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Court of Appeals
Division II
State of Washington
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NO. 50442-1-II

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

STATE OF WASHINGTON, Respondent

v.

RAMON TREVINO-HERNANDEZ, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.06-1-01930-0

BRIEF OF RESPONDENT

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 I. The State concedes that the trial court erred when it entered findings regarding legal financial obligations because the record did not support the findings and the findings were outside the scope of the Washington Supreme Court’s remand order..... 1

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The State concedes that the trial court erred when it entered findings regarding legal financial obligations because the record did not support the findings and the findings were outside the scope of the Washington Supreme Court’s remand order.**

STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), and for the purposes of this responsive brief only, the State is satisfied with Mr. Trevino-Hernandez’s statement of the case.

ARGUMENT

- I. **The State concedes that the trial court erred when it entered findings regarding legal financial obligations because the record did not support the findings and the findings were outside the scope of the Washington Supreme Court’s remand order.**

Mr. Trevino-Hernandez filed a personal restraint petition alleging, amongst other claims, that two of his sentences were facially invalid because he should have been sentenced to determinate standard range terms. The State conceded on that issue and the Washington Supreme Court agreed that Mr. Trevino-Hernandez was improperly sentenced. CP 53-54. As a result, the Supreme Court granted Mr. Trevino-Hernandez’s petition and remanded “to the Superior Court for resentencing on these

counts.” CP 54. The remand order did not instruct the trial court to make any findings regarding legal financial obligations. CP 53-54.

Accordingly, in order to satisfy the remand order the Superior court only needed to impose determinate standard range sentences for the relevant counts and the associated, required terms of community custody. Legal financial obligations had already been determined at the previous sentencing. CP 28-32, 78. Nonetheless, as noted by Mr. Trevino-Hernandez, the trial court checked boxes finding “[t]hat the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future” and “[t]he above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. . . . A restitution hearing: . . . shall be set by the prosecutor.” CP 75, 78. These findings were made without “an individualized inquiry into the defendant’s current and future ability to pay” as the record is clear that legal financial obligations were not discussed. *State v. Blazina*, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015); RCW 10.01.160(3); RP 3-10. Thus, the record did not support the findings and the findings were outside the scope of the remand order. As a result, this Court should remand this case to the trial court for the purposes of striking the above discussed findings regarding legal financial obligations from the Judgment and Sentence.

CONCLUSION

For the reasons argued above, this Court should remand this case to the trial court for the purposes of striking the above discussed findings regarding legal financial obligations from the Judgment and Sentence.

DATED this 6th day of Feb, 2018.

Respectfully submitted:

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