

NO. 46632-5-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ANTHONY TOLMAN, APPELLANT

**Appeal from the Superior Court of Pierce County
The Honorable Kitty-Ann van Doorninck**

No. 14-1-02363-6

RESPONDENT'S RESPONSE TO SECOND SUPPLEMENTAL BRIEF

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the defendant waived any issue with regard to legal financial obligations by failing to object?

B. STATEMENT OF THE CASE.

1. Procedure and Facts

On September 2, 2014, the trial court ordered defendant to pay legal financial obligations (“LFOs”) in the amount of \$1300, broken down as: \$500 Crime Victim Assessment, \$100 DNA Database Fee, \$500 Court-Appointment Attorney Fees and Defense Costs and \$200 Criminal Filing Fee. CP 52. Defendant did not object to these LFOs at sentencing. 9/2/14/ RP 5. The record contains no discussion about his ability to pay or his finances. 9/2/14 RP 2-11. Defendant did not ask the trial court to reduce or waive any of the LFOs. 9/2/14 RP 2-11.

C. ARGUMENT.

1. THE DEFENDANT FAILED TO PRESERVE ANY ISSUE REGARDING HIS ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS BY FAILING TO OBJECT.

“As a general rule, appellate courts will not consider issues raised for the first time on appeal. RAP 2.5(a).” *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251, 1255-56 (1995), *as amended* (Sept.

13, 1995). RAP 2.5(a)(3) is an exception to the general rule and allows criminal defendants a means for obtaining review of a manifest error affecting a constitutional right. RAP 2.5(a)(3). The asserted error must be “manifest”—i.e., it must be “truly of constitutional magnitude.” RAP 2.5(a)(3). Even if the Court considers an issue raised for the first time on appeal, if the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest. *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993).

“Where [defendant] did not challenge the trial court’s imposition of LFOs at his sentencing, so he may not do so on appeal.” *State v. Lyle*, No. 46101-3-II, ---P.3d--- (July 10, 2015).

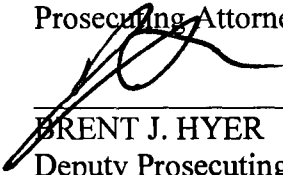
In this case, defendant did not object to the LFOs imposed at sentencing. He also did not ask the trial court to waive or reduce them. As some of the LFOs are mandatory and others are discretionary, there was no discussion in the record about any of these LFOs that defendant is now challenging for the first time. The Court should decline to review this issue as it was not preserved for appeal.

D. CONCLUSION.

Defendant's challenge to his LFOs was not preserved in the trial court. This Court should decline to review the issue.

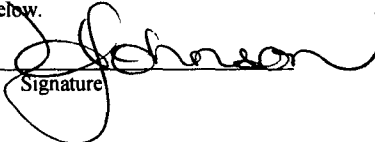
DATED: August 5, 2015.

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Certificate of Service:

The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.


Date: 8/15
Signature

PIERCE COUNTY PROSECUTOR

August 21, 2015 - 10:07 AM

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Court of Appeals Case Number: 46632-5

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Second Supplemental Brief

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