

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
2017 JAN 12 AM 11:11

DIVISION TWO

STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

No. 49071-4-II BY JW
DEPUTY

v.

APPELLANTS PRO SE SUPPLEMENTAL BRIEF

JOSHUA D.C. RHOADES,
Appellant.

A. ASSIGNMENT OF ERROR

1. The court erred and abused its discretion by imposing Legal Financial Obligations upon an impoverished defendant.
2. The court should have applied the "Manifest Hardship" standard of RCW 10.01.160(3)(4).

B. STATEMENT OF THE CASE

Mr. Rhoades returned to Lewis County Superior Court for Cause No. 13-1-00076-2 on a remand for re-sentencing within his standard range (COA unpublished opinion No. 45083-6-II) on May 3, 2016.

Rhoades was then re-sentenced to 77 months and Legal Financial Obligations were assessed as follows;

1. \$500 crime victim penalty assessment;
2. \$100 DNA fee;
3. \$200 criminal filing fee; and
4. \$2,400 attorney fees-(original trial attorney).

No other motions on this cause number were addressed.

Rhoades returned to the Department of Corrections where he's timely filed an appeal, as well as submits this supplemental pro se brief.

C. ARGUMENT

The court erred when imposing Legal Financial Obligations (LFO's) upon an impoverished defendant who's been deemed indigent by the same court for at least 17 years. The court should have applied the "Manifest Hardship" standard of RCW 10.01.160 (3)(4). A courts failure to do so constitutes reversible error.

There are seven requirements that were delineated in *State v. Curry*, 118 Wn.2d 911,915-16, 829 P.2d 166-67 (1992), which must be met in order for there to be a constitutionally permissible cost and fees structured;

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. Repayment may "ONLY" be ordered if the defendant is or will be able to pay;
4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may "not" be imposed if it appears there is no likelihood the defendants indigency will end;
6. The convicted person must be permitted to petition the court for remission of the payment of cost or any unpaid portion;
7. The convicted person cannot be held in contempt for failure to repay if the defendant was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

The court should also take into account other circumstances demonstrating defendants inability to pay. GR 34 "Basic livings cost means the average monthly amount defendants will spend on reasonable payments toward living costs, such as shelter, food, utilities, healthcare, transportation, clothing, loan payments, support payments, and court-imposed obligations. RCW 10.101.010 (2)(D).

A defendant must have the ability to pay or the fine is excessive. The Eighth Amendments excessive fine clause limits the governments power to extract payments. The excessive fines clause of the federal constitution and Eighth Amendment provides that excessive fines "SHALL" not be imposed. U.S. v. Bajakajian, 524 U.S. 321, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998).

Appellate courts review a decision on whether to impose legal financial obligations for abuse of discretion. State v. Clark, 191 Wn.App. 369,372, 362 P.3d 309,310-11 (2015), citing Baldwin 63 Wn.App. 303,312 818 P.2d 1116 (1991). Discretion is abused when its exercised on untenable grounds or for untenable reasons. State v. Ex Rel. Carrol v. Junker 79 Wn.2d 12, 26, 482 P.2d 775 (1971). The trial courts factual determination concerning a defendants resources and ability to pay is reviewed under the "clearly erroneous" standard. State v. Bertrand, 165 Wn.App. 393, 403-04,267 P.3d 511 (2011); Baldwin, 63 Wn.App. at 312.

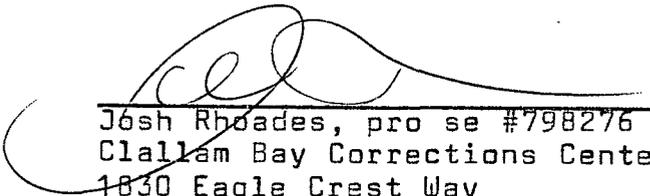
In the instant case Rhoades inability to pay is evident from his seventeen years of being deemed indigent by this same court starting with cause number 99-1-00424-2 (RP pg.19). Rhoades falls under the 125% poverty level of estimated earned income. The record reflects Rhoades has been incarcerated the majority of his life from juvenile to adult status. Given these reasons listed above, thus Rhoades was prejudiced by the trial court which failed to follow statutory requirements of RCW 10.01.160(1) statutory authority to impose discretionary legal financial obligations. A sentencing court has general authority to require a defendant to pay cost. **But** RCW 10.01,160(3) further states that "[t]he court shall not order a defendant to pay cost unless the defendant is or will be able to pay them." [emphasis added]. In making this determination the sentencing court must "take account of the financial resources of the defendant and the nature of the burden that payment of cost will impose." RCW 10.01.160(3).

RCW 10.01.160(4) which establishes a "manifest hardship" standard when determining a defendants ability to pay. A "manifest hardship" includes an inability to provide for ones own basic needs. A defendants inability to meet basic needs is not only relevant, but crucial in determining whether requiring the defendant to pay legal financial obligations would create a "manifest hardship."

D. CONCLUSION

Rhoades was prejudiced by the courts failure to assert, comply, and adhere to strict court rule procedures to apply correct application of well established supreme court case law and federal constitutional provisions that do in fact violate due process to a fair and impartial fact finding of applicably applying correct facts, findings, and conclusions of law. For the facts stated above Rhoades should be granted relief from the Legal Financial Obligations imposed.

Dated this 9th day of January 2017.



Josh Rhoades, pro se #798276
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723

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I, Joshua D.C. Rhoades 2017 JAN 12 AM 11:10

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(1) Appellants Pro Se Supplemental Brief COA No. 49071-4-II
DUE 1-13-2017

(2) Copy of Declaration of Service by MAIL to SARA BEIGH
LEWIS County Prosecutors Office. COA. no. 49071-4-II

(3) Copy of Declaration of Service by MAIL to DAVID KOCH, Appellate
Counsel - COA. no. 49071-4-II
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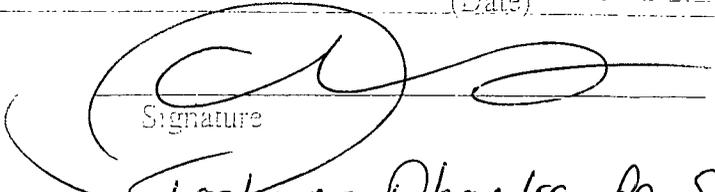
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Dated at Clallam Bay, WA on January 2017
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Signature
Joshua Rhoades, Pro Se
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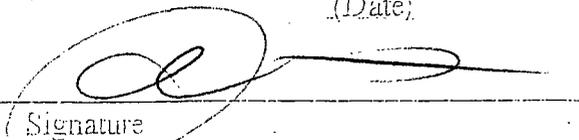
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DAVID B. KOCH
NIELSEN FROGMAN, 3 ECHU PLLC
1908 East Madison St.
SEATTLE, WA 98122

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay, WA on 1-9-2017
(City & State.) (Date)


Signature

Josh Rhodes Pro Se
Type / Print Name