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Division II
State of Washington
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NO. 49944-4-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent

v.

KAELA GLOVER,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

By deciding to exercise her right to a jury trial, Ms. Glover was assessed \$2,100 dollars in attorney fees she would not have otherwise had to pay. These fees should be stricken as they are an expense inherent in providing a constitutionally guaranteed jury trial.

In addition, Ms. Glover asks this Court to remand the remainder of her fees so that the sentencing court can conduct a complete inquiry into her ability to pay.

Finally, she asks this Court to hold that the payment schedule imposed by the sentencing court was unjustly punitive and should not have been set.

The imposition of Ms. Glover's legal financial obligations are properly before the court and where not raised below, this Court should exercise its discretion and address the issues under RAP 2.5(a).

1. Attorney fees imposed based on the days a person spends in trial are an improper imposition of expenses inherent to a constitutionally guaranteed trial.

The government argues the trial court properly imposed attorney fees based on the number of days Ms. Glover spent in trial, citing an advisory opinion issued by the Attorney General's Office in 1976. Respondent's brief at 8. This argument ignores the constitutional and

statutory mandates that fees may not be imposed for expenses inherent in providing a constitutionally guaranteed jury trial. *State v. Diaz-Farias*, 191 Wn. App. 512, 514, 362 P.3d 322 (2015); RCW 10.01.160(2).

In striking jury, court reporter, and interpreter costs, *Diaz-Farias* holds contrary to the government's position. *Diaz-Farias* instead holds that RCW 10.01.160 forbids the imposition of expenses relating to the jury trial itself. *Id.* at 525. Like the other costs considered in *Diaz-Farias*, there is no question that the costs of providing an attorney to an indigent person is inherent in the right to a trial. U.S. Const. amend. 6; Const. art. 1, § 22; *State v. Ulestad*, 127 Wn. App. 209, 214, 111 P.3d 276, 278 (2005) (citing *Coleman v. Alabama*, 399 U.S. 1, 7, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970)). Like *Diaz-Farias*, this Court should hold that imposing attorney's fees based on the time spent in trial is an improper imposition of expenses inherent to a constitutionally guaranteed trial.

The government further argues RCW 10.01.160 should not exclude attorney fees for time spent in trial because the legislature has not amended the statute to exclude such fees. Respondent's brief at 10. This is not the standard to determine whether the imposition of a fee is

allowable. Instead, this Court must determine whether the fees relate directly to the right to go to trial. *Diaz-Farias*, 191 Wn. App. at 525. Here, the fees relate directly to the number of days Ms. Glover spent in trial. RP 243. The imposition of this fee is improper and should have been excluded.

RCW 9.94A.030(31) defines attorney fees as a legal financial obligation. RCW 10.01.160 states that fees cannot include expenses inherent in providing a constitutionally guaranteed jury trial. This Court has ruled that fees inherent in providing a constitutionally guaranteed jury trial are improper. *Diaz-Farias*, 191 Wn. App. at 514. Here, this Court should hold that imposing attorney fees based on the number of days Ms. Glover spent in trial is prohibited and strike these fees from her judgment and sentence. *Accord, Diaz-Farias*, 191 Wn. App at 514.

2. The sentencing court failed to properly inquire into Ms. Glover's ability to pay legal financial obligations.

The government requests that this Court not consider whether the sentencing court failed to properly inquire into Ms. Glover's ability to pay before imposing legal financial obligations. Respondent's brief at 6. However, Washington's Supreme Court has recognized that national and local cries for reform of the broken legal financial obligations system demand review of this issue. *State v. Blazina*, 182

Wn.2d 827, 835, 344 P.3d 680 (2015). The imposition of costs against indigent defendants raises problems that are well documented and include “increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration.” *Blazina*, 182 Wn.2d at 839. Because the fees here were so high and related directly to Ms. Glover’s exercise of her right to a jury trial, this Court should exercise its discretion and address whether the sentencing court’s inquiry was adequate. RAP 2.5(a).

Under RCW 10.01.160(3), the sentencing judge must consider the defendant’s individual financial circumstances and make an individualized inquiry into the defendant’s current and future ability to pay. *Blazina*, 182 Wn.2d at 837-38. As the *Blazina* Court held, “[b]y statute, ‘the court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them.’” *Id.* at 838, quoting RCW 10.01.160(3) (emphasis added in *Blazina*).

The trial court’s inquiry into Ms. Glover’s ability to pay was inadequate. To determine a person’s ability to pay costs, “the court shall take account the financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Blazina*, 182 Wn.2d at 838. The only inquiry the court made into Ms. Glover’s

present or future ability to pay legal financial obligations was into Ms. Glover's non-existent work history. RP 242. The only work Ms. Glover could point to was time she spent working retail nearly two years ago and days she had spent working for a friend landscaping. RP 242. Ms. Glover does not appear to have worked more than a few days in the past few years. RP 242.

The only other information regarding Ms. Glover's ability to pay was the fact that she was indigent and unable to pay for an attorney. The court lacked any information regarding Ms. Glover's financial circumstances, including questions of whether she was financially responsible for other persons, whether there were any persons who supported her, whether she had any assets, and what other debts she had accrued. Given that Ms. Glover has two other Washington state convictions, it is likely Ms. Glover has incurred other court debt. CP 38-39. Further, the court made no inquiry into whether Ms. Glover depended on needs-based assistance programs or whether her household income fell below 125 percent of the federal poverty line. *City of Richland v. Wakefield*, 186 Wn.2d 596, 607, 380 P.3d 459 (2016).

There was no evidence that Ms. Glover has been able to pay any of the fees already imposed by the courts. This inquiry was insufficient. This Court should remand this matter for a hearing to determine whether Ms. Glover has the current or future ability to pay the legal financial obligations imposed. *Blazina*, 182 Wn.2d at 830.

3. A payment schedule that will increase the amount of legal financial obligations owed to the court is punitive.

The government requests that this Court not consider whether the imposition of a punitive payment schedule. Respondent's brief at 6. This Court should recognize the reform of the broken legal financial obligations system demands review of this issue. *Blazina*, 182 Wn.2d at 835. Whether a sentencing court may impose a fine Ms. Glover will never be able to finish paying merits review and this Court should exercise its discretion under RAP. 2.5.

Ms. Glover will never be able to pay off the debt imposed on her by the sentencing court. *See Katherine Beckett and Alexes Harris, The Assessment and Consequences of Legal Financial Obligations in Washington State*, Washington State Minority and Justice Commission, 17 (2008)The trial court found Ms. Glover only had the ability to pay \$25 a month towards her legal financial obligations. CP 43, RP 243.

This is an inadequate payment in order for her to ever reduce her debt, which will instead increase by \$50 a year. RCW 10.82.090.

Our Supreme Court recognizes the punitive nature of this scheme. *Wakefield*, 186 Wn.2d at 465. Low payments should only be ordered for short term situations. *Id.* at 607-08. And while the prosecutor argues that these minimum payments do not mean Ms. Glover cannot pay a higher amount, there is nothing about Ms. Glover's background to suggest she will ever be able to even pay this minimum amount. Respondent's brief at 11. Ms. Glover has a virtually non-existent work history and no apparent system of support. RP 242. It is not likely Ms. Glover is going to distinguish herself from the many others who find themselves in her circumstances. *Wakefield*, 186 Wn.2d at 465; *see also Blazina*, 182 Wn.2d at 836. She will be unable to pay legal financial obligations and forced to suffer the difficulties of reentering society as a result of her legal financial obligations that the Supreme Court recognized in *Blazina*. *Id.* at 839.

Under RCW 10.01.160 (3), the "ability to pay" means the ability "to actually pay off" all LFOs. *Wakefield*, 186 Wn.2d at 607. If a person lacks this actual ability, it is not appropriate for a court to impose any discretionary costs. *Id.* When the sentencing court found

Ms. Glover could only pay \$25 a month towards her fines and fees, it did exactly what *Wakefield* forbids. This Court should hold that the payment schedule imposed on Ms. Glover by the sentencing court was unjustly punitive. *Id.*

B. CONCLUSION

Ms. Glover asks this Court to strike the attorney fees as inherent in providing a constitutionally guaranteed jury trial. She asks this Court to remand this matter for a hearing to determine whether she has the ability to pay the rest of her legal financial obligations. Finally, she asks this Court to hold that the payment schedule set by the trial court was unjustly punitive.

DATED this 17 day of November, 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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Respondent,)	
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