

RECEIVED

JAN - 6 2017  
Washington State  
Supreme Court

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6 IN THE SUPREME COURT OF THE STATE OF WASHINGTON

7 SC# 93779-6

8  
9 STATE OF WASHINGTON  
Respondent,

10 NO. 32476-1-III

11 v.

12 PAUL KARAKOSKY  
Petitioner.

13 PETITION OF APPELLANT

14  
15  
16 I. STATEMENT

17  
18 The Appellate Court stated that I have presented them  
19 and The Superior Court with "Sketchy Facts", and that I did  
20 not inform them of the amount or nature of my LFO's, or if  
21 any payments had been made. This is the first time a court  
22 has stated that there wasn't enough information so I will  
23 rectify this by submitting a copy of my J+S, a case financial  
24 history and my restitution schedule.

25  
26 II. FACTS

27  
28 AS my J+S shows at pg. 4 (4.1), The court assigned the

1 Following; (A) \$76.00 Court Costs, (b) \$70.00 Victim assessment,  
2 (c) T.B.D., restitution, (x) Schedule of restitution "if any",  
3 and (d) \$2500.00 Attorney's Fees, For a Total of \$2646.00  
4 plus restitution "if any".

5 The restitution schedule I received later shows a total  
6 obligation of \$3,047.97. AS OF 12-8-16 I have paid a total  
7 OF \$1,037.79 Towards restitution which means my payments  
8 average \$ 3.20 per month over a 324 month period.

### 9 10 III ARGUMENT

11  
12 Per RCW 10.01.160 (3) There should have been a hearing  
13 to determine ability to pay costs. This was addressed by this  
14 Court in Blazing, 182 Wn.2d at 838.

15 In the present case there also was no hearing on my  
16 ability to pay discretionary LFO's (The \$2500.00 Atty's. Fees And  
17 \$76.00 Court Costs.) In addition, there is the absence of  
18 "boiler plate" language addressing my ability to pay.

19 In recent case law remanded by this Court there seem  
20 to be two issues most prominent. (1) Sentencing Court's  
21 lack of actively inquiring into a defendant's ability to pay  
22 costs, (a hearing), and (2) Sentencing Court's dependence  
23 on existing boilerplate language to satisfy their statutory  
24 obligation. Without either of these two there exists not  
25 a scintilla of evidence that the court made any effort at  
26 all to satisfy its obligation(s) thereby exceeding its  
27 authority and in doing so violated my state and federal due  
28 process rights.

## IV. Conclusion

Before attaching costs the court should have considered the following factors;

1) Other costs, (Restitution), shown as "if any" on my J+S, which later turned out to be greater than all the other costs combined making its impact unknown at sentencing.

2) Incarceration, a length of 645 months.

3) Age, 70+ years old upon release.

4) Hireability, negligible due to age and health.

5) Financial support, minimal social security (if any).

6) Family support, since being the youngest I have already outlived my parents, uncle and aunts.

Of the case law I have read it seems at least 90% are less severe in circumstances than I and the court should have made an effort since they were already aware of my indigency status, for inability to pay bail, given a public defender, and having already explained my lack of any assets.

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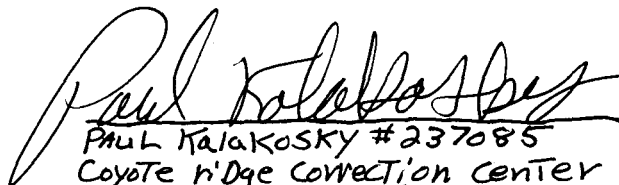
V. AUTHORITIES

Blazina, 182 Wn. 2d at 838  
RCW 10.01.160 (1)  
RCW 10.01.160 (3)

VI. ATTACHMENTS

Judgment and Sentence  
Restitution Schedule  
Case Financial History (10-12-11)

DATED This 29 day of December, 2016.

  
Paul Kalakosky #237085  
Coyote Ridge Correction Center  
1301 N. EPHATA AVE. (FA-08)  
Connell, Wa. 99326



Count No.: II Crime: FIRST Degree Rape  
RCW 9A.44.040(1)(a)-F (#67300)  
Date of Crime 11-29-87  
Incident No. 028778874

Count No.: III Crime: FIRST Degree RAPE  
RCW 9A.44.040(1)(a)-F (#67300)  
Date of Crime 12-5-87  
Incident No. 028781355

Count No.: IV Crime: FIRST Degree Rape  
RCW 9A.44.040(1)(a)-F (#67300)  
Date of Crime 12-12-87  
Incident No. 028793186

Count No.: V Crime: ATTEMPTED FIRST Degree RAPE  
RCW 9A.44.040(1)(a)AT-F (#67301)  
(9A.28.020(1))  
Date of Crime 12-21-87  
Incident No. 028782864

- ( ) With a special verdict/finding for use of deadly weapon on Count(s):
- ( ) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):
- ( ) Additional current offenses attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

<u>Crime</u>	<u>Sentencing Date</u>	<u>Adult or Juv. Crime</u>	<u>Date of Crime</u>	<u>Crime Type</u>
2° Burglary	1976 (Paroled 1982)	Adult	1976	NV

( ) Additional criminal history is attached in Appendix B.

2.3 SENTENCING DATA:

	<u>Offender Score</u>	<u>Seriousness Level</u>	<u>Range</u>	<u>Maximum Term</u>
Count No. <u>I</u>	<u>1</u>	<u>X</u>	<u>57-75 MO</u>	<u>LIFE</u>
Count No. <u>II, III, IV</u>	<u>0</u>	<u>X</u>	<u>51-68 Mo. (Each)</u>	<u>LIFE (Each)</u>
Count No. <u>V</u>	<u>0</u>	<u>X</u>	<u>38.25-51 MO</u>	<u>10 years</u>

( ) Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

(X) Substantial and compelling reasons exist which justify a sentence (above) ~~(above)~~ the standard range for Count(s) 1-5. Findings of Fact and Conclusions of Law are attached in Appendix D, to be filed at a later date by the State presentment to 7-10-89 930.

2.5 CATEGORY OF OFFENDER: The defendant is:

- (a)  An offender who shall be sentenced to confinement of over one year.
- (b) ( ) An offender who shall be sentenced to confinement of one year or less.
- (c) ( ) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).

- (d) ( ) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and the community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) ( ) A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

III. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: FIRST DEGREE RAPE (FOUR COUNTS) and ATTEMPTED FIRST DEGREE RAPE

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 Defendant shall pay to the Clerk of the Court:

- (a) \$ 76 \_\_\_\_\_, Court costs;
- (b) \$70, Victim Assessment;
- (c) \$ T.B.D. \_\_\_\_\_, Restitution (with credit for amounts paid by co-defendants); *which may be filed within 60 days*
- (X) *Schedule of Restitution is attached as Appendix E if any. which may be filed within 60 days.*
- (d) \$ 2500 \_\_\_\_\_, Recoupment for attorney's fees;
- (e) \$ \_\_\_\_\_, Fine;
- (f) \$ \_\_\_\_\_, Drug enforcement fund;
- (g) \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (h) \$ 2,646.00 \_\_\_\_\_, TOTAL monetary obligations, *plus restitution if any.*



# 2

(i) Payments shall be made in the following manner: according to a schedule as set up by his CCO. That the DOC shall monitor said payments while the defendant is in prison

(j) This court shall retain jurisdiction over the defendant for a period of 10 years to assure payment of the above monetary obligations and the defendant shall report to the Department of Corrections to monitor compliance, to obey conditions as provided by RCW 9.94A.120(11)).

4.2 ( ) The Court DISMISSES Count(s) \_\_\_\_\_

4.3 CONFINEMENT OVER ONE YEAR: The defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing 6-19-89, 19\_\_\_\_\_:

225 months for Count No. I.  
120 months for Count No. II.  
120 months for Count No. III.  
120 months for Count No. IV.  
60 months for Count No. V.

( ) The terms in Counts No. \_\_\_\_\_ to be concurrent for a total term of \_\_\_\_\_ months.

(X) The terms in Counts No. 1-5 to be consecutive for a total term of 645 months.

~~4/2~~ The sentence herein to run (~~concurrently~~) (consecutively) with the sentence in \_\_\_\_\_ (Count(s) or cause number(s))

(X) Credit be given for (time) (539 days) served solely on these charges (*includes time held on Parole Hold*)

( ) The defendant is sentenced to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of earned early release, according to the conditions set out in Appendix G.

4.4 ~~X~~ Pursuant to RCW 70.24.340 the defendant shall submit to HIV testing as soon as possible for the reason that:

~~X~~ The offense herein is a sexual offense under RCW Chapter 9A.44.

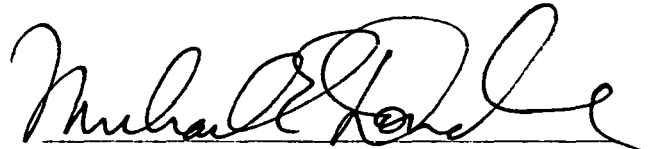
( ) The offense herein is a prostitution offense or related to prostitution under RCW Chapter 9A.88.

( ) The offense herein is a drug offense under RCW Chapter 69.50 and it is determined by the court that the related drug offense is one associated with the use of hypodermic needles.

The following appendices are attached to this Judgment and Sentence and are incorporated by reference:

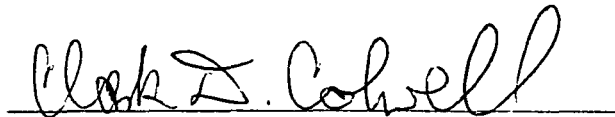
- ( ) Appendix A, Additional Current Offenses
- ( ) Appendix B, Additional Criminal History
- ( ) Appendix C, Current Offense(s) Sentencing Information
- (X) Appendix D, Findings of Fact and Conclusions of Law for Exceptional Sentence *to be filed 7-10-89 at 930*
- (X) Appendix E, Schedule of Restitution *if any.*
- ( ) Appendix F, Additional Conditions
- ( ) Appendix G, Conditions of Community Placement
- ( ) Appendix H, Order Prohibiting Contact

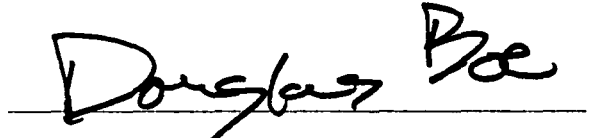
Date: 6-19-89  
~~5-26-89~~

  
Judge

Presented by:

Approved as to form:

  
CLARK D. COLWELL  
Deputy Prosecuting Attorney  
WA State Bar ID #: \_\_\_\_\_

  
Lawyer for Defendant

FINGERPRINTS



Right Hand  
Fingerprints of:

PAUL HAROLD KALAKOSKY

Dated: 6-19-89

Attested by:

THOMAS R. FALLOQUIST, County Clerk

By: Richard Fontaine

CERTIFICATE

I, RICHARD C. FONTAINE,  
Clerk of this Court, certify that  
the above is a true copy of the  
Judgment and Sentence in this  
action on record in my office.

Dated: 6-19-89

THOMAS R. FALLOQUIST, County Clerk

Clerk

By: Richard Fontaine  
Deputy Clerk

\* OFFENDER IDENTIFICATION

\*  
\* S.I.D. NO. WA10344846  
\* Date of Birth 4-19-53  
\* Sex W  
\* Race M  
\* ORI WMO32013A  
\* OCA 013460  
\* OIN 0287075131 and others  
\* DOA 4-15-88

JUDGMENT AND SENTENCE  
(RCW 9.94A.110, .120)

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE  
ORIGINAL IN THE SAME APPEARS OF RECORD  
JUNE 19 1989  
THOMAS R. FALLOQUIST, COUNTY CLERK AND CLERK OF THE  
SUPERIOR COURT IN AND FOR THE COUNTY OF SPOKANE  
STATE OF WASHINGTON.

BY: [Signature] DEPUTY  
Page 8 of 8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PAUL H. KALAKOSKY )  
 WM 041953 )  
 )  
 Defendant. )

NO. 88-1-00341-7  
PA# 89-9-74356-0

RESTITUTION SCHEDULE

Department of Labor & Industries  
Crime Victims Compensaiton Division  
General Administration Building  
Olympia, Washington 98504  
Re: Katrina Wren (V883476)  
Sabrina Heinen (V881719)

\$1,386.97

FILED

JUN 28 1989

THOMAS R. FALLQUIST  
SPOKANE COUNTY  
CLERK

116  
Lisa Stumphj  
N. 15713 Timberwood Court  
Spokane, Washington 99208


\$ 85.00

TOTAL

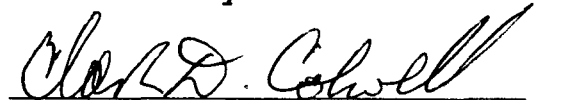
\$1,471.97

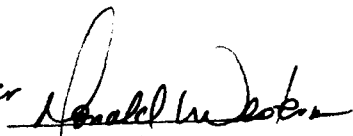
Payment of restitution shall be made into the Registry  
of the Clerk of this Court and distributed by the Clerk in  
accordance with this schedule.

DATED this 28 day of June, 1989.

  
J U D G E

Presented by:

  
Clark D. Colwell  
Deputy Prosecuting Attorney  
WA State Bar ID #: \_\_\_\_\_

Subject to later  
modification   
for Doug Box

RESTITUTION SCHEDULE

RPT # 02-89-75153-0

DONALD C. BROCKETT  
Spokane County Prosecuting Attorney  
County-City Public Safety Building  
Spokane, Washington 99260

4 PPO  
1 DEF  
1 PA

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON AUG 16 1989

IN AND FOR THE COUNTY OF SPOKANE

THOMAS R. FALLQUIST  
SPOKANE COUNTY  
CLERK

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PAUL HAROLD KALAKOSKY )  
 WM 041953 )  
 )  
 Defendant. )

NO. 88-1-00341-7  
PA# 88-9-74356-0  
*Additional*  
RESTITUTION SCHEDULE

125  
CHRISTINE FLOWERS  
4311 Schofield Ave., Lot 75  
Schofield, WI 54476

TOTAL \$ 1,576.00

Payment of restitution shall be made into the Registry of the Clerk of this Court and distributed by the Clerk in accordance with this schedule.

DATED this 15 day of August, 1989.

*Michael Paul*  
\_\_\_\_\_  
J U D G E

Presented by:

*Clark D. Colwell*  
\_\_\_\_\_  
CLARK D. COLWELL  
Deputy Prosecuting Attorney  
WA State Bar ID #: \_\_\_\_\_

*Waived  
Notice of presentment:  
Doug [Signature]*

RESTITUTION SCHEDULE  
02-87-75153;78874;81355;  
83186;82864-0  
4 PPO  
1 DEF  
1 PA

DONALD C. BROCKETT  
Spokane County Prosecuting Attorney  
County-City Public Safety Building  
Spokane, Washington 99260

10/12/11 16:12:31

DG1310MI Case Financial History (CFHS)

SPOKANE SUPERIOR

S32

Case: 881003417 S1 Csh: Pty: DEF 1 StID: C 10344846

Name: KALAKOSKY, PAUL HAROLD NmCd: IN 810 74192

----- A C C O U N T I N G S U M M A R Y -----

TOTAL TRUST		TOTAL AR	
Current Bail:		AR ORDERED: Fine/Fee:	2,646.00
Bail Payable:		Restitution:	3,035.44
Undisbursed Fnds:	39.00	TOTAL AR ORDERED:	5,681.44
Other Trust:		ADJUSTMENTS:Fine/Fee:	
Trust Balance:	39.00	Restitution:	
Other Rev Rec:		AR ADJUSTMENTS:	
Current Bond:		INTEREST:Int Accrued:	
Bond Payable:		Int Received:	
Disbur to Payees:	18.90	INTEREST BALANCE:	
Bail Forfeit Rec:		RECEIVED: Fine/Fee:	
Disp Code:		Restitution:	57.90
Last Receipt Date: 07/27/2010		TOTAL AR RECEIVED:	57.90
Cln Sts: Time Pay: N		BAIL/OTHER APPLIED:	
Joint and Several Case: N		BALANCE: Fine/Fee:	2,646.00
Case Fund Investments: N		Restitution:	2,977.54
Obligor AR Rec:	57.90	TOTAL AR BALANCE:	5,623.54

PF Keys: AR=2 Adj=3 Rec T=4 Rec Dt=5 Disb=6 BndBail T=9 Bnd Dt=10 Bail Dt=11

DECLARATION OF MAILING

GR 3.1

I, Paul Kalakosky on the below date, placed in the U.S. Mail, postage prepaid, 2 envelope(s) addressed to the below listed individual(s):

WASHINGTON STATE SUPREME COURT  
Temple of Justice  
P.O. Box 40929  
OLYMPIA, WA. 98504-0929

The Court of Appeals  
Division III  
N. 500 Cedar  
SPOKANE, WA. 99201

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. PETITION OF APPELLANT
2. JUDGEMENT AND SENTENCE
3. RESTITUTION SCHEDULE
4. CASE FINANCIAL HISTORY
5. \_\_\_\_\_
6. \_\_\_\_\_

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 29 day of December, 2016, at Connell WA.

Signature Paul Kalakosky



**FILED**  
**OCTOBER 4, 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. 32476-1-III
Respondent,	)	
	)	
v.	)	
	)	
PAUL HAROLD KALAKOSKY,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	

FEARING, C.J. — We address whether the superior court loses jurisdiction to review legal financial obligations imposed in a 1989 criminal judgment, when the State did not seek to renew the judgment within ten years, but the defendant remains in prison today. After reviewing the relevant statutes and amendments to the statutes, we hold that the superior court does not lose jurisdiction. We affirm the superior court's refusal to remit legal financial obligations imposed on Paul Kalakosky.

FACTS

Appellant Paul Kalakosky presented both the superior court and this reviewing court sketchy facts. Kalakosky committed attempted rape and four rapes in 1987. On June 19, 1989, the Spokane County Superior Court sentenced Kalakosky, for the rapes, to fifty-three years and nine months in prison. In addition, Kalakosky's judgment and sentence ordered him to pay legal financial obligations. The judgment read:

(i) Payments shall be made in the following manner: according to a schedule as set up by his CCO [community corrections officer]; that the DOC [Department of Corrections] shall monitor said payments while the defendant is in prison.

(ii) This court shall retain jurisdiction over the defendant for a period of 10 years to assure payment of the above monetary obligations and the defendant shall report to the Department of Corrections to monitor compliance, to obey conditions as provided by RCW 9.94A.120(11).

Reply Br. of Pet'r, App. 2.

Paul Kalakosky does not inform the court of the amount of the legal financial obligations imposed on him. Nor does he inform the court of the nature of the financial obligations.

Paul Kalakosky obtained direct review of his conviction from the Washington Supreme Court. The state high court affirmed the convictions in an opinion dated May 27, 1993. *State v. Kalakosky*, 121 Wn.2d 525, 852 P.2d 1064 (1993).

No. 32476-1-III  
*State v. Kalakosky*

The state Department of Corrections has held Paul Kalakosky in custody since June 1989. We do not know if Kalakosky has paid any of the legal financial obligations or if the State has taken any action to collect the obligations.

#### PROCEDURE

Paul Kalakosky, while still confined in state prison, requested the trial court to remit his legal financial obligations. Kalakosky argued that the trial court no longer possessed jurisdiction to enforce the financial obligation order because ten years elapsed without the State requesting an extension of jurisdiction in compliance with the language of the 1989 statute. He accompanied his motion with a letter from the Spokane County Superior Court clerk that declared, in part: “the clerk could not find an Order to Extend LFO Collection or an Order of Termination of LFO’s in [Kalakosky’s] Superior Court Case File.” Letter from Vicky Rice, Collection Deputy, Spokane County Superior Court, to Mr. Kalakosky, (Oct. 12, 2011), *State v. Kalakosky*, No. 88-1-00341-7 (Spokane County Super. Ct.).

On April 11, 2014, the trial court issued a letter ruling that held that the ten-year jurisdictional period for collection of legal financial obligations does not commence until a defendant is released from prison. Therefore, the superior court denied Paul Kalakosky’s request for remission.

Paul Kalakosky never argued, during the superior court proceeding, that the court should vacate any or all of his legal financial obligations because the superior court, in 1989, failed to consider his financial situation before imposing obligations.

#### LAW AND ANALYSIS

Paul Kalakosky contends on appeal that the trial court errantly dismissed his motion to terminate legal financial obligations because, under the statutes in effect at the time of his sentencing, the court's jurisdiction expired ten years from the date of his sentencing. The State argues that the current statutes control Kalakosky's case and provide the trial court with jurisdiction for ten years after sentencing or ten years after release from confinement, whichever is later. We agree with the State.

Since we do not know whether the legal financial obligations imposed on Paul Kalakosky include any restitution or whether the obligations are solely based on restitution, we do not know what statute or statutes control this appeal. Legal financial obligations include restitution, court costs, and fines. RCW 9.94A.030(31). Different statutes apply depending on whether the financial obligations constitute restitution or other forms of financial obligations. We resolve the appeal, however, because no matter which statute or statutes control, the outcome remains the same.

We first address the question of whether the trial court lost jurisdiction over any restitution order. In 1989, the year of Paul Kalakosky's sentence, the restitution statute provided that the court retained jurisdiction over the offender for restitution purposes a

No. 32476-1-III  
*State v. Kalakosky*

maximum of ten years from date of sentencing. LAWS OF 1985, ch. 443, § 10; Former RCW 9.94A.142(1) (1985). The statute then read:

For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence.

In 1994, the Washington Legislature amended RCW 9.94A.142 so as to calculate the ten-year window from the date of sentencing or the date of release from total confinement. LAWS OF 1994, ch. 271, § 602; Former RCW 9.94A.142(1) (1994). In 1997, the Washington Legislature amended the restitution statute further. LAWS OF 1997, ch. 52, § 2; LAWS OF 1997, ch. 121, § 4. A 1997 amendment added the following sentence: "Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution." LAWS OF 1997, ch. 121, § 4.

RCW 9.94A.753(4) now controls the court's jurisdiction for restitution. The first sentence of the statute and of this subsection of the statute provides:

This section applies to offenses committed after July 1, 1985.

....

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years **following the offender's release from total confinement** or ten years subsequent to the entry of the judgment and sentence, **whichever period ends later.** . . .

The legislature added the bold language in the 1994 amendments. LAWS OF 1994, ch. 271, § 602.

Under the statutory scheme at the time of Paul Kalakosky's sentence, the superior court automatically lost jurisdiction over legal financial obligations within ten years. Nevertheless, before the ten years expired, the legislature amended the scheme to read that the sentence for restitution did not expire until ten years after the offender's release from confinement. The 1994 statute applies to crimes committed after July 1, 1985, which would include Paul Kalakosky's offenses. The 1997 amendment permits the State to extend the ten-year limitation period, but the amendment and an extension are irrelevant if the offender remains in prison.

We may constitutionally apply the 1994 amendment to Paul Kalakosky's obligation of restitution. Extending the life of a restitution order is analogous to extending the statute of limitation on a criminal act. *State v. Shultz*, 138 Wn.2d 638, 645, 980 P.2d 1265 (1999). A person who commits a criminal act has no right to rely on a fixed limitation period, and the period can be extended without violating the ex post facto clause, so long as the extension occurs before expiration of the original period. *State v. Hodgson*, 108 Wn.2d 662, 668-69, 740 P.2d 848 (1987). Similarly, an offender has no right to rely on a fixed limitation period for the life of a restitution order. *State v. Shultz*, 138 Wn.2d at 645.

The Washington Legislature adopted the 1994 restitution amendment before the expiration of the first ten-year limitation period of Paul Kalakosky's 1989 sentence.

No. 32476-1-III  
*State v. Kalakosky*

Therefore, we hold that the superior court retains jurisdiction over the restitution order since Kalakosky remains in custody.

We now address whether any legal financial obligations, other than restitution, remain under the jurisdiction of the superior court. RCW 9.94A.760(4) presently governs the court's jurisdiction for other legal financial obligations. An embedded sentence in the statute declares:

**All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later.**

RCW 9.94A.760(4) (emphasis added). Paul Kalakosky, without support, argues the trial court should not have applied this statute but the statutes in effect at the time of his sentencing. This statute codifies legislation enacted in 1989 that became effective July 1, 1990, which applied prospectively, to crimes committed after the effective date. LAWS OF 1989, ch. 252, §5. Former RCW 9.94A.140 (1989) (effective July 1, 1990). The legislature added the bolded language in 2001. LAWS OF 2001, ch. 10, § 3. Former RCW 9.94A.145 (2001).

In *State v. Serio*, 97 Wn. App. 586, 589, 987 P.2d 133 (1999), this court held that an amendment to a legal financial obligation statute retroactively applies to criminal sentences and judgments not yet completed. The decision does not make clear whether its ruling applies only to restitution or whether it also applies to other financial

obligations. The reasoning applies to all forms of legal financial obligations, however. The amending statutes do not increase the amount of the obligations. The statutes only extend the time during which the State may enforce the obligations.

Paul Kalakosky received legal financial obligations for offenses committed in 1987. Under RCW 9.94A.760, the trial court retains jurisdiction to enforce Kalakosky's legal financial obligations for ten years after his release from confinement.

#### Discretionary Legal Financial Obligations

Paul Kalakosky also contends the sentencing court failed to follow the statutory requirement to consider his ability to pay when imposing discretionary legal financial obligations. We refuse to address this argument because Kalakosky did not raise the argument before the superior court.

RAP 2.5(a) formalizes a fundamental principle of appellate review. The first sentence of the rule reads:

**(a) Errors Raised for First Time on Review.** The appellate court may refuse to review any claim of error which was not raised in the trial court.

A party may not generally raise a new argument on appeal that the party did not present to the trial court. *In re Det. of Ambers*, 160 Wn.2d 543, 557 n.6, 158 P.3d 1144 (2007). A party must inform the court of the rules of law it wishes the court to apply and afford the trial court an opportunity to correct any error. *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). We may decline to consider an issue that was inadequately argued



No. 32476-1-III  
*State v. Kalakosky*

below. *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 37, 42 P.3d 1265 (2002); *Mid Mountain Contractors, Inc. v. Dep't of Labor & Indus.*, 136 Wn. App. 1, 8, 146 P.3d 1212 (2006).

We decline to address Paul Kalakosky's contention for many reasons. The superior court entered the judgment for legal financial obligations in 1989. Kalakosky does not present any evidence as to his financial condition in 1989.

The law distinguishes between discretionary and mandatory legal financial obligations. RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 respectively mandate that the court impose a victim assessment fee, a criminal case filing fee, and the DNA (deoxyribonucleic acid) collection fee regardless of the defendant's ability to pay. Trial courts must impose such fees regardless of a defendant's indigency. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). Thus, the superior court in 1989 did not need to determine Kalakosky's financial condition when imposing mandatory legal financial obligations. In this appeal, Kalakosky does not inform us of the nature of his financial obligations.

Paul Kalakosky seeks to benefit from the recent decision of *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). In *Blazina*, the Supreme Court granted appellate courts discretion to determine challenges to legal financial obligations for the first time on appeal. Nevertheless, the Supreme Court decided *Blazina* on direct review. Kalakosky challenges his legal financial obligations for the first time on appeal in an action he

No. 32476-1-III  
*State v. Kalakosky*

brought for remission of all financial obligations twenty-five years after entry of the obligations.

CONCLUSION

We affirm the trial court's refusal to remit the legal financial obligations imposed on Paul Kalakosky in his 1989 sentence and judgment. We refuse to address Kalakosky's request that we remand for a hearing to determine his financial capability to pay the legal financial obligations.

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.

*Fearing, J.*

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Fearing, C.J.

WE CONCUR:

*Siddoway, J.*  
Siddoway, J.

*Lawrence-Berrey, J.*  
Lawrence-Berrey, J.