

RECEIVED  
JUN 13 2017  
Washington State  
Supreme Court

Supreme Court No. 94470-9 - State of  
WA v. Paul Anthony McVay Court of  
Appeals No 34490-8-III

SUPREME COURT, COURT OF Appeals  
DIVISION III STATE OF WASHINGTON

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SUPREME COURT  
Respondent,  
v.  
PAUL MCVAY  
Appellant

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PETITION FOR REVIEW

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Paul McVay  
Pro Se Appellant  
Franklin County Corrections  
1016 N. 4th Ave, D-102  
Pasco, WA 99301

## I. IDENTITY OF MOVING PARTY

Appellant Paul McVay asks for relief designated in part I.

## II. STATEMENT OF RELIEF SOUGHT

Paul McVay requests the court modify the Amended Motion And Order Modifying Judgement And Sentence done on May 26th, 2016 in Benton County Superior Court by Judge Vandenschoor on cause no 01-1-00167-5.

## III. FACTS RELEVANT TO MOTION

Originally I requested the court eliminate all LFO debt, discretionary as well as non-discretionary. The judge ordered all discretionary dismissed, but the amount of discretionary quoted by the prosecutor was incorrect, and money previously paid wasn't credited to further reduce the debt. All discretionary wasn't removed. I requested debt be

reduced to zero.

#### IV. GROUND'S FOR RELIEF AND ARGUMENT

IF all discretionary were removed I would only owe about \$900 after being credited for the \$1,116.50 I already paid.

On page 2 of Exhibit B (States own motion) there's a list of the obligations. On page 5 of same brief, state acknowledges the \$400 Court Appointed Attorney Fee and \$37 Sheriff's fee are discretionary. Those subtracted, my original debt should have been reduced to \$1342.21. Adding the restitution interest \$290.01 brings the debt to \$1632.22. IF I'm given credit for the \$1,116.50 already paid, the total debt would only be \$515.72.

Even if the Attorney Fee and Sheriff's Fee were to remain, the debt should only be \$952.72 if it were properly adjusted.

All proper arguments were made to dismiss all LFO's, discretionary as well as NON-discretionary. Due to clerical error, neither was done, and

discretionary was improperly reduced to leave an inflated debt balance.

V. CONCLUSION

Appellant McVay respectfully requests this court to grant this Petition To Review the original Amended Sentence and reach the merits of my appeal regarding the proper calculation of my LFO's to the reduced debt of \$515.72.

DATED this 8th day of June 2017.

Respectfully submitted,

Paul McVay  
Pro Se Appellant

DG1310MI Case Financial History (CFHS) BENTON SUPERIOR CT 04/12/16 13:59:08  
Case: 011001675 S1 Csh: Pty: DEF 1 StID: D MCVAYPA287MH WA  
Name: MCVAY, PAUL ANTHONY NmCd: IN 099 88223

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: 1,450.00
Bail Payable:	Restitution: 732.21
Undisbursed Fnds:	TOTAL AR ORDERED: 2,182.21
Other Trust:	ADJUSTMENTS: Fine/Fee: 1,200.00
Trust Balance:	Restitution:
Other Rev Rec:	AR ADJUSTMENTS: 1,200.00
Current Bond:	INTEREST: Int Accrued: 3,083.37
Bond Payable:	Int Received:
Disbur to Payees: 732.21	INTEREST BALANCE: 3,083.37
Bail Forfeit Rec:	RECEIVED: Fine/Fee: 384.29
Disp Code:	Restitution: 732.21
Last Receipt Date: 12/29/2015	TOTAL AR RECEIVED: 1,116.50
Cln Sts: Time Pay: N	BAIL/OTHER APPLIED:
Joint and Several Case: Y	BALANCE: Fine/Fee: 5,059.07
Case Fund Investments: N	Restitution: 290.01
Obligor AR Rec: 487.53	TOTAL AR BALANCE: 5,349.08

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

# CERTIFIED COPY

I, JOSIE DELVIN, Benton County Clerk, do hereby certify that the foregoing copy is a true and correct copy of the original on file in this office.

WITNESS, MY HAND AND Seal of the Said Superior Court affixed on this 12<sup>th</sup> day of April 16

Josie Delvin, Ex-Officio Clerk of Superior Court

  
Deputy

05/23/17 09:36:47

DG1310MI Case Financial History (CFHS)

BENTON SUPERIOR CT

S03

Case: 011001675 S1 Csh:

Pty: DEF 1

StID: D MCVAYPA287MH WA

Name: MCVAY, PAUL ANTHONY

NmCd: IN 099 88223

----- 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:	1,450.00
Bail Payable:		Restitution:	732.21
Undisbursed Fnds:		TOTAL AR ORDERED:	2,182.21
Other Trust:		ADJUSTMENTS: Fine/Fee:	-2,280.67
Trust Balance:		Restitution:	
Other Rev Rec:		AR ADJUSTMENTS:	-2,280.67
Current Bond:		INTEREST: Int Accrued:	428.12
Bond Payable:		Int Received:	
Disbur to Payees:	732.21	INTEREST BALANCE:	428.12
Bail Forfeit Rec:		RECEIVED: Fine/Fee:	385.62
Disp Code:		Restitution:	732.21
Last Receipt Date: 01/13/2017		TOTAL AR RECEIVED:	1,117.83
Cln Sts: Time Pay: N		BAIL/OTHER APPLIED:	
Joint and Several Case: Y		BALANCE: Fine/Fee:	1,762.49
Case Fund Investments: N		Restitution:	290.01
Obligor AR Rec:	487.53	TOTAL AR BALANCE:	2,052.50
PF Keys: AR=2 Adj=3 Rec T=4 Rec Dt=5 Disb=6 BndBail T=9 Bnd Dt=10 Bail Dt=11			

JOSIE DELVIN  
BENTON COUNTY CLERK

MAY 26 2016

FILED

SXD2

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

STATE OF WASHINGTON,  
Plaintiff,

vs.

PAUL ANTHONY MCVAY,  
Defendant.

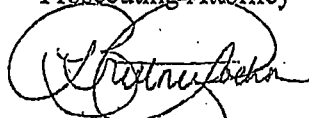
NO. 01-1-00167-5

AMENDED MOTION AND ORDER  
MODIFYING JUDGMENT AND  
SENTENCE

MOTION

Pursuant to the Court's order, the State noted the case on the docket so that the Court can make a finding as to whether the defendant has the ability, or likely future ability to pay the legal financial obligations imposed. The remainder of the Judgment and Sentence shall remain the same.

ANDY MILLER  
Prosecuting Attorney



BRITINIE E. ROEHM  
Deputy Prosecuting Attorney  
WSBA # 49588

**ORDER**

IT IS HEREBY ORDERED that the Judgment and Sentence previously entered on April 20, 2001, be modified as follows:

Section 2.5 should be modified as follows:

**ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change.

The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

The court finds that the defendant does not have the ability or likely future ability to pay the legal financial obligations imposed herein. The court waives discretionary legal financial obligations in the amount of \$3,556.62.

The court finds that the defendant does not have the ability or likely future ability to pay the legal financial obligations imposed herein. The court waives discretionary legal financial obligations in the amount of \$3,556.62. Additionally, the court finds that payment of the mandatory legal financial obligations in the amount of \$900.01 will impose a manifest hardship on the defendant or the defendant's immediate family. The court will suspend payment of the mandatory legal financial obligations pending further order of the court.

All other terms of the Judgment and Sentence remain in effect.

DATED: This 26 day of May, 2016.

*N. D. Van der ...*  
SUPERIOR COURT JUDGE



McVay, P 824869 01-1-00167-5

Exhibit B

~~1179.01~~  
~~431~~  
~~7542.04~~  
~~4116.02~~  
~~22.76~~

DEFENSE COPY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

PAUL ANTHONY MCVAY,

Defendant.

NO. 01-1-00167-5

STATE'S MOTION TO TRANSFER  
DEFENDANT'S MOTION TO VACATE  
JUDGMENT AS TO LEGAL FINANCIAL  
OBLIGATIONS

**I. MOTION**

The State, represented by Deputy Prosecuting Attorney Brittanie E. Roehm, moves for an order transferring the defendant's motion to vacate judgment as to legal financial obligations to the Court of Appeals as a personal restraint petition. This motion is based on CrR 7.8(c)(2) and the following memorandum.

**II. FACTS**

The defendant, Paul McVay, was found guilty of one count of Taking a Motor Vehicle Without Permission and one count of Possessing a Stolen Firearm by guilty plea. On April 20, 2001, the court imposed sentence consisting of seventy-two month in prison and community custody. The court imposed legal financial obligations (LFOs") as follows:

LEGAL FINANCIAL OBLIGATIONS IMPOSED IN THIS CASE

Amount	LFO Description	Statutory Authority (RCW)
\$500	Victim assessment	7.68.035
\$37	Sheriff's Service Fee	36.18.040
\$400	Court Appointed Attorney's Fees	9.94A.760
\$110	Criminal Filing Fee	36.18.020(2)(h)
\$732.21	Restitution	9.94A.753
\$1779.21	<b>Total</b>	

Re: Time barred The defendant did not appeal his conviction. The defendant has been released from total confinement on this case. Not released from total confinement, last incarceration on this was in 2008, financial obligation causes further incarceration, still being punished. As long as still under punishment, can still file motions.

→ The defendant's present motion claims that the judgment and sentence is invalid on its face, and that the court failed to conduct an individualized inquiry into the defendant's current remission of the costs or any unpaid thereof.

→ RCW 10.01.160 (4) allows defendant to petition courts at any time for and future ability to pay costs, citing as authority *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 630 (2015), and RCW 10.01.160(3).

III. ISSUE

Should this case be transferred to the Court of Appeals for consideration as a personal restraint petition?

IV. ARGUMENT

Motions to modify or terminate LFOs are properly noted in Superior Court if the motion alleges a manifest financial hardship currently affecting the defendant or his immediate family. RCW 10.01.160(4). A new allegation of changed financial circumstances occurring after sentencing will often require a factual hearing in order to evaluate the defendant's claim of manifest financial hardship. This court routinely evaluates such requests on the legal financial obligations calendar.

However, this defendant's motion is different. The motion is based on a legal argument that ~~the sentencing court committed an error of law in its original imposition of LFOs by failing to~~ <sup>Ermon & No "proof"</sup> ~~conduct an individualized inquiry into the defendant's ability to pay.~~ <sup>I previously asked in 2010 or 2011 for transcripts & was refused</sup> ~~As such, the motion seeks relief from judgment and is governed by CrR 7.8. Motions to vacate judgment can be either resolved~~ <sup>the court should be able to show their # transcripts. Failure to make inquiry is</sup> ~~grounds to vacate five: US v. Walker; US v. Francisco.~~

by this court on the merits or transferred to the Court of Appeals. The standards governing this choice are set out in CrR 7.8(c)(2):

The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

The court should engage in a "meaningful analysis" of these requirements. *In re Ruiz-Sanabria*, \_\_\_ Wn.2d \_\_\_, 362 P.3d 758 (2015). The provisions of the rule are mandatory. If the requirements for transfer are satisfied, the court may not decide the motion – even if the motion is clearly unfounded. *State v. Smith*, 144 Wn. App. 860, 184 P.3d 666 (2008).

Under this rule, this court should resolve three issues: (1) Is the motion barred by RCW 10.73.090? (2) Has the defendant made a substantial showing that he or she is entitled to relief? (3) Will resolution of the motion require a factual hearing?

**A. THE DEFENDANT'S MOTION IS TIME BARRED.**

<sup>Authorize</sup> ~~RCW 10.73.090(1) sets a time limit on motions to vacate judgments and other forms of~~ <sup>Petitions on LFOs:</sup> ~~Such a motion must be filed within one year after the judgment becomes final.~~ <sup>RCW 10.01.160 (4) allows a defendant to petition the sentencing court at any time for remission of the costs or any unpaid thereof.</sup> ~~Since the judgment in the present case was not appealed, it became final on April 20, 2001, the day it was filed. RCW 10.73.090(3)(a). The present motion was filed on April 4, 2016. It was not filed within the time limit.~~

The defendant essentially argues the judgment is invalid on its face and that the one year time

→ limit should not apply. See RCW 10.73.090(1). A judgment and sentence is not valid on its face Court should consider RCW 10.73.100(6) as there has been a significant change when the judgment and sentence, without further elaboration, evidences an error. In re Clark, 168 Wn.2d 581, 585, 230 P.3d 156 (2010). But the defendant's complaint, that the court failed to conduct a colloquy or individualized ability-to-pay inquiry, is not manifest within the four corners of

→ the judgment and sentence. In fact, to the extent that the Judgment and Sentence addresses the issue Court held that State v. Blazina & RCW 10.01.160(3) means that the court at all, the boilerplate language in paragraph 2.5 indicates that the court did conduct the ability-to-pay inquiry. The State acknowledges that the boilerplate language is not credible proof that the inquiry occurred, but it also does nothing to establish the opposite conclusion that the inquiry was lacking.

This court is well aware of the reality that when individualized ability-to-pay inquiries do occur, they usually occur verbally in open court. The fact that the judgment and sentence lacks credible evidence of this verbal inquiry occurring, or not, does nothing to establish that RCW 10.01.160(3) was violated in this case. The most that can be said is that the judgment and sentence is silent on the issue. The judgment is not invalid on its face, so the one year time limit still applies.

**B. THE DEFENDANT HAS NOT MADE A SUBSTANTIAL SHOWING OF ENTITLEMENT TO RELIEF.**

**1. Even If Imposition Of LFOs Was An Error Of Law, Such Errors Do Not Provide A Basis For Vacating A Judgment.**

The defendant claims that all of the LFOs imposed by the court at sentencing were improperly imposed due to the alleged failure to conduct the ability-to-pay inquiry as directed by RCW 10.01.160(3), and as reinforced by State v. Blazina. Even if that were true, the error of law would not be a basis for vacating the judgment. "Mistakes of law may not be corrected by a motion for relief from judgment under CrR 7.8(b) but must be challenged on direct appeal." State v.

Dorenbos, 113 Wn.App. 494, 499, 53 P.3d 52 (2002).

In *Blazina* the issue was raised on direct appeal. The State Supreme Court held this is not an issue that can be raised automatically for the first time on appeal. *Blazina*, 182 Wn.2d at 832-833. Instead the court chose to consider the issue as a matter of discretion. *Id.* at 835. The court specifically said “this error will not taint sentencing for similar crimes in the future.” *Id.* at 834. It is thus clear that an error under *Blazina* does not provide grounds for vacating a sentence on collateral attack.

**2. With The Exception Of The \$400 Court-Appointed Attorney Fee and \$37 Sheriff’s Service Fee, The LFO’s Imposed In This Case Do Not Require Any Prior Assessment Of The Defendant’s Ability To Pay. If The Court Erred In Imposing The Court-Appointed Attorney’s Fee and Sheriff’s Service Fee, It Was Harmless.**

Even if the issue were properly before the court the defendant would not be entitled to relief.

→ The defendant relies on *Blazina* to argue all of the legal financial obligations in his case were improperly imposed. *Relying on all of the caselaw in my motion.* There are many different kinds of legal financial obligations. Whether any

specific legal financial obligation was validly imposed must be determined by reference to the statute that authorized that particular obligation. For example, the most frequently imposed LFO’s in Benton County are the *mandatory* \$500 victim penalty assessment and the \$100 DNA fee, which are not discretionary court costs subject to the ability-to-pay inquiry emphasized in *Blazina*. *State v. Stoddard*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_, No. 32756-6-III at \*3 (Div. III, Jan. 12, 2016). Each LFO imposed in this case is addressed below.

**a. Discretionary Court Costs**

*Blazina* only dealt with one kind of legal financial obligation, costs imposed pursuant to RCW 10.01.160. Costs under that statute are those expenses incurred by the state in prosecuting the defendant. RCW 10.01.160(2). The \$400 court-appointed attorney fee and \$37 sheriff’s service fee

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

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STATE OF WASHINGTON,	)	
	)	Benton No. 01-1-00167-5
Plaintiff,	)	
	)	COA No. 344908
v.	)	
	)	
PAUL ANTHONY MCVAY,	)	VRP: Motion to dismiss
	)	LFO's
Defendant.	)	

Proceedings had before the HONORABLE VIC L. VANDERSCHOOR, Superior Court Judge in and for the County of Benton on May 26, 2016, at Kennewick, Washington.

Appearances:

MS. BRITTIE ROEHM  
Deputy Prosecuting Attorney  
7011 W. Okanogan Pl.  
Kennewick, Washington 99336

Appearing on the behalf of the Plaintiff;

MR. CALEB DIPESO  
Attorney at Law  
7011 W. Okanogan Pl.  
Kennewick, Washington 99336

Appearing on the behalf of Defendant.

John R. McLaughlin - Court Reporter



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May 26, 2016  
Kennewick, Washington

P R O C E E D I N G S

MR DIPESO: And, Your Honor, this is on the docket. Mr. McVay filed a motion pro se. I believe it was Judge Shea Brown ordered a hearing to determine whether or not he has any current or future ability to pay and whether or not his current obligation place manifest hardship or an undo burden on him. He was on the criminal docket yesterday and Judge spanner set the case over one day so I could file a copy of his brief motion and we were prepared to proceed today.

One note, Your Honor, after speaking with Mr. McVay yesterday I learned it was his intention to ask the Court to waive all of his financial obligations with respect to this case. I reviewed the case law last night and this morning. I determined that while I am prepared, read, willing and able to argue that discretionary LFO's should be waive in this case. I don't believe I can argue that mandatory LFO's should be waived. I spoke with Mr. McVay about that and he elected to have me argue that the discretionary LFO's be waived but then he asked for on the mandatory ones then he can make that argument.

THE COURT: Okay.

1 MR. DIPESO: I'm asking the Court waive all  
2 discretion LFOs in this case. The basis of this argument  
3 first of all Mr. McVay is currently 43 years old. He  
4 doesn't expect to be released until he is 65. He did  
5 complete some college related to automotive repair he  
6 never worked in that field and he did not finish. He has  
7 a torn ligament in his shoulder and fracture in his back.  
8 He believes in all likelihood he won't be able to work and  
9 the job process will be thin according to his criminal  
10 history.

11 He has 10 dollars in his account currently.  
12 He doesn't work for pay in prison. He also believes he  
13 owes approximately \$100,000. Based on that I believe he  
14 qualifies as indigent under GR 34 or any standard of  
15 indigency. I don't think he has any current or future  
16 ability to pay any amount on those LFO's. I ask the Court  
17 to waive all discretionary LFO's.

18 MS. ROEHM: With regard to the  
19 discretionary LFO State would defer to the Court.  
20 However, with regard to the mandatory LFO's I believe -- I  
21 don't believe the Court can waive these costs.

22 THE COURT: I'll waive the discretionary  
23 costs.

24 MR. DIPESO: Your Honor, I do believe  
25 Mr. McVay would like to --



1 MR. MCVAY: Your Honor, right now this deal  
2 is three times what it was there is approximately \$1200  
3 paid over the period of 15 years. I think it's clear  
4 RCW's and legislative intent say it's improper to impose  
5 sanctions on somebody that never extricate themselves from  
6 that. As he said I'm doing pretty much the rest of my  
7 life in prison. I've only been out a couple years since  
8 this cause number. I've already been arrested on it once.  
9 I have a co-defendant on this and I don't know where the  
10 payments came from. They didn't come from me. The Court  
11 can check. You guys refused it so in my eyes you guys  
12 don't want my money. No other money has been paid from  
13 me. I'm currently disabled. I was going through all of  
14 that, and Pasco with DSHS getting x-rays and stuff and  
15 disability when the stabbing happened over here across the  
16 river. There is really no way I can get out of these  
17 payments. Makes no sense at all to have any more monetary  
18 obligations in this court.

19 If I live long enough to get out, I don't want  
20 to come back here or close to this area. I want to leave  
21 this state. I'm not from here. So none of this makes  
22 any sense how you guys can justify, you guys have anymore  
23 LFO's in my case for me or my co-defendant. My  
24 co-defendant, she is unemployed, been unemployed since  
25 this happened. She never had a job. She is not real

1 bright, unhirable. From my understanding what the RCW's  
2 say is you are not supposed to put LFO's on people who  
3 have now way to pay them in any foreseeable future. With  
4 these being three times as much as they are now, as they  
5 were within 15 years what are you going to be in 45. It  
6 makes no sense. I mean you're never going get a dime of  
7 me, not now, not tomorrow, not next month, not next year  
8 certainly not when I'm 65 when I'm elderly. So I think  
9 all this stuff should be dismissed. Whatever I have  
10 remaining should be dismissed.

11 THE COURT: I won't dismiss the  
12 nondiscretionary.

13 MS. ROEHM: Thanks, Your Honor. I have an  
14 order prepared.

15 MR. MCVAY: I would like to appeal. I  
16 would like to note to the Court to give me some more time  
17 on my life sentence to take care of my LFO's and my  
18 co-defendant. Maybe that will work or a motion on that  
19 docket next week. I have all the time in the world.  
20 Maybe you could put that on the calendar.

21 THE COURT: I've signed that order.

22 MR DIPESO: Your Honor, I do have some  
23 paperwork I can present to the Court and give a copy of  
24 the notice to the State right now. (End of proceedings)

25

1 STATE OF WASHINGTON )  
2 COUNTY OF BENTON ) ss.  
3

4 I, John R. McLaughlin, Jr. an official court  
5 reporter for Benton County, Washington, hereby certify  
6 that at said time and place I reported in stenotype all  
7 testimony adduced and other oral proceedings had in the  
8 foregoing matter; that thereafter my notes were reduced to  
9 typewriting under my direction; and that the foregoing  
10 transcript, page 2 to 5 both inclusive, contains a full,  
11 true, and correct record of all such testimony adduced and  
12 oral proceedings had and of the whole thereof. I am in no  
13 way related to or employed by any party in this matter,  
14 nor any counsel in the matter; and I have no financial  
15 interest in the litigation. Witness my hand at Kennewick,  
16 Washington, this 12th of September 2016.

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John R. McLaughlin, Jr., CSR