

NO. 46696-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON, Respondent

v.

JEREMY PUTNAM BAKKE, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-02265-6

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SUPPLEMENTAL BRIEF OF RESPONDENT

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**A. ANSWERS TO ASSIGNMENTS OF ERROR**

**I. THIS ASSIGNMENT OF ERROR WAS WAIVED AND THIS COURT SHOULD NOT CONSIDER IT.**

**II. THIS ASSIGNMENT OF ERROR WAS WAIVED AND THIS COURT SHOULD NOT CONSIDER IT.**

**B. STATEMENT OF THE CASE**

On September 19, 2014, Mr. Bakke was sentenced. CP 43-50; RP 585-611. As part of his sentence, the trial court ordered Mr. Bakke to pay a \$500.00 fine, which is a discretionary legal financial obligation.<sup>1</sup> CP 47. During the sentencing hearing, neither Mr. Bakke nor his attorney objected to the imposition of the discretionary legal financial obligation. RP 327-29.

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<sup>1</sup> Bakke purports to challenge the imposition of \$1300 in legal financial obligations. But Bakke ignores that all but \$500 of that amount is for mandatory fees (DNA fee, Victim Assessment, and filing fee). In the case of mandatory legal financial obligations, “the legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing these obligations. For victim restitution, victim 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, 758 (2013).

C. ARGUMENT

I. MR. BAKKE WAIVED HIS CHALLENGE TO THE IMPOSITION OF LEGAL FINANCIAL OBLIGATIONS BECAUSE HE DID NOT OBJECT AT THE TRIAL LEVEL

“A defendant who makes no objection to the imposition of discretionary LFOs (legal financial obligations) at sentencing is not automatically entitled to review” of that issue on appeal. *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015). The defendant is not entitled to review because in Washington it is “well settled that an ‘appellate court may refuse to review any claim of error which was not raised in the trial court.’” *Id.* (quoting RAP 2.5(a)). Thus, under *Blazina*, it remains the law that “[u]npreserved LFO errors do not command review as a matter of right.” *Id.* Accordingly, *Blazina* held, regarding the consolidated cases on review, that “the Court of Appeals did not err in declining to reach the merits” of the LFO issue, and instead, “properly declined discretionary review.” *Id.* at 830. Moreover, in *State v. Duncan*, 180 Wn.App. 245, 250, 327 P.3d 699 (2014), the Court of Appeals recognized that declining to argue future inability to pay LFOs can be a legitimate tactical decision on the part of the defendant and his counsel.

Here, Mr. Bakke did not object to trial court’s imposition of LFOs. There is no compelling reason in Mr. Bakke’s case to utilize this court’s

discretion and reach out and decide the merits of the LFO issue. Thus, this court should decline to address his LFO challenge.

**D. CONCLUSION**

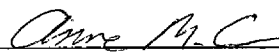
For the reasons argued above, this court should decline to reach Mr. Bakke's LFO challenge.

DATED this 31<sup>st</sup> day of July, 2015.

Respectfully submitted:

ANTHONY F. GOLIK  
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By:

  
\_\_\_\_\_  
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## CLARK COUNTY PROSECUTOR

**July 31, 2015 - 11:21 AM**

### Transmittal Letter

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Court of Appeals Case Number: 46696-1

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