

FILED
Aug 09, 2016
Court of Appeals
Division III
State of Washington

SC#93477.1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 33552-6-III

FILED

AUG 16 2016

STATE OF WASHINGTON, Respondent,

WASHINGTON STATE
SUPREME COURT

v.

MAGDALENO CRUZ TELLEZ, Petitioner.

PETITION FOR REVIEW

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Cases

State v. A.N.J., 168 Wn.2d 91, 225 P.3d 956 (2010).....6

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I. IDENTITY OF PETITIONER

Magdaleno Cruz Tellez requests that this court accept review of the decision designated in Part II of this petition.

II. DECISION OF THE COURT OF APPEALS

Petitioner seeks review of the decision of the Court of Appeals filed on July 19, 2016, affirming the Benton County Superior Court's imposition of discretionary legal financial obligations (LFOs) in his judgment and sentence. A copy of the Court of Appeals' unpublished opinion is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

The sentencing court imposed \$660 in discretionary legal financial obligations without objection and without inquiring into "incarceration and a defendant's other debts" as required by *State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). Instead, the court merely inquired whether Cruz Tellez was able to work and if there was any other reason why he could not pay them. Cruz Tellez's attorney did not object. Was the trial court's inquiry adequate under *Blazina*, and was Cruz Tellez's attorney ineffective for failing to object to the discretionary LFOs despite an inadequate inquiry into Cruz Tellez's ability to pay?

IV. STATEMENT OF THE CASE

Cruz Tellez was convicted of violating a protective order. CP 13-15. Before imposing LFOs, the trial court asked about Cruz Tellez's employment at the time of the offense, and Cruz Tellez stated he had been driving a forklift. RP 10. When asked if he had the ability to obtain employment in the future, Cruz Tellez stated he did. RP 10. When asked if anything else precluded him from being able to pay LFOs, Cruz Tellez responded that there was not. RP 10.

The trial court thereupon imposed \$1,460.00 in LFOs, \$660 of which were discretionary. CP 19-20. At no point did the trial court ask Cruz Tellez about his assets or other debts. Cruz Tellez's attorney did not object. The trial court then immediately found Cruz Tellez to be indigent for purposes of appeal. RP 11.

On appeal, Cruz Tellez sought to supplement the record with the Judicial Information System (JIS) entry showing his considerable outstanding LFOs in other matters. *Motion to Take Additional Evidence on Review and Extend Time to File Reply Brief*, attached hereto as Appendix B. Cruz Tellez argued that the existence of considerable outstanding debt owed to Washington courts would tend to show that the trial court's failure to inquire into his debts and his trial attorney's failure

to object to the discretionary LFOs were prejudicial. The Commissioner denied the motion. *Commissioner's Ruling (2/24/16)*, attached hereto as Appendix C.

Thereafter, the Court of Appeals issued its opinion declining to consider the trial court's failure to conduct an adequate *Blazina* inquiry under RAP 2.5 and finding that Cruz Tellez failed to show ineffective assistance of counsel. *Unpublished Opinion (7/19/16)*, attached hereto as Appendix A. Cruz Tellez now seeks review of that opinion.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b)(4), review will be accepted if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. This factor is satisfied in the present case.

The *Blazina* Court responded to national attention given to the burdens associated with imposing unpayable legal financial obligations on indigent defendants, including "increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration." 182 Wn.2d at 835. Under Washington's system, unpaid obligations accrue interest at 12% per annum and can be subject to collection fees, creating the perverse outcome that impoverished defendants who pay only \$25 per month toward their obligations will, on

average, owe more after ten years than at the time of the initial assessment. *Id.* at 836. As a result, unpaid financial obligations can become a burden on gaining (and keeping) employment, housing, credit rating, and increases the chances of recidivism. *Id.* at 837.

In response to these unanticipated and unintended effects, the *Blazina* Court reaffirmed the trial court's statutory duty to conduct an individualized inquiry into the defendant's current and future ability to pay, considering factors "such as incarceration and a defendant's other debts, including restitution." *Id.* at 838. Moreover, the *Blazina* Court specifically the indigency standard established in GR 34 and noted, "if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs." *Id.* at 839.

In the present case, the trial court's inquiry failed to address a factor specifically identified by the *Blazina* Court as mandatory, namely, the defendant's other debts. *Blazina*, 182 Wn.2d at 838. As of this writing, no courts have published any decisions evaluating the adequacy of sentencing inquiries into employment and employability, without considering debts and other resources as specifically identified by *Blazina*. This dearth of authority provides inadequate guidance to trial courts, resulting in inconsistent application of the *Blazina* requirements in

different counties. Uniform standards in carrying out *Blazina*'s mandate are of substantial public interest, and review should be granted to clarify the requirements of the LFO inquiry.

Moreover, *Blazina* creates some ambiguity over the responsibilities and obligations of the courtroom participants to ensure a fair sentencing proceeding. The obligation to conduct the required inquiry is placed upon the trial court. RCW 10.01.160(3); *Blazina*, 182 Wn.2d at 839. But neither the statute nor the case law has addressed defense counsel's obligations in the context of the *Blazina* inquiry and LFO imposition.

Arguably, the LFO imposition is analogous to the trial court's obligation under RCW 9.94A.505 to impose a sentence within the standard range. However, in order for the trial court to fulfill this requirement, it must have evidence of the defendant's criminal history before it to calculate the offender score. This Court has placed the burden of producing that evidence squarely on the State, observing that requiring the defendant to affirmatively disprove his history would violate due process. *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012).

If the analogy holds, then effective assistance requires an objection if the State fails to meet its evidentiary burden. *See, e.g., State v. Lopez*, 107 Wn. App. 270, 27 P.3d 237 (2001). Because such failure to object

cannot be excused as strategic when no benefit inures to the defendant, it should comprise ineffective assistance of counsel. Moreover, the failure to object as to an indigent appellant should be reversible error when the record fails to demonstrate an adequate inquiry by the court, since the appellant is prejudiced by the imposition of discretionary fees without a showing of assets, debts, and related factors establishing ability to pay.

Defense counsel's obligations at sentencing also raise questions of counsel's duty to investigate the client's financial circumstances. *See generally State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010) (discussing duty to investigate). Information readily available through court resources, such as JIS information showing other LFO account balances, should arguably be obtained by defense counsel to prepare for sentencing so that counsel can be reasonably prepared to lodge an objection.

Where, as here, counsel fails to object to an inquiry that does not meet the *Blazina* requirements and fails to investigate the defendant's financial circumstances before sentencing, counsel is contributing to the harm caused by inequitable assessment of unpayable LFOs. To the extent that *Blazina* presented a question of substantial public interest in addressing the broken LFO system, defense counsel's role in that broken system is of no less importance.

VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(4) and this Court should enter a ruling that the trial court's inquiry was inadequate, and Cruz Tellez received ineffective assistance of counsel when counsel failed to object to the imposition of LFOs after an inquiry that failed to satisfy the minimum requirements set forth in *Blazina*.

RESPECTFULLY SUBMITTED this 9th day of August, 2016.



ANDREA BURKHART, WSBA #38519
Attorney for Petitioner

DECLARATION OF SERVICE

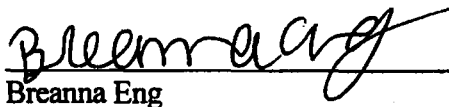
I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Petition for Review upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Andrew Kelvin Miller
Benton County Prosecutors Office
7122 W. Okanogan Pl. Bldg. A
Kennewick, WA 99362

Magdelano Cruz Tellez
c/o Benton County Jail
7320 W. Quinault
Kennewick, WA 99336

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

Signed this 9th day of August, 2016 in Walla Walla, Washington.


Breanna Eng

APPENDIX A

FILED
July 19, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	
)	No. 33552-6-III
Respondent,)	
)	
v.)	
)	
MAGDALENO CRUZ TELLEZ,)	UNPUBLISHED OPINION
)	
Appellant.)	

PENNELL, J. — In June 2015, Magdaleno Cruz Tellez was convicted in a stipulated facts trial before the Benton County Superior Court of violating a protective order, a gross misdemeanor. On appeal, he challenges the superior court’s imposition of discretionary legal financial obligations (LFOs). He contends (1) the trial court failed to make an individualized determination of his present and future ability to pay, and (2) his counsel provided ineffective assistance of counsel by failing to object to the LFOs. Because Mr. Cruz Tellez did not raise the LFO issue before the trial court at sentencing, we exercise our discretion under RAP 2.5(a) and decline to address this contention. We also conclude Mr. Cruz Tellez does not establish ineffective assistance of counsel on this record. Thus, we affirm.

FACTS

During the sentencing phase of Mr. Cruz Tellez’s stipulated facts trial, the court asked Mr. Cruz Tellez about his projected financial situation, and then imposed LFOs:

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THE COURT: I'll ask you, were you employed at the time you were arrested on this?

THE DEFENDANT: Yes.

THE COURT: What were you doing at that time?

THE DEFENDANT: Forklift driver at Pasco Processing.

THE COURT: Has anything changed to where you're physically or unable at this time to work?

THE DEFENDANT: No. I have the opportunity. I'm ready to go back to work.

THE COURT: All right then. Is there any other reason why you would not be able to pay legal-financial obligations associated with this judgment and sentence?

THE DEFENDANT: No.

THE COURT: Ok. So, I'll assess a \$500.00 victim assessment, \$860.00 in costs, a \$100.00 domestic violence assessment.

Report of Proceedings at 10. Neither Mr. Cruz Tellez nor defense counsel objected.

The trial court imposed mandatory fees of \$500 for the victim assessment (RCW 7.68.035), \$100 for the domestic violence penalty assessment (RCW 10.99.080) and \$200 for the criminal filing fee, for a total of \$800. *See State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013) (the criminal filing fee is mandatory). The trial court also imposed discretionary fees of \$60 for the sheriff's service fee and \$600 for attorney fees, for a total of \$660. Upon Mr. Cruz Tellez's motion after trial, the trial court found he lacked sufficient funds to seek an appeal, and entered an order of indigency granting him the right to review at public expense.

DISCRETIONARY LFOs

In March 2015, two months before Mr. Cruz Tellez was sentenced, the Washington Supreme Court decided *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680

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State v. Tellez

(2015), which made clear that under RCW 10.01.160(3),¹ a sentencing court must make an individualized inquiry on the record into the defendant's present and future ability to pay LFOs. *Blazina*, 182 Wn.2d at 838. Citing *Blazina*, Mr. Cruz Tellez contends for the first time on appeal that the trial court violated RCW 10.01.160(3) because it ordered him to pay discretionary LFOs without considering his current or future ability to pay.

Mr. Cruz Tellez did not challenge the LFOs or the sufficiency of the individualized inquiry at his sentencing. Consequently, he is not automatically entitled to review. *Blazina*, 182 Wn.2d at 832. RAP 2.5(a) grants appellate courts discretion whether to review a defendant's LFO challenge raised for the first time on appeal. *Id.* at 833. Here, the sentencing court heeded *Blazina* and engaged in some individualized inquiry. Because only the sufficiency of the inquiry could arguably be the basis for appeal, we decline to review his unpreserved challenge.

INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. Cruz Tellez contends his trial counsel provided ineffective assistance of counsel by failing to challenge the LFOs. Based on this record, we do not find prejudicial error.

¹ The provision states the court "shall not order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3). In its inquiry, the court must take into account the defendant's financial resources and the burden of the costs. *Id.*

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Our review of ineffective assistance of counsel claims is de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To prove ineffective assistance of counsel, Mr. Cruz Tellez must show with a preponderance of the evidence that his trial counsel's performance fell below an objective standard of reasonableness, and that this deficiency actually prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). We will find prejudice if it is reasonably probable that, but for the deficient performance, the outcome of the trial would have been different. *McFarland*, 127 Wn.2d at 335. Mr. Cruz Tellez fails to show either deficient performance or prejudice.

First, he does not show that trial counsel had any reason to object to the imposition of LFOs. As *Blazina* established, the trial court must make an individualized inquiry into a defendant's current and future ability to pay. 182 Wn.2d at 838. Additionally, if the defendant meets the GR 34 standard for indigency, a court "should seriously question that person's ability to pay LFOs." *See id.* at 838-39 (under GR 34, the court must find a person indigent if he or she receives assistance from a needs-based program or if he or she has a household income below 125 percent of the federal poverty guideline). Here, although Mr. Cruz Tellez apparently met the GR 34 standard for indigency, the sentencing court's inquiry into his ability to pay was sufficient to establish that Mr. Cruz Tellez thought he would be able to pay off his LFOs. Before imposing the LFOs, the

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court asked whether he would be able to return to his work as a forklift driver and allowed Mr. Cruz Tellez to give any other reasons why he would not be able to pay. Under these circumstances, defense counsel reasonably did not object to the imposition of LFOs.

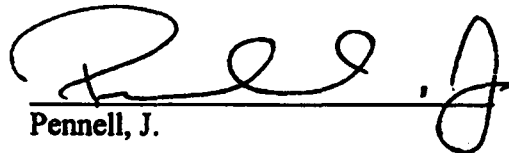
Second, the record also suggests that any objection raised would have been unsuccessful. Mr. Cruz Tellez contends defense counsel should have informed the court that he had outstanding LFOs from other convictions totaling over \$12,000. *See Appellant's Br., Appendix 1.* This information does not appear in the record and is not properly before this court on appeal. *See State v. Grier*, 171 Wn.2d 17, 29, 246 P.3d 1260 (2011) (when ineffective assistance is raised on appeal, the court may consider only facts within the record). Moreover, even with knowledge of his other debts, Mr. Cruz Tellez assured the court he would be able to pay the LFOs associated with his judgment and sentence. He simply does not show that an objection raised by defense counsel likely would have changed the trial court's decision to impose the discretionary fees. Consequently, his claim of ineffective assistance of counsel fails.

Based on the foregoing, we affirm the trial court. In addition, RCW 10.73.160(1) vests the appellate court with discretion to deny or approve a request for an award of costs. Under RAP 14.2, that discretion may be exercised in a decision terminating

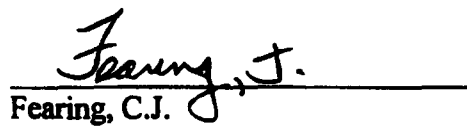
No. 33552-6-III
State v. Tellez

review. Adopting *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612 (2016), we exercise our discretion to not award costs to the State. Appellate costs will not be awarded. The pending cost bill is stricken.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Pennell, J.

I CONCUR:


Fearing, C.J.

No. 33552-6-III

SIDDOWAY, J. (dissenting in part) — After the filing of the original opinion in this matter, Magdaleno Cruz Tellez filed a motion for reconsideration in which, for the first time, he asked this court to exercise its discretion under RAP 14.2 to deny the State an award of costs as the prevailing party on appeal.

A motion for reconsideration under RAP 12.4(c) is required to state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended. This court could not possibly have overlooked or misapprehended any point of law or fact bearing on the State's right to request an award of costs, because our discretion to deny costs was never mentioned or suggested by anything in Mr. Cruz Tellez's briefing.

In *Nostrand v. Little*, 58 Wn.2d 111, 120, 361 P.2d 551 (1961), our Supreme Court stated, "This court has for many years adhered to its rule that it will not consider questions presented to it for the first time in a petition for rehearing." The issue presented for the first time following the court's decision terminating review in *Nostrand* was whether the state Subversive Activities Act, chapter 9.81 RCW, requiring that public employees take a noncommunist oath, violated due process because it made no provision for a hearing at which a public employee could explain or defend his or her refusal to sign the oath. Our high court entertained the issue only "as a matter of comity," because the United States Supreme Court had asked that it do so. *Id.*

Nostrand cited *State v. Hazzard*, 76 Wash. 586, 137 P. 143 (1913) and cases cited therein for this longstanding rule. 58 Wn.2d at 120. Among the cases cited by *Hazzard* is *State ex rel. Milwaukee Terminal R. Co. v. Superior Court*, 54 Wash. 365, 377, 104 Pac. 175 (1909), in which the court held, "We cannot sanction the practice of permitting new questions to be raised in a petition for rehearing." *Holohan v. Melville*, 41 Wn.2d 380, 408, 255 P.2d 899 (1953) likewise denied a petition for rehearing where an overlooked issue of an agreement's invalidity under the statute of frauds "was not theretofore raised and therefore could not be considered or determined on this appeal."

The law was well settled at the time Mr. Cruz Tellez filed his brief that this court enjoys the latitude to deny an award of costs to the State in its decision. *State v. Nolan*, 141 Wn.2d 620, 627, 8 P.3d 300 (2000). The issue could have been raised in his briefing of the appeal but was not.

The public is entitled to consistency in our application of court rules. If the tenured University of Washington professors risking discharge in *Nostrand* did not present reason enough for a departure from the rule forbidding new issues from being presented in a request for rehearing, Mr. Cruz Tellez certainly does not. I dissent from this random departure from RAP 12.4.



Siddoway, J.

APPENDIX B

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6 **IN THE COURT OF APPEALS**
7 **OF THE STATE OF WASHINGTON**
8 **DIVISION III**

9 **STATE OF WASHINGTON,**

10 **Respondent,**

11 **vs.**

12 **MADGELANO CRUZ TELLEZ,**

13 **Appellant.**

No. 33552-6-III

**MOTION TO TAKE ADDITIONAL
EVIDENCE ON REVIEW AND
EXTEND TIME TO FILE REPLY
BRIEF**

(RAP 9.11)

14
15
16
17 **1. PERSON FILING THE MOTION**

18 **This motion is filed by Appellant by and through his attorney, Andrea Burkhart.**

19 **2. RELIEF REQUESTED**

20 **Appellant requests that the court take notice of additional evidence on review,**
21 **namely, the record of Appellant's current outstanding legal financial obligation balances**
22 **maintained in the Judicial Information System (JIS) database.**

23 **3. REFERENCE TO RECORD**

24 **The information requested to be added to the record on review is attached**
25 **hereto and was submitted as Appendix I to the Appellant's Brief.**

1 4. **GROUNDS FOR RELIEF REQUESTED**

2 RAP 9.11(a) permits the appellate court to take additional evidence in a case
3 subject to review when six factors are met.

- 4 1) Additional proof of facts is needed to fairly resolve the issues on review.
5 Appellant has raised the issue of imposition of legal financial obligations in
6 this case. Trial counsel did not object to the imposition of LFOs and the trial
7 court did not conduct an individualized inquiry into Cruz Tellez's ability to pay
8 them as required by *State v. Blazina*. The additional evidence reflects
9 information necessary to the *Blazina* inquiry, namely, the existence of Cruz
10 Tellez's debts at the time the LFOs were imposed and is, presumably,
11 available to both the trial and appellate courts to review. The information is
12 necessary both to evaluate the harmlessness of the trial court's error and
13 whether counsel's failure to object was prejudicial. This evidence is
14 particularly pertinent because the State has argued that there is sufficient
15 evidence in the record to support a finding of ability to pay. *Respondent's*
16 *Brief* at 4.
- 17 2) The additional evidence would probably change the decision being
18 reviewed. The additional evidence establishes Cruz Tellez's substantial
19 debts, and calls seriously into question his likely current or future ability to pay
20 LFOs in light of his indigency. As such, it is likely that a court relying upon the
21 evidence would find Cruz Tellez unable to pay LFOs and decline to assess
22 them.
- 23 3) It is equitable to excuse a party's failure to present the evidence to the trial
24 court. While it is presumed that the trial court has access to the JIS
25 database, it is unknown whether trial counsel had access to the database to
26 present the information to the trial court. Conducting the *Blazina* inquiry is
27 primarily the trial court's obligation under RCW 10.01.160(3); as such, the
trial court should have reviewed JIS to obtain the proffered evidence before
imposing LFOs. Lastly, defense counsel has an obligation to conduct a
meaningful investigation in order to provide competent representation,
including the "thoroughness and preparation reasonably necessary for the
representation." *State v. A.N.J.*, 168 Wn.2d 91, 110-11, 225 P.3d 956
(2010). The evidence proffered is readily available information about Cruz
Tellez's financial circumstances that should have been requested as part of
the ordinary preparation for sentencing, and tends to show the prejudice
resulting from such failure. Cruz Tellez should not be punished for ineffective
preparation on the part of his advocate.

- 1 4) The remedy available to a party through postjudgment motions in the trial
2 court is inadequate or unnecessarily expensive. Mr. Cruz Tellez could
3 request to stay the appeal and to request relief from the judgment and
4 sentence under CrR 7.8. However, his trial counsel has been discharged and
5 Mr. Cruz Tellez, a native Spanish speaker, has been found indigent such that
6 he cannot afford to hire his own attorney to assist. Moreover, if the court of
7 appeals declined to reach the LFO issue, Mr. Cruz Tellez would be severely
8 prejudiced by the accrual of interest on the obligations as well as the
9 limitation of his remedy to remission, which shifts the burden to him to show a
10 manifest hardship under RCW 10.01.160(4) when the burden to show ability
11 to pay before the obligation is imposed under RCW 10.01.160(3) should
12 properly rest with the State.
- 13 5) The appellate court remedy of granting a new trial is inadequate or
14 unnecessarily expensive. Remanding for resentencing is expensive and
15 time-consuming when adequate evidence exists for the court of appeals to
16 independently determine that he lacks the ability to pay LFOs. Alternatively,
17 the evidence is necessary for the Court of Appeals to determine whether to
18 exercise its discretion to review the LFO challenge under RAP 2.5(a).
- 19 6) It would be inequitable to decide the case solely on the evidence already
20 taken in the trial court. When the court of appeals declines to review LFOs
21 imposed without a determination of the ability to pay because trial counsel did
22 not object, it is the defendant who suffers for the trial court's failure to
23 exercise its statutory duty. Basic fairness requires recourse to correct errors.
24 Here, there was nominal evidence before the trial court to analyze Mr. Cruz
25 Tellez's ability to pay, and the evidence proffered is the type of evidence that
26 is readily available to the trial court to carry out its statutory duty as well as
27 the type of evidence specifically identified by the *Blazina* court as part of the
 minimum required inquiry. Simply put, it is inequitable to saddle Mr. Cruz
 Tellez with thousands of dollars in LFOs because the trial court and defense
 counsel did not take the simple step of reviewing the existing JIS records for
 Mr. Cruz Tellez.

 Accordingly, Cruz Tellez respectfully requests that the court grant the motion to
take additional evidence on review and extend the time to file his reply brief fourteen
(14) days after granting the motion so that he may ensure that all of the pertinent
information is before the court to consider the issue on appeal and evaluate the
arguments made by the Respondent.

1 Dated this 17 day of December, 2015.

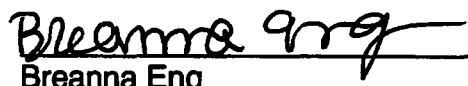
2
3 BURKHART & BURKHART, PLLC

4 BY 
5 Andrea Burkhart, WSBA #38519
6 Attorney for Appellant

7 **CERTIFICATE OF MAILING**

8 I certify under penalty of perjury under the laws of the State of Washington, that
9 on the 17th day of December, 2015, I mailed by regular mail, with postage thereon
10 prepaid, a copy of the foregoing Motion to Take Additional Evidence on Review and
11 Extend Time to File Reply to the following:

12 Andrew Kevin Miller
13 Benton County Prosecutor's Office
14 7122 W. Okanogan Pl Bldg A
15 Kennewick, WA 99336

16 
17 Breanna Eng
18 Signed this 17th day of December, 2015
19 at Walla Walla, Washington.

D0091I Top of list

DN2000PI

09/23/15 14:21:56

DN2002MI Defendant Case History (DCH) STATEWIDE COURT DB2P PUB 1 of 3
 Case: 4Z0901986 BCS CT Csh: Pty: StId: D CRUZTM*312M2 WA
 Name: CRUZ TELLEZ, MAGDALENO NmCd: IN 121 99744

<More CONFIDENTIAL--NOT FOR RELEASE

True Name: CRUZ TELLEZ, MAGDALENO IN 121 99744 22 Cases
 AKA's: CRUZ, MAGDALENO; TELLEZ, MAGDALENO CRUZ 2 Aliases

S	N	Case	LEA	Ty	Crt	Loc	Short Title	Next Hearing	C	Balance
-	-	PC15Y0233	KWP	PC	BCC		PC NO CONTACT ORDER VIO FEL			
-	-	4Z0901986	BCS	CT	BCC		DWLS 1ST DEGREE			1146.00
-	-	4Z0901985	BCS	IT	BCC		OP MOT VEH W/OUT INSURANCE			612.00
-	-	4Z0183353	KWP	CN	BCC		VIOLATION COURT ORDER			1243.00
-	-	4Z0598240	KWP	CN	BCC		ASSAULT DV			1493.00
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PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
 HELP PER AKA CDK PLS CDT BWD FWD DOL COS CFHS EXIT

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DN2002MI Defendant Case History (DCH) STATEWIDE COURT DB2P PUB 2 of 3
 Case: 4Z0901986 BCS CT Csh: Pty: StId: D CRUZTM*312M2 WA
 Name: CRUZ TELLEZ, MAGDALENO NmCd: IN 121 99744

<More CONFIDENTIAL--NOT FOR RELEASE

True Name: CRUZ TELLEZ, MAGDALENO IN 121 99744 22 Cases
 AKA's: CRUZ, MAGDALENO; TELLEZ, MAGDALENO CRUZ 2 Aliases

S	N	Case	LEA	Ty	Crt	Loc	Short Title	Next Hearing	C	Balance
-		J00519458	BCS	CT	BCC		DUI OPER VEH. W/OUT IGNITION IN			3223.00
-		J00141306	BCS	IT	BCC		OP MOT VEH W/OUT INSURANCE FAIL TO SIGN/CARRY/DISPLAY OPEN ALCOHOLIC CONTAINER			
-		J00130825	BCS	IT	BCC		SPEEDING 11 MPH OVER LIMIT NO VALID OPER LICENSE WITH		A	732.00
-		J00515558	BCS	CT	BCC		DWLS 1ST DEGREE			
-		J00131142	BCS	IT	BCC		OP MOT VEH W/OUT INS FL RENEW EXPIRED REG <= 2 M		A	412.00

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
 HELP PER AKA CDK PLS CDT BWD FWD DOL COS CFHS EXIT

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DN2000PI

09/23/15 14:22:09

DN2002MI Defendant Case History (DCH) STATEWIDE COURT DB2P PUB 3 of 3

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S	N	Case	LEA	Ty	Crt	Loc	Short Title	Next Hearing	C	Balance
-	-	J00131142	BCS	IT	BCC		FLD STOP/YIELD ENTERING ART		A	412.00
-	-	J00524218	WSP	CT	BCC		DUI DRIVING WHILE SUSPENDED 3RD			
-	-	J00513789	BCS	CT	BCC		DWLS 2ND DEGREE			
-	-	CR0007673	FCS	CT	FRD		DUI		A	1997.00
-	-	J00509621	BCS	CT	BCC		OPER VEH. W/OUT IGNITION IN			
-	-	K00020815	KWP	CT	BCC		DUI			
-	A	97C006382	PAD	CT	PAM		DUI			
-	-	15-1-00379-1	S1	S03			PROTECTION ORDER VIOLATION RESIDENTIAL BURGLARY UNLAWF			1597.97

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
 HELP PER AKA CDK PLS CDT BWD FWD DOL COS CFHS EXIT

APPENDIX C

The Court of Appeals
of the
State of Washington
Division III

FILED

FEB 24 2016

**COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____**

STATE OF WASHINGTON,)	No. 33552-6-III
)	
)	
Respondent,)	
)	
v.)	COMMISSIONER'S RULING
)	
)	
MAGDALENO CRUZ TELLEZ,)	
)	
Appellant.)	
_____)	

Magdaleno Cruz Tellez has appealed the Benton County Superior Court's June 19, 2015 judgment and sentence that the court entered after finding in a bench trial that he had committed the offense of violating a protection order – gross misdemeanor, with a domestic violence allegation.

On appeal, he contends that defense counsel provided ineffective assistance because he did not argue that Mr. Cruz Tellez' liability for legal financial obligations

No. 33552-6-III

imposed in prior convictions affected his present and/or future ability to pay the legal financial obligations that the court ordered him to pay in this case. In support of that argument, he moves this Court pursuant to RAP 9.11 to add to the appellate record evidence from the Judicial Information System that shows he already owes several thousand dollars in legal financial obligations.

This Court has determined that the evidence Mr. Cruz Tellez seeks to admit, while perhaps relevant to some future motion to remit, is not relevant to this appeal. Mr. Cruz-Tellez wants to use the evidence to show that his lawyer did not perform to a reasonable standard when the lawyer did not reference the evidence at sentencing to show he had no present or future ability to pay legal financial obligations in this case. But such an argument would have directly contradicted Mr. Cruz Tellez' testimony at sentencing, as follows:

I'll ask you, were you employed at the time you were arrested on this?

THE DEFENDANT: Yes.

THE COURT: What were you doing at that time?

THE DEFENDANT: Forklift driver at Pasco Processing.

THE COURT: Has anything changed to where you're physically or unable at this time to work?

THE DEFENDANT: No. I have the opportunity. I'm ready to go back to work.

THE COURT: All right then.

Is there any other reason why you would not be able to pay legal-financial obligations associated with this judgment and sentence?

THE DEFENDANT: No.

(Emphasis added.) RP at 10.

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In these circumstances, the evidence would not change the decision on review.

Therefore, the evidence, at a minimum, does not satisfy that requisite of RAP 9.11.

Accordingly, IT IS ORDERED, the motion to add evidence is denied.



Monica Wasson
Commissioner