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Court of Appeals
Division II
State of Washington
7/8/2019 9:43 AM
NO. 50592-4

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

LEVAR COUCH, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Frank E. Cuthbertson

No. 17-1-01312-1

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly consider the defendant's ability to pay LFOs when it took into account his employment and confinement?
2. Should this Court remand for the criminal filing fee and interest accrual provision to be stricken?

B. STATEMENT OF THE CASE.

On June 13, 2017, Levar Couch, hereinafter referred to as "the defendant" pleaded guilty to one count of attempting to elude a pursuing police vehicle (count 1), one count of driving under the influence of alcohol (count 2) and one count of driving while in suspended or revoked status in the second degree (count 3). CP 1-3, 6/13/17 RP 3-15. Defendant was sentenced on June 15, 2017, 6/15/17 RP 7. Prior to sentencing, the court inquired into the defendant's ability to pay legal financial obligations. 6/15/17 RP 6. Following inquiry, the court imposed the following discretionary legal financial obligations: \$500 court appointed attorneys fees, \$200 criminal filing fee, \$2,895.50 fine and \$124.04 emergency response cost to the Washington State Patrol. RP 27, 36, 6/15/17 RP 7.

Defendant timely filed a Notice of Appeal. CP 43. Counsel filed a brief pursuant to *Anders v. California* asserting that there were no non-frivolous issues to be raised specifically with regard to legal financial obligations. U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). The Supreme Court issued its opinion in *State v. Ramirez*, 191 Wn.2d 732, 740, 426 P.3d 714 (2018). Consequently, defendant filed a supplemental brief requesting that the \$200 criminal filing fee and interest on restitution be stricken pursuant to *Ramirez*. This Court rejected counsel's *Anders* brief and ordered additional briefing.

C. ARGUMENT.

1. THE TRIAL COURT MADE AN INDIVIDUALIZED INQUIRY INTO DEFENDANT'S PRESENT AND FUTURE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS PURSUANT TO *BLAZINA*.

The trial court must impose mandatory LFOs and may impose discretionary LFOs. RCW 9.94A.760; RCW 10.01.160(1); *State v. Clark*, 191 Wn. App. 369, 374, 362 P.3d 309 (2015) (victim assessment, filing fee, and DNA collection fee are mandatory obligations not subject to defendant's ability to pay); *State v. Mathers*, 193 Wn. App. 913, 918, 376 P.3d 1163, 1166, *review denied*, 186 Wn.2d 1015, 380 P.3d 482 (2016) (a trial court need not consider a defendant's past, present, or future ability to pay when it imposes either DNA or VPA fees). 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). The sentencing judge must make an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs. *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680, 685 (2015). This inquiry requires the court to consider factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay. *Id.*

Here, the trial court made the proper inquiry into the defendant's present and future ability to pay legal financial obligations. The trial court asked about the defendant's education and employment:

THE COURT: How old did you say you were again?

DEFENDANT: I'm 32.

THE COURT: 32.

DEFENDANT: Yes, sir.

THE COURT: So you're not like somebody under 25 whose brain hasn't fully developed?

DEFENDANT: Not at all.

THE COURT: Are you employed, sir?

DEFENDANT: Yes, I was, up to this point.

COURT: What were you employed doing?

DEFENDANT: I was working at Nordstrom.

COURT: At Nordstrom.

DEFENDANT: Uh-huh. Yes. I was working in the women's shoe department.

THE COURT: How long were you there?

DEFENDANT: For a year and a half.

THE COURT: How far did you go in school? I didn't take the plea, so that's why I'm asking all these questions.

DEFENDANT: I went to school for – I went to 12th grade.

THE COURT: Okay.

RP 6/15/17 at 6. The trial court then assessed, on the record, defendant's ability to pay LFOs when it stated:

At this point, since you're not doing a lot of time and since you do have work history and since you can make this up, I'm going to impose \$200 court costs, \$500 dollar crime victim penalty assessment, the DNA sample, \$500 reimbursement to DAC, the \$2895.50 assessment, and the \$124 for DUI recovery.

RP 6/15/17 at 7. The trial court properly made an individualized inquiry into the defendant's ability to pay legal financial obligations considering factors such as age, length of incarceration, employment and education. Defendant claims that the trial court failed to make a proper inquiry because it "failed to consider other "important factors"... such as actual income, his assets, and other financial resources, his monthly living

expenses, and his employment history. Brief of Appellant at 7. This claim fails as the record reflects that the court not only took into consideration the defendant's current and future ability to pay not only based on his age and length of incarceration, but also other important factors such as his education and employment. There is no legal authority to suggest that the court must consider each and every factor suggested by the court in *Blazina*. As such, defendant's claim should be dismissed and his conviction affirmed.

2. THIS COURT SHOULD ORDER THAT THE IMPOSITION OF THE CRIMINAL FILING FEE AND THE INTEREST ACCRUAL PROVISION BE STRIKEN.

In this case, the trial court found the defendant to be indigent. CP 44 - 45. The defendant's direct appeal is still pending after the court withdrew its original opinion. House Bill 1783, effective March 27, 2018, prohibits the imposition of the \$200.00 filing fee on defendants who were indigent at the time of sentencing. As the court held in *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that the criminal filing fee of \$200.00 that was imposed in this case should be stricken. The State further agrees that House Bill 1783 eliminates any interest accrual on nonrestitution legal financial obligations.

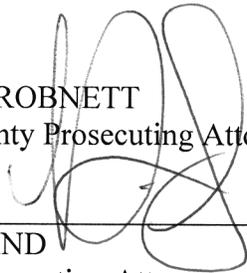
The State acknowledges that this defendant was found indigent by the sentencing court, and therefore the \$200.00 criminal filing fee and the interest accrual provision should be stricken.

D. CONCLUSION.

This Court should dismiss defendant's claim regarding the trial court's inquiry into his ability to pay legal financial obligations where the trial court considered age, length of incarceration, employment and education prior to imposing costs. However, this Court should remand for to strike the imposition of the \$200.00 filing fee and the interest accrual provision.

DATED: July 8, 2019

MARY E. ROBNETT
Pierce County Prosecuting Attorney



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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7/8/19 [Signature]
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

July 08, 2019 - 9:43 AM

Transmittal Information

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