No. 92061-3
Court of Appeals No. 45568-4-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

OSCAR RAUL MORENO VARGAS,

Petitioner.

PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
and the Superior Court of Pierce County

KATHRYN RUSSELL SELK
WSBA No. 23879
Counsel for Petitioner
RUSSELL SELK LAW OFFICE
Post Office Box 31017
Seattle, Washington 98103
(206) 782-3353

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT

WASHINGTON COURT OF APPEALS

RULES, STATUTES, CONSTITUTIONAL PROVISIONS

A. IDENTITY OF PETITIONER

Oscar R. Moreno Vargas, appellant below, petitions this Court to grant review of the unpublished decision of the court of appeals designated in section B.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(1), (3) and (4), Petitioner asks this Court to review the portion of the decision of Division Two of the Court of Appeals, issued under No. 45568-4-II, in State v. Moreno Vargas, on July 7, 2015 (2015 WL 4094091) (filed herewith as Appendix A), in which Division Two affirmed the imposition of legal financial obligations (LFOs) on the indigent defendant.

C. ISSUES PRESENTED FOR REVIEW

In State v. Blazina, 182 Wn.2d 827, 832, 344 P.3d 680 (2015), this Court held that, under RCW 10.01.160(3), the record must show that the trial court made an individualized inquiry into the defendant's current and future ability to pay before imposing discretionary legal financial obligations.

1. Did Blazina overrule State v. Baldwin, 63 Wn. App. 303, 312, 818 P.2d 116, 837 P.2d 646 (1991), State v. Bertrand, 165 Wn. App. 393, 404, 267 P.3d 511 (2011), and similar cases in which the courts of appeals applied a deferential, "clearly erroneous" standard of review to a trial court's failure to comply with RCW 10.01.160?

2. Did the court of appeals err and is this case in direct conflict with Blazina because the same error occurred here

but the court of appeals upheld the imposition of LFOs without the required inquiry by applying the old "clearly erroneous" standard of review and concluding that the reviewing court must assume the required inquiry was conducted if there was any information in the record from which a limited inquiry *could* have occurred?

3. Should Petitioner and those other indigents like him remain subjected to the same legal financial obligation system this Court recognized in Blazina as broken and unfair even though their appeals were still pending when Blazina was decided, they are in the same position as the defendants in Blazina and the same serious, systemic concerns and policy issues are present?

D. STATEMENT OF THE CASE

1. Procedural facts

Petitioner Oscar R. Moreno Vargas was charged with voyeurism and second-degree malicious mischief but convicted only of voyeurism after jury trial in Pierce County before the Honorable Judge Katherine Stolz in October of 2013. RP 181, 284. He was ordered to serve a standard sentence and appealed. CP 64-78. On July 7, 2015, the court of appeals, Division Two, affirmed in an unpublished opinion. See App. A. This Petition timely follows.

2. Facts relevant to issues on appeal

a. Imposition of legal financial obligations below

At sentencing on November 8, 2013, the court told the parties that

the "PSI" recommended a certain sentence and "standard fines and costs." RP 288. The prosecutor summarized his recommendation as:

> 90 days followed by 12 months of community custody; $500 crime victim penalty assessment; $200 court costs; $100 DNA and provide a sample $2,000 DAC recoupment after trial; restitution, if any, by later order of the Court; no contact with the victim for five years; a psychosexual evaluation and complete any follow-up treatment; forfeit any contraband in evidence; and law-abiding behavior.

RP 289. The court then turned to defense counsel, who asked the trial court to impose "a sentence of essentially credit for time served," after which there was a brief discussion and Mr. Moreno Vargas given an opportunity to speak - which he declined. RP 189. At that point, Judge Stolz then declared:

> All right. The Court will order the 90 days, credit for the time he has served. I understand there is an immigration hold on him, $200 court costs, $500 crime victim penalty assessment, $100 DNA lab fee and DNA draw. I'll order $1,500 to the Department of Assigned counsel, but all of these are probably moot.

RP 289-90. Counsel asked for the court to impose only $1,000 for the attorney fee because Mr. Moreno Vargas was very easy to work with, and the trial judge said, "I'll order $1,500 rather than $2,000. It was a trial; but as I said, it's sort of academic." RP 290. Counsel then told the court that he was presenting a motion and order authorizing an appeal at public expense, telling the court Mr. Moreno Vargas, "has no significant assets at

all at this point." RP 290. The court responded, "I didn't think he did." RP 290.

Preprinted on the judgment and sentence form was the following language, as section 2.5:

> **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

CP 68.

Also ordered as a preprinted section was the following:

> **INTEREST** The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to. civil judgments. RCW 10.82.090[.]

CP 70.

Mr. Moreno Vargas appealed and was determined by the trial court to be indigent and entitled to appointed counsel on appeal.

b. Proceedings in the court of appeals

In his initial briefing on appeal, filed in June of 2014, Moreno Vargas argued, *inter alia*, 1) that the trial court erred in failing to comply the statutory requirements of RCW 10.01.160(1) because the court did not

consider his specific financial situation and ability to pay before imposing legal financial obligations (Brief of Appellant ("BOA") at 11-17)); 2) the "boilerplate" finding of "ability to pay" preprinted on the judgment and sentence was not sufficient to meet the requirements of RCW 10.01.160(3) (BOA at 12-13); 3) that the "boilerplate" finding was not supported by the record (BOA at 17-19), and 4) that the issue was "ripe" and could be raised for the first time on appeal because it involved a questions of whether the sentencing court had acted outside his statutory authority in failing to conduct the required inquiry.

On March 12, 2015, this Court decided Blazina, supra. On July 7, 2015, the court of appeals upheld the imposition of costs on Mr. Moreno Vargas. App. A at 5-8. First, the court of appeals held that Moreno Vargas' objection at sentencing to reduce the amount "under the circumstances" was not an objection that the trial court should consider the defendant's ability to pay before imposing LFOs. App. A at 5. The court then decided to exercise its discretion to address the issue under Blazina, noting that more than "a cursory inquiry" into ability to pay was required under that case. App. A at 6.

The court of appeals nevertheless affirmed the LFOs, however, applying a pre-Blazina standard set forth in Baldwin, supra, of affirming

unless the decision of the lower court was "clearly erroneous." App. A at 6. Holding that the state had a "low evidentiary burden" for proving a defendant's "ability to pay," again relying on pre-Blazina cases. App. A at 6-7. Because Moreno Vargas did not object below, Division Two held, and because it found some evidence in a presentence investigation report filed below that he had some ability to work at some times, the court of appeals declared that the trial court had "made an individualized inquiry" as required under Blazina and thus had not committed "clear error" in imposing discretionary costs. App. A at 8.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD ACCEPT REVIEW TO ADDRESS WHETHER THE PRE-BLAZINA DEFERENTIAL "CLEARLY ERRONEOUS" STANDARD OF REVIEW IS IMPROPER IN LIGHT OF BLAZINA AND BECAUSE OF THE IMPORTANCE OF THE QUESTION OF HOW CASES SHOULD BE TREATED WHEN THEY WERE PENDING AND BLAZINA WAS DECIDED

In Blazina, this Court did not fault the lower appellate courts for failing to exercise their discretion under RAP 2.5(a) to address the issue of whether the imposition of legal financial obligations on indigent defendants without consideration of ability to pay was a violation of RCW 10.01.160(3). Blazina, 344 P.3d at 683. But this Court found that the urgency of our broken "LFO" system compelled the exercise of its own

discretion to reach the issue. The Court then made a clear declaration that RCW 10.01.160(3) requires that an indigent criminal defendant's present and future ability to pay must be considered prior to imposition of discretionary legal financial obligations. Blazina, 344 P.3d at 683-84. And it specifically rejected the same "boilerplate" finding made here, declaring:

> 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.

Id. Indeed, the Court pointed to standards giving guidance, which looked at such questions as whether someone was receiving assistance from a "needs-based, means-tested assistance program," and other questions. Id.

In this case, instead of following that holding, Division Two affirmed imposition of legal financial obligations without the required inquiry under Blazina, simply because the defendant did not object below and ask the court to make the required inquiry and there was a presentence investigation report with some information about employment. App. A at 5-8.

This Court should grant review, because that holding is in direct

conflict with this Court's decision in Blazina. Blazina does not hold that the inquiry is sufficient if the defendant fails to object and there is a PSI and a boilerplate finding - it holds to the contrary.

Further, review should be granted to address the continuing validity of Baldwin and its progeny, such as Bertrand and the other cases relied on by Division Two in upholding the imposition of LFOs here despite the failure to conduct the required Blazina inquiry.

In Baldwin, the apparent progenitor case, the appellate court focused on the idea that the proper time to make the required inquiry into ability to pay under RCW 10.01.160(3) was at the time of *enforcement*, when collection was occurring, and not at the time of sentencing. Baldwin, 63 Wn. App. At 309. And the Baldwin Court was also convinced by the promise of RCW 10.01.160(4), that a defendant who had really had no ability to pay could later seek "remission" through existing procedures. Baldwin, 63 Wn. App. at 310-11.

It was in that context, and with that reasoning, that the Court in Baldwin found that, "when the presentence report establishes a factual basis for the defendant's future ability to pay and the defendant does not object, the requirement of inquiry into the ability to pay is satisfied." Id. It is that holding that the court of appeals used in this case to uphold the imposition

of discretionary LFOs, applying the deferential "clear error" and "clearly erroneous" standards it used apparently interchangeably. App. A at 5-8.

Under Blazina, however, the proper time to make the inquiry is now at the time of sentencing. Prior to Blazina, this Court had not yet made its declarations regarding the problems with our system and the need for additional judicial oversight over LFOs at the outset, instead of later. Thus, prior to Blazina, using a deferential standard and not requiring the inquiry at the time of imposition was the norm. Blazina changed that and the court of appeals erred in failing to acknowledge that and applying a pre-Blazina standard.

Notably, the pre-Blazina deferential standard is what led to the system we have today, which suffers from fundamental problems which this Court recognized so clearly in Blazina. Applying the deferential standard of Baldwin - and thus upholding virtually every LFO order if there is just a presentence investigation report with some information upon which *no one* relied in making the boilerplate "finding" below is completely inconsistent with this Court's historic admission of a serious, systemic problem in our criminal justice system.

This Court should grant review in order to make it clear that appellate courts should not use the pre-Blazina deferential standard of

review when a pre-Blazina judge did not make the required inquiry. Blazina has changed our understanding of the fairness and justice of the way our system was working and this Court should ensure that our new understanding - and its concerns - are not ignored by using an old standard and thus potentially perpetuating the same problems.

In addition, this Court should grant review under RAP 13.4(b)(3) to address the a potential equal protection issues raised by this case. Because of the court of appeals decision, Mr. Moreno Vargas, an indigent, was deprived of the chance for relief. He is, however, in exactly the same position as the defendants in Blazina. The amounts were ordered without compliance with the statute or any consideration of his ability to pay on the record. The amounts are subject to immediate collection and 12% interest, with Mr. Moreno Vargas having to pay fees and costs of any collection.

Finally, this Court should grant review under RAP 13.4(b)(4), because the question of proper application of the decision in Blazina to cases which were pending on appeal when it was decided is an issue of substantial public importance upon which this Court should quickly rule. In Blazina, the Court appeared to believe that the failure to properly consider a defendant's indigency and present and future ability to pay before imposing legal financial obligations was "unique" to the petitioners

in that case. 344 P.3d at 684-86. But it was not, as the Court is now no doubt aware. Thus, while Blazina was sufficient to remedy the scope of the potential injustice suffered by the petitioners in that case, its application to other appellants in the very same position was not made clear - as the actions of the court of appeals here show.

Imposition of legal financial obligations is not a minor, clerical event. It is an event which can reduce the rest of the defendant's life to a cycle of poverty and prevent them from ever becoming a productive member of society once they are released from prison. In Blazina, this Court recognized these highly troubling facts and that our system is, put simply, broken as it is applied to indigent defendants like Mr. Moreno Vargas. Despite these findings and this Court's historic recognition in Blazina of the failures of the LFO component of our criminal justice system, Division Two here denied Mr. Moreno Vargas the relief to which he was entitled, by applying a standard and caselaw no longer good law after Blazina. Only by granting review can this Court ensure that the injustices it tried to redress in Blazina are not perpetuated in this case. This Court should grant review.

F. CONCLUSION

For the foregoing reasons, this Court should accept review of the decision of Division Two of the court of appeals.

DATED this 6th day of August, 2015.

Respectfully submitted,

/s/ Kathryn Russell Selk
KATHRYN RUSSELL SELK, No. 23879
Attorney for Petitioner
RUSSELL SELK LAW OFFICE
Post Office Box 31017
Seattle, Washington 98103
(206) 782-3353

CERTIFICATE OF SERVICE BY EFILING/MAIL

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 via the upload portal at the Court of Appeals, Division Two, at their official service address, pcpatcecf@co.pierce.wa.us, and petitioner by depositing the same in the United States Mail, first class postage pre-paid, as follows: Mr. Moreno Vargas, NW Detention Center, 1623 E.J. Street, Tacoma, WA. 98421.

DATED this 6th day of August, 2015.

/s Kathryn Russell Selk
KATHRYN RUSSELL SELK, No. 23879
Attorney for Petitioner
RUSSELL SELK LAW OFFICE
Post Office Box 31017
Seattle, Washington 98103
(206) 782-3353

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

OSCAR RAUL MORENO VARGAS.

Appellant.

No. 45568-4-II

UNPUBLISHED OPINION

SUTTON, J. — Oscar Moreno Vargas appeals his conviction for voyeurism and the imposition of legal financial obligations (LFOs) as part of his sentence. He argues that (1) insufficient evidence supported his conviction, and (2) the trial court failed to comply with the statutory requirements for imposing LFOs because it did not first inquire into his present or future ability to pay. We hold that (1) sufficient evidence supported the voyeurism conviction, and (2) the trial court did not commit clear error in imposing $1,500 in discretionary LFOs. We affirm Vargas's conviction and sentence.

FACTS

Melissa Geffre was using the women's bathroom at a grocery store when she noticed two shoes in the neighboring stall move toward the partition that separated the stalls. The feet then moved toward the back of the stall, and Geffre heard heavy breathing and a rubbing noise. She looked through a gap between the partition and the wall and saw Vargas watching her from the neighboring stall. She yelled at him, jumped up, and ran out of the stall. Vargas exited the

neighboring stall in a state of partial undress and ran from the bathroom. Geffre pursued Vargas to the grocery store exit then stopped as Vargas fled to a nearby restaurant.

Another customer at the grocery store who witnessed Vargas's flight went into the restaurant to find him. He did not see Vargas but suspected he had locked himself in a stall in the restaurant's bathroom. He notified the police, who eventually were able to coax Vargas out of the stall. Geffre identified Vargas as the man who had been watching her in the grocery store bathroom, and the other customer verified that Vargas was the man he had seen flee into the restaurant. Police then arrested Vargas.

The State charged Vargas with voyeurism.[1] The jury found Vargas guilty. At sentencing, the trial court imposed mandatory LFOs amounting to $800, as well as $1,500 in discretionary LFOs for the cost of Vargas's assigned counsel. Vargas appeals his conviction and his sentence.

ANALYSIS

Vargas argues that the evidence against him was insufficient and that the sentencing court violated RCW 10.01.160(3) by failing to make an individualized inquiry into his current and future ability to pay before imposing the discretionary LFOs. We reject Vargas's challenges and affirm his conviction and sentence.

[1] The State also charged Vargas with second degree malicious mischief, but the trial court dismissed the charge.

I. CONVICTION—SUFFICIENCY OF THE EVIDENCE

Vargas argues that the State failed to offer evidence sufficient to support his conviction for voyeurism. We disagree and hold that sufficient evidence supported his conviction.

The due process guarantee in our state and federal constitutions allow us to uphold a criminal conviction only if the State has proved each element of the charged offense beyond a reasonable doubt. *State v. O'Hara*, 167 Wn.2d 91, 105, 217 P.3d 756 (2009). When a criminal defendant claims that the evidence against him was insufficient to support his conviction, we review whether a rational trier of fact could find the elements of the charged crime beyond a reasonable doubt on the basis of the State's admitted evidence. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). By challenging the sufficiency of the evidence against him, a defendant admits the truth of the State's evidence and all inferences that may reasonably be drawn therefrom. *Kintz*, 169 Wn.2d at 551. We view the evidence in the light most favorable to the State and draw all inferences in the State's favor. *State v. Rose*, 175 Wn.2d 10, 14, 282 P.3d 1087 (2012). We also defer to the jury's credibility determinations and resolution of conflicting testimony. *State v. McCreven*, 170 Wn. App. 444, 477, 284 P.3d 793 (2012), *review denied*, 176 Wn.2d 1015 (2013).

The crime of voyeurism consists of (1) intentionally and knowingly, (2) viewing another person or that person's intimate areas for more than a brief period of time, (3) for purposes of sexual gratification, (4) without that person's knowledge and consent, and (5) in a place or under circumstances where the person has a reasonable expectation of privacy. RCW 9A.44.115; *State v. Fleming*, 137 Wn. App. 645, 647, 154 P.3d 304 (2007).

Vargas argues that the evidence before the jury was insufficient to support a finding that he had viewed Geffre for more than a brief period of time. Although RCW 9A.44.115, the statute

criminalizing voyeurism, does not specify how long such a viewing must be, a jury may find the viewing to be more than brief if the victim testifies that they discovered the defendant's gaze, yelled at the defendant, then fled before the defendant stopped looking at them. *See Fleming*, 137 Wn. App. at 648.

In *Fleming*, Division One of our court affirmed a voyeurism conviction where the evidence showed that the victim discovered the defendant peering over a bathroom stall at her and she yelled at him to stop. *Id.* at 647. The defendant in that case stuck his tongue out in response, after which the victim fled the stall and ran out of the bathroom while the defendant remained watching from over the stall. *Id.* at 647. Vargas attempts to distinguish his conduct from that of the defendant in *Fleming*. We are not persuaded.

In her testimony, Geffre described a scenario similar to that in *Fleming*. She said she saw shoes in the neighboring stall move toward the partition between the stalls, feet move toward the back of the stall and a shadow at the back of the stall, and she heard a heavy breathing and rubbing sound. Upon looking closer, she saw Vargas peering at her through the crack between the stalls, yelled at him, then left the stall in a hurry. Once she exited the stall, Vargas left the neighboring stall and ran from the bathroom. This testimony, and all reasonable inferences from the testimony, was sufficient for the jury to find that Vargas had watched Geffre in the stall for more than a brief period of time and supports a finding that Vargas had engaged in voyeurism rather than casual or cursory viewing.

Vargas argues that his testimony showed he took a cursory glance into the next stall to determine whether he was in the women's or men's bathroom, and that Geffre just happened to look at him at that moment. Clearly, the jury made a credibility determination between Vargas's

testimony and Geffre's testimony. We will not disturb the jury's credibility determination. *McCreven*, 170 Wn. App. at 477. We hold that sufficient evidence supported the voyeurism conviction.

II. SENTENCE—INQUIRY INTO ABILITY TO PAY LFOS

Vargas argues that the trial court erred by imposing discretionary LFOs against him without first inquiring into his present or future ability to pay. We disagree.

At sentencing, the trial court imposed $800 in mandatory LFOs and $1,500 in discretionary LFOs for the cost of Vargas's assigned counsel. Vargas objected at sentencing to the amount imposed by the sentencing court, but not its validity; he now challenges its validity for the first time on appeal.[2]

In general, we may refuse to review any issue not raised below; "[a] defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review," and an "'appellate court may refuse to review any claim of error which was not raised in the trial court.'" *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015) (quoting RAP 2.5(a)). But RAP 2.5(a) grants us discretion to review issues raised for the first time on appeal and thus we may consider unpreserved challenges to findings on a defendant's ability to pay discretionary LFOs; we exercise it here. *Blazina*, 182 Wn.2d at 833; RAP 2.5(a).

For mandatory LFOs, "the legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing these obligations. For victim restitution, victim

[2] Vargas objected to the sentencing court's imposition of the $1,500 LFO for the costs of his assigned counsel. But he objected on grounds that the amount was inappropriate under the circumstances. He did not raise any issues of statutory law or argue that the sentencing court should inquire into his ability to pay.

assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account." *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013).

But as to the $1,500 discretionary LFO, RCW 10.01.160(3) provides that a sentencing court "shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose."

In *Blazina*, the court held that this language obligates sentencing courts to inquire into a criminal defendant's financial circumstances and ability to pay before imposing discretionary LFOs as sentencing conditions. *Blazina*, 182 Wn.2d at 837. Moreover, a cursory inquiry is insufficient:

> [T]he 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.

Id. at 838.

We review a sentencing court's imposition of discretionary LFOs under a clearly erroneous standard. *State v. Bertrand*, 165 Wn. App. 393, 404, 267 P.3d 511 (2011); *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991). A sentencing court's decision is clearly erroneous and must be reversed when review of all the evidence leaves the reviewing court with the "'definite and firm conviction that a mistake has been committed.'" *Lundy*, 176 Wn. App.

at 105 (quoting *Schryvers v. Coulee Cmty. Hosp.*, 138 Wn. App. 648, 654, 158 P.3d 113 (2007)). "The inquiry is whether the court's determination [that the defendant is or will be able to pay the LFOs] is supported by the record." *Baldwin*, 63 Wn. App. at 312 n.27. Although *Baldwin* does not require formal findings of fact about a defendant's current or future ability to pay LFOs, the record must be sufficient for us to review whether the trial court made an individualized review as required by *Blazina*, 182 Wn.2d at 838.

The State argues that "[t]he Pre-Sentence Investigation (PSI) established an adequate factual basis of defendant's future ability to pay." Br. of Resp't at 16; *see also* Supplemental Clerk's Papers (Suppl. CP) at 89. "'[W]hen the presentence report establishes a factual basis for the defendant's future ability to pay and the defendant does not object, the requirement of inquiry into the ability to pay is satisfied.'" *Lundy*, 176 Wn. App. at 106 (quoting *Baldwin*, 63 Wn. App. at 311); *see State v. Bergen*, 186 Wn. App. 21, 30, 344 P.3d 1251 (2015) (holding that the State has a low evidentiary burden for establishing a defendant's present or likely future ability to pay).

Here, the judge received and reviewed the PSI before the sentencing hearing. The PSI included one section discussing Vargas' education and employment history and another section discussing his financial resources. The PSI established that Vargas was not working at the time of his arrest because he recently left a previous job to begin a new job. The PSI also showed that he was able to hold jobs, including construction and landscaping jobs, and was physically able to work. Although he had no property, he had three bank accounts with undisclosed balances.

Accordingly, the record shows that the PSI provided the judge with a sufficient factual basis to conduct an individualized inquiry into Vargas's present or future ability to pay. And Vargas did not object to the validity of the discretionary LFO at the sentencing hearing. We hold

that the sentencing court made an individualized inquiry into Vargas's present or future ability to pay and the court did not commit clear error in imposing $1,500 in discretionary LFOs as part of Vargas's sentence. We affirm Vargas's conviction and sentence.

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

Sutton, J.
SUTTON, J.

We concur:

Bjorgen, A.C.J.
BJORGEN, A.C.J.

J
LEE, J.

RUSSELL SELK LAW OFFICES

August 06, 2015 - 4:48 PM

Transmittal Letter

Document Uploaded: 3-455684-Petition for Review.pdf

Case Name: State v. Moreno Vargas
Court of Appeals Case Number: 45568-4

Is this a Personal Restraint Petition? Yes ● No

The document being Filed is:

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

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

● Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: K A Russell Selk - Email: karsdroit@aol.com

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

pcpatcecf@co.pierce.wa.us

RUSSELL SELK LAW OFFICES

August 06, 2015 - 4:48 PM

Transmittal Letter

Document Uploaded: 3-455684-morenovargasopinion.pdf

Case Name: State v. Moreno Vargas
Court of Appeals Case Number: 45568-4

Is this a Personal Restraint Petition? Yes ● No

The document being Filed is:

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

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

● Other: Appendix A to PRP - court's opinion

Comments:

No Comments were entered.

Sender Name: K A Russell Selk - Email: karsdroit@aol.com

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

pcpatcecf@co.pierce.wa.us