

No. 46426-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**John Tyler,**

Appellant.

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Clark County Superior Court Cause No. 02-1-00419-9

The Honorable Judge John P. Wulle

**Appellant's Supplemental Brief**

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## **ISSUES AND ASSIGNMENT OF ERROR**

1. The court erred by ordering John Tyler to pay \$3,911.97 in legal financial obligations absent any inquiry into whether he had the means to do so.
2. The court erred by entering finding of fact 2.5. CP 100.

**ISSUE 1:** A court may not order a person to pay legal financial obligations (LFOs) without conducting an individualized inquiry into his/her means to do so. Did the court err by ordering John Tyler to pay \$3,911.97 in LFOs while also finding him indigent and without analyzing whether he had the money to pay?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

At sentencing, the court did not conduct any inquiry into John Tyler's financial situation. RP 586-611.

When the state first filed the charges, Mr. Tyler received Supplemental Security Income.<sup>1</sup> Court Information and Appointed Counsel Screening filed 3/1/02, Supp. CP. At the time the appeal was filed, the Department of Corrections confirmed that Mr. Tyler met "in forma pauperis status." Motion for Indigency filed 6/19/14, Supp. CP.

Still, the court ordered him to pay \$3,911.97 in legal financial obligations. CP 101. The court also found John Tyler indigent for purposes of appeal. CP 163-165.

John Tyler timely appealed. CP 131-162.

## **ARGUMENT**

**THE TRIAL COURT ERRED BY ORDERING JOHN TYLER TO PAY \$3,911.97 IN LEGAL FINANCIAL OBLIGATIONS WITHOUT INQUIRING INTO HIS ABILITY TO PAY.**

John Tyler was found indigent at the end of trial. CP 163-165.

Still, the court ordered him to pay \$3,911.97 in legal financial obligations (LFOs). CP 101.

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<sup>1</sup> Mr. Tyler was convicted of the sex offense at issue here in 2002, but his direct appeal was not commenced until 2014. CP 92, 131. He spent the intervening years at the Department of Corrections. Motion for Indigency filed 6/19/14, Supp. CP.

The court appeared to rely on boilerplate language in the Judgment and Sentence stating, essentially, that every offender has the ability to pay LFOs. CP 100. But the court did not conduct any particularized inquiry into John Tyler's financial situation at sentencing or at any other time. RP 586-611. The court erred by ordering John Tyler to pay LFOs absent any indication that he had the means to do so.

The legislature has mandated that "[t]he 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); *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015) (emphasis added by court).

This imperative language prohibits a trial court from ordering LFOs absent an individualized inquiry into the person's ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.*

The court must consider personal factors such as incarceration, the person's other debts (including restitution), and the receipt of means-tested benefits. *Id.* Here, the court failed to conduct any meaningful inquiry into John Tyler's ability to pay LFOs. RP 586-611. The court did not consider his financial status in any way.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, John Tyler's lengthy incarceration of 873 months, as well as his receipt of Supplemental Security Income benefits would have weighed heavily against a finding that he had the ability to pay LFOs.

In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* at 839 (“[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs”). John Tyler was determined to be indigent at both the beginning and the end of the proceedings in trial court. CP 163-165; Court Information and Appointed Counsel Screening filed 3/1/02, Supp. CP.

RAP 2.5(a) permits an appellate court to review errors even when they are not raised in the trial court. RAP 2.5(a); *Blazina*, 182 Wn.2d at 835. The *Blazina* court recently chose to review the LFO-related issue raised in this case, finding that “National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case.” *Id.*

The Supreme Court noted the significant disparities both nationally and in Washington in the administration of LFOs and the significant barriers they place to reentry of society. *Id.* at 835-36. This court should

follow the Supreme Court's lead and consider the merits of John Tyler's LFO claim even though it was not raised below.

The court erred by ordering John Tyler to pay \$3,911.97 in LFOs absent any showing that he had the means to do so. *Blazina*, 182 Wn.2d at 841. The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

### **CONCLUSION**

The court erred by ordering John Tyler to pay \$3,911.97 in legal financial obligations without any inquiry into his means to do so. John Tyler's case must be remanded for resentencing.

Respectfully submitted on July 14, 2015,

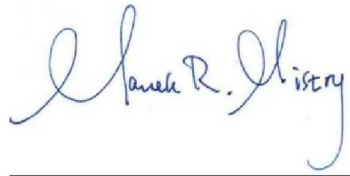
**BACKLUND AND MISTRY**

A handwritten signature in blue ink that reads "Jodi R. Backlund". The signature is written in a cursive style with a large initial "J".

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

John Tyler, DOC#901014  
Airway Heights Correction Center  
PO Box 1899  
Airway Heights, WA 99001

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney  
prosecutor@clark.wa.gov

I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 14, 2015.



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# BACKLUND & MISTRY

**July 14, 2015 - 12:13 PM**

## Transmittal Letter

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