No. 46589-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Angelino Pena,

Appellant.

Clark County Superior Court Cause No. 13-1-00417-8

The Honorable Judge David Gregerson

Appellant's Supplemental Brief

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ISSUE AND ASSIGNMENTS OF ERROR

1. The court erred by ordering Angelino Pena to pay $6,606.50 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 176.

> **ISSUE:** 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 Angelino Pena to pay $6,606.50 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 Angelino Pena's financial situation. RP 482-502.

Still, the court ordered him to pay $6,606.50 in legal financial obligations. CP 178. The court also ordered him to serve 330 months. RP 499. The court also found Angelino Pena indigent for purposes of appeal. CP 132-134.

Angelino Pena timely appealed. CP 130-131.

ARGUMENT

THE TRIAL COURT ERRED BY ORDERING ANGELINO PENA TO PAY $6,606.50 IN LEGAL FINANCIAL OBLIGATIONS WITHOUT INQUIRING INTO HIS ABILITY TO PAY.

Angelino Pena was found indigent at the end of trial. CP 132-134. Still, the court ordered him to pay $6,606.50 in legal financial obligations (LFOs). CP 178.

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 176. But the court did not conduct any particularized inquiry into Angelino Pena's financial situation at sentencing or at any other time. RP 482-502. The court erred by ordering Angelino Pena 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 form 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 Angelino Pena's ability to pay LFOs. RP 482-502. The court did not consider hid financial status in any way. Indeed, the court also found Angelino Pena indigent soon after imposing $6,606.50 in LFOs. CP 132-134, 178.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, Angelino Pena's lengthy incarceration of 330 months 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"). Angelino Pena was determined to be indigent at both the beginning and the end of the proceedings in trial court. CP 3, 132-134.

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 Angelino Pena's LFO claim even though it was not raised below.

The court erred by ordering Angelino Pena to pay $6,606.50 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 Angelino Pena to pay $6,606.50 in legal financial obligations without any inquiry into his means to do so. Angelino Pena's case must be remanded for resentencing.

Respectfully submitted on July 14, 2015,

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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:

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

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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 - 10:39 AM

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