

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

STATE OF WASHINGTON,

Respondent,

v.

CANDACE RALSTON,

Appellant.

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

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

Our supreme court remanded Candace Ralston’s case to the trial court because the trial court failed to conduct the required individualized inquiry before imposing \$39,211.85 in discretionary legal financial obligations against her. Despite the supreme court’s order, the trial court failed to apply the correct statutory standard on remand. It found simply that, because Ms. Ralston was not disabled, she could pay all previously imposed legal financial obligations, which totaled \$43,456.87 after the imposition of appellate costs.

Because the trial court was required to consider the “nature of the burden” that payment of the discretionary legal financial obligations would impose, this Court should reverse. Reversal is also required because Ms. Ralston was denied her right to the effective assistance of counsel when her attorney failed to direct the court to the correct statutory standard or identify the relevant facts for the court.

B. ASSIGNMENTS OF ERROR

1. The trial court violated RCW 10.01.160(3) when it imposed \$43,456.87 in discretionary legal financial obligations against Ms. Ralston without considering the nature of the burden that payment of these costs would impose upon her.

2. Ms. Ralston was denied her constitutional right to the effective assistance of counsel when defense counsel failed to direct the court to the applicable law or the relevant facts at issue at her remand hearing.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Pursuant to RCW 10.01.160(3), a court must consider “the nature of the burden that payment of the costs will impose” before ordering a defendant to pay discretionary legal financial obligations. Our supreme court remanded Ms. Ralston’s case so that the trial court could conduct this analysis, but the trial court failed to apply the correct statutory standard and instead ordered Ms. Ralston to pay “all previously ordered LFOs,” which included \$43,456.87 in discretionary legal financial obligations, based on its finding that Ms. Ralston was not disabled. Should this Court reverse where the trial court failed to apply the correct standard?

2. Ms. Ralston had the constitutional right to the effective assistance of counsel at her legal financial obligations hearing. An attorney’s performance fails to satisfy this constitutional requirement when he does not alert the court to the applicable law. At Ms. Ralston’s hearing defense counsel failed to direct the trial court to the

correct statutory standard or the relevant facts of her case. Where counsel's performance was deficient and prejudiced Ms. Ralston, should this Court reverse?

C. STATEMENT OF THE CASE

Candace Ralston pled guilty to charges of first degree theft and forgery. CP 41. Based on her offender score of one, the standard range for the theft charge was two to six months imprisonment and the standard range for the forgery charge was zero to 90 days imprisonment. CP 28. However, Ms. Ralston stipulated that her crimes constituted a major economic offense and the trial court found an exceptional sentence was justified by multiple aggravating circumstances. CP 38, 49. She was sentenced to 96 months in prison on the theft conviction and 36 months on the forgery conviction. CP 30.

In addition to the significant prison sentence, the trial court ordered Ms. Ralston to pay \$294,115.73 in restitution. CP 24. Ms. Ralston had stolen from her former employer, Alderbrook Resort & Spa, and the restitution order was designed primarily to reimburse the insurance company that covered the resort's losses. CP 24-25. In addition to this restitution, the trial court initially ordered Ms. Ralston

to pay \$5,678.50 in legal costs, which included a discretionary filing fee of \$200 and \$4,878.50 in discretionary sheriff service fees. CP 12. The trial court later imposed an additional \$34,133.85 in defense costs, which consisted of fees for Ms. Ralston's court appointed attorney and a defense expert. CP 146.

The Court of Appeals affirmed Ms. Ralston's judgment and sentence but our supreme court ruled the trial court failed to follow the governing law when imposing the discretionary legal financial obligations (LFOs). CP 20, 22. It remanded Ms. Ralston's case to the trial court and directed the court to engage in an individualized inquiry of Ms. Ralston's ability to pay these fees and costs. CP 22. Despite granting review on this issue, Ms. Ralston was required to pay an additional \$4,244.52 in appellate costs under the prior court rules. CP 4. After her appeal, the total amount in discretionary LFOs owed by Ms. Ralston was \$43,456.87.

On remand, the trial court determined Ms. Ralston was able-bodied and could therefore return to work upon her release from prison. RP 7. Based on its assessment of Ms. Ralston's physical ability to gain employment upon her release, it determined she would eventually be able to pay her LFOs. RP 7.

Only after reaching this decision did the trial court question the parties about Ms. Ralston's resources and determine the actual amount of discretionary LFOs previously imposed. RP 8-9. The court's written order states the previously imposed LFOs will remain in place because it found Ms. Ralston will be "employable" upon release and the court was "presented with no information that she is not otherwise able to find and engage in gainful employment." CP 19.

D. ARGUMENT

1. **The trial court violated the statutory requirement that it consider Ms. Ralston's financial resources and the nature of the burden payment will impose before ordering her to pay discretionary legal financial obligations.**
 - a. Trial courts are required to fully comply with RCW 10.01.160(3) before imposing costs on a defendant.

Before ordering a defendant to pay discretionary costs, courts are required by statute to consider a defendant's financial resources, and the nature of the burden payment of those costs will impose upon the defendant. RCW 10.01.160(3). The legislature demands that courts:

shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3).

Despite this unambiguous statutory language, courts continued to impose discretionary LFOs against indigent individuals that they had no ability to pay. *See State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). In *Blazina*, our supreme court discussed the significant problems that result when a court fails to adhere to RCW 10.01.160(3).

For example, as occurred in Ms. Ralston's case, indigent defendants are frequently assured they need only pay \$25 each month toward their LFOs. CP 33. However, this only leads to a cycle of ever-increasing debt for the individual. Because LFOs are subject to an interest rate of 12 percent, "a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed." *Blazina*, 182 Wn.2d at 836.

This imposition of a lifelong debt presents a considerable barrier to reentry into the community from prison, as it decreases the individual's chances of finding stable housing and employment. *Id.* at 837. In addition, imposing this kind of debt is both pointless, because the state will not receive money from an individual who cannot pay,

and arbitrary, because some counties act to impose higher LFOs on defendants than others. *Id.*

Following its recognition of the devastating effects the imposition of LFOs may have on indigent individuals in *Blazina*, our supreme court has repeatedly remanded cases to the trial court where the trial court failed to conduct the inquiry required by RCW 10.01.160(3). *See e.g., State v. Duncan*, 185 Wn.2d 430, 437-38, 374 P.3d 83 (2016); *State v. Marks*, 185 Wn.2d 143, 145-46, 368 P.3d 485 (2016); *State v. Licon*, noted at 184 Wn.2d 1010, 359 P.3d 791 (2015); *State v. Leonard*, 184 Wn.2d 505, 506-507, 358 P.3d 1167 (2015) (per curium); *State v. Vansycle*, noted at 183 Wn.2d 1013, 353 P.3d 634 (2015); *State v. Cole*, noted at 183 Wn.2d 1013, 353 P.3d 634 (2015). This is what the supreme court did here. CP 22; *State v. Ralston*, noted at 185 Wn.2d 1025, 377 P.3d 724 (2016).

- b. In evaluating whether to impose the previously ordered discretionary LFOs the trial court did not consider the amount of the LFOs or the nature of the burden payment of the LFOs would impose.

When remanding Ms. Ralston's case, the supreme court found the trial court failed to comply with RCW 10.01.160(3) at Ms. Ralston's sentencing and directed the court to conduct the

individualized inquiry as required under the statute. CP 22. Despite the supreme court's order, the trial court failed to comply with RCW 10.01.160(3) on remand. CP 22. Instead, the trial court presided over a perfunctory hearing in which it failed to consider the amount of LFOs it was being asked to impose, or the nature of the burden payment of those LFOs would impose against Ms. Ralston. RP 8-9.

At the remand hearing the State claimed Ms. Ralston had the future ability to pay the LFOs because no physical disabilities prevented her from gaining employment upon her release. CP 3-4. The State relied, in part, on the fact that Ms. Ralston had no difficulty finding work before being convicted of the two felonies in this case and being sentenced to 8 years in prison. RP 4. It claimed that although the crimes were committed against Ms. Ralston's employer, this would not hinder her ability to obtain a different job where she had no access to company funds. RP 4.

The trial court wrongly adopted the State's argument, finding that while Ms. Ralston did not have the ability to pay LFOs during her incarceration, she had the future ability to pay them because she was "employable." The court stated:

With the information that's been provided today, the Court is making a [sic] individualized determination,

first of all, of her ability to currently pay, which I've done, and consider the future ability to pay. Once she is released, the Court finds that she is employable. It may not be in a similar type of employment, in that an employer would be advised that Ms. Ralston has had a conviction for – of this nature, which would limit her employment in her current or past line of work. But, the Court has not been made aware of any physical limitation or any limitation on her general skills and intelligence and ability to work.

So, the Court does find that, even though she may not be able to work in her chosen profession, which was in some way to handle other people's money, she does have the ability to obtain employment and work, therefore pay towards the legal financial obligations.

RP 7.

The court then paused to note it had not been informed of whether she had additional resources, such as a house. RP 7. Defense counsel explained the family home was foreclosed on and Ms. Ralston was in the process of a divorce, leaving her with “no financial resources that she'll be able to draw on upon her release.” RP 8. The trial court did not acknowledge this new information, instead reiterating that it had made the necessary “individualized inquiry” and moving on to determine the amount of LFOs previously imposed against Ms. Ralston. RP 8-9.

At that point, the trial court narrated its review of the record, during which it discovered the initial imposition of \$5,678.50 in fees

and costs and then the restitution order in the amount of \$294,115.73. RP 8-9. The court questioned whether the order regarding attorney's fees had been reduced, but then located the supplemental order regarding costs and noted Ms. Ralston was required to pay an additional \$34,133.85 in attorney's fees and other defense costs. RP 9, CP 146. At no point did the court recognize that appellate costs in the amount of \$4,244.52 were also previously imposed. CP 6-7.

The court gave no consideration to the large amount of LFOs previously imposed before determining Ms. Ralston had the ability to pay them. It simply stated again that it had made a finding Ms. Ralston had the ability to work and found that she could make payments of \$25 per month beginning sixty days after her release from confinement. RP 9-10.

The trial court's written order reflected this oral ruling. It stated in relevant part:

the court further finds that upon release the defendant will be employable, albeit likely in a different line of work, and the court has been presented with no information that she is not otherwise able to find and engage in gainful employment, therefore, all previously ordered LFOs remain imposed, provided further, that payments previously ordered shall commence 60 days after release.

CP 19.

This finding was insufficient under RCW 10.01.160(3) and *Blazina*. A court’s “individualized inquiry” of a defendant’s ability to pay discretionary LFOs must include a consideration of important factors relevant to the determination, such as whether the individual must also pay restitution. *Blazina*, 182 Wn.2d at 838. Here it was impossible to adequately evaluate the “nature of the burden” the discretionary LFOs imposed without considering the amount of discretionary LFOs at issue and Ms. Ralston’s other financial obligations. Yet the trial court did not consider the amount of LFOs previously imposed, including the \$294,115.73 award of restitution, until *after* it found Ms. Ralston had the ability to pay them. RP 9.

In addition, the court acknowledged Ms. Ralston would only be able to make payments of \$25 each month. CP 33, RP 11. As this Court recently recognized in an unpublished opinion, “[o]ur Supreme Court has disapproved of imposing LFOs when the defendant cannot or will not be able to pay off the principal amount.” *State v. Aguilar*, ___ Wn. App. ___, 2017 WL 1391134 at *3 (No. 34221-2-III, April 13, 2017) (unpublished opinion)¹ (citing *City of Richland v. Wakefield*, 186

¹ “Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as

Wn.2d 596, 607, 380 P.3d 459 (2016)). While RCW 10.01.160(3) does not specify the amount of costs the court must find the defendant is able to pay, “the only rational interpretation of the statute is that it requires the defendant to be able to pay the total amount of discretionary LFOs imposed, including interest.” *Id.*

Here the court’s analysis did not comply with RCW 10.01.160(3). When it determined Ms. Ralston had the future ability to pay a limited amount toward her LFOs simply because she was not disabled, it failed to apply the correct statutory standard.

- c. This Court should reverse and instruct the trial court to strike Ms. Ralston’s discretionary LFOs.

A trial court commits reversible error when it fails to consider or apply the correct statutory standard. *Wakefield*, 186 Wn.2d at 605. In *Wakefield*, the petitioner moved under RCW 10.01.160(4) for remission of the discretionary costs imposed against her because she was unable to pay them. *Id.* This statutory provision provides, in part, that “the court may remit all or part of the amount due in costs” if “payment of the amount due will impose manifest hardship on the defendant or the defendant’s immediate family.” RCW 10.01.160(4).

such by the citing party, and may be accorded such persuasive value as the court deems appropriate.” GR 14.1.

The trial court denied Ms. Wakefield’s motion after finding she “had some ability to pay her fines,” but it failed to consider whether paying the costs would cause her or her family “manifest hardship.” *Wakefield*, 186 Wn.2d at 605-06. Our supreme court determined the trial court’s failure to apply the correct statutory standard required reversal. *Id.* at 606.

Similarly, in direct contravention of RCW 10.01.160(3), the trial court in Ms. Ralston’s case did not “take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose” before ordering that Ms. Ralston pay “all previously ordered LFOs.” RCW 10.01.160(3); CP 19. Reversal is therefore required under *Wakefield*, 186 Wn.2d at 606.

In *Wakefield*, both parties agreed the case should be remanded “for entry of an order remitting the outstanding LFOs at issue.” 186 Wn.2d at 606. The court suggested that under different circumstances it “might remand for the district court to apply the proper standard.” *Id.* However, this Court should hold that a finding that Ms. Ralston has the ability to pay LFOs is clearly erroneous and remand her case with instructions to the trial court to strike Ms. Ralston’s discretionary LFOs. *See State v. Bertrand*, 165 Wn. App. 393, 404, 267 P.3d 511

(2011) (holding that where a trial court's finding that a defendant has the ability to pay lacks support in the record, it is clearly erroneous).

The amount of LFOs previously imposed against Ms. Ralston totaled \$338,172.60. CP 7, 12, 146; RP 9. Under RCW 10.82.090, financial obligations "bear interest from the date of the judgment until payment, at the rate applicable to civil judgments." The annual interest rate is 12 percent. *Blazina*, 182 Wn.2d at 836; Katherine A. Beckett, Alexes M. Harris & Heather Evans, *Wash. State Minority & Justice Comm'n, The Assessment and Consequences of Legal Financial Obligations in Washington State*, at 21 (2008).² At this interest rate, Ms. Ralston will owe an *additional* \$40,580.71 in one year, and every year thereafter. In the first year alone, this will raise the total amount she owes to \$378,753.31. Payment at a rate of \$25 per month, as the trial court assumed Ms. Ralston will be able to satisfy upon her release, would reduce this burden by \$300 each year, permitting her total debt to accrue by approximately \$40,280.71 each year.

Ms. Ralston will be approximately 53 years old at the time she fulfills her eight year sentence. CP 26, 36. Her home has been foreclosed upon and she is in the process of divorcing her husband. RP

² Available at http://www.courts.wa.gov/committec/pdf/2008LFO_report.pdf (last accessed April 20, 2017).

8. As the trial court acknowledged, she will not be able to return to her career in bookkeeping. RP 7. Even if, despite her felony convictions for having stolen from her employer, she was able to secure a job paying more than minimum wage, it is absurd to suggest that she is likely to have the ability to pay \$338,172.60 and the additional annual interest of approximately \$40,580.71.

Indeed, even without the discretionary LFOs, Ms. Ralston is required to pay restitution in the amount of \$294,115.73 and mandatory fees in the amount of \$600. CP 12, 24. This is a considerable burden for any non-wealthy individual, much less someone with two felony convictions, a prison record, and no resources waiting for her upon her release from prison.

When the trial court ordered that Ms. Ralston pay an additional \$43,456.37 in discretionary LFOs without applying the correct statutory standard, it committed reversible error. This Court should remand and instruct the trial court to strike the discretionary LFOs. *Wakefield*, 186 Wn.2d at 606; *Bertrand*, 165 Wn. App. at 404.

2. Ms. Ralston was denied the effective assistance of counsel at her LFO hearing.

- a. Ms. Ralston had the constitutionally protected right to the effective assistance of counsel at the LFO hearing.

A person accused of a crime has a constitutional right to the effective assistance of counsel. U.S. Const. amend. VI; Const. art. I, § 22; *United States v. Cronin*, 466 U.S. 648, 654, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); *State v. Khan*, 184 Wn.2d 679, 688, 363 P.3d 577 (2015). “The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants the ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.” *Strickland v. Washington*, 466 U.S. 668, 685, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 276, 63 S. Ct. 236, 87 L. Ed. 2d 268 (1942)).

This right extends to every critical stage of a case, including sentencing. *State v. Bandura*, 85 Wn. App. 87, 97, 931 P.2d 174 (1997); *Gardner v. Florida*, 430 U.S. 349, 358, 97 S. Ct. 1197, 1204-05, 51 L. Ed. 2d 393 (1977). Under the *Strickland* standard, a new LFO hearing should be granted if (1) counsel’s performance was deficient, and (2) the deficient performance prejudiced the defendant.

466 U.S. at 687; *see also State v. Grier*, 171 Wn.2d 17, 32-33, 246 P.3d 1260 (2011). “A claim of ineffective assistance of counsel presents a mixed question of fact and law [and is] reviewed *de novo*.” *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

b. Defense counsel’s representation at the LFO hearing was deficient.

An attorney renders constitutionally inadequate representation when he or she engages in conduct for which there is no legitimate strategic or tactical basis. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1998). A decision is not permissibly tactical or strategic if it is not reasonable. *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000); *see also Wiggins v. Smith*, 539 U.S. 510, 521, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003) (“[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms” (*quoting Strickland*, 466 U.S. at 688)).

At Ms. Ralston’s LFO hearing, defense counsel indicated that the attorney of record was “hoping to retire very soon” and although he had not actually retired yet, he was unable to appear in court on Ms. Ralston’s behalf. RP 3. Defense counsel, as an associate of the

attorney of record, indicated he had met Ms. Ralston and “seen the Mandate” and was prepared to go forward. RP 2-3. Despite this representation to the court, the record demonstrates defense counsel was ill-prepared for the hearing, as he was unfamiliar with both the applicable law and the relevant facts of Ms. Ralston’s case.

In response to the State’s argument that the discretionary LFOs should be imposed because Ms. Ralston was physically able to work, defense counsel appropriately responded that Ms. Ralston is indigent and that, given her convictions, she would not be able to return to her prior work “handling finances.” RP 5-6. However, this was the sum of defense counsel’s argument.³

When the State replied that “[w]here there’s a will there’s a way,” arguing that surely Ms. Ralston could find another job that would allow her to pay back the LFOs, defense counsel responded only by saying:

I would ask that you waive any – I meant to say this earlier – that you waive anything discretionary that you can in the fines and fees. I do believe, under the

³ After the court found Ms. Ralston had the ability to pay defense counsel mentioned the bank had foreclosed on Ms. Ralston’s home and she could not rely on her husband’s support because she was in the process of getting a divorce. RP 8. However, defense counsel’s statements were made only in response to the court’s inquiry as to whether, in addition to finding Ms. Ralston was able to work and therefore able to pay the discretionary LFOs, the court should also find Ms. Ralston had assets that would assist her in paying the LFOs. RP 7.

circumstances, that that would be appropriate. Any future ability is, as yet, undetermined.

RP 6.

Defense counsel did not direct the trial court to the applicable statute and failed to explain why it would be appropriate to “waive” the discretionary LFOs. When the trial court immediately issued its ruling based solely on the fact that Ms. Ralston was able-bodied, defense counsel still did not cite the correct standard or discuss the amount of LFOs previously imposed. Instead, he left it to the court to track down the amount at issue. RP 8.

As the court searched through the record, it asked the parties if the award of attorney’s fees had been reduced, and defense counsel erroneously suggested that it had. RP 9. This demonstrated defense counsel was unfamiliar with one of the most basic facts relevant to this hearing: that a significant amount of discretionary LFOs were previously requested and imposed. At no point did defense counsel direct the court’s attention to the fact that Ms. Ralston was required to pay \$294,115.73 in restitution. He also never alerted the trial court to the fact that its order regarding “all previously ordered LFOs” included discretionary appellate costs in the amount of \$4,244.52. *See* CP 4.

“An attorney’s ignorance of a point of law that is fundamental to

his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*.” *State v. Estes*, 193 Wn. App. 479, 489, 372 P.3d 163 (2016) (quoting *In re Pers. Restraint of Yung-Cheng Tsai*, 183 Wn.2d 91, 102, 351 P.3d 138 (2015)) (other internal citations omitted). Similarly, when a defense attorney fails to alert the court to the applicable law, his representation is deficient. *State v. McGill*, 112 Wn. App. 95, 102-03, 47 P.3d 173 (2002) (finding defense counsel ineffective where the attorney failed to cite the relevant case law to the trial court at sentencing or use the law to argue for an exceptional sentence down).

Here, defense counsel demonstrated his unfamiliarity with both the law and the facts of the case. He failed to direct the trial court to the controlling statute, RCW 10.01.160(3), and failed to explain that the court should not impose discretionary LFOs because the nature of the burden that payment of the LFOs would impose was enormous, given both the restitution order and the unusually high amount of discretionary LFOs at issue.⁴ Defense counsel’s failure to identify the

⁴ See Katherine A. Beckett, Alexis M. Harris & Heather Evans, *Wash. State Minority & Justice Comm’n, The Assessment and Consequences of Legal Financial Obligations in Washington State*, at 23 (2008) (showing that the amount of LFOs

applicable law and relevant facts for the trial court was unreasonable. *See Estes*, 193 Wn. App. at 491. This Court should find defense counsel's performance deficient.

c. Defense counsel's deficient performance prejudiced Ms. Ralston.

If there is a reasonable probability that but for counsel's inadequate performance, the result would have been different, prejudice is established and reversal is required. *Strickland*, 466 U.S. at 694; *Khan*, 129 Wn.2d at 688. A reasonable probability "is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *see also Estes*, 193 Wn. App. at 493 (a defendant must "show that counsel's deficient performance was prejudicial or undercut confidence in the result of the proceeding"). The "reasonable probability" standard is a lower standard than "more likely than not." *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

Here, there is a reasonable probability that, had defense counsel informed the trial court of the law and discussed the nature of the

imposed vary widely by county in Washington State and that, while Mason County imposes higher amounts than some other counties, the median amount assessed in Mason County in 2004 was \$1,292). Available at http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf (last accessed April 20, 2017).

burden imposed by the extremely high amount of discretionary LFOs, both alone and in combination with the significant award of restitution, the trial court would have reached a different decision. Our supreme court granted review and remanded Ms. Ralston's case solely for the trial court to conduct the proper inquiry under RCW 10.01.160(3) and its decision in *Blazina*, 182 Wn.2d at 839. Had defense counsel provided the court with the information it required to conduct the correct inquiry, the court would have employed the appropriate standard and likely reached a different result. For, as explained above, once the actual amounts at issue are considered, it would be absurd to find that Ms. Ralston will be able to pay the discretionary LFOs, even if she returns to work following prison.

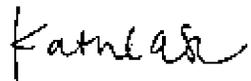
Ms. Ralston was denied her constitutional right to the effective assistance of counsel when her attorney failed to alert the Court to the applicable law or the relevant facts of her case. *See McGill*, 112 Wn. App. at 102. This Court should reverse.

E. CONCLUSION

This Court should reverse the order of legal financial obligations imposed against Ms. Ralston and remand her case to the trial court with instructions to strike the discretionary LFOs.

DATED this 24th day of April, 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen A. Shea". The signature is written in a cursive style with a horizontal line above the text.

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. 49504-0-II
)	
CANDACE RALSTON,)	
)	
Appellant.)	

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