

NO. 44189-6-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

BRANDON BLURTON,

Appellant.

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

APPELLANT'S REPLY BRIEF

KATHLEEN A. SHEA
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT IN REPLY..... 1

 1. The State concedes that the court used the incorrect sentencing range and resentencing is required 1

 2. The court must inquire into Mr. Blurton’s financial circumstances and determine if he has the present or likely future ability to pay attorney’s fees and court costs..... 1

 a. The Court may review the sentencing court’s imposition of legal financial obligations for the first time on appeal.....1

 b. The sentencing court was required to take Mr. Blurton’s ability to pay into account before imposing attorney’s fees and court costs.....4

B. CONCLUSION..... 5

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

In re Call, 144 Wn.2d 315, 28 P.3d 709 (2001) 1

In re Pers. Restraint of Johnson, 131 Wn.2d 558, 933 P.2d 1019
(1997)..... 1

State v. Barklind, 87 Wn.2d 814, 557 P.2d 314 (1977).....2, 4

State v. Ford, 137 Wn.2d 472, 973 P.2d 452 (1999)..... 2, 3

State v. Mendoza, 165 Wn.2d 913, 205 P.3d 113 (2009)..... 3

Washington Court of Appeals Decisions

State v. Blazina, __ Wn. App. __, 301 P.3d 492 (2013) 2

State v. Hunter, 102 Wn. App. 630, 9 P.3d 872 (2000)..... 3

State v. Paine, 69 Wn. App. 873, 850 P.2d 1369 (1993)..... 3

State v. Williams, 65 Wn. App. 456, 829 P.2d 166 (1992) 4

Statutes

RCW 9.94A.010(1)-(3).....3

RCW 10.01.160(3) 2, 4

Court Rules

RAP 2.5 2

A. ARGUMENT IN REPLY

1. The State concedes that the court used the incorrect sentencing range and resentencing is required.

When an error in sentencing is discovered, the court has the power and duty to correct it. In re Call, 144 Wn.2d 315, 332, 28 P.3d 709 (2001); In re Pers. Restraint of Johnson, 131 Wn.2d 558, 569, 933 P.2d 1019 (1997). The State concedes the trial court used the incorrect standard range when sentencing Mr. Blurton and that “it was the intent of the deputy prosecutor and the sentencing court to sentence Blurton to the bottom of the standard range.” Resp. Br. at 5. Mr. Blurton was sentenced to 22 months. RP 458. Using the correct standard range, Mr. Blurton should have been sentenced to 17 months. Mr. Blurton is entitled to a resentencing hearing so that the court may impose the sentence that was originally intended.

2. The court must inquire into Mr. Blurton’s financial circumstances and determine if he has the present or likely future ability to pay attorney’s fees and court costs.

- a. The Court may review the sentencing court’s imposition of legal financial obligations for the first time on appeal.

At sentencing, the court ordered Mr. Blurton to pay \$2,400 in attorney’s fees and court costs of \$387.02 in addition to a fine and

mandatory fees, for a total of \$4,387.02. CP 41; RP 458. The sentencing court cannot order a defendant to pay court costs or attorney's fees without considering the defendant's ability to pay. RCW 10.01.160(3); State v. Barklind, 87 Wn.2d 814, 817, 557 P.2d 314 (1977). Here, the State concedes that the "sentencing court did not make an affirmative finding that Blurton had the present or future ability to pay" before imposing the attorney's fees and costs. Resp. Br. at 7; see also CP 39.

The State argues, however, that Mr. Blurton may not challenge the imposition of these fees and costs because he did not object at the time of sentencing. Resp. Br. at 6. This Court should reject the State's argument, as Washington permits appeals from improper sentencing orders. Mr. Blurton is not required to show that the sentencing error meets the RAP 2.5(a) requirement of manifest constitutional error.

Appellate courts normally address issues that were raised in the trial courts, but have the discretion to address other issues as well. RAP 2.5(a); State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). While the State relies on State v. Blazina for its assertion that Mr. Blurton's failure to object at sentencing precludes appellate review, Blazina held only that it is not required to review this issue for the first time on

appeal in every case. ___ Wn. App. ___, 301 P.3d 492, 494 (2013); see also Resp. Br. at 5-6. In Washington, erroneous or illegal sentences may always be addressed for the first time on appeal. Ford, 137 Wn.2d at 477-78 (criminal history); State v. Mendoza, 165 Wn.2d 913, 919-20, 205 P.3d 113 (2009) (criminal history); State v. Hunter, 102 Wn. App. 630, 633-64, 9 P.3d 872 (2000) (drug fund contribution), rev. denied, 142 Wn.2d 1026 (2001); State v. Paine, 69 Wn. App. 873, 884, 850 P.2d 1369 (State's appeal of sentence below standard range), rev. denied, 122 Wn.2d 1024 (1993) (and cases cited therein).

Sentencing is a critical stage in a criminal proceeding. Permitting defendants to challenge an illegal sentence on appeal helps ensure that sentences are in compliance with the sentencing statutes. Mendoza, 165 Wn.2d at 920. Moreover, the rule inspires confidence in the criminal justice system and is consistent with the Sentencing Reform Act's goal of uniform and proportional sentencing. Id; Ford, 137 Wn.2d at 478-79, 484; RCW 9.94A.010(1)-(3).

- b. The sentencing court was required to take Mr. Blurton's ability to pay into account before imposing attorney's fees and court costs.

The State argues “[t]here is nothing in the record that would support Blurton’s inability in the future to make payments on his legal financial obligations.” Resp. Br. at 7. First, this is not accurate. Mr. Blurton was assigned a court-appointed attorney for trial and the court granted an order of indigency and appointment of an attorney for the appeal. CP 41; Supp. CP 58 (Order of Indigency, November 7, 2012). He was incarcerated as a result of his conviction. RP 458. Any future prospects Mr. Blurton had for earning income are only further diminished with this additional felony conviction.

This argument also misses the point. The sentencing court is required to take into account the defendant’s financial circumstances when imposing court costs and attorney’s fees. RCW 10.01.160(3); Barklind, 87 Wn.2d at 817. The record must reflect the judge had knowledge of the defendant’s financial situation. State v. Williams, 65 Wn. App. 456, 460, 829 P.2d 166 (1992). It is not sufficient for the State to speculate, as it attempts to do in its response, as to what type of documentation the sentencing court might have relied upon. Resp. Br. at 8. Here, the court failed to make these required findings. CP 39.

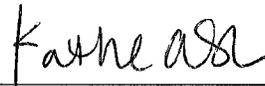
The court's imposition of court fees was clearly erroneous and the State must take no action to collect the financial obligations until the court has inquired into Mr. Blurton's financial situation and determined if he has the present or likely future ability to pay the court-ordered financial obligations.

B. CONCLUSION

For the reasons stated above and in his opening brief, Mr. Blurton respectfully asks this Court to reverse his sentence and remand this case for a new sentencing hearing.

DATED this 8th day of August 2013.

Respectfully submitted,



KATHLEEN A. SHEA (WSBA 42634)
Washington Appellate Project (91052)
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 44189-6-II
)	
BRANDON BLURTON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8TH DAY OF AUGUST, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|----------------------------|--|
| <p>[X] SARA BEIGH, DPA
[appeals@lewiscountywa.gov]
LEWIS COUNTY PROSECUTING ATTORNEY
345 W MAIN ST FL 2
CHEHALIS, WA 98532</p> | <p>()
()
(X)</p> | <p>U.S. MAIL
HAND DELIVERY
E-MAIL VIA COA PORTAL</p> |
| <p>[X] BRANDON BLURTON
315430
LONGVIEW WORK RELEASE
1821 1ST AVE
LONGVIEW, WA 98632</p> | <p>(X)
()
()</p> | <p>U.S. MAIL
HAND DELIVERY
_____</p> |

SIGNED IN SEATTLE, WASHINGTON THIS 8TH DAY OF AUGUST, 2013.

x _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

August 08, 2013 - 3:41 PM

Transmittal Letter

Document Uploaded: 441896-Reply Brief.pdf

Case Name: STATE V. BRANDON BLURTON

Court of Appeals Case Number: 44189-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:
sara.beigh@lewiscountywa.gov