79 P.3d 1 (2003) (applying de novo review to determination of whether a conflict exists between attorney and client); *State v. Ramirez-Dominguez*, 140 Wn. App. 233, 239, 165 P.3d 391 (2007) (applying de novo review to determination of whether the defendant knowingly, intelligently, and voluntarily waived his right to a jury trial)).

That said, the trial court's ultimate decision whether to impose discretionary LFOs is undoubtedly discretionary. The trial court must balance the defendant's ability to pay against the burden of his obligation, which is an exercise of discretion. *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991). But, discretion is necessarily abused when it is manifestly unreasonable or based on untenable grounds or reasons. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). If the trial

court fails to conduct an individualized inquiry into the defendant's financial circumstances, as RCW 10.01.160(3) requires, and nonetheless imposes discretionary LFOs on the defendant, the trial court has per se abused its discretionary power. Stated differently, the court's exercise of discretion is unreasonable when it is premised on a legal error. The focus of Ramirez's argument for de novo review is squarely on the trial court's legal error in failing to conduct an individualized inquiry. Thus, while the State is correct that the abuse of discretion standard of review is relevant to the broad question of whether discretionary LFOs were validly imposed, de novo review applies to the alleged error in this case: the failure to make an adequate inquiry under *Blazina*.

B. The Trial Court's Inquiry into Ramirez's Ability To Pay Discretionary LFOs Was Inadequate under Blazina

The legal question before us is whether the trial court's inquiry into Ramirez's current and future ability to pay discretionary LFOs was adequate under *Blazina*. In *Blazina*, we held that former RCW 10.01.160(3) requires the trial court to conduct an individualized inquiry on the record concerning a defendant's current and future ability to pay before imposing discretionary LFOs. 182 Wn.2d at 839. We explained that "the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry." *Id.* at 838. As part of this inquiry, the trial court is required to consider "important factors," such as

incarceration and the defendant's other debts, when determining a defendant's ability to pay. *Id.* Additionally, we specifically instructed courts to look for additional guidance in the comment to court rule GR 34, which lists the ways a person may prove indigent status for the purpose of seeking a waiver of filing fees and surcharges. *Id.*; *City of Richland v. Wakefield*, 186 Wn.2d 596, 606-07, 380 P.3d 459 (2016). As we further clarified, "if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs." *Blazina*, 182 Wn.2d at 839.

Here, the record shows that the trial court asked only two questions concerning Ramirez's ability to pay LFOs, both of which were directed to the State. First, the court asked, "And when he is not in jail, he has the ability to make money to make periodic payments on his LFOs, right?" VRP at 348. The State responded, "When he's not in jail and when he is in jail," noting that Ramirez could work while incarcerated. *Id.* The court then asked the State for clarification on the LFO issue: "But as far as you are concerned, the LFOs should be imposed." *Id.* In response, the State simply answered, "Yes." *Id.* The record reflects that these two questions, directed to the State, are the only questions asked by the trial court relating to Ramirez's ability to pay discretionary LFOs before ordering him to pay \$25 per month starting in 60 days. When Ramirez asked, "How am I going to do that from

inside?” *id.* at 376, the trial court said nothing. Ramirez’s counsel said, “I will explain,” and the court moved on. *Id.*

The court made no inquiry into Ramirez’s debts, which his declaration of indigency listed as exceeding \$10,000 at the time of sentencing (apparently previously imposed court costs and fees). Suppl. CP at 4. Nor does the record reflect that the trial court inquired into whether Ramirez met the GR 34 standard for indigency. Had the court looked to GR 34 for guidance, as required under *Blazina*, it would have confirmed that Ramirez was indigent at the time of sentencing—his income fell below 125 percent of the federal poverty guideline. As we explained in *Blazina*, “if someone does meet the GR 34 standard for indigency, courts should seriously question that person’s ability to pay LFOs.” 182 Wn.2d at 839; *Wakefield*, 186 Wn.2d at 607. The record does not reflect that the trial court meaningfully inquired into any of the mandatory *Blazina* factors.

The trial court also failed to consider other “important factors” relating to Ramirez’s current and future ability to pay discretionary LFOs, such as Ramirez’s income, his assets and other financial resources, his monthly living expenses, and his employment history. *Blazina*, 182 Wn.2d at 838. In *Blazina*, we held that “[t]he record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay,” which requires the court to consider

“important factors,” in addition to the mandatory factors discussed above. *Id.* The only information in the record about Ramirez’s financial situation came during Ramirez’s allocution and was offered to show how he had been putting his life in order prior to his arrest. The court made no inquiry.

Consistent with *Blazina*’s instruction that courts use GR 34 as a guide for determining whether someone has an ability to pay discretionary costs, we believe the financial statement section of Ramirez’s motion for indigency would have provided a reliable framework for the individualized inquiry that *Blazina* and RCW 10.01.160(3) require. In determining a defendant’s indigency status, the financial statement section of the motion for indigency asks the defendant to answer questions relating to five broad categories: (1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts. *See* Suppl. CP at 2-4. These categories are equally relevant to determining a defendant’s ability to pay discretionary LFOs.

Regarding employment history, a trial court should inquire into the defendant’s present employment and past work experience. The court should also inquire into the defendant’s income, as well as the defendant’s assets and other financial resources. Finally, the court should ask questions about the defendant’s monthly expenses, and as identified in *Blazina*, the court must ask about the

defendant's other debts, including other LFOs, health care costs, or education loans. To satisfy *Blazina* and RCW 10.01.160(3)'s mandate that the State cannot collect costs from defendants who are unable to pay, the record must reflect that the trial court inquired into all five of these categories before deciding to impose discretionary costs. That did not happen here.

The State argues, and the Court of Appeals majority agreed, that despite any lack of inquiry by the trial court into Ramirez's ability to pay, statements by Ramirez during his allocution were adequate to support the imposition of discretionary LFOs. Resp't's Br. at 4. In opposing the State's request for an exceptional sentence, Ramirez told the court he was "doing everything right" prior to his arrest—he was working a minimum wage job at Weyerhaeuser on a "temporary service team," his wife had helped him get his own apartment, he was paying his household bills, including a DirecTV subscription, and he had opened a bank account for the first time in his life and was hoping to get a driver's license. VRP at 359-363. Ramirez did not offer this information in the context of assessing his current and future ability to pay LFOs, but rather in an effort to "counter the State's negative portrayal of him and direct the court's attention to his accomplishments in order to persuade the court he was deserving of a lesser sentence." Suppl. Br. of Pet'r at 19.

Notably, while the Court of Appeals majority viewed Ramirez's statements as supporting imposition of discretionary costs, there is no indication in the record that the trial court actually relied on any of Ramirez's statements. *See Ramirez*, slip op. at 13.⁵ Nor would reliance on Ramirez's statements be reasonable, given that Ramirez was describing his circumstances and the positive strides he had made in the months *prior* to his arrest. As his statements at sentencing and his declaration of indigency make clear, all of that changed. Indeed, Ramirez lamented that after being on the right track, he "screwed up" and lost everything. VRP at 363.

RCW 10.01.160(3) requires the trial court to inquire into a person's present and future ability to pay LFOs. This inquiry must be made on the record, and courts should be cautious of any after-the-fact attempt to justify the imposition of LFOs based on information offered by a defendant for an entirely different purpose. Judges understand that defendants want to appear in their best light at sentencing. It

⁵ The Court of Appeals inferred that the trial court's decision was based on Ramirez's statements:

Here, the court considered that Ramirez had recently been released from custody, was working in a minimum wage job, and had been paying his household bills. Ramirez also told the court that he had opened a bank account for the first time in his life and "was just getting on track[.]" He added that although he was working a minimum wage job "it was fine because it took care of everything." Thus, we hold that the court conducted an adequate individualized inquiry and did not err in imposing the discretionary LFOs.

Ramirez, slip op. at 13 (citations omitted).

is precisely for this reason that the judge's obligation is to engage in an on-the-record individualized inquiry into the defendant's ability to pay discretionary LFOs.

We hold that the trial court failed to make an adequate individualized inquiry into Ramirez's current and future ability to pay prior to imposing discretionary LFOs. Normally, this *Blazina* error would entitle Ramirez to a full resentencing hearing on his ability to pay LFOs. The timing of Ramirez's appeal, however, makes this case somewhat unusual. After we granted review, the legislature passed House Bill 1783, which amends two LFO statutes at issue. LAWS OF 2018, ch. 269. House Bill 1783 amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c). LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(h), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

Ramirez argues that House Bill 1783's amendments apply to his case on appeal because he qualified as indigent at the time of sentencing and his case was not yet final when House Bill 1783 was enacted. Suppl. Br. of Pet'r at 8-10. As for the remedy, Ramirez asks us to strike the discretionary LFOs and the \$200 criminal filing fee from his judgment and sentence rather than remand his case for

resentencing. For the reasons discussed below, we agree that House Bill 1783 applies on appeal to invalidate Ramirez's discretionary LFOs (and the \$200 criminal filing fee) and that resentencing is unnecessary in this case.

II. House Bill 1783 Applies Prospectively to Ramirez's Case Because the Statutory Amendments Pertain to Costs and His Case on Direct Review Is Not Yet Final

House Bill 1783's amendments modify Washington's system of LFOs, addressing some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction. For example, House Bill 1783 eliminates interest accrual on the nonrestitution portions of LFOs, it establishes that the DNA database fee is no longer mandatory if the offender's DNA has been collected because of a prior conviction, and it provides that a court may not sanction an offender for failure to pay LFOs unless the failure to pay is willful. LAWS OF 2018, ch. 269, §§ 1, 18, 7. Relevant here, House Bill 1783 amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 6(3). It also prohibits imposing the \$200 filing fee on indigent defendants. *Id.* § 17. Because House Bill 1783 was enacted *after* we granted Ramirez's petition for review, we must decide whether House Bill 1783's amendments apply to Ramirez's case on appeal. We hold that House Bill 1783 applies prospectively to Ramirez

because the statutory amendments pertain to costs imposed on criminal defendants following conviction, and Ramirez's case was pending on direct review and thus not final when the amendments were enacted.

At the time of Ramirez's sentencing in 2016, the discretionary cost statute provided that "[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them." Former RCW 10.01.160(3). In making this determination, the statute instructed the trial court to "take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." *Id.* The statutory language directs that the trial court must consider a defendant's current and future ability to pay before deciding to impose discretionary costs on the defendant.

House Bill 1783 amends former RCW 10.01.160(3) to expressly prohibit courts from imposing discretionary costs on defendants who are indigent at the time of sentencing: "The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c)." LAWS OF 2018, ch. 269, § 6(3). Under RCW 10.101.010(3)(a) through (c), a person is "indigent" if the person receives certain types of public assistance, is involuntarily committed to a public mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level. If the defendant is not

indigent, the amendment instructs the court to engage in the same individualized inquiry into the defendant's ability to pay as previously required under former RCW 10.01.160(3), i.e., to assess "the financial resources of the defendant and the nature of the burden that payment of costs will impose." *Id.* In this case, there is no question that Ramirez satisfied the indigency requirements of RCW 10.101.010(3)(c) at the time of sentencing. Accordingly, if House Bill 1783 applies to Ramirez's case, the trial court impermissibly imposed discretionary LFOs on Ramirez.

As noted, House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit charging the \$200 criminal filing fee to defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 17. Thus, if House Bill 1783's amendments apply to Ramirez's case on appeal, the trial court improperly imposed both the discretionary costs of \$2,100 and the criminal filing fee.

This is not our first occasion to consider the prospective application of cost statutes to criminal cases on appeal. In *State v. Blank*, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997), we held that a statute imposing appellate costs applied prospectively to the defendants' cases on appeal. In *Blank*, the defendants' appeals were pending when the legislature enacted a statute providing for recoupment of

appellate defense costs from a convicted defendant. *Id.* at 234. In determining whether the statute applied to the defendants' cases, we clarified that “[a] statute operates prospectively when the precipitating event for [its] application . . . occurs after the effective date of the statute.” *Id.* at 248 (alterations in original) (quoting *Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass’n*, 83 Wn.2d 523, 535, 520 P.2d 162 (1974)). We concluded that the “precipitating event” for a statute “concerning attorney fees and costs of litigation” was the termination of the defendant’s case and held that the statute therefore applied prospectively to cases that were pending on appeal when the costs statute was enacted. *Id.* at 249 (citing *Kilpatrick v. Dep’t of Labor & Indus.*, 125 Wn.2d 222, 232, 883 P.2d 1370, 915 P.2d 519 (1994) (holding that the right to attorney fees is governed by the statute in force at the termination of the action)).

Similar to the statute at issue in *Blank*, House Bill 1783’s amendments concern the court’s ability to impose costs on a criminal defendant following conviction. House Bill 1783 amends former RCW 10.01.160(3) by expressly prohibiting the imposition of discretionary LFOs on defendants like Ramirez who are indigent at the time of sentencing; the amendment conclusively establishes that courts do not have discretion to impose such LFOs. And, like the defendants in *Blank*, Ramirez’s case was on appeal as a matter of right and thus was not yet final

under RAP 12.7 when House Bill 1783 became effective. Because House Bill 1783's amendments pertain to costs imposed upon conviction and Ramirez's case was not yet final when the amendments were enacted, Ramirez is entitled to benefit from this statutory change.

Applying House Bill 1783 to the facts of this case, we hold that the trial court impermissibly imposed discretionary LFOs of \$2,100, as well as the \$200 criminal filing fee, on Ramirez. We reverse the Court of Appeals and remand for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs.

CONCLUSION

In *Blazina*, we held that under former RCW 10.73.160(3), trial courts have an obligation to conduct an individualized inquiry into a defendant's current and future ability to pay discretionary LFOs before imposing them at sentencing. Today, we articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs. Trial courts must meaningfully inquire into the mandatory factors established by *Blazina*, such as a defendant's incarceration and other debts, or whether a defendant meets the GR 34 standard for indigency. Trial courts must also consider other "important factors" relating to a defendant's financial circumstances, including employment history, income, assets and other financial resources, monthly living expenses, and other

debts. Under this framework, trial courts must conduct an on-the-record inquiry into the mandatory *Blazina* factors and other “important factors” before imposing discretionary LFOs.

We reverse the Court of Appeals and hold that the trial court failed to conduct an adequate *Blazina* inquiry into Ramirez’s current and future ability to pay. Although this *Blazina* error would normally entitle Ramirez to a resentencing hearing on his ability to pay, resentencing is unnecessary in this case. House Bill 1783, which prohibits the imposition of discretionary LFOs on an indigent defendant, applies on appeal to invalidate Ramirez’s discretionary LFOs (and the \$200 criminal filing fee). We remand for the trial court to strike the \$2,100 discretionary LFOs and the \$200 filing fee from Ramirez’s judgment and sentence.

Stephens, J.

WE CONCUR:

Fairhurst, C.J.

Johnson

Madden, J.

Owens, J.

Wiggins, J.

Gonzalez, J.

Robt. McCool, J.

Jr., J.

RUSSELL SELK LAW OFFICE

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