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APR - 6 2016
WASHINGTON STATE
SUPREME COURT

IN THE WASHINGTON
SUPREME COURT

Petition for Review
Case # 47893-5-II

Fred C Myers Jr.
Petitioner in Pro Se

Fred C Myers Jr.
3706 S Yakima Ave
Tacoma WA 98418
(253) 671-4400

4-02-2016

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A Identity of Petitioner

Fred C Myers Jr, Petitioner

in pro se petitions this Court

for review due to issues arising

in Division II Appeal and

Dismissal of appeal in case

no. 47893-5-II (2015-16)

B. FACTS

In April 2001 petitioner was

arrested and wrongfully charged

with first degree burglary of his

home in mason county and harass-

ment and on counsels advice Pled

Pet. for review 1

B. Facts Cont.

guilty for said charges, petitioner withdrew his plea and was transported to and from Walla Walla to Mason County every 2 weeks for nearly 3 years to have his case postponed by Mason County Superior Court on 5-10-2004 petitioner on advice of counsel pled guilty to attempted assault of petitioner's fiancée's lover. petitioner was sent to Shelton W.C.C. to be booked & released.

B Facts Cont.

once at wa Correction Center petitioner was informed he had Community Custody & couldn't be released without a release address. Petitioner wrote Judge James Sawyer who agreed Community Custody did not apply. Petitioner was illegally detained 64 days before the mandate was issued. In August of 2010 Judge Sheldon issued a warrant for petitioner for first degree burglary and harassment.

B Facts Cont.

petitioner was transported from
maysville Washington to Shelton
(11 days) for failure to pay L.F.O.'S
on dismissed charges and was
forced to begin paying 5~~\$~~ a
month as petitioner is mentally
disabled. petitioner was sent to
prison on unrelated charge and
in June 2015 petitioner filed
a motion to modify LFO's
in mason county Cause # 01-1-00149-3
Judge Amber Finlay heard the case

B Facts Cont.

telephonically on June 15 2015 and

denied the CrR 7.8 motion to modify

LFO's (see Appendix) and informed

petitioner of direct Appeal option, petitioner

filed in July 2015. On December 7

2015 Commissioner Schmidt ruled

that petitioner is not appealing a

valid Superior Court order and gave

the Court 30 days to enter an

appealable order. On January 8 2016

Division II Court Clerk dismissed Appeal

B Facts

(See Appendix) by mistake thinking

petitioners needed to act rather than

Court. petitioners filed motion to modify

Clerks ruling which was denied

(See Appendix)

C. Issues Presented for Review

1. Did the Court of Appeals deny

petitioner due process by denying

motion to modify?

2. Did denying motion to modify

violate Art. 1 § 3 Wests RCWA

and USCA Const Amend 14?

C Issues Cont.

3. Will denial of motion to
modify Clerical mistake allow
Mason County to Continue to
arrest petitioner on dismissed
charges depriving him of life
liberty and property ?

D ARGUMENT

petitioner requests Justice and
looks to the Supreme Court for
protection of his Constitutionally
Guaranteed rights of the Washington
Constitution and the United States Constitution

D. Argument Cont

In the Personal Restraint of

Cashew 123 Wn 2d 138 (1994)

[1] Constitutional Law - Due Process -

Deprivation - Test, a Constitutional

due process violation occurs only

when a person has been deprived

of a protected interest in life liberty,

or property. This Court ruled on

the above case 22 years ago and

it should be applied to the instant

case in light of petitioners deprivation

of Due Process. In the case of

D Argument Cont.

Presidential Estates v. Barrett, 129

Wn 2d 320 (1996) [17] Judgment -

Correction - Clerical Mistake -

Review - Standard of Review. The

validity of a Correction made to a

Judgment pursuant CR 60(a) for a

"Clerical Mistake is reviewed under

the abuse of discretion standard".

Thus, lack of Correction of a

Clerical error must also be

reviewed under abuse of discretion

Standard. In Ritter v Board

D Argument Cont.

entitlement as Commissioner

Schmidt-Division II did rule in

petitioners' favor and the Court

Clerk did dismiss petitioners Appeal.

In the matter of estate of Anna Kramer

deceased Michael Kramer respondent v.

Sylvia Nelson et al, 49 Wn 2d 829

(1957) at 830 " Clerical mistakes

in judgments, orders or other parts

of the record and errors therein

arising from oversight or omission

may be corrected by the Court at any

Appendix A

Motion to Modify
or Correct Judgment
& Sentence

IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF Mason

State of Washington
Plaintiff,

v.

Fred C. Myers Jr.
Defendant.

No. 01-1-00149-3

Motion to Modify or
correct Judgement
and Sentence
CrR 7.8

Comes now the defendant, Fred Myers, DOC #960923 pro se, and proceeding in forma pauperis asks this court for relief designated in Part III.

I.

FACIS RELEVANT TO MOTION

On 5-10-04, Defendant was sentenced, and ordered to pay Legal Financial Obligations (LFO's) in Mason County Superior Court. See Judgment and Sentence.

The ordered LFO's have accrued interest at 12% annually. See RCW 10.82.090.

1. II.

ISSUES

2. 1. DID THE TRIAL COURT PROPERLY DETERMINE DEFENDANT'S ABILITY TO PAY
3. LEGAL FINANCIAL OBLIGATIONS (LFO'S) PRIOR TO IMPOSING THEM?
4. A. Does the improper imposition of LFO's render the defendant's Judgment
5. & Sentence invalid on its face?
6. B. Is the recent decision in the Washington State Supreme Court (i.e.,
7. STATE v. BLAZINA, No. 89028-5 March 12, 2015) a significant change in
8. law?

ARGUMENT

9. The Washington State Supreme Court recently handed down a
10. decision that changes the way superior courts are to inquire into
11. defendant's ability to pay LFO's prior to imposing them upon defendants.
12. See State v. Blazina, No. 89028-5 (March 12, 2015). BLAZINA holds: "

13. (1) The court must do more than sign a Judgment & Sentence with
14. boilerplate language stating that it engaged in the required inquiry
15. into a defendant's ability to pay LFO's;
16. (2) The court must consider incarceration and a defendant's other debts,
17. including restitution, when determining defendant's ability to pay;
18. and,
19. (3) The court should look to the Comment Court Rule GR 34 for guidance in
20. determining defendant's ability to pay." Id.

21. In defendant's case the sentencing court made little or no
22. inquiries into his ability to pay LFO's prior to imposing them.
23. Furthermore, the sentencing failed to consider the defendant's
24. incarceration period, failed to look into defendant's other debts, and
25. never even considered restitution amounts when determining defendant's
26. ability to pay. Instead, the court, in defendant's case imposed
27. boilerplate language stating that it had engaged in the required inquiry
under RCW 10.101.060(3) when, in fact, it did not. See Judgment &
page 2; CrR 7.8; / / ; No. 2

1. Sentence.

2. Additionally, looking at Court Rule GR 34 for guidance in
3. defendant's case further distinguishes defendant's position that the
4. LFO's imposed were unlawful and unauthorized. GR 34(3)(A)(B)(C)(D)
5. define indigent and set forth a basis for waiving a filing fee. Also CrR
6. 3.1(c)(1)(d)(1)(2)(3)(4); RCW 4.88.330; RCW 10.101.010(3)(a)(c)(d)
7. define indigent offender and set provisions for a defendant's right to a
8. lawyer in a criminal proceeding.

9. Defendant, at the time of sentencing, was truly indigent, did
10. not have the ability to pay LFO's and was considered as indigent by this
11. court by appointing assigned counsel to represent him. See Court Record.
12. Additionally, defendant was sentenced to a significant period of
13. incarceration and has several other debts.

14. Defendant remains indigent and continues to meet all the
15. definitions of indigency under GR 34; CrR 3.1; RCW 10.101.010; and RCW
16. 4.88.330. Finally, due to defendant's lack of job skills, disability,
17. lengthy period of incarceration and lack of community support as well as
18. lack of resources, his likelihood of ever having the ability to pay his
19. LFO's is greatly diminished.

20. Thus, the LFO's ordered in the defendant's case at hand were
21. imposed illegally without properly considering his ability to pay them.
22. Defendant requests this court remand for resentencing and/or strike ALL
23. unauthorized imposed LFO's from his Judgment & Sentence. State v.
24. Blazina, No. 89028-5. Remedy for erroneous sentence is to remand for
25. resentencing. State v. Ross, 152 Wash. 2d 220, 229, 95 P. 3d 1225
26. (2004). Record did not support trial courts finding that defendant had
27. ability to pay court costs. State v. Calvin, 176 Wn. App. 1, 302 P. 3d
521 (Div. 1 2013) republished at 316 P. 3d 296; State v. Wilson, 176
page 3; CrR 7.8; / / ; No. 3

1. Wn. App. 147, 307 P.3d 823 (Div. 3). In addition, defendant asks that
2. all interest accrued to date on illegally imposed LFO's be struck down or
3. waived under RCW 10.82,090(2)(a)(b)(c)(d).

4. TIME BAR

5. Defendant strongly asserts that he is not time barred and this
6. CrR 7.8 motion is properly before the court. RCW 10.73.100(6) delineates
7. an exception to the time bar if there is a significant change in the law.
8. Defendant believes State v. Blazina, No. 89028-5, decided March 12, 2015
9. in Washington State Supreme Court is a significant change in the law
10. eliciting the exception in §(6) above and entitling him to relief. In re
11. Greening, 141 Wash 2d 687, P. 3d 206 (200); In re Charles, 135 Wash. 2d
12. 239, 245-46, 254, 955 P. 2d 798 (1998). Even if the State disagrees with
13. the argument on a significant change of law, the rule of lenity requires
14. resolving the alleged ambiguity in the defendant's favor. In re Charles,
15. at 249-50.

16. Defendant alternatively claims he is not time barred and
17. asserts the exception to the time bar under RCW 10.73.090(1) because his
18. Judgment & Sentence is invalid on its face. In the defendant's case the
19. sentencing court unlawfully imposed LFO's without determining his ability
20. to pay. The LFO portion of the Judgment & Sentence was not authorized by
21. law rendering the Judgment & Sentence invalid on its face, overcoming the
22. time bar by exception pursuant to RCW 10.73.090(1) and entitling the
23. defendant relief under CrR 7.8 and RAP 16.4. In re personal Restraint of
24. Rivera, 152 Wn. App. 794, 218 P. 3d 1089 (2009). A Judgment & Sentence
25. is invalid on its face circumventing the time bar where a court exceeds
26. its statutory authority in entering Judgment & Sentence. In re Coats,
27. 173 Wash. 2d 123, 267 P. 3d 324 (2011); In re the Personal Restraint of
page 4; CrR 7.8; / / ; No. 4

1. Scott, 149 Wn. App. 213, 202 P. 3d 985 review granted 168 Wash. 2d 1010,
2. 227 P. 3d 295 reversed 173 Wash. 2d 911, 271 P. 3d 218.

3. Defendant concedes that while he made no objection to the
4. imposition of LFO's imposed upon him at sentencing, the judge and
5. prosecutor as well as assigned counsel, all being versed in the law,
6. should have known said imposition of LFO's to be unlawfully imposed in
7. regards to GR 34. Because this is a CrR 7.8 motion, the sentencing court
8. has an opportunity to correct the erroneous sentence and/or respond. It
9. is well settled that an appellate court may refuse to review any claim of
10. error which was not raised in the trial court. RAP 2.2(a). "This rule
11. exists to give the trial court an opportunity to correct the error and to
12. give the opposing party an opportunity to respond." State v. Davis, 175
13. Wash. 2d 287, 344, 290 P. 3d 43 (2012) cert. denied ----U.S.----, 134 S.
14. Ct. 62 187 L. Ed. 2d 51 (2013) (citing Blazina, 344 P. 3d 680 (Wash.
15. 2015)). The trial court now has ample opportunity to respond and to
16. correct the erroneous LFO's imposed. Therefore, the unpreserved error
17. objection under RAP 2.5(a) is inapplicable in this CrR 7.8 motion.

18. Additionally, if this court improperly decides to transfer this
19. CrR 7.8 motion to the Court of Appeals as a Personal Restraint Petition,
20. defendant urges the court to exercise its discretion by applying RAP
21. 1.2(a). The Supreme Court "has the authority to determine whether a
22. matter is properly before the Court, to perform those acts which are
23. proper to secure fair and orderly review, and to waive the rules of
24. appellate procedure when necessary to serve the ends of justice."
25. (quoting RAP 1.2(c)) citing State v. Aho, 137 Wash. 2d 736, 740-41, 975
26. P. 2d 512 (1999) citing Blazina, 344 P. 3d 680. Fairhurst, J (concurring
27. in result) for the same reason Fairhurst lists in his concurring opinion
page 5; CrR 7.8; / / ; No. 5

1. in the Blazina decision, defendant strongly believes the error in this
2. case can be reached by applying RAP 1.2(a).

3. Finally, defendant asserts the issue raised herein is ripe for
4. review. "Three requirements compose a claim fit for judicial
5. determination:

6. (i) if the issues are primarily legal,
7. (ii) do not require further factual development,
8. (iii) and the challenged action is final."

9. State v. Bahl, 164 Wash. 2d 739, 751, 193 P. 3d 678 (2008) (quoting First
10. United Methodist Church v. Hr'g Exam'r, 129 Wash. 2d 238, 255-56, 916 P.
11. 2d 374 (1996). A challenge to the trial court's entry of an LFO order
12. under RCW 10.101.160(3) satisfies all three conditions. Blazina, 344 P.
13. 3d 680.

14. Thus, defendant is not time barred and his Judgment & Sentence
15. is invalid on its face due to the illegal, unauthorized imposition of
16. LFO's.

17. For all these reasons defendant asks the court to grant relief
18. requested and remand his case for resentencing to properly determine his
19. ability to pay LFO's as required under RCW 10.101.160(3) and using court
20. rule GR 34 for guidance. State v. Blazina, 344 P. 3d 680 (2015); State
21. v. Ross, 152 Wash. 2d 220, 229, 95 P. 3d 1225 (2004); In re Coats, 173
22. Wash. 2d 123, 267 P. 3d 324 (2011);
23. RCW 10.73.090(1); RCW 10.73.100(6).

24. III

RELIEF


25. 1. Remand for resentencing;
26. 2. Strike all improperly imposed LFO's;
27. 3. Strike all accrued interest on improper LFO's;

1. 4. Remit all principle and all interest on all applicable LFO's under RCW
2. 10.101.160(4); RCW 10.82.090(2)(a)(b)(c)(d); and

3. 5. Any other relief this court deems fair and appropriate.

4. I Fred Myers DOC #960923, declare under penalty of perjury under the
5. laws of the State of Washington the forgoing is true and correct.

6. This ___ day of _____, 2015.
7. Respectfully Submitted,

8. 
9. Petitioner, pro se
10. Fred Myers 960923
11. William A-124
12. Washington State Penitentiary
13. 1313 N. 13th Ave
14. Walla Walla WA 99362

Appendix B

Motion for Reconsideration

Changed to motion to modify

FILED
COURT OF APPEALS
DIVISION II

2016 JAN 27 AM 9:42

STATE OF WASHINGTON

BY ~~DEPUTY~~ State of Washington
Court of Appeals Division II

State of Washington
respondent

vs

Fred C Myers Jr.
Appellant

NO. 47893-5-II

Motion for
reconsideration
of Dismissal
of Appeal RAP 17.4(b);
12.9(b)

Fred C Myers Jr. Appellant in pro se
requests reconsideration of dismissal
of his appeal due to a misunderstanding
by court clerk. RAP 17.4(b); 12.9(b)

A. Facts

On December 7th, 2015

Commissioner Schmidt entered an

A Facts Cont.

ruling and in short it states:

"Accordingly, this Court finds that Myers amended notice of appeal does not seek review of a valid Superior Court order. As such, this Court remands for the trial Court to either explain a valid basis for denying the motion on its merits or for it to transfer the motion to this Court for consideration as a personal restraint petition. This matter will be dismissed within 30 days of the date of this

2

Facts Cont.

ruling without further notice,
unless the trial court enters an
appealable order.

B Argument

It is the trial court and not
the appellant that needed to act
and the trial court has failed
to respond with an appealable
order therefore Mason County
Superior Court # 01-1-00149-3
should eliminate all L.F.O's,

Argument Cont.

in the Case #47893-5-II
including all L.F.O.'s, and interest,
and close the Case - as they
failed to enter an appealable
Order ^{concerning} ~~concerning~~ Commissioner
Schmidts' ruling of December 7
2015. under RAP 17.4(b), 12.9(b)

Relief Sought

Reverse dismissal of Appeal
of 1-8-2016; and dismiss Appellants
LFO's & interest accrued ...

Relief Cont.

respectfully Submitted this

27th Day of January 2016

Fred C Myers Jr.
Appellant in pro se

Fred C Myers Jr.

Fred C Myers Jr.
Lincoln Park Work Release
3706 S. YAKIMA AVE
Tacoma WA 98418

I Fred Myers Jr. Appellant in pro se
swears under the penalty of perjury
the forgoing motion for reconsideration
is true & correct.

1-27-16

Fred C Myers Jr.

Fred C Myers Jr.
Appellant in pro se

Appendix C

Ruling by

Commissioner Schmidt

Court of Appeals Div. II



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

December 7, 2015

Fred C. Myers, Jr. (via USPS)
DOC# 960923
Airway Heights Correction Ctr
PO Box 2049
Airway Heights, WA 99001

Michael K Dorcy (via email)
Mason County Prosecutors Office
PO Box 639
521 N 4th St
Shelton, WA 98584-1715

CASE #: 47893-5-II

State of Washington, Respondent v. Fred C. Myers, Jr., Appellant

Mr. Myers & Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

In reviewing the superior court order of 10/15/2015 and Myers's June 1, 2015 CrR 7.8 motion to correct his judgment and sentence, it appears that the superior court denied the motion because *State v. Blazina*, 182 Wash.2d 827 (2015), does not render his judgment and sentence invalid on its face. The language "invalid on its face" is derived from RCW 10.73.090, which allows an otherwise untimely motion to be heard on its merits. But when a motion fails to show that a judgment and sentence is invalid on its face, there must be some other statutory exception to the one year time limit of RCW 10.73.090 that allows the superior court to deny the motion rather than transfer it to this court for consideration as a personal restraint petition. CrR 7.8(c); *In re Pers. Restraint of Ruiz-Sanabria*, ___ Wn.2d ___, 2015 WL 7008616. Accordingly, this court finds that Myers' amended notice of appeal does not seek review of a valid superior court order. As such, this court remands for the trial court to either explain a valid basis for denying the motion on its merits or for it to transfer the motion to this court for consideration as a personal restraint petition. This matter will be dismissed within 30 days of the date of this ruling, without further notice, unless the trial court enters an appealable order.

Very truly yours,

David C. Ponzoha
Court Clerk

Appendix D

Ruling by Court Clerk

Division II Dismissing

Appeal

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,
v.
FRED C. MEYERS,
Appellant.

No. 47893-5-II
RULING DISMISSING APPEAL

FILED
COURT OF APPEALS
DIVISION II
2016 JAN -8 AM 11:03
STATE OF WASHINGTON
BY [Signature]
DEPUTY

THIS MATTER came on for hearing of the clerk's motion to dismiss on the ground of abandonment, no final order being submitted per the commissioner's ruling of December 7, 2015. Appellant has not responded to the commissioner's ruling, and it appears that the appeal was taken for delay and should be dismissed for want of prosecution. RAP 18.9(a),(b). Accordingly, it is

ORDERED that this appeal is dismissed.

DATED this 8th day of January, 2016.

[Signature]
COURT CLERK

Fred C. Myers, Jr.
DOC# 960923
Airway Heights Correction Ctr
PO Box 2049
Airway Heights, WA 99001

Michael K Dorcy
Mason County Prosecutors Office
PO Box 639
521 N 4th St
Shelton, WA 98584-1715

Appendix E

Order denying Motion

to modify ruling

Division II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

FRED MYERS, JR.,
Appellant.

No. 47893-5-II

ORDER DENYING MOTION TO MODIFY

FILED APPEALS
COURT OF APPEALS
DIVISION II
2016 MAR 17 AM 10:25
STATE OF WASHINGTON
BY DEPUTY

Appellant filed a motion to modify a Clerk's ruling dated January 8, 2016, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 17th day of MARCH, 2016.

PANEL: Jj. Maxa, Lee, Sutton

FOR THE COURT:

Maxa, J.
PRESIDING JUDGE

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