

No. 47144-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

DALE DEAN CARTER,

Appellant.

---

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

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BRIEF OF APPELLANT

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**I. ASSIGNMENTS OF ERROR**

1. The trial court erred in admitting evidence from a *Terry* stop that violates Article 1, Section 7 of the Washington Constitution and the Fourth Amendment of the United States Constitution.

2. The trial court erred in finding that the officers had the articulable suspicion necessary to justify a *Terry* stop based only on the subjective observation of a known informant.

3. The trial court erred in imposing a jury demand fee in excess of \$1,100 above the statutory cap.

4. The trial court erred in finding that Mr. Carter has the present and future ability to pay legal financial obligations.

5. The trial court erred in indicating that the court considered the total amount owing and the defendant's present and future ability to pay legal financial obligations when no such consideration was made.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the court erred when it admitted evidence obtained during the commission of a *Terry* stop when 1) an informant (and later, an officer) deemed a handshake between a laborer and his client suspicious; 2) the police officer involved in the stop gathered no corroborating evidence of criminal activity before the *Terry* stop; and 3) one of the

officers involved in the stop was aware of unsubstantiated reports of suspicious activity at Ms. Johnson's home?

2. Whether the court erred by imposing \$4,817.78 in legal financial obligations when 1) the amount included a jury fee more than \$1,100 above the statutory cap; 2) the court did not inquire on Mr. Carter's present or future ability to pay before imposing the legal financial obligations; 3) Mr. Carter's Felony Judgment and Sentence contains unsupported boilerplate language stating the court considered Mr. Carter's ability to pay, "including the defendant's financial resources and the likelihood that the defendant's status will change"; and 4) the legal financial obligations comprise more than half of Mr. Carter's income in 2014?

## **II. STATEMENT OF THE CASE**

On April 3, 2014, Mr. Carter arrived at a home in Morton to load Joanna Johnson's truck on a trailer and later fix its transmission. 9/8/14 RP 10. Shortly after departing from the home, Deputy Brian Lauer and Officer Perry Royle stopped Mr. Carter's truck. CP 19-20. The officers approached Mr. Carter's door, asked Mr. Carter to step away from the truck, and asked to search both Mr. Carter's person and vehicle. *Id.* at 20. Mr. Carter consented to the search. *Id.* In the course of the search the officers found methamphetamine in Mr. Carter's pocket. *Id.* The State

charged Mr. Carter with one count of possession of methamphetamine. CP 1.

At a suppression hearing, Officer Royle recounted that Randy Dunaway, a person Officer Royle has known for ten years, observed Mr. Carter and Ms. Johnson's interactions prior to Mr. Carter departing from Ms. Johnson's home. 9/8/14 RP 4. Mr. Dunaway described to Officer Royle a hand-to-hand gesture between Mr. Carter and Ms. Johnson. *Id.* Specifically, Mr. Dunaway reported that Ms. Johnson and Mr. Carter performed a handshake, with Ms. Johnson holding cash and "something" in her hand as Mr. Carter was loading Ms. Johnson's vehicle on his trailer. 9/8/14 RP 10. Mr. Dunaway never relayed that he saw drugs being exchanged. 9/8/14 RP 10. Nonetheless, Mr. Dunaway believed that the handshake was a drug exchange. CP 19. Later, Officer Royle characterized this handshake as a "high five." 9/8/14 RP 11. Based on Mr. Dunaway's observations, Officer Royle believed a drug exchange occurred between Mr. Carter and Ms. Johnson. 9/8/14 RP 13.

Additionally, Officer Royle claimed he previously received reports from other people living in the area concerning Ms. Johnson's home. 9/8/14 RP 11. Supposedly, Ms. Johnson had people coming in and out of her home at all hours and this behavior is consistent with drug trafficking. *Id.* However, nothing in the record indicates that reports of Ms. Johnson's

alleged drug trafficking from her home were ever confirmed prior to the *Terry* stop. 9/8/14 RP 2-22.

The court denied Mr. Carter's Motion to Suppress, concluding the evidence was properly discovered in the course of *Terry* stop and subsequent consensual search. CP 21. Following a bench trial, Mr. Carter was convicted of one count of possession of methamphetamine. CP 28-31.

At sentencing, Mr. Carter earned a mere \$8,500. Supp. CP \_\_, Sub No. 57. With the money he earns, he supports his 13-year-old daughter, 15-year-old daughter, and girlfriend. *Id.* Because of his low income, Mr. Carter and his family receive food stamps. *Id.*

However, at the sentencing hearing, the State asked the judge to impose legal financial obligations (LFOs) upon Mr. Carter. The fees requested are as follows: 1) \$500 victim assessment fee; 2) \$200 filing fee; 3) \$100 crime lab fee; 4) \$100 DNA fee; 5) \$2,000 VUCSA fine; 6) \$500 Drug Enforcement Fund of Lewis County fee; and 7) \$1,417.78 jury trial fee. 1/14/15 RP 3. According to the prosecutor, the State was merely asking for "standard terms." 1/14/15 RP 4. The judge imposed all of the LFOs the State requested. 1/14/15 RP 6. No inquiry was made regarding Mr. Carter's ability to pay prior to the judge imposing the fees and fines. 1/14/15 RP 2-6.

An exchange between the judge and Mr. Carter's attorney regarding Mr. Carter's finances was made *after* the judge imposed the LFOs, when the judge mentioned to Mr. Carter that a motion was filed to seek review at public expense. 1/14/15 RP 9. The judge asked whether Mr. Carter works or has an income. *Id.* Counsel for Mr. Carter indicated that Mr. Carter does work, but "he works essentially job to job. It's subsistence living." *Id.* However, because Mr. Carter did not previously qualify for a state appointed attorney, the judge declined to appoint counsel because "there needs to be more detail about his income and what his expenses are. And so in order to have that there needs to be an affidavit." 1/14/15 RP 10. The judge's behavior indicates that while he needed clear proof of indigent status prior to appointing counsel on behalf of Mr. Carter at the state's expense, he readily imposed LFOs without the same standard of proof of Mr. Carter's financial situation. 1/14/15 RP 6-11.

Mr. Carter now owes \$4,817.78 to state, more than half of his annual income. Supp. CP \_\_, Sub No. 57. Mr. Carter filed a timely Notice of Appeal on January 14, 2015. CP 55.

### **C. ARGUMENT**

- I. Because the officers involved did not possess any reasonable suspicion that Mr. Carter was involved or was about to be involved in criminal activity, the trial court erred in admitting the fruits of the illegal stop.**

Article 1, section 7, of the Washington Constitution provides that “no person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, § 7. The privacy protection provided by the Washington Constitution is greater than that of the Fourth Amendment of the Constitution. *State v. Martinez*, 135 Wn. App. 174, 179, 143 P.3d 855 (2006). However, there are a few jealously and carefully drawn exceptions to the warrant requirement, which include *Terry* investigative stops. *Id.* A *Terry* stop requires an officer attest to specific and objective facts that provide a reasonable suspicion the person stopped has committed or is about to commit a crime. *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997).

A stop, although less intrusive than an arrest, is nevertheless a seizure and therefore must be reasonable under the Fourth Amendment and Article 1 section 7 of the Washington Constitution. *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). Thus, whether a defendant’s rights were violated begins with the stop of the car. *Id.* If the initial stop was unlawful, the subsequent search and fruits of that search are inadmissible as fruits of the poisonous tree. *Id.*

While we evaluate the totality of the circumstances to determine whether a reasonable suspicion of criminal activity exists, we do so, in part, by examining each fact identified by the officer as contributing to

that suspicion. *State v. Fuentes*, Nos. 90039-6, 90270-4, 2015 WL 2145820, at \*5 (Wash., May 7, 2015). The State must show by clear and convincing evidence that the stop was justified. *State v. Doughty*, 170 Wn.2d 57, 61 239 P.3d 573 (2010).

Whether a warrantless *Terry* stop passes constitutional muster is a question of law and is reviewed de novo. *State v. Bray*, 143 Wn. App. 148, 156, 177 P.3d 154 (2008).

A. The *Terry* stop was improper because Mr. Dunaway's observations between Mr. Carter and Ms. Johnson were devoid of any objective reasonable suspicion of criminal activity and insufficiently corroborated with police observation.

Mr. Dunaway's tip regarding his observation of the handshake between Mr. Carter and Ms. Johnson contained no objective reasonable basis to suspect criminal activity, thus rendering the tip unreliable and unhelpful.

The State establishes a tip's reliability when 1) the informant is reliable *and* 2) the informant's tip contains enough objective facts to justify the pursuit and detention of the suspect or the noninnocuous details of the tip have been corroborated by the police thus suggesting that the information was obtained in a reliable fashion. *State v. Hopkins*, 128 Wn. App. 855, 862-863, 117 P.3d 377 (2005) (quoting *State v. Hart*, 66 Wn.

App. 1,7, 830 P.2d 696 (1992)). For example, in *State v. Sieler*, a father waiting to pick up his son at school observed what he believed to be a drug sale in another car. 95 Wn.2d 43, 44-45, 621 P.2d 1272 (1980). The father telephoned the school secretary regarding his observation, described the car, reported its license number, gave his telephone number, and left the school's premises. *Id.* The secretary called the police and recounted all of the information the student's father had given her. *Id.* at 45. When police stopped the described vehicle, they found narcotics. *Id.* at 46. However, because the tipster merely asserted that criminal activity was afoot without describing objective facts that led to this conclusion, the Court deemed the tip unreliable and the *Terry* stop unlawful. *Id.* at 49.

Like the informant in *Sieler*, Mr. Dunaway's observation of the hand-to-hand gesture between Mr. Carter and Ms. Johnson did not contain a description of behavior that could objectively be interpreted as criminal. While, like in *Sieler*, police knew the identity of the caller and the informant gave relevant information identifying the defendant, the informant's observations merely concluded that a handshake and a nod between a laborer and his client was evidence of a drug deal. 9/8/14 RP 5. However, the state generally should not be allowed to detain and question an individual based on an informant's tip which is merely a bare conclusion unsupported by a sufficient factual basis which is disclosed to the police

prior to detention. *Id.* at 48. The underlying factual justification for the informant's conclusion must be revealed so an assessment of the probable accuracy of the informant's conclusion can be made... This additional requirement helps prevent investigatory detentions made on the basis of a tip provided by an honest informant who misconstrued innocent conduct. *Id.*

Specifically, Mr. Dunaway told Officer Royle that Mr. Carter was at Ms. Johnson's home loading a truck onto a trailer when he witnessed Mr. Carter and Ms. Johnson shake hands. 9/8/14 RP 10. Based on this behavior, Mr. Dunaway (and later, Officer Royle), speculated a drug deal took place. *Id.* at 13-14. However, it is customary for people who perform a job for another to shake hands with those who employ them, and it also customary to exchange money with those that perform labor on one's behalf.<sup>1</sup> While Officer Royle pointed to the timing of the handshake as suspicious (after Mr. Carter completed his work), *Id.* at 13, his statement from the day of the incident indicates that the handshake occurred *before* the truck was loaded. *Id.* at 15. Either way, people should have the liberty to choose when to

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<sup>1</sup> See generally *The Definition of Money*, BOUNDLESS, <https://www.boundless.com/economics/textbooks/boundless-economics-textbook/the-monetary-system-27/introducing-money-114/the-definition-of-money-444-12541/> (last visited June 18, 2015); See also *People v. Moore*, 676 N.E.2d 700 (Ill. App. Ct. 1997) (holding a *Terry* stop unlawful because an apparent transaction of money amidst a handshake was insufficient to warrant stop).

exchange money and/or gratitude with those who work for them at their leisure without the State's interference.

Additionally, none of the police officers involved in the *Terry* stop corroborated the informant's report to support its veracity. Even if an informant is unreliable and/or the tip lacks sufficient factual basis, an officer's corroboration can justify an investigative stop if an officer observes some illegal, dangerous, or suspicious activity. *State v. Z.U.E.*, 178 Wn. App. 769, 786, 315 P.3d 1158 (2014). For example, in *State v. Hopkins*, a citizen called 911 and reported a minor may be carrying a gun. 128 Wn. App. at 858. The informant described the person as "a light skinned Black male, 17 [years of age], 5'9", thin, Afro, goatee...carrying a green backpack and a black backpack." *Id.* Minutes later, the informant reported that the person was in a payphone and that it appeared he put a gun in his pocket. *Id.* Officers went to the pay phone the informant identified. *Id.* at 859. There, they found the defendant, who matched the informant's description, hanging up the phone. *Id.* Neither officer observed a gun or any illegal, dangerous, or suspicious activity. *Id.* Nonetheless, the officers approached the defendant and ordered him to put his hands up in the air. *Id.* A *Terry* stop yielded methamphetamine and a firearm. *Id.* However, the stop was improper in part because the officers did not personally observe

any criminal or suspicious activity prior to conducting the *Terry* stop. *Id.* at 865.

Likewise, in the instant case, the police officers involved in Mr. Carter's *Terry* stop can point to no corroborating circumstances indicative of a drug exchange. After Mr. Dunaway's tip, the officers did not observe Mr. Carter engage in activities consistent with the behavior of someone who has just purchased/sold drugs or observe any other behavior that indicates criminal activity. 9/8/14 RP 2-22. Instead, the police officers conducted a *Terry* stop as soon as they saw Mr. Carter in his vehicle leaving Ms. Johnson's residence. *Id.* at 5. While the State may argue *Hopkins* is distinguishable because in *Hopkins* the informant was unknown to the police officers, again, the Court made clear

[t]he state establishes a tip's reliability when 1) the informant is reliable and 2) the informant's tip contains enough objective facts to justify the pursuit and detention of the suspect *or the noninnocuous details of the tip have been corroborated by the police thus suggesting that the information was obtained in a reliable fashion.*

*Hopkins*, 128 Wn. App. at 862-63 (emphasis added).

Here, because the informant's tip lacked enough objective facts to justify the stop, the officers involved in the stop should have identified adequate corroborating circumstances to make the stop lawful. In the instant case, the police officers made no such effort.

- B. The *Terry* stop was improper because Officer Royle erroneously considered the unsubstantiated reports of continuous traffic at Ms. Johnson's home before he conducted the stop.

Furthermore, Officer Royle improperly considered unsubstantiated reports of continuous traffic at Ms. Johnson's home prior to the *Terry* stop. For example, in *State v. Doughty*, a police officer observed the defendant park his car, approach a house, return to his car shortly after approaching the home, and drive away. 170 Wn.2d at 60. Neighbors had previously made reports of short stay traffic, prompting the police to identify the home as a drug house. *Id.* The police officer stopped the defendant for suspicion of drug activity. *Id.* During the *Terry* stop, the officer found methamphetamine. *Id.* However, the Court found that the defendant's behavior in *Doughty* did not warrant a *Terry* stop, mostly because nothing in the record indicated that the police's label of the home as a "drug house" came from anything besides neighbor complaints. *Id.* at 64.

Like the home in *Doughty*, nothing but neighbor complaints prompted Officer Royle to conclude that Ms. Johnson's home was a "drug house." 9/8/14 RP 11. However, unlike the defendant in *Doughty*, Mr. Carter was at Ms. Johnson's home for some time, loading her truck onto his trailer. *Id.* at 10. Therefore, the instant case provides circumstances that are even less suspicious than the circumstances in *Doughty*, as Mr.

Carter's presence at the home did not fall under the umbrella of "short stay traffic" that rendered Ms. Johnson's home a suspected drug house.

II. The lower's court's imposition of a \$1,417.78 jury fee should be reversed because the judge exceeded his authority under RCW 36.18.016(3)(b), which mandates that the maximum jury fee that can be assessed upon a defendant is \$250.

Established case law holds that illegal or erroneous sentences may be challenged for the first time on appeal. *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). In fact, when a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence when the error is discovered. *In re Goodwin*, 146 Wn.2d 861, 869, 850 P.3d 618 (2002). A sentence in excess of statutory authority is subject to challenge, and the defendant is entitled to resentencing. *Id.* at 873.

The judgment required Mr. Carter to begin payment on his legal financial obligation payments 60 days from the entry of the judgment and sentence, which occurred on January 14, 2015. CP 41. A challenge to legal financial obligations is ripe when the state attempts to collect legal financial obligations from the defendant. *State v. Lundy*, 176 Wn. App. 96, 108, P.3d 253 (2011). Because more than 60 days have passed from Mr. Carter's entry of judgment, this issue is properly before the court.

The plain language of RCW 36.18.016 (3)(b) dictates that the jury fee imposed is unlawful and therefore warrants reversal. For example, in *State v. Hardtke*, the defendant was imposed \$3,972 in fees for his use of a transdermal alcohol detection (TAD) bracelet prior to trial. No. 90812-5, 2015 LEXIS 690, at \*2 (Wash., June 11, 2015). While the State argued that the fee was proper because the bracelet fell under the category of “expenses specially incurred by the state in prosecuting the defendant,” the Court concluded that TAD monitoring clearly fell under the plain language meaning of “pretrial supervision.” *Id.* at 9. Per RCW 10.01.160, pretrial supervision fees cannot exceed \$150. *Id.* at 11. Thus, the fee imposed was grossly excessive, and the court reversed the trial court’s ruling. *Id.*

Similarly, the plain language of RCW 36.18.016 (3)(b) demonstrates the jury fee imposed in the instant case is in clear excess of the boundaries set by statute. RCW 10.46.190 allows a superior court to impose jury fees on a convicted defendant using the same rule covering civil jury fees. *State v. Hathaway*, 161 Wn. App. 634, 652, 251 P.3d 253 (2011). However, RCW 36.18.016 (3)(b) provides “[u]pon conviction in criminal cases, a jury demand charge of one hundred twenty five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.” Here, the jury fee exceeds the

statutory limit by \$1,167.78, more than four times the lawful amount.

Justice requires this excessive fine be reversed in accordance with law.<sup>2</sup>

**III. The court should reverse the legal financial obligations imposed on Mr. Carter because the court did not perform an individualized inquiry regarding Mr. Carter's ability to pay.**

RCW 10.01.160(3) mandates a trial court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. Additionally, in determining the amount and method of payment of costs, the court must also take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose. RCW 10.01.160(3). While a defendant must properly preserve a claim of error, an appellate court may use its discretion to reach unpreserved claims of error consistent with RAP 2.5. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

- A. The lower court's assessment of LFOs should be reversed because the Court failed to meaningfully evaluate Mr. Carter's current or future ability to pay, yet used boilerplate language stating that the court considered Mr. Carter's ability to pay.

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<sup>2</sup> Alternatively, the attorney's failure to object to the unlawful fee deprived Mr. Carter of his Sixth Amendment right to effective assistance of counsel. The *Strickland v. Washington* standard dictates that a criminal defendant's right to counsel is violated when 1) counsel's performance fell below an objective standard of reasonableness; and 2) that counsel's performance gives rise to a reasonable probability that, if counsel had performed adequately, the result would have been different. 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The lower court failed to comply with the statutory requirement of RCW 10.01.160(3) when imposing legal financial obligations upon Mr. Carter, thus warranting reversal of Mr. Carter's LFOs. For example, in *State v. Blazina* (containing two consolidated cases on appeal), the defendant, Blazina, was convicted of second-degree assault. *Id.* at 681. The state asked the court to assess \$3,287.87 in legal financial obligations. *Id.* The defendant did not object, and the trial court accepted the state's recommendation. *Id.* However, prior to accepting the state's recommendations, the court did not undertake the required assessment under RCW 10.01.160(3) regarding the defendant's current or future ability to pay. *Id.* Nonetheless, boilerplate language was placed in the defendant's judgment and sentence indicating that such an assessment was made. *Id.* at 681-682. The Supreme Court exercised its RAP 2.5 discretion and found that reversal was proper because the trial judge failed to fulfill his statutory obligation to make an individualized inquiry regarding ability to pay. *Id.* at 685.

Similarly, in the instant case, no meaningful assessment under RCW 10.01.160(3) of Mr. Carter's current and future ability to pay back the \$4,817.78 in legal financial obligations was ever conducted. 1/14/15 RP 2-6. Akin to *Blazina*, the judge in the instant case simply accepted the state's recommendations. *Id.* at 6. Additionally, boilerplate language almost

identical to the language that appeared in Blazina's Judgment and Sentence claiming the court had considered the defendant's ability to pay appeared in Mr. Carter's Felony Judgment and Sentence. CP 37, *Blazina*, 344 P.3d at 682.<sup>3</sup> However, *Blazina* made clear the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. *Id.* at 685.

B. The Court should exercise its RAP 2.5 discretion because the legal financial obligations imposed upon Mr. Carter, which currently exceed half of his yearly income, are unconscionable.

Since Mr. Carter's legal financial obligations currently exceed half of his yearly income, and because the 12% interest rate attached to his LFOs will result in his debt far surpassing what he currently owes, the LFOs imposed are unconscionable. Again, Mr. Carter earned approximately \$8,500 in 2014 and owes \$4,817.78 in LFOs. Supp. CP \_\_, Sub No. 57. Mr. Carter's income is well below the federal poverty line for

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<sup>3</sup> Compare:

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defend[ant]'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. [(*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015)] with

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's 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. (RCW 10.01.160). CP 54.

a single person.<sup>4</sup> However, with this income, he supports his two daughters and his girlfriend. *Id.* Because the money he earns is insufficient to support his family, he receives food stamps. *Id.*

If Mr. Carter makes payments of only \$25 per month in accordance with his Judgment and Sentence, he will not even begin to pay the principal, as his interest for the year totals \$578.13. In a year, the 12% interest rate will cause Mr. Carter's debt to increase to \$5,395.91. After a year, the interest will compound, and Mr. Carter will owe significantly more than the originally imposed debt. It is simply unethical to inflict a great financial burden upon Mr. Carter and his family, who obviously struggle to make ends meet.

Furthermore, the policy considerations behind the Court's reasoning in *Blazina* are directly applicable to Mr. Carter, thus demonstrating the importance of reaching the merits. Chief among the policy considerations identified in *Blazina* is the manner in which LFOs stifle ex-offender reentry into society. 344 P.3d at 682-83. Because indigent offenders are more likely to be unable to pay back their LFOs, they will remain in the court's jurisdiction for longer than their wealthier peers. *Id.* at 684. This is because even if the offender has completed their

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<sup>4</sup> See 2015 Poverty Guidelines, U.S. DEP'T OF HEALTH & HUMAN SERV., <http://aspe.hhs.gov/poverty/15poverty.cfm> (last visited June 10, 2015). (stating that the federal poverty level for an individual is \$11,770.00).

sentence, the ex-offender cannot receive a certificate of discharge and apply to expunge their record.<sup>5</sup> As a result, legal or background checks will show an active criminal record while the defendant repays the debt, and the active record can have negative consequences in employment, housing, and finances, increasing the chance of recidivism. *Id.* Because Mr. Carter's legal financial obligations are extraordinarily high and his income is extraordinarily low, he will likely be unable to pay them off for a long time. Thus, it is likely that he will have to face all of these barriers for decades.

#### **IV. CONCLUSION**

For the reasons stated in this brief, Mr. Carter asks this Court to reverse the conviction, vacate the sentence, and strike the unsupported finding that Mr. Carter has the present and future ability to pay legal financial obligations.

DATED this 30th day of June, 2015.

Respectfully submitted,

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<sup>5</sup> See KATHERINE BECKETT ET AL., THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE 54 (2008), *available at* <https://www.aclu-wa.org/sites/default/files/attachments/LFO%20Report%20%28WA%20Minority%20and%20Justice%20Comm.%20Report%29.pdf>. <https://www.aclu-wa.org/sites/default/files/attachments/LFO%20Report%20%28WA%20Minority%20and%20Justice%20Comm.%20Report%29.pdf>.

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s/ GREGORY LINK (25228)  
Washington Appellate Project  
Attorney for Appellant

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s/ SARA TABOADA  
APR 9 Licensed Legal Intern No. 9499630  
Washington Appellate Project

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 47144-2-II
v.	)	
	)	
DALE CARTER,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 1<sup>ST</sup> DAY OF JULY, 2015, I CAUSED THE ORIGINAL **OPENING 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:

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[X] DALE CARTER 646 BURNT RIDGE RD ONALASKA, WA 98570-9448	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 1<sup>ST</sup> DAY OF JULY, 2015.

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# WASHINGTON APPELLATE PROJECT

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## Transmittal Letter

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