

No. 49656-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

THOMAS READE
Appellant.

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

Cause No. 05-1-01468-1; 04-1-02172-7; 06-1-00343-1;
08-1-01465-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

B. STATEMENT OF THE CASE.

The State accepts the appellant's statement of the case.

C. ARGUMENT.

1. Reade did not object to the imposition of discretionary LFO's at sentencing, therefore, this Court may decline consideration of the issue pursuant to RAP 2.5.

This is a consolidated appeal from convictions in four cause numbers out of Thurston County. Reade raises for the first time on appeal the issue of whether the trial court improperly imposed discretionary financial obligations during the sentencing hearing in cause number 06-1-00343-1. Reade does not allege error in the other three cause numbers consolidated in this appeal, causes 05-1-01468-1; 04-1-02172-7; and 08-1-01465-1.

The sole issue raised in this appeal is whether the court erred in ordering Reade to pay \$150 for court appointed defense expert and other defense costs and by finding that Reade had that ability to pay for the cost of incarceration and ordering Reade to pay such costs at the rate of \$50 per day. CP 91-92. The trial court's verbal pronouncement of the indicated that the \$150 was for "attorney's fees" and did not mention the costs of incarceration.

5RP 7. Reade was sentenced to 90 days of total confinement. CP 92. Reade did not object to the discretionary fees. 5RP 7.

“The appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a). “A defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review.” *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015). “Unpreserved LFO errors do not command review as a matter of right.” *Id.* at 833. While the court in *Blazina* decided to exercise discretion under RAP 2.5, the decision is clear that the appellate court is not required to do so.

Reade was sentenced on March 14, 2006. CP 88. During the sentencing hearing, he did not object to the imposition of the discretionary fees that are at issue. This court is not required to use its discretion to review Reade’s claim of error.

2. If the Court is inclined to review Reade’s claim of error, the proper remedy for a trial court failing to inquire as to ability to pay is to remand for re-sentencing on that issue.

RCW 10.01.160(3) requires the record reflect that the sentencing judge make an individualized inquiry into the defendant’s current and future ability to pay before the court

imposes discretionary LFOs. *Blazina*, 182 Wn.2d at 839. When a trial court fails to conduct such an inquiry, the proper remedy is to remand to the trial court for resentencing with proper consideration of the defendant's ability to pay LFOs. *State v. Duncan*, 185 Wn.2d 430, 437-438; 374 P.3d 83 (2016).

The State concedes that at sentencing in cause number 06-1-00343-1, the trial court did not make an inquiry into Reade's current and future ability to pay prior to imposing discretionary legal financial obligations. 5RP 1-7. If the Court exercises its discretion to hear Reade's claim of error, the proper remedy in this case would be to remand to the trial court for resentencing on the issue of discretionary LFOs with proper consideration of the defendant's ability to pay.

D. CONCLUSION.

Reade did not object to the imposed discretionary LFO's in cause number 06-1-00343-1; therefore, this Court is not required to review the claim of error pursuant to RAP 2.5(a). If the Court elects to exercise its discretion, the proper remedy is to remand cause number 06-1-00343-1 to the trial court for resentencing on the issue of discretionary LFO's. Reade does not assign any error to cause

numbers 05-1-01468-1, 04-1-02172-7, or 08-1-01465-1, which have been consolidated into this appeal. As such, the convictions in those cause numbers should be affirmed with no further action.

Respectfully submitted this 1 day of August, 2017.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent on the date below as follows:

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

Dated this 2nd day of August, 2017, at Olympia,

Washington.



CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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