

NO. 48558-3

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

VAN DAMME BUTH, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Kitty Ann Van Doorninck, Judge

No. 14-1-04071-9 & 15-1-01469-4

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly accept defendant's guilty plea when defendant understood the nature of the charges as they related to Counts I and II? (Appellant's Assignment of Error 1).
2. Should the Court award appellate costs if a cost bill is filed? (Appellant's Assignment of Error 2).

B. STATEMENT OF THE CASE.

1. Procedure

Pierce County Superior Court Cause Numbers 14-1-04071-9 and 15-1-01469-4 have been consolidated for appeal under this cause number.¹ On October 8, 2015, the Pierce County Prosecutor's Office filed an Amended Information charging VAN DAMME ALEX BUTH, hereinafter, "defendant," with Count I (Unlawful Possession of a Controlled Substance with Intent to Deliver), and Count II (Unlawful Possession of a Firearm in the First Degree) under Pierce County Superior Court Cause Number 14-1-04071-9. 14CP 5-6. The Prosecutor's Office filed a second amended information that same day charging defendant with Count I (Unlawful Possession of a Controlled Substance with Intent

¹ The clerk's papers for Pierce County Superior Court Cause No. 14-1-04071-9 are referenced as "14CP" and the clerk's papers for Pierce County Superior Court Cause No. 15-1-01469-4 are referenced as "15CP." The transcripts are referred to as "RP" and "2RP."

to Deliver) under Pierce County Superior Court cause number 15-1-01469-4. 15CP 71. Defendant pleaded guilty to Counts I and II under cause number 14-1-04071-9, and Count I under cause number 15-1-01469-4. RP 4. Defendant was sentenced to 100 months on Count I, and 89 months on Count II. 14CP 35-36. He was also sentenced to 60 months on Count I. 15CP 100-101. Defendant moved to withdraw his guilty pleas under both cause numbers on January 22, 2016. 2RP 3-4. Defendant filed a timely notice of appeal on February 1, 2016. 14CP 42-56; 15CP 107-121.

2. Facts

At defendant's guilty plea hearing, defendant was informed of the sentence the State would recommend. RP 3-4. Defense counsel also stated on the record that defendant was aware he was not required to follow any recommendation made by the court. *Id.* Defense counsel stated that defendant signed both plea forms indicating he was adopting the statements therein as his own in her presence. RP 5. She also stated she believed defendant was knowingly, intelligently, and voluntarily proceeding, and invited the Court to inquire further. *Id.*

Defendant then testified he had gone over the forms with defense counsel and had also read them to himself. RP 5-6. The Court asked defendant if he had any questions about any of the forms or paperwork

that defense counsel was unable to answer, and defendant responded he did not. RP 6. The Court discussed page two, paragraph five of the forms with defendant, which listed the rights defendant would be giving up if he pleaded guilty. RP 8. Defendant was advised of the standard penalty range and the associated fines he would face. RP 7. The Court specifically explained that if defendant pleaded guilty, he would be giving up the right to go to trial and have a jury determine whether or not he was guilty. RP 8.

To ensure defendant understood the specific charges he was facing, the Court read, verbatim, the language in the plea forms, which explained the charges. RP 8-9. The Court then asked defendant if anyone had made threats or promises to him to plead guilty, and defendant responded that no one had done so. RP 9-10. Defendant pleaded guilty to all counts against him, and the Court accepted his pleas as knowing, intelligent, and voluntary. RP 10.

On December 21st, 2015, defendant filed a motion to withdraw his guilty plea, claiming that at the time he entered his plea he was suffering from emotional distress due to the death of his grandfather and that he was threatened to take the plea. 14CP 22-24; 15CP 87-89; 2RP 4. The Court requested further explanation and defendant stated that the prosecutor had “told [him] if [he] didn’t take the plea, [he] would go to trial and lose and

would get 20 years.” 2RP 4-5. The Court responded that the prosecutor’s statement was not a threat and was merely a factual statement about if defendant were to lose, and asked if defendant had anything else he wanted to tell him. 2RP 5. Defendant stated he did not have anything else to say. *Id.* The Court ruled there was no legal basis to withdraw defendant’s guilty plea and that there needed to be legitimate, specific problems in order to withdraw a plea. *Id.*

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY ACCEPTED DEFENDANT’S GUILTY PLEA AS THE RECORD SHOWS THE PLEA WAS ENTERED KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY, AND THAT DEFENDANT UNDERSTOOD THE NATURE OF THE CHARGES AS THEY RELATED TO COUNTS I (14-1-04071-9) AND I (15-1-01469-4).

The enforcement of valid plea agreements is of profound public importance. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008). A guilty plea is valid when the totality of the circumstances show it was knowing, intelligent and voluntary. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996); *Wood v. Morris*, 87 Wn.2d 501, 503, 554 P.2d 1032 (1976).

Due process requires that a defendant’s guilty plea be knowing, voluntary, and intelligent. *U.S. Const.* amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re*

Personal Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); *Wood v. Morris*, 87 Wn.2d 501, 505, 554 P.2d 1032 (1976).

Whether a plea is knowing, voluntary, and intelligent is determined from a totality of the circumstances. *Wood*, 87 Wn.2d at 506; *State v. Branch*, 129 Wn.2d 635, 919 P.2d 1228 (1996). If a defendant has received the information and pleads guilty pursuant to a plea agreement, there is a presumption that the plea is knowing, voluntary, and intelligent. *In re Personal Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191, review denied, 123 Wn.2d 1009, 869 P.2d 1085 (1994). “A defendant’s signature on the plea form is strong evidence of a plea’s voluntariness.” *State v. Branch*, 129 Wn.2d at 642; *State v. Stephan*, 35 Wn. App. 889, 893, 671 P.2d 780 (1983) (quoting *State v. Perez*, 33 Wn. App. 258, 261-262, 654 P.2d 708 (1982) (citing *In re Personal Restraint of Keene*, 95 Wn.2d 203, 206-207, 622 P.2d 13 (1981))). If the trial court orally inquires into a matter that is on that plea form, the presumption that the defendant understands this matter becomes “well nigh irrefutable.” *Branch*, 129 Wn.2d at 642 n.2; *State v. Stephan*, 35 Wn. App. at 893. After a defendant has orally confirmed statements in this written plea form, that defendant “will not now be heard to deny these facts.” *In re Keene*, 95 Wn.2d 203, 207, 622 P.2d 13 (1981).

For a court to conclude that a guilty plea is made knowingly, voluntarily, and intelligently, it must have facts sufficient to satisfy three tests. First, the defendant must understand “the direct consequences of

[the] guilty plea,” and the record of the plea hearing “must show on its face that the plea was entered voluntarily and intelligently.” *Wood v. Morris*, 87 Wn.2d 501; *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (citing *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). The defendant must “understand the sentencing consequences” of his plea. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988); *State v. Turley*, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003). He must also understand that he is waiving certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. *Boykin v. Alabama*, 395 U.S. at 243.

Second, a defendant must “be informed of the requisite elements of the crime charged, [and]... understand that his conduct satisfies those elements.” *In re Personal Restraint of Hews*, 99 Wn.2d 80, 87, 88, 660 P.2d 263 (1983); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969); *See also United States v. Johnson*, 612 F.2d 305, 309 (7th Cir. 1980). Third, the court must be “satisfied that there is a factual basis for the plea.” CrR 4.2(d).

For a plea to be voluntary the defendant must be advised of the nature of the charge. *Henderson v. Morgan*, 426 U.S. 637, 645 n.18, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). But the court in that same case indicates that advising the defendant of the offense does not mean going through every element of the offense. *Keene, supra*, at 207 (citing *Henderson*, at 647). The minimum would be that the defendant needs to

be made aware of the acts and state of mind required to constitute the crime. *State v. Holsworth*, 93 Wn.2d 148, 153 n.3, 607 P.2d 845 (1980).

- a. Defendant understood the nature of the charges and was informed of the requisite elements as they relate to Count I (Unlawful Possession of a Controlled Substance with Intent to Deliver While Armed with a Deadly Weapon) under Cause No. 14-1-04071-9.

Defendant himself makes several statements indicating his plea was knowing, intelligent, and voluntary. On the second to last page, defendant's statement reads:

On October 9th, 2014, in Pierce County, WA, I unlawfully and feloniously possessed oxycodone, a controlled substance, **while armed with a deadly weapon**, with the intent to unlawfully deliver the oxycodone to another individual. On October 9th, 2014, in Pierce County, WA, I unlawfully, feloniously, and knowingly was in possession of a firearm after having been previously convicted of a serious offense.

14CP 19.

Just below there is a sentence that reads:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Felony Firearm Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

14CP 19.

Defendant's signature appears on the page just below this sentence.

14CP 20. Directly below defendant's signature there is a sentence that

reads, "I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement." *Id.* The defense attorney's signature appears directly below that statement. *Id.* The court also signed a statement on the last page which reads, "I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. **Defendant understands the charges and the consequences of the plea.** There is a factual basis for the plea. The defendant is guilty as charged." (*emphasis added*) *Id.* The written plea agreement supports a knowing, intelligent and voluntary entry into a plea of guilty. Defendant reviewed and signed the same documents for the 15-1-01469-4 case as well. 15CP 84. Further, the language in the amended information specifically included that:

In the commission of the crime, defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: 9mm pistol, that being a deadly weapon as defined in RCW 9.94A.825, and invoking the provisions of RCW 9.94A.530 and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

14CP 5. The language is very clear that because defendant was armed at the time of the crime, he would be facing additional time.

In *Weaver*, the defendant's guilty plea on a conspiracy charge was withdrawn because the Court determined the defendant did not understand the nature of the charge based on questions he asked during the plea hearing. *State v. Weaver*, _ P.2d _, 87 Wn. App. 1099 WL 632976

(1997). At the plea hearing, the defendant stated that he had no trouble understanding anything in his statements of plea of guilty. *Id.* But when the prosecutor asked whether he understood “basically what [the conspiracy] offense was, the defendant said, “No, I don’t, but I think I understand a little bit about it, yes.” *Id.* The appellate court found that although the amended information clearly indicated the acts and state of mind necessary for commission of the conspiracy charge and therefore raised a presumption of voluntariness, that presumption was rebutted by the defendant’s statements during the plea hearing. *Id.*

Here, unlike in *Weaver*, defendant explicitly stated to the Court that he did not have any questions regarding the nature of the charges. RP 6. The Court specifically asked defendant about his understanding of the nature of the charges he to which he was pleading guilty. Defendant explained he had both read the plea forms to himself and reviewed them with defense counsel. RP 6. The Court asked defendant if he had any questions about the forms or paperwork that defense counsel could not answer, and he responded he did not. *Id.* While the *Weaver* defendant’s acknowledgement of the understanding of the nature of the charges was precarious at best, defendant’s statement here was unyielding.

In *State v. S.M.*, the court found that the defendant did not understand the nature of the charges to which he was pleading guilty when a 12-year-old boy had sexual intercourse with his then nine-year-old brother, and the court consequentially allowed the defendant to withdraw

his plea. *State v. S.M.*, 100 Wn. App. 401, 996 P.2d 1111 (2000). A legal assistant met and reviewed the charges with the defendant, and his mother and appointed counsel met with the defendant only just before entering the courtroom for the plea hearing. *Id.* at 407. During the colloquy, the judge asked the defendant if he knew what the word “sexual intercourse” meant, as well as if he knew that the “John Doe” referenced in the information was his brother, and the defendant responded that he did. *Id.* at 404. The defendant then pleaded guilty to all counts. *Id.* The court reasoned that a guilty plea is not truly voluntary unless the defendant possesses an understanding of the law relation to the facts. *Id.* at 414. It further reasoned that the judge must determine that the conduct which the defendant admits constitutes the offense charged in the indictment or information. *Id.* Requiring such an examination protects a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge. *Id.*

State v. S.M. is distinguishable from the present case in several respects. First, at the plea hearing in *S.M.*, the trial court asked the defendant whether he knew the meaning of “sexual intercourse” but did not ask what he thought it meant or inquire into his understanding of the nature of the charges. *Id.* at 415. In the present case, the Court specifically asked if defendant understood the charges he was facing and inquired if defendant had any questions about the plea forms. 14RP 6-7.

Second, the defendant in *S.M.* reviewed the charges with a legal assistant, meaning he did not receive effective assistance of counsel pursuant to the Sixth Amendment.² Here, nothing in the record indicates that trial defense counsel did not effectively represent defendant. Instead, it appears that trial defense counsel met with defendant to review and explain the plea forms prior to the plea hearing. 14RP 4-6. Finally, in *S.M.*, the plea statement did not provide the necessary factual basis for the charge of rape of a child. *State v. S.M.* at 415. The amended information stated that the defendant had “sexual conduct” with his brother; the Court determined that the statement lacked any indication that the defendant understood that the crime of rape of a child required penetration. *Id.* In this case, the amended information clearly states the nature of the charge and includes the statutory language. 14CP 5-6; 15CP 71.

- b. Defendant understood the nature of the charges and was informed of the requisite elements as they relate to Count I (Unlawful Possession of a Controlled Substance with Intent to Deliver) under Cause No. 15-1-01469-4.

Defendant himself states his plea was knowing, intelligent, and voluntary. On the second to the last page of the plea form, defendant’s statement reads:

² “Counsel” as referred to in the Sixth Amendment refers to a person authorized to practice law; it does not include a lay person.” *State v. S.M.*, 100 Wn. App. 401, 410, 996 P.2d 1111 (2000) (quoting *United States v. Grismore*, 546 F.2d 844, 847 (10th Cir. 1976)). The term “practice of law” includes legal advice and counsel and the preparation of legal instruments that secure legal rights. *Id.* (quoting *State v. Hunt*, Wn. App. 795, 802, 880 P.2d 96 (1994)).

On January 20, 2015, in Pierce County, Washington, I unlawfully and feloniously possessed oxycodone, a controlled substance, **with the intent to unlawfully deliver the oxycodone to another individual.**

15CP 84. Just below there is a statement that reads:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the “Offender Registration” and/or “Felony Firearm Offender Registration” Attachment, if applicable. I understand them all. I have been given a copy of this “Statement of Defendant on Plea of Guilty.”

14CP 84. Defendant’s signature appears on the page just below this sentence. 14CP 85. Directly below defendant’s signature there is a sentence that reads, “I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.” *Id.* The trial defense attorney’s signature appears directly below that statement. *Id.* The Court also signed a statement on the last page which reads, “I find the defendant’s plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.” *Id.*

Defendant was also informed of the nature of the charge in the amended information. The language in the amended information specifically reads:

[The defendant], in the State of Washington, on or about the 14th day of April, 2015, did unlawfully, feloniously, and knowingly possess, **with intent to deliver to another,** a

controlled substance, to-wit: Oxycodone, a narcotic, classified under Schedule II of the Uniform Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(a) – I, and against the peace and dignity of the State of Washington.

15CP 71. The language is very clear that the charge was based partially upon the fact that defendant planned to deliver the drugs to another person.

In *McCarthy*, the defendant pleaded guilty to tax evasion, which requires a “knowing and “willful” attempt to defraud the Government of its tax money. *McCarthy v. U.S.*, 394 U.S. 459, 470, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969). However, throughout his sentencing hearing, the defendant and his counsel insisted that his acts were merely neglectful,” “inadvertent,” and committed without “any disposition to deprive the United States of its due.” *Id.* Those remarks cast considerable doubt on the Government’s assertion that the defendant pleaded guilty with full awareness of the nature of the charge.” *Id.* The Court reasoned that it was certainly conceivable that the defendant may have intended to acknowledge only that he in fact owed the Government the money it claimed without necessarily admitting that he committed the crime charged; for that crime requires the very type of specific intent that defendant repeatedly disavowed. *Id.* (quoting *Sasone v. United States*, 380 U.S. 343, 85 S. Ct. 1004, 13 L. Ed. 2d 882 (1965).

McCarthy is distinguishable from the present case in that, here, defendant did not hesitate in the slightest when questioned whether he understood the nature of the charges against him. Additionally, while there is a reasonable possibility that the *McCarthy* defendant could have failed to pay his taxes out of error or neglect, it is farfetched to believe defendant did not understand the “intent” element of Count I that the State had to prove evidence showing he intended to deliver the drugs to another person. Further, it is unlikely defendant did not understand the nature of the charge when this is not his first time being charged and convicted of crimes involving delivery and possession of drugs. 14 CP 32; 15CP 97.³

Similarly, in *State v. Smith*, 74 Wn. App. 844, 848, 875 P.2d 1249 (1994), the defendant claimed his plea was involuntary because he did not understand the nature of his charge. However, the court determined the defendant was made aware by the amended information as well as his own statement on plea of guilty. *Id.* at 849. In *Smith*, the defendant asserted that his plea of guilty to second degree murder was involuntary because he did not have an understanding of the nature of the second degree murder charge. *Id.* at 848. The court held that the written statements of the defendant and the charging document may be considered when determining if the defendant was informed of the nature of the charge. *Id.*,

³ Defendant was previously charged with and convicted of Unlawful Possession of a Controlled Substance and Attempted Unlawful Delivery of a Controlled Substance on March 25, 2014. 14CP 32; 15CP 97.

(quoting *State v. Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993); *In re Personal Restrain of Keene*, 95 Wn.2d 203, 206-209, 622 P.2d 360 (1980).

Like in *Smith*, the defendant was made aware of the nature of the charge by the amended information and his personal statements. RP 6-9; 15CP 71; 15CP 84-85. As discussed above, defendant provided a personal statement on the plea form and signed that he understood all of the charges against him. 15CP 84-85. Applying the reasoning in *Smith*, defendant surely understood the nature of the charges, and, therefore, no manifest injustice has occurred.

2. THE STATE HAS NOT YET REQUESTED AN AWARD OF APPELLATE COSTS AND THIS COURT HAS THE DISCRETION TO AWARD THEM IF A COST BILL IS FILED.

Under RCW 10.73.160, an appellate court may provide for the recoupment of appellate costs from a convicted defendant. *State v. Blank*, 131 Wn.2d 230, 234, 930 P.2d 1213 (1997); *State v. Mahone*, 98 Wn. App. 342, 989 P. 2d 583 (1999). The award of appellate costs to a prevailing party is within the discretion of the appellate court. RAP 14.2; *State v. Nolan*, 141 Wn.2d 620, 8 P.3d 300 (2000).

In *Nolan*, as in most of other cases discussing the award of appellate costs, the defendant began review of the issue by filing an objection to the State's cost bill. *Id.*, at 622. As suggested by the Supreme

Court in *Blank*, 131 Wn.2d at 244, this is an appropriate manner in which to raise the issue. The procedure invented by Division I in *State v. Sinclair*, 192 Wn. App. 380, 389-390, 367 P. 3d 612 (2016), prematurely raises an issue that is not before the Court. *If* the defendant does not prevail; and *if* the State files a cost bill; the defendant can argue regarding the Court's exercise of discretion in an objection to the cost bill.

If appellate costs are imposed, the Legislature has provided a remedy in the same statute that authorizes the imposition of costs. RCW 10.73.160(4) provides:

A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

The defendant argues that the Court should not impose costs on indigent defendants. Brief of Appellant, 17-18. However, through the language and provisions of RCW 10.73.160, the Legislature has demonstrated its intent that indigent defendants contribute to the cost of their appeal. This is not a new policy.

The legal principle that convicted offenders contribute toward the costs of the case, and even appointed counsel, goes back many years. In 1976, the Legislature enacted RCW 10.01.160, which permitted the trial courts to order the payment of various costs, including that of prosecuting the defendant and his incarceration. *Id.*, RCW 10.01.160(2). In *State v. Barklind*, 82 Wn.2d 814, 557 P.2d 314 (1977), the Supreme Court held that requiring a defendant to contribute toward paying for appointed counsel under this statute did not violate, or even “chill” the right to counsel. *Id.*, at 818.

In 1995, the Legislature enacted RCW 10.73.160, which specifically authorized the appellate courts to order the (unsuccessful) defendant to pay appellate costs. In *Blank, supra*, at 239, the Supreme Court held this statute constitutional, affirming this Court’s holding in *State v. Blank*, 80 Wn. App. 638, 641-642, 910 P.2d 545 (1996).

By enacting RCW 10.01.160 and RCW 10.73.160, the Legislature has expressed its intent that criminal defendants, including indigent ones, should contribute to the costs of their cases. RCW 10.01.160 was enacted in 1976 and 10.73.160 in 1995. They have been amended somewhat through the years, but despite concerns about adding to the financial burden of persons convicted of crimes, the Legislature has yet to show any sympathy.

In *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Supreme Court interpreted the meaning of RCW 10.01.160(3). As *Blazina* instructed, trial courts should carefully consider a defendant's financial circumstances, as required by RCW 10.01.160(3), before imposing discretionary LFOs. But, *Blazina* does not apply to appellate costs. As *Sinclair* points out at 389, the Legislature did not include the "individual financial circumstances" provision in RCW 10.73.160. Instead, it provided that a defendant could petition for the remission of costs on the grounds of "manifest hardship." See RCW 10.73.160(4).

The Legislature's intent that indigent defendants contribute to the cost of representation is also demonstrated in RCW 10.73.160(4), above, which permits a defendant to petition for remission of part or all of the appellate costs ordered. In *Blank, supra*, at 242, the Supreme Court found that this relief provision prevented RCW 10.73.160 from being unconstitutional.

Not only does the Legislature intend indigent defendants to contribute to the costs of their litigation, the Legislature has decided that the defendants should pay interest on the debt. RCW 10.82.090(1) provides that such legal debts shall bear interest at the rate applicable to civil judgments, which is found in RCW 4.56.110. This can be as much as 12%. *Id.* RCW 10.82.090(2) establishes a means for defendants to obtain

some relief from the interest, much as the cost remission procedure in RCW 10.73.160(4). But, the limits included in statutory scheme show that the Legislature intends that even judgments on defendants serving prison sentences accrue interest:

(2) The court may, on motion by the offender, following the offender's *release from total confinement*, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction...

RCW 10.82.090 (emphasis added). The rest of the “relief” is equally limited and demonstrative of the Legislature’s intent and presumption that the debts be paid:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued during the term of total confinement for the conviction giving rise to the financial obligations, *provided the offender shows that the interest creates a hardship for the offender or his or her immediate family*;

(b) The court may reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full;

(c) The court may otherwise reduce or waive the interest on the portions of the legal financial obligations that are not restitution *if the offender shows that he or she has personally made a good faith effort to pay and that the interest accrual is causing a significant hardship. For purposes of this section, “good faith effort” means that the offender has either (i) paid the principal amount in full; or (ii) made at least fifteen monthly payments within an eighteen-month period, excluding any payments mandatorily deducted by the department of corrections*;

(d) For purposes of (a) through (c) of this subsection, the court may reduce or waive interest on legal financial obligations *only as an incentive for the offender to meet his*

or her legal financial obligations. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest.

RCW 10.82.090(2) (emphasis added). This is not some legislative relic of the past. It was enacted in 1989, after RCW 9.94A, the Sentencing Reform Act, and most recently amended in 2015.

The unfortunate fact is that most criminal defendants are represented at public expense at trial and on appeal. Almost all of the defendants taxed for costs under RCW 10.73.160 are indigent. Subsection 3 specifically includes “recoupment of fees for court-appointed counsel.” Obviously, all these defendants have been found indigent by the court. If the Court decided on a policy to excuse every indigent defendant from payment of costs, such a policy would, in effect, nullify RCW 10.73.160(3).

Parties and the courts can criticize this legislation, its purpose and result, and that the debts accumulated by indigent defendants under RCW 10.73.160(3) (and 10.01.160) and the interest that accrues on it under RCW 10.82.090 and RCW 4.56.110 are onerous. The parties may even be in agreement in their criticism. In *Blazina* the Supreme Court was likewise critical of these statutes and their result. *See* 182 Wn.2d at 835-836. Yet, the Court did *not* find the statutes illegal or unconstitutional.

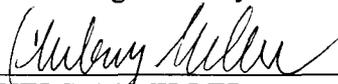
The question for this Court is not whether the Legislative intent or result of these laws is wise or even fair. The question is: are these laws legal or constitutional? Those questions were settled in the affirmative by the Supreme Court in *Blank*, and what the Court did *not* do in *Blazina*. It is for the Legislature to change the statute if it so desires.

D. CONCLUSION

The trial court properly accepted defendant's guilty plea as the record shows the plea was entered knowingly, voluntarily, and intelligently, and that defendant understood the nature of the charges are they related to both counts. Additionally, this Court should exercise its discretion to award appellate costs if a cost bill is filed.

DATED: August 23, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



CHELSEY MILLER
Deputy Prosecuting Attorney
WSB # 42892

Lily Wilson
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or
ABC-LMI delivery to the attorney of record for the appellant and appellant
c/o his attorney true and correct copies of the document to which this certificate
is attached. This statement is certified to be true and correct under penalty of
perjury of the laws of the State of Washington. Signed at Tacoma, Washington,
on the date below.

8-23-10 Sherr
Date Signature

PIERCE COUNTY PROSECUTOR

August 23, 2016 - 3:00 PM

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