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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

Supreme Court No. 97805- 1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRIA WALKER,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

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ANSWER TO STATE'S CROSS-PETITION FOR REVIEW

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TABLE OF CONTENTS

A. ARGUMENT IN RESPONSE TO CROSS-PETITION..... 1

**The Court of Appeals appropriately ordered the sentencing court to strike discretionary LFOs imposed upon an indigent defendant ..... 1**

B. CONCLUSION..... 4

TABLE OF AUTHORITIES

**Washington Supreme Court**

*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) ..... 3  
*State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018) ..... 2, 3

**Statutes**

RCW 10.01.160 ..... 2  
RCW 2.30.030 ..... 1

**Court Rules**

RAP 13.4 ..... 4

A. ARGUMENT IN RESPONSE TO STATE’S CROSS-PETITION

**The Court of Appeals appropriately ordered the sentencing court to strike discretionary LFOs imposed upon an indigent defendant.**

The prosecution contends the trial court should be permitted to impose discretionary legal financial obligations upon an indigent person and asks this Court to grant review on this basis.

The prosecution agrees, as it has throughout this case, that a drug court fee is a discretionary LFO and by statute, the court may waive it when a person is indigent. RCW 2.30.030(5). IT agrees “it is likely that most drug program participants will be indigent.” State’s Answer at 12. However, it contends that the court should focus on the needs of the drug court program and order an indigent person to pay these fees if it would benefit the program, notwithstanding a person’s indigence. *Id.*

This argument misrepresents the Court of Appeals decision in this case and misapprehends the issues at stake when an indigent person’s punishment includes LFOs the person cannot afford.

The Court of Appeals ruled that because the drug court fee is discretionary by statute, and the legislature enacted a new LFO sentencing scheme in 2018 that prohibited courts from imposing

discretionary fees upon indigent defendants as explained in RCW 10.01.160(3), this \$900 fee should also be stricken. Slip op. at 16. The State concedes the court “may” reduce these fees for any person who is indigent “under RCW 10.101.010.” *Id.*

RCW 10.01.160(3) was amended after Ms. Walker’s sentence but this change in the law applies to her because it is a curative remedy enacted while her case is on direct appeal. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). The amendment was part of House Bill 1783, “addressing some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction.” *Id.*

House Bill 1783 amends former RCW 10.01.160(3) to expressly prohibit courts from imposing discretionary costs on defendants who are indigent at the time of sentencing: “The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).” Laws of 2018, ch. 269, § 6(3). *Ramirez*, 191 Wn.2d at 748. The prior version of RCW 10.01.160(3) merely asked the court to consider whether a person “is or will be able to pay” LFOs. *Id.* at 474 (quoting Former RCW 10.01.160(3)).

The Court of Appeals did not undercut the drug court fee statute when it found the drug court LFOs should be stricken in this case. It makes no claim made Ms. Walker is in any financial position to ever pay these fees. She is serving a long prison sentence after suffering from a long-term drug addiction. The trial court gave no careful consideration to Ms. Walker's ability to pay any LFOs as *Ramirez* mandates. 191 Wn.2d at 743-44.

The Court of Appeals decision further adheres to this Court's ruling in *State v. Blazina*, 182 Wn.2d 827, 836, 344 P.3d 680 (2015). *Blazina* recognized "Washington's LFO system carries problematic consequences." *Id.* Furthermore, "the State cannot collect money from defendants who cannot pay, which obviates one of the reasons for courts to impose LFOs." *Id.* at 837. While the Legislature did not rewrite the drug court fee statute, it in no way encouraged courts to impose LFOs upon indigent drug court participants, as the Court of Appeals appropriately recognized.


This Court should deny the prosecution's request for review of the imposition of LFOs that are not mandatory upon a person whose indigence is not in dispute.

B. CONCLUSION

The prosecution's petition for cross-review should be denied pursuant to RAP 13.4(b).

DATED this 17<sup>th</sup> day of December 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Collins', written over a horizontal line.

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 97805-1**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: December 17, 2019



# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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**Appellate Court Case Number:** 97805-1  
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**Superior Court Case Number:** 16-1-02686-3

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