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Court of Appeals
Division II
State of Washington
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No. 51031-6-II
Pierce County No. 16-1-01409-9

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES E. HARRIS,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
PIERCE COUNTY

The Honorable Kathryn J. Nelson, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. This Court should strike the \$200 criminal filing fee, \$100 DNA fee and interest provision of the judgment and sentence¹ under the new controlling precedent of State v. Ramirez, __ Wn.2d __, __ P.3d __ (No. 95249-3)(2018 WL 4499761) (September 20, 2018).²
2. Under Ramirez, 2018 changes³ to the legal financial obligations statutes apply to appellant who was indigent at the time of sentencing.
3. Appellant assigns error to the following preprinted language on the judgment and sentence:

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

CP 46.

B. SUPPLEMENTAL QUESTION PRESENTED

2018 legislative changes to the relevant statutory scheme eliminated the bulk of LFOs for indigent defendants. In Ramirez, supra, the Supreme Court held that the 2018 changes applied to all cases pending on first direct appeal, regardless when sentencing or even lower appellate court review had occurred.

Is appellant entitled to relief under Ramirez where he was ordered to pay LFOs and was indigent at the time of sentencing?

¹Copies of the felony judgment and sentence and misdemeanor suspended judgment and sentence are attached as Appendix A.

²A copy of the decision is attached as Appendix B.

³A copy of Engrossed Second Substitute House Bill 1783 (2018) is attached as Appendix C.

C. SUPPLEMENTAL STATEMENT OF THE CASE

Mr. Harris was found indigent before and after trial. See CP 7, 64-65. The felony judgment and sentence ordered *inter alia* a \$500 victim assessment, a \$100 DNA “collection fee,” and a \$200 fee for “court costs,” and the misdemeanor judgment and sentence ordered *inter alia* a \$200 fee for “court costs.” CP 47-48. The felony judgment and sentence also included a preprinted section finding of “ability to pay” and one in each judgment ordering that the financial obligations “shall bear interest from the date of this judgment” but someone had marked through the DNA testing, collection costs, interest and similar provisions in the felony document. CP 62 (emphasis omitted; see CP 48.

At sentencing before the Honorable Judge Kathryn J. Nelson, the prosecutor asked about “legal financial obligations,” and the judge said, “there’s no barrier such as mental health that would reduce but he’s otherwise indigent and has appointed counsel[.]” SRP 9. The judge decided to order “only the mandatory legal financial obligations” on both the felony and misdemeanor documents as a result. SRP 9.

On September 20, 2018, the state Supreme Court decided Ramirez, supra (App. B). This Supplemental Brief follows.

D. SUPPLEMENTAL ARGUMENT

THIS COURT SHOULD STRIKE THE LEGAL FINANCIAL OBLIGATIONS UNDER RAMIREZ

In 2018, the Legislature amended the statutory scheme under which most court have imposed “legal financial obligations” (LFOs) against defendants in state criminal cases. See Laws of 2018, ch. 269 (Engrossed Second Substitute House Bill (“Bill”) 1783 (2018)(App. C)). In Ramirez, supra, the state’s highest Court just held that those amendments apply to all cases currently pending on direct review. See App. B. As a result, appellant is entitled to relief.

Before 2018, the relevant statutes allowed and sometimes even required imposition of multiple LFOs on those convicted of a crime. See State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). At the time of the sentencing here, “legal financial obligations” were defined in former RCW 9.94A.030(30)(2012), as “a sum of money that is ordered by a superior court” including

restitution to the victim, statutorily imposed crime victims’ compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction[.]

A sentencing court was limited (somewhat) in imposing costs, because former RCW 10.01.160(1)(2013) provided that costs “shall be limited to expenses specially incurred by the state in prosecuting the defendant[.]” Former RCW 10.01.160(3)(2013) further required that a sentencing court “shall not order a defendant to pay costs unless the

defendant is or will be able to pay them.”

When the superior court chose to order LFOs, former RCW 9.94A.760 (2011) required the court to separately set out each LFO, i.e., assessments for restitution, “costs, fines, and other assessments required by law.” The lower court complied in this case, setting forth on the judgment and sentence *inter alia* the following separate orders: \$200 for a criminal filing fee and \$100 for a DNA testing fee on the felony judgment and sentence and \$200 court fee for the misdemeanor documents. See App. A.

In Blazina, supra, the state’s highest court noted the requirement of former RCW 10.01.160(3)(2013), that a sentencing court “shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” 182 Wn.2d at 829-30. The Blazina Court also noted that most sentencing courts in our state were not conducting any analysis of a defendant’s actual “ability to pay.” Id. The Court condemned that use of “boilerplate” or pre-printed “findings” of a defendant’s “ability to pay” if the record showed that the court had not conducted a careful, individualized examination of a defendant’s actual financial situation. Id.

Further, the Court recognized serious systemic problems with the LFO scheme, which had led to significant inequities and issues for defendants who were indigent when sentenced. Blazina, 182 Wn.2d at 829-30.

Since Blazina, courts have struggled to determine both what

constitutes an adequate inquiry and for which costs, exactly, a Blazina analysis must occur. See e.g., State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016); State v. Stoddard, 192 Wn. App. 222, 686 P.3d 474 (2016); State v. Clark, 191 Wn. App. 369, 362 P.3d 309 (2015). It was expected that Ramirez would provide some needed clarity, as the Supreme Court granted review to “articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs” under Blazina. App. B at 4.

After review was granted in Ramirez, however, the 2018 Legislature significantly amended our LFO system. See Ramirez, App. B at 4-5. More specifically, Engrossed Second Substitute House Bill (“Bill”) 1783 (2018) was passed. See Laws of 2018, ch. 269 (ESSHB 1783 (App. C)).

With the Bill, the Legislature chose to “prohibit[] the imposition of certain LFOs on indigent defendants[.]” Ramirez, App. B at 4-5. Whereas before, under Blazina, former RCW 10.01.160(3)(2013) allowed imposition of “discretionary” LFOs with a proper finding of “ability to pay,” the amendments to RCW 10.01.160(3) now “categorically prohibit” imposition of *any* discretionary LFOs on a defendant who was indigent at the time of sentencing. See Laws of 2018, ch. 269, § (6)(3); Ramirez, App. B at 5.

Other provisions of the bill prohibit imposition of specific LFOs, such as the \$200 court filing fee, if the defendant is indigent, and declining to impose the \$100 DNA testing fee if the defendant

has previously given the state DNA. See Ramirez, App. B at 4-5; Laws of 2018, ch. 269, § 18 (App. C).

In Ramirez, after first deciding some issues regarding the Blazina analysis, the Court then did not apply Blazina, instead finding that the 2018 Bill had changed the law. Ramirez, App. B at 10. The Court first noted that the Bill was “concerning attorney fees and costs[.]” Ramirez, App. B at 11-12. The Court then pointed out that the “precipitating event” for such a statute is the end of any direct appeal. App. B at 11-12, citing, State v. Blank, 131 Wn.2d 230, 249, 930 P.2d 1210 (1997). Because the Bill’s provisions “concern the courts’ ability to impose costs on a criminal defendant following conviction,” the Ramirez Court held, the amendments wrought by the Bill applied to defendants like Ramirez whose cases are “on appeal as a matter of right.” Ramirez, App. B at 12.

Put another way, cases still pending on direct review at the time of the statutory changes “not final under RAP 12.7.” Ramirez, App. B at 12. As a result, the Ramirez Court held, the changes to the LFO scheme contained in the 2018 Bill apply to all cases still pending on direct review when those changes were enacted -regardless when sentencing occurred. Id.

Under Ramirez, this Court should grant Mr. Harris relief from some of the LFOs imposed below. The criminal filing fee statute, former RCW 36.18.020(2)(h) (2014), authorized imposition of a fee but now prohibits such fees against those who are indigent. See Ramirez, App. B at 10-11; Laws of 2018, ch. 269, § 17. Interest may no

longer be charged on nonrestitution LFOs, either, based on the Bill. See former RCW 10.82.090 (2015); Laws of 2018, ch. 269, §§ 1, 5 (App. C). Other statutory changes include amending former RCW 10.46.190 (2005) so that no jury fee can be ordered against a person who is indigent at the time of sentencing. Laws of 2018, ch. 269, § 9.

The Bill also eliminated the mandatory nature of the DNA lab “fee,” provided the defendant has previously given the state their DNA. Laws of 2018, ch. 269, § 10; see former RCW 43.43.7541 (2015).

Under Ramirez, appellant is entitled to relief from the bulk of the LFOs imposed. He was indigent at the time of sentencing, as the judge herself noted. SRP 9. His criminal history includes felonies in the state so he has clearly given DNA before. And the \$200 criminal filing fee separately charged for both the misdemeanor and felony judgments (total of \$400), as well as the interest provisions, should be stricken under Ramirez. This Court should so hold.

E. CONCLUSION

For the reasons stated herein and in the opening brief, this Court should grant relief.

DATED this 17th day of October, 2018.

Respectfully submitted,



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DECLARATION OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Opening Brief to opposing counsel VIA this Court's upload service, to Pierce County Prosecutor's Office, and to appellant, Mr. Harris, DOC 832160, Monroe CC, P.O. Box 777, Monroe, WA. 98272

DATED this 17th day of October, 2018,



KATHRYN RUSSELL SELK, No. 23879
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APPENDIX A



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 16-1-01409-9

vs.

JAMES ELIOTT THEODORE HARRIS,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF COMMITMENT -1

Handwritten signature/initials

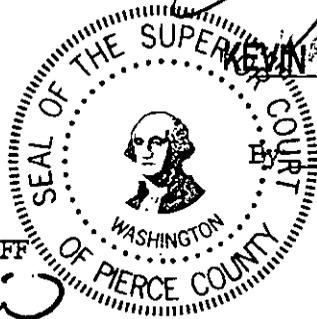
[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

~~MAAY 26,~~ JUNE 2, 2017
Dated: ~~APRIL 28, 2017~~

By direction of the Honorable

[Signature]

JUDGE



KEVIN STOCK Kathryn J. Nelson
CLERK

[Signature]

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

AUG 07 2017 By *[Signature]*
Date Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk

By: _____ Deputy

cjc



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 16-1-01409-9

vs

JAMES ELLIOTT THEODORE HARRIS

Defendant.

JUDGMENT AND SENTENCE (FJS)

- Prison
- RCW 9.94A.712/9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

SID: WA14821304
DOB: 10/04/1975

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on MARCH 29, 2017 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66) COMMUNITY CUSTODY	9.41.040(1)(a)	NONE	04/05/16	TACOMA PD 1609600009

17-9-06667-D

II	UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (J730) METHADONE SCH II COMMUNITY CUSTODY	69.50.4013(1)	NONE	04/05/16	TACOMA PD 1609600009
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* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ORIGINAL Information

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ASSAULT 4	02-15-1991	SUPERIOR CT - PIERCE CTY	01-03-1991	J	
2	FIREARMS/DANGEROUS WEAPONS	02-15-1991	SUPERIOR CT - PIERCE CTY	01-03-1991	J	
3	ROBBERY 2	06-08-1990	SUPERIOR CT - PIERCE CTY	03-22-1990	J	
4	PSP 2	06-08-1990	SUPERIOR CT - PIERCE CTY	03-22-1990	J	
5	THEFT 1	12-30-1991	SUPERIOR CT - PIERCE CTY	11-24-1991	J	
6	DV - ASSAULT 4	12-04-2000	DES MOINES MUNICIPAL CT	05-28-1999	A	
7	ATT POSS DRUGS	03-13-2015	CLEVELAND, OH.	04-11-2000	A	
8	OBSTRUCTING	07-23-2009	SEATTLE MUNICIPAL	07-22-2009	A	
9	DV - CRIM ASSAULT	09-30-2015	TACOMA MUNICIPAL COURT	08-30-2012	A	
10	DRUG TRAFFIC	09-27-2013	SEATTLE MUNICIPAL	07-12-2013	A	
11	UPCS - MAN/DEL/POSS W/INT.	11-21-2001	KING CO. SUPERIOR COURT	08-15-2001	A	
12	UPCS - MAN/DEL/POSS	11-07-2002	KING CO. SUPERIOR COURT	07-31-2002	A	
13	BURGLARY 1	09-24-2004	KING CO. SUPERIOR COURT	04-04-2004	A	
14	ASSAULT 2	09-24-2004	KING CO. SUPERIOR COURT	04-04-2004	A	
15	TRAFF STOLEN PROP 1	09-24-2004	KING CO. SUPERIOR COURT	04-04-2004	A	
16	ATT UPCS	10-20-2015	SUPERIOR CT - PIERCE CTY	08-29-2015	A	
17	COMMUNITY CUSTODY					

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	8 8	VII	77-102 87-116 MONTHS	NONE	77-102 87-116 MONTHS	10 YRS
II	8 8	I DRUG GRID	12+-24 MONTHS	NONE	12+-24 MONTHS	5 YRS

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____
 above the standard range for Count(s) _____

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9A.10.010.

The court considered the following factors:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: _____

The court decided the defendant [] should [] should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNRJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ _____	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 800.00 TOTAL

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

[] RESTITUTION. Order Attached

[] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**
The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

[] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.9b **BOND IS HEREBY EXONERATED**

4.5 ~~**CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:~~

~~(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):~~

1
2 4.5 CONFINEMENT/SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660.
3 The court finds that the defendant is a drug offender who is eligible for the special sentencing alternative on
4 count(s) _____ and the court has determined that the special drug offender sentencing alternative is
5 appropriate. The court waives imposition of a sentence within the standard range on the indicated counts
6 and imposes a sentence which is half of the midpoint of the standard range. The court imposes the
7 following sentence:

8 (a) PRISON-BASED ALTERNATIVE (effective for sentences imposed on or after October 1, 2005):

9 (1) CONFINEMENT. On SDOSA sentences, defendant is sentenced to a term of total confinement in the
10 custody of the Department of Corrections (DOC) that is half of the midpoint of the standard range, or 12
11 months, whichever is greater.

12 44.75 ~~50.75~~ months on Count No. I SDOSA Standard Range
13 12 months on Count No. II SDOSA Standard Range
14 _____ months on Count No. _____ SDOSA Standard Range

15 Confinement shall commence immediately unless otherwise set forth here:
16 _____

17 Work release is authorized, if eligible and approved. If the midpoint of the standard range is 24 months or
18 less, no more than three months may be served in work release status. RCW 9.94A.731.

19 The defendant shall receive credit for time served prior to sentencing if that confinement was solely under
20 this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for
21 time served prior to sentencing is specifically set forth by the court: _____

22 44.75 ~~50.75~~ (COUNT I)
23 (2) COMMUNITY CUSTODY. Defendant shall serve 12 (COUNT II) months in community custody.
24 (The remainder of the midpoint of the standard range.) The defendant shall comply with the community
25 custody conditions in paragraph 4.6.

26 (b) RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED ALTERNATIVE (effective
27 for sentences imposed on or after October 1, 2005).

28 (1) Defendant shall serve _____ months in community custody (A term equal to one-half of the
midpoint of the standard range or two years, whichever is greater) under the supervision of the Department
of Corrections (DOC), on the condition that the defendant enters and remains in residential chemical
dependency treatment certified under chapter 70.96A RCW for _____ months.

(2) The defendant shall comply with the community custody conditions in paragraph 4.6. DOC shall make
chemical dependency assessment and treatment services available to the defendant during the term of
community custody, within available funding.

(3) A progress hearing is set for _____ (date). A treatment termination hearing is scheduled
for three months before the expiration of the term of community custody, on _____ (date), or
to be set later.

4.6. **COMMUNITY CUSTODY CONDITIONS.** RCW 9.94A.660. Defendant shall serve the following months in community custody. (The remainder of the midpoint of the standard range on SDOSA sentences.)

44.75 ~~30.75~~ months on Count No. I
12 months on Count No. II
_____ months on Count No. _____

Defendant shall report to DOC, 514 South 13th St, Tacoma not later than 72 hours after release from confinement and the defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community custody, shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, shall obey all laws, shall not use illegal controlled substances and shall comply with any other conditions of community custody stated in this Judgment and Sentence or other conditions that may be imposed by the court or DOC during community custody.

- (a) Undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Department of Social and Health Services
- (b) Undergo urinalysis or other testing to monitor drug-free status. [] The defendant shall pay the statutory rate to DOC, while on community custody, to offset the cost of urinalysis.

(c) Additional conditions (choose at least three):

- pay all court-ordered legal financial obligations
- report as directed to a community corrections officer
- notify the court or community corrections officer in advance of any change in defendant's address or employment
- remain within or outside of prescribed geographical boundaries
- perform community service work
- devote time to specific employment or training
- stay out of areas designated by the judge
- conditions set forth in Appendix F

Other conditions: AS PER COMMUNITY CORRECTIONS OFFICER (C.C.O.)

4.7 (a) **ADDITIONAL CONFINEMENT UPON VIOLATION OF SDOSA SENTENCE CONDITIONS.**

If the defendant violates any of the sentence conditions in Section 4.6 above, or, for offenses committed on or after June 8, 2000, is found by the United States attorney general to be subject to a deportation order, a violation hearing shall be held by the department, unless waived by the offender. If the department finds that the conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. For offenses committed on or after June 8, 2000, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. An offender who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall be subject to all rules relating to community custody and earned release time. An offender who violates any conditions of community custody as defined by the department shall be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of the sentence, the offender shall be subject to all rules relating to earned release time. RCW 9.94A.660.

(b) **CONFINEMENT ORDERED AT THE TREATMENT TERMINATION HEARING** (effective for sentences imposed on or after October 1, 2005). At the treatment termination hearing, the court may

impose a term of total confinement equal to one-half of the midpoint of the standard sentence range. Confinement imposed at the hearing shall be followed by the term of community custody in paragraph 4.8 within available funding, DOC shall make chemical dependency assessment and treatment services available to the defendant during the terms of total confinement and community custody.

4.8 **ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM ALTERNATIVE PROGRAM** For offenses committed on or after June 8, 2000, the following term of community custody is ordered and shall be imposed upon the defendant's failure to complete or defendant's administrative termination from the special drug offender sentencing alternative program: Defendant shall serve:

44.75 ~~50.75~~ months on Count No. I
12 months on Count No. II
_____ months on Count No. _____

in community custody or up to the period of earned release, whichever is longer. PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense

While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community custody.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: AS PER C.I.O.

Defendant shall remain [] within [] outside of a specified geographical boundary, to-wit: AS PER C.I.O.

The defendant shall participate in the following crime-related treatment or counseling services:

The defendant shall undergo an evaluation for treatment for [] domestic violence substance abuse [] mental health [] anger management and fully comply with all recommended treatment AND AS

PER C.I.O.

The defendant shall comply with the following crime-related prohibitions:

AS PER C.I.O.

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

AS PER C.I.O.

community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING-OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

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583
9/8/2017
11:32

5.10 OTHER: _____

DONE IN OPEN COURT and in the presence of the defendant this date: ~~July 26, 2017~~ JUNE 2, 2017

JUDGE

Print name

Kathryn J. Nelson

Brian Wasankari

Deputy Prosecuting Attorney

Print name: BRIAN WASANKARI

WSB # 28945

Danahya

Attorney for Defendant

Print name: Danahya

WSB # 12418

James Law

Defendant

Print name: _____

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: James Law



APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: _____

AS PER COMMUNITY CORRECTIONS OFFICER (C.C.O.)

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol; _____

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: COMPLETE SUBSTANCE ABUSE EVALUATION AND TREATMENT PER C.C.O.

IDENTIFICATION OF DEFENDANT

SID No. WA14821304 Date of Birth 10/04/1975
 (If no SID take fingerprint card for State Patrol)

FBI No. 367527KB6 Local ID No. 900520037

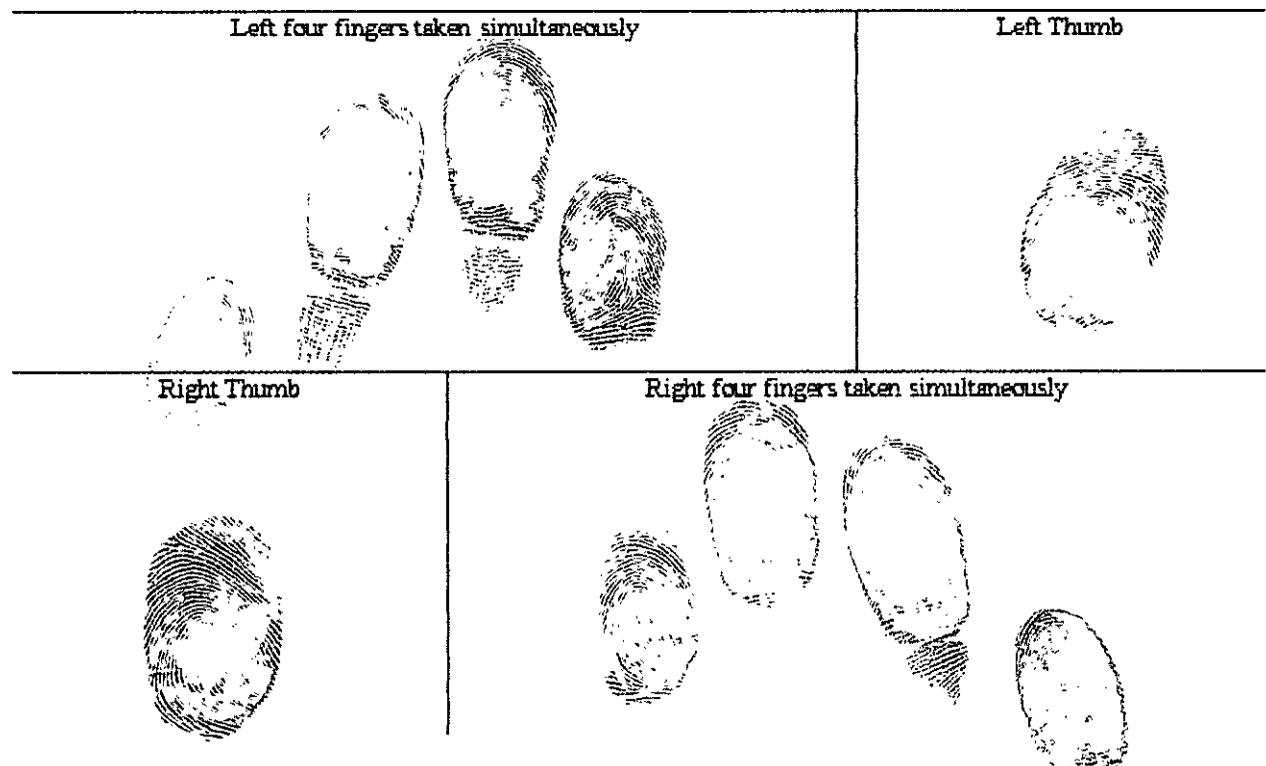
PCN No. 541583700 Other

Alias name, SSN, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Male

Native American Other: Non-Hispanic Female

FINGERPRINTS



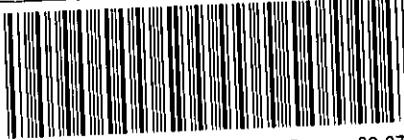
I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, *[Signature]*

Dated: 8-4-17

DEFENDANT'S SIGNATURE:

James Harris

DEFENDANT'S ADDRESS:



16-1-01409-9 49701267 JDOSSG 08-07-17



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 16-1-01409-9

vs.

JAMES ELIOTT THEODORE HARRIS,

Defendant.

JUDGMENT AND SENTENCE

(Misd. and/or Gross Misd.)

Plea of Guilty

Found Guilty by Jury

Found Guilty by Court

SUSPENDED

AS TO COUNT III & IV ONLY

DOB: 10/04/75
RACE: BLACK
SEX: MALE
AGENCY: WA02703
INCIDENT #: 1609600009
PCN: 541583700

THIS MATTER coming on regularly for hearing in open court on the ~~28th~~ ^{47th} day of ~~MAY~~ ^{AVG.}, 2017, the defendant JAMES ELIOTT THEODORE HARRIS and HIS attorney DANA MICHAEL RYAN appearing, and the State of Washington appearing by BRIAN N WASANKARI Prosecuting Attorney for Pierce County, following a verdict of guilty by jury by the court on the ~~28th~~ ^{47th} day of ~~MAY~~ ^{AVG.}, 2017.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That said Defendant is guilty of the crime(s) of OBSTRUCTING A LAW ENFORCEMENT OFFICER, MAKING A FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT, Charge Code: (EE12, HH8), as charged in the ORIGINAL Information herein, and that HE shall be punished by confinement in the Pierce County Jail for a term of not more than 367 DAYS PER COUNT.

() The State has pleaded and proved that the crime charged in Count(s) _____ involve(s) domestic violence.

Said sentence shall be (suspended) on the attached conditions of (suspended) sentence and that the Defendant pay the prescribed crime victim compensation penalty assessment as per RCW 7.68.035 in the amount of \$ 500.00.

()The said Defendant is now hereby committed to the custody of the sheriff of aforesaid county to be detained.

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

Bail is hereby exonerated.

Signed this ~~26th~~ day of ~~JUNE~~ 3RD AUG., 2017, in the presence of said Defendant.

[Signature]

JUDGE/COMMISSIONER

CERTIFICATE Kathryn J. Nelson
Entered Jour. No. _____ Page No. _____ Department No. _____, this _____ day of _____,

I, _____, County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Pierce, do hereby certify that the foregoing is a fully, true and correct copy of the judgment, sentence, and commitment in this cause as the name appears of record in my office.

WITNESS my hand and seal of said Superior Court this _____ day of _____,

County Clerk and Clerk of Superior Court.

By _____
Deputy Clerk

Presented by:

[Signature]

BRIAN N WASANKARI
Deputy Prosecuting Attorney
WSB # 28945

Approved as to Form:

[Signature]

DANA MICHAEL RYAN
Attorney for Defendant
WSB# 17418



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 16-1-01409-9

vs.

JAMES ELIOTT THEODORE HARRIS,

CONDITIONS ON SUSPENDED SENTENCE

Defendant.

This matter coming on regularly for sentencing before the Honorable K. NELSON, Judge, on the 27th day of AUG ~~MAY~~ 2017, and the Court having sentenced the defendant JAMES ELIOTT THEODORE HARRIS to the term of 364 DAYS (CONCURRENT) for the crime(s) of OBSTRUCTING A LAW ENFORCEMENT OFFICER; MAKING A FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT and the Court having suspended that term, the Court herewith orders the following conditions and provisions:

- 1. Termination date is to be 2 year(s) after date of sentence.
- 2. The Defendant shall be under the charge of a probation officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by the Department of Corrections for the conduct of the Defendant during the time of his/her probation herein.
- () That the Defendant be under the supervision of the Court (bench probation).
- 3. Defendant will pay the following amounts to the Clerk of the Superior Court, Pierce County, Washington.

\$ _____ Attorney fees as reimbursement for a portion of the expense of his/her court appointed counsel provided by the Pierce County Department of Assigned Counsel. The court finds that the defendant is able to pay said fee without undue financial hardship.

1
2 \$ 500.00 Crime Victim Compensation penalty assessment per RCW 7.68.035;

3 \$ 200.00 Court Costs;

4 \$ _____ Fine;

5 \$ _____ Other: _____

6 \$ _____ Restitution to be forwarded to: _____

7
8
9
10 Restitution hearing set for _____

11 \$ 700.00 TOTAL payable at the rate of \$ * per month commencing *

12 * PER C.C.O.

13
14 Revocation of this probation for nonpayment shall occur only if defendant wilfully fails to
15 make the payments having the financial ability to do so or wilfully fails to make a good faith
16 effort to acquire means to make the payment.

17 A notice of payroll deduction may be issued or other income-withholding action may be
18 taken, without further notice to the offender, if a monthly court-ordered legal financial obligation
19 payment is not paid when due and an amount equal to or greater than the amount payable for one
20 month is owed.

21 **RESTITUTION HEARING.**

22 () Defendant waives any right to be present at any restitution hearing (sign initials): _____

23 **THE FINANCIAL OBLIGATIONS IMPOSED IN THIS JUDGMENT SHALL BEAR INTEREST
24 FROM THE DATE OF THE JUDGMENT UNTIL PAYMENT IN FULL, AT THE RATE
25 APPLICABLE TO CIVIL JUDGMENTS. RCW 10.82.090. AN AWARD OF COSTS ON APPEAL
26 AGAINST THE DEFENDANT MAY BE ADDED TO THE TOTAL LEGAL FINANCIAL
27 OBLIGATIONS. RCW 10.73.**

28 Any period of supervision shall be tolled during any period of time the offender is in
confinement for any reason.

Further Conditions as follows:

364 DAYS IMPOSED WITH 364 SUSPENDED ON CONDITIONS

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1583
8/8/2017

1
2 INCLUDING COMPLETION OF A SUBSTANCE ABUSE EVALUATION
3 AND TREATMENT AS PER COMMUNITY CORRECTIONS OFFICER (CCO)
4 AND LAW ABIDING BEHAVIOR AND NO SIMILAR INCIDENTS

5 IT IS FURTHER ORDERED that, upon completion of any incarceration imposed the
6 defendant shall be released from the custody of the Sheriff of Pierce County and report to the
7 authorized Probation Officer of this district, to receive his instructions: Bail is hereby
8 exonerated.

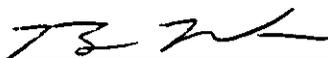
9
10 [] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS
11 OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR
12 RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION
13 AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND RE-
14 INCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE
15 UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH
16 RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE
17 SENTENCE.

18 DONE IN OPEN COURT this ^{2ND} ~~25TH~~ day of ~~May~~ JUNE, 2017.

19 
20 _____
21 JUDGE/COMMISSIONER

22 Kathryn J. Nelson

23 Presented by:

24 
25 _____
26 BRIAN N WASANKARI
27 Deputy Prosecuting Attorney
28 WSB # 28945

29 Approved as to Form:

30 
31 _____
32 DANA MICHAEL RYAN
33 Attorney for Defendant
34 WSB # 17418

35 
36 _____
37 JAMES ELIOTT THEODORE HARRIS
38 Defendant
39 cjc

40 

APPENDIX B

2018 WL 4499761

Only the Westlaw citation is currently available.
Supreme Court of Washington.

STATE of Washington, Respondent,
v.
David Angel RAMIREZ, Petitioner.

NO. 95249-3

|
Argued June 26, 2018

|
Filed September 20, 2018

Synopsis

Background: Defendant was convicted in the Superior Court, Lewis County, 15-1-00520-5, Richard Lynn Brosey, J., of third-degree assault with sexual motivation. He appealed. The Court of Appeals, 2017 WL 4791011, affirmed. Defendant petitioned for further review, which petition was granted only on issue of discretionary legal financial obligations (LFOs) imposed at sentencing.

Holdings: The Supreme Court, Stephens, J., held that:

de novo standard of review applied to trial court's alleged error in failing to conduct adequate inquiry prior to imposing discretionary LFOs;

trial court failed to conduct adequate individualized inquiry into defendant's ability to pay prior to imposing discretionary LFOs; and

amendments to discretionary LFO statute, enacted after defendant's petition for review was granted, applied prospectively to defendant's appeal.

Reversed and remanded.

Appeal from Lewis County Superior Court, (No. 15-1-00520-5), Hon. Richard Lynn Brosey, Judge

Attorneys and Law Firms

Kathleen A. Shea, Washington Appellate Project, 1511 3rd Avenue, Suite 610, Seattle, WA 98101-3647, for Petitioner.

Jessica L. Blye, Lewis County Prosecutor's Office, 345 W. Main Street, Chehalis, WA 98532-4802, for Respondent.

Opinion

STEPHENS, J.

*1 ¶ 1 In *State v. Blazina*, 182 Wash.2d 827, 839, 344 P.3d 680 (2015), we held that under former RCW 10.01.160(3) (2015), trial courts have an obligation to conduct an individualized inquiry into a defendant's current and future ability to pay before imposing discretionary legal financial obligations (LFOs) at sentencing. This case provides an opportunity to more fully describe the nature of such an inquiry. An adequate inquiry must include consideration of the mandatory factors set forth in *Blazina*, including the defendant's incarceration and other debts, and the court rule GR 34 criteria for indigency. *Id.* at 838, 344 P.3d 680. The trial court should also address what we described in *Blazina* as other "important factors" relating to the defendant's financial circumstances, including employment history, income, assets and other financial resources, monthly living expenses, and other debts. *Id.*

¶ 2 The trial court in David A. Ramirez's case failed to conduct an adequate individualized inquiry before imposing LFOs on Ramirez. While this *Blazina* error would normally entitle Ramirez to a resentencing hearing on his ability to pay discretionary LFOs, such a limited resentencing is unnecessary in this case. Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783), which amended two statutes at issue and now prohibits the imposition of certain LFOs on indigent defendants, applies prospectively to Ramirez's case on appeal. We reverse the Court of Appeals and remand for the trial court to strike the improperly imposed LFOs from Ramirez's judgment and sentence.

FACTS AND PROCEDURAL HISTORY

¶ 3 A jury convicted Ramirez of third degree assault and possession of a controlled substance, and found by special verdict that he committed the assault with sexual motivation and displayed an egregious lack of remorse. Clerk's Papers (CP) at 63-66.

¶ 4 At sentencing, the State sought an exceptional sentence of 10 years based on Ramirez’s prior record and offender score. 2 Verbatim Report of Proceedings (Mar. 7, 2016) (VRP) at 346. Following the State’s argument for imposing an exceptional sentence, Ramirez took the opportunity to directly address the trial court. Ramirez explained to the court that despite the State’s representations, he “was doing everything right” before his arrest. *Id.* at 360. Ramirez shared that prior to his arrest, he was working a minimum wage job at Weyerhaeuser as part of a “temporary service team” and paying all his household bills, including a DirecTV subscription that included Seattle Seahawks games. *Id.* at 359-60, 362-63. Ramirez had opened a bank account for the first time in his life, was planning on getting his driver’s license, and had moved into his own apartment with the help of his wife. *Id.* at 360, 362. Ramirez discussed these favorable aspects of his life in an effort to show that despite his criminal history, he did not deserve an exceptional sentence. Suppl. Br. of Pet’r at 3. He lamented that because of his drug relapse and arrest, “I missed out on all of that.” VRP at 363.¹

¹ Ramirez’s full statement was, “I missed out on all of that because I screwed up before even the first Seahawk game. That was the weekend that I screwed up. It was the Saturday before the first Seahawk game.” VRP at 363.

*2 ¶ 5 The trial court sentenced Ramirez to five years for the third degree assault conviction and two years for possession of a controlled substance, to be served consecutively. *Id.* at 372-73. The trial court also imposed \$2,900 in LFOs, including a \$500 victim assessment fee, a \$100 DNA (deoxyribonucleic acid) collection fee, a \$200 criminal filing fee, and discretionary LFOs of \$2,100 in attorney fees, and set a monthly payment amount of \$25. *Id.* at 375-76. After the court announced the sentence, Ramirez presented a notice of appeal and a motion for an order of indigency, which the court granted. *Id.* at 373; Suppl. CP at 1-4. According to the financial statement in his declaration of indigency, Ramirez had no source of income or assets and no savings, and owed more than \$10,000 at the time of sentencing (apparently previously imposed court costs and fees). Suppl. CP at 2-4.

¶ 6 Prior to imposing LFOs, the trial court asked only two questions relating to Ramirez’s current and future ability to pay, both of which were directed to the State. First, the court asked, “And when he is not in jail, he has the ability to make money to make periodic payments on his LFOs, right?” VRP at 348. The State responded that Ramirez had the ability to pay his LFOs “[w]hen he’s not in jail and when he is in jail,” noting that Ramirez could work while incarcerated. *Id.* The trial court then asked the State to once more confirm that LFOs were appropriate in Ramirez’s case: “But as far as you are concerned, the LFOs should be imposed.” *Id.* The State answered, “Yes.” *Id.*

¶ 7 The trial court did not directly ask Ramirez or his counsel about his ability to pay at any point during sentencing. The only statement made by Ramirez concerning his ability to pay came after the trial court announced its decision to impose discretionary costs. After finding that Ramirez had “the ability to earn money and make small payments on his financial

obligations,” the court listed the specific costs imposed and ordered Ramirez to pay “25 bucks a month starting [in] 60 days.” *Id.* at 375-76. Ramirez then asked, “How am I going to do that from inside?” *Id.* at 376. Ramirez’s counsel responded, “I will explain.” *Id.* The discussion then moved on to a different subject.²

² Ramirez’s counsel made only one mention of LFOs, in correcting the trial court’s original estimate of the amount of attorney fees. The court initially stated that these discretionary costs totaled \$900, but Ramirez’s counsel clarified that \$2,100 was the correct amount. VRP at 375.

¶ 8 On appeal, Ramirez argued that the trial court failed to make an adequate individualized inquiry into his ability to pay before imposing discretionary LFOs, contrary to *Blazina*, 182 Wash.2d at 837-38, 344 P.3d 680.³ In a 2-1 unpublished opinion, Division Two of the Court of Appeals affirmed the trial court, holding that the court “conducted an adequate individualized inquiry and did not err in imposing the discretionary LFOs.” *State v. Ramirez*, No. 48705-5-II, slip op. at 13, 2017 WL 4791011 (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2048705-5-II%20Unpublished%20Opinion.pdf>. In reviewing the trial court’s decision to impose discretionary LFOs on Ramirez, the Court of Appeals majority applied an overall abuse of discretion standard; it cited the information offered by Ramirez in his statement to the trial court as sufficient grounds for finding Ramirez able to pay LFOs. *Id.* at 12-13.

³ Ramirez’s appeal additionally raised several guilt-phase claims of error, which the Court of Appeals rejected. *State v. Ramirez*, No. 48705-5-II, slip op. at 7-11, 13-15, 2017 WL 4791011 (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2048705-5-II%20Unpublished%20Opinion.pdf>. These issues are not before us.

¶ 9 In dissent, Chief Judge Bjorgen argued that the question of whether a trial court made an adequate inquiry into a defendant’s ability to pay discretionary LFOs should be reviewed de novo, not for an abuse of discretion. *Id.* at 16 (Bjorgen, C.J., dissenting). Applying the de novo standard, Chief Judge Bjorgen concluded that the trial court’s inquiry into Ramirez’s financial status fell short of the *Blazina* standards. *Id.* at 19.

*3 ¶ 10 On March 7, 2018, we granted Ramirez’s petition for review “only on the issue of discretionary [LFOs].” Order Granting Review, No. 95249-3 (Wash. Mar. 7, 2018). On March 27, 2018, just weeks after we granted Ramirez’s petition, House Bill 1783 became law. LAWS OF 2018, ch. 269. House Bill 1783’s amendments relate to Washington’s system for imposing and collecting LFOs and are effective as of June 7, 2018. House Bill 1783 is particularly relevant to Ramirez’s case because it amends the discretionary LFO statute to prohibit trial courts from imposing discretionary LFOs on defendants who are indigent at the time of sentencing. *Id.* at § 6(3).

ANALYSIS

¶ 11 This case concerns Washington's system of LFOs, specifically the imposition of discretionary LFOs on individuals who lack the current and future ability to pay them. State law requires that trial courts consider the financial resources of a defendant and the nature of the burden imposed by LFOs before ordering the defendant to pay discretionary costs. See RCW 10.01.160(3).

¶ 12 We addressed former RCW 10.01.160(3) in *Blazina* and held that the statute requires trial courts to conduct an individualized inquiry into the financial circumstances of each offender before levying any discretionary LFOs. 182 Wash.2d at 839, 344 P.3d 680. As Ramirez's case demonstrates, however, costs are often imposed with very little discussion. We granted review in this case to articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs.

¶ 13 After we granted review, the legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h). According to Ramirez's motion for an order of indigency, which the trial court granted, Ramirez unquestionably qualified as indigent at the time of sentencing: Ramirez had no source of income or assets and no savings, and owed more than \$10,000 at the time of sentencing. Suppl. CP at 3-4.

¶ 14 This case presents two issues. The primary issue is whether the trial court conducted an adequate individualized inquiry into Ramirez's ability to pay, as required under *Blazina* and former RCW 10.01.160(3). A separate but related issue is whether House Bill 1783's statutory amendments apply to Ramirez's case on appeal.

I. The Trial Court Did Not Conduct an Adequate Individualized Inquiry into Ramirez's Current and Future Ability To Pay LFOs

¶ 15 The threshold issue in this case is whether the trial court performed an adequate inquiry into Ramirez's present and future ability to pay before imposing discretionary LFOs. In addressing this issue, we must decide what standard of review applies to a trial court's decision to impose discretionary LFOs. The Court of Appeals was seemingly split on this question, with the majority applying an overall abuse of discretion standard and the

dissenting judge applying de novo review. We address the proper standard of review before turning to the merits of Ramirez’s argument.

A. The Adequacy of the Trial Court’s Individualized Inquiry into a Defendant’s Ability To Pay Discretionary LFOs Should Be Reviewed De Novo

¶ 16 As Ramirez correctly points out, the question of whether the trial court adequately inquired into his ability to pay discretionary LFOs involves both a factual and a legal component. Suppl. Br. of Pet’r at 16. On the factual side, the reviewing court determines what evidence the trial court actually considered in making the *Blazina* inquiry. Chief Judge Bjorgen aptly observed that the factual determination can be decided by simply examining the record for supporting evidence.⁴ *Ramirez, slip op. at 17* (Bjorgen, C.J., dissenting). On the legal side, the reviewing court decides whether the trial court’s inquiry complied with the requirements of *Blazina*. Both the majority and dissenting opinions below recognized that this legal inquiry merits de novo review. *See id. at 13 n.4* (“[w]hether or not a trial court makes an individualized inquiry is reviewed de novo”), *17* (Bjorgen, C.J., dissenting) (describing this as “an unalloyed legal question”).

⁴ Ramirez criticizes Chief Judge Bjorgen for embracing a “clearly erroneous” standard of review for factual determinations, based on prior appellate decisions. *See* Suppl. Br. of Pet’r at 17 & n.6. Ramirez insists that “substantial evidence” is the correct Washington standard, while “clear error” applies in federal courts. *Id.* We believe the distinction is semantic in this context. The very case Ramirez cites as identifying different state and federal standards says, “[W]e review [factual findings] for substantial evidence, which is analogous to the ‘clear error’ test applied by the federal courts.” *Steele v. Lundgren*, 85 Wash. App. 845, 850, 935 P.2d 671 (1997).

*4 ¶ 17 Given their shared recognition that de novo review applies to the question of whether the trial court complied with *Blazina*, the split in the Court of Appeals may be more a difference in emphasis than in substance. *Blazina* establishes what constitutes an adequate inquiry into a defendant’s ability to pay under state law, and the standard of review for an issue involving questions of law is de novo. *State v. Hanson*, 151 Wash.2d 783, 784-85, 91 P.3d 888 (2004). Ramirez is correct that the *Blazina* inquiry is similar to other inquiries trial judges make that are subject to de novo review. *See* Suppl. Br. of Pet’r at 16-17 (citing *State v. Vicuna*, 119 Wash. App. 26, 30-31, 79 P.3d 1 (2003) (applying de novo review to determination of whether a conflict exists between attorney and client); *State v. Ramirez-Dominguez*, 140 Wash. App. 233, 239, 165 P.3d 391 (2007) (applying de novo review to determination of whether the defendant knowingly, intelligently, and voluntarily waived his right to a jury trial)).

¶ 18 That said, the trial court’s ultimate decision whether to impose discretionary LFOs is undoubtedly discretionary. The trial court must balance the defendant’s ability to pay against the burden of his obligation, which is an exercise of discretion. *State v. Baldwin*, 63 Wash. App. 303, 312, 818 P.2d 1116 (1991). But, discretion is necessarily abused when it is manifestly

unreasonable or based on untenable grounds or reasons. *State v. Stenson*, 132 Wash.2d 668, 701, 940 P.2d 1239 (1997). If the trial court fails to conduct an individualized inquiry into the defendant's financial circumstances, as RCW 10.01.160(3) requires, and nonetheless imposes discretionary LFOs on the defendant, the trial court has per se abused its discretionary power. Stated differently, the court's exercise of discretion is unreasonable when it is premised on a legal error. The focus of Ramirez's argument for de novo review is squarely on the trial court's legal error in failing to conduct an individualized inquiry. Thus, while the State is correct that the abuse of discretion standard of review is relevant to the broad question of whether discretionary LFOs were validly imposed, de novo review applies to the alleged error in this case: the failure to make an adequate inquiry under *Blazina*.

B. The Trial Court's Inquiry into Ramirez's Ability To Pay Discretionary LFOs Was Inadequate under Blazina

¶ 19 The legal question before us is whether the trial court's inquiry into Ramirez's current and future ability to pay discretionary LFOs was adequate under *Blazina*. In *Blazina*, we held that former RCW 10.01.160(3) requires the trial court to conduct an individualized inquiry on the record concerning a defendant's current and future ability to pay before imposing discretionary LFOs. 182 Wash.2d at 839, 344 P.3d 680. We explained that "the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry." *Id.* at 838, 344 P.3d 680. As part of this inquiry, the trial court is required to consider "important factors," such as incarceration and the defendant's other debts, when determining a defendant's ability to pay. *Id.* Additionally, we specifically instructed courts to look for additional guidance in the comment to court rule GR 34, which lists the ways a person may prove indigent status for the purpose of seeking a waiver of filing fees and surcharges. *Id.*; *City of Richland v. Wakefield*, 186 Wash.2d 596, 606-07, 380 P.3d 459 (2016). As we further clarified, "if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs." *Blazina*, 182 Wash.2d at 839, 344 P.3d 680.

¶ 20 Here, the record shows that the trial court asked only two questions concerning Ramirez's ability to pay LFOs, both of which were directed to the State. First, the court asked, "And when he is not in jail, he has the ability to make money to make periodic payments on his LFOs, right?" VRP at 348. The State responded, "When he's not in jail and when he is in jail," noting that Ramirez could work while incarcerated. *Id.* The court then asked the State for clarification on the LFO issue: "But as far as you are concerned, the LFOs should be imposed." *Id.* In response, the State simply answered, "Yes." *Id.* The record reflects that these two questions, directed to the State, are the only questions asked by the trial court relating to Ramirez's ability to pay discretionary LFOs before ordering him to pay \$25 per month starting in 60 days. When Ramirez asked, "How am I going to do that

from inside?” *id.* at 376, the trial court said nothing. Ramirez’s counsel said, “I will explain,” and the court moved on. *Id.*

*5 ¶ 21 The court made no inquiry into Ramirez’s debts, which his declaration of indigency listed as exceeding \$10,000 at the time of sentencing (apparently previously imposed court costs and fees). Suppl. CP at 4. Nor does the record reflect that the trial court inquired into whether Ramirez met the GR 34 standard for indigency. Had the court looked to GR 34 for guidance, as required under *Blazina*, it would have confirmed that Ramirez was indigent at the time of sentencing—his income fell below 125 percent of the federal poverty guideline. As we explained in *Blazina*, “if someone does meet the GR 34 standard for indigency, courts should seriously question that person’s ability to pay LFOs.” 182 Wash.2d at 839, 344 P.3d 680; Wakefield, 186 Wash.2d at 607, 380 P.3d 459. The record does not reflect that the trial court meaningfully inquired into any of the mandatory *Blazina* factors.

¶ 22 The trial court also failed to consider other “important factors” relating to Ramirez’s current and future ability to pay discretionary LFOs, such as Ramirez’s income, his assets and other financial resources, his monthly living expenses, and his employment history. *Blazina*, 182 Wash.2d at 838, 344 P.3d 680. In *Blazina*, we held that “[t]he record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay,” which requires the court to consider “important factors,” in addition to the mandatory factors discussed above. *Id.* The only information in the record about Ramirez’s financial situation came during Ramirez’s allocution and was offered to show how he had been putting his life in order prior to his arrest. The court made no inquiry.

¶ 23 Consistent with *Blazina*’s instruction that courts use GR 34 as a guide for determining whether someone has an ability to pay discretionary costs, we believe the financial statement section of Ramirez’s motion for indigency would have provided a reliable framework for the individualized inquiry that *Blazina* and RCW 10.01.160(3) require. In determining a defendant’s indigency status, the financial statement section of the motion for indigency asks the defendant to answer questions relating to five broad categories: (1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts. *See* Suppl. CP at 2-4. These categories are equally relevant to determining a defendant’s ability to pay discretionary LFOs.

¶ 24 Regarding employment history, a trial court should inquire into the defendant’s present employment and past work experience. The court should also inquire into the defendant’s income, as well as the defendant’s assets and other financial resources. Finally, the court should ask questions about the defendant’s monthly expenses, and as identified in *Blazina*, the court must ask about the defendant’s other debts, including other LFOs, health care costs, or education loans. To satisfy *Blazina* and RCW 10.01.160(3)’s mandate that the State

cannot collect costs from defendants who are unable to pay, the record must reflect that the trial court inquired into all five of these categories before deciding to impose discretionary costs. That did not happen here.

¶ 25 The State argues, and the Court of Appeals majority agreed, that despite any lack of inquiry by the trial court into Ramirez’s ability to pay, statements by Ramirez during his allocution were adequate to support the imposition of discretionary LFOs. Resp’t’s Br. at 4. In opposing the State’s request for an exceptional sentence, Ramirez told the court he was “doing everything right” prior to his arrest—he was working a minimum wage job at Weyerhaeuser on a “temporary service team,” his wife had helped him get his own apartment, he was paying his household bills, including a DirecTV subscription, and he had opened a bank account for the first time in his life and was hoping to get a driver’s license. VRP at 359-363. Ramirez did not offer this information in the context of assessing his current and future ability to pay LFOs, but rather in an effort to “counter the State’s negative portrayal of him and direct the court’s attention to his accomplishments in order to persuade the court he was deserving of a lesser sentence.” Suppl. Br. of Pet’r at 19.

*6 ¶ 26 Notably, while the Court of Appeals majority viewed Ramirez’s statements as supporting imposition of discretionary costs, there is no indication in the record that the trial court actually relied on any of Ramirez’s statements. *See Ramirez, slip op. at 13.*⁵ Nor would reliance on Ramirez’s statements be reasonable, given that Ramirez was describing his circumstances and the positive strides he had made in the months *prior* to his arrest. As his statements at sentencing and his declaration of indigency make clear, all of that changed. Indeed, Ramirez lamented that after being on the right track, he “screwed up” and lost everything. VRP at 363.

⁵ The Court of Appeals inferred that the trial court’s decision was based on Ramirez’s statements:

Here, the court considered that Ramirez had recently been released from custody, was working in a minimum wage job, and had been paying his household bills. Ramirez also told the court that he had opened a bank account for the first time in his life and “was just getting on track[.]” He added that although he was working a minimum wage job “it was fine because it took care of everything.” Thus, we hold that the court conducted an adequate individualized inquiry and did not err in imposing the discretionary LFOs.

Ramirez, slip op. at 13 (citations omitted).

¶ 27 RCW 10.01.160(3) requires the trial court to inquire into a person’s present and future ability to pay LFOs. This inquiry must be made on the record, and courts should be cautious of any after-the-fact attempt to justify the imposition of LFOs based on information offered by a defendant for an entirely different purpose. Judges understand that defendants want to appear in their best light at sentencing. It is precisely for this reason that the judge’s obligation is to engage in an on-the-record individualized inquiry into the defendant’s ability to pay discretionary LFOs.

¶ 28 We hold that the trial court failed to make an adequate individualized inquiry into Ramirez’s current and future ability to pay prior to imposing discretionary LFOs. Normally, this *Blazina* error would entitle Ramirez to a full resentencing hearing on his ability to pay LFOs. The timing of Ramirez’s appeal, however, makes this case somewhat unusual. After we granted review, the legislature passed House Bill 1783, which amends two LFO statutes at issue. LAWS OF 2018, ch. 269. House Bill 1783 amends the discretionary LFO statute, former ROW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c). LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(h), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

¶ 29 Ramirez argues that House Bill 1783’s amendments apply to his case on appeal because he qualified as indigent at the time of sentencing and his case was not yet final when House Bill 1783 was enacted. Suppl. Br. of Pet’r at 8-10. As for the remedy, Ramirez asks us to strike the discretionary LFOs and the \$200 criminal filing fee from his judgment and sentence rather than remand his case for resentencing. For the reasons discussed below, we agree that House Bill 1783 applies on appeal to invalidate Ramirez’s discretionary LFOs (and the \$200 criminal filing fee) and that resentencing is unnecessary in this case.

II. House Bill 1783 Applies Prospectively to Ramirez’s Case Because the Statutory Amendments Pertain to Costs and His Case on Direct Review Is Not Yet Final

¶ 30 House Bill 1783’s amendments modify Washington’s system of LFOs, addressing some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction. For example, House Bill 1783 eliminates interest accrual on the nonrestitution portions of LFOs, it establishes that the DNA database fee is no longer mandatory if the offender’s DNA has been collected because of a prior conviction, and it provides that a court may not sanction an offender for failure to pay LFOs unless the failure to pay is willful. LAWS OF 2018, ch. 269, §§ 1, 18, 7. Relevant here, House Bill 1783 amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 6(3). It also prohibits imposing the \$200 filing fee on indigent defendants. *Id.* § 17. Because House Bill 1783 was enacted *after* we granted Ramirez’s petition for review, we must decide whether House Bill 1783’s amendments apply to Ramirez’s case on appeal. We hold that House Bill 1783 applies prospectively to Ramirez because the statutory amendments pertain to costs imposed on criminal defendants following conviction, and Ramirez’s case was pending on direct review and thus not final when the amendments were enacted.

*7 ¶ 31 At the time of Ramirez’s sentencing in 2016, the discretionary cost statute provided that “[t]he court shall not order a defendant to pay costs unless the defendant is or will be

able to pay them.” Former RCW 10.01.160(3). In making this determination, the statute instructed the trial court to “take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Id.* The statutory language directs that the trial court must consider a defendant’s current and future ability to pay before deciding to impose discretionary costs on the defendant.

¶ 32 House Bill 1783 amends former RCW 10.01.160(3) to expressly prohibit courts from imposing discretionary costs on defendants who are indigent at the time of sentencing: “The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).” LAWS OF 2018, ch. 269, § 6(3). Under RCW 10.101.010(3)(a) through (c), a person is “indigent” if the person receives certain types of public assistance, is involuntarily committed to a public mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level. If the defendant is not indigent, the amendment instructs the court to engage in the same individualized inquiry into the defendant’s ability to pay as previously required under former RCW 10.01.160(3), i.e., to assess “the financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Id.* In this case, there is no question that Ramirez satisfied the indigency requirements of RCW 10.101.010(3)(c) at the time of sentencing. Accordingly, if House Bill 1783 applies to Ramirez’s case, the trial court impermissibly imposed discretionary LFOs on Ramirez.

¶ 33 As noted, House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit charging the \$200 criminal filing fee to defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 17. Thus, if House Bill 1783’s amendments apply to Ramirez’s case on appeal, the trial court improperly imposed both the discretionary costs of \$2,100 and the criminal filing fee.

¶ 34 This is not our first occasion to consider the prospective application of cost statutes to criminal cases on appeal. In State v. Blank, 131 Wash.2d 230, 249, 930 P.2d 1213 (1997), we held that a statute imposing appellate costs applied prospectively to the defendants’ cases on appeal. In Blank, the defendants’ appeals were pending when the legislature enacted a statute providing for recoupment of appellate defense costs from a convicted defendant. *Id.* at 234, 930 P.2d 1213. In determining whether the statute applied to the defendants’ cases, we clarified that “[a] statute operates prospectively when the precipitating event for [its] application ... occurs after the effective date of the statute.” *Id.* at 248, 930 P.2d 1213 (alterations in original) (quoting Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass’n, 83 Wash.2d 523, 535, 520 P.2d 162 (1974)). We concluded that the “precipitating event” for a statute “concerning attorney fees and costs of litigation” was the termination of the defendant’s case and held that the statute therefore applied prospectively to cases that were pending on appeal when the costs statute was enacted. *Id.* at 249, 930 P.2d 1213

(citing *Kilpatrick v. Dep't of Labor & Indus.*, 125 Wash.2d 222, 232, 883 P.2d 1370, 915 P.2d 519 (1994) (holding that the right to attorney fees is governed by the statute in force at the termination of the action)).

*8 ¶ 35 Similar to the statute at issue in *Blank*, House Bill 1783's amendments concern the court's ability to impose costs on a criminal defendant following conviction. House Bill 1783 amends former RCW 10.01.160(3) by expressly prohibiting the imposition of discretionary LFOs on defendants like Ramirez who are indigent at the time of sentencing; the amendment conclusively establishes that courts do not have discretion to impose such LFOs. And, like the defendants in *Blank*, Ramirez's case was on appeal as a matter of right and thus was not yet final under RAP 12.7 when House Bill 1783 became effective. Because House Bill 1783's amendments pertain to costs imposed upon conviction and Ramirez's case was not yet final when the amendments were enacted, Ramirez is entitled to benefit from this statutory change.

¶ 36 Applying House Bill 1783 to the facts of this case, we hold that the trial court impermissibly imposed discretionary LFOs of \$2,100, as well as the \$200 criminal filing fee, on Ramirez. We reverse the Court of Appeals and remand for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs.

CONCLUSION

¶ 37 In *Blazina*, we held that under former RCW 10.73.160(3), trial courts have an obligation to conduct an individualized inquiry into a defendant's current and future ability to pay discretionary LFOs before imposing them at sentencing. Today, we articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs. Trial courts must meaningfully inquire into the mandatory factors established by *Blazina*, such as a defendant's incarceration and other debts, or whether a defendant meets the GR 34 standard for indigency. Trial courts must also consider other "important factors" relating to a defendant's financial circumstances, including employment history, income, assets and other financial resources, monthly living expenses, and other debts. Under this framework, trial courts must conduct an on-the-record inquiry into the mandatory *Blazina* factors and other "important factors" before imposing discretionary LFOs.

¶ 38 We reverse the Court of Appeals and hold that the trial court failed to conduct an adequate *Blazina* inquiry into Ramirez's current and future ability to pay. Although this *Blazina* error would normally entitle Ramirez to a resentencing hearing on his ability to pay, resentencing is unnecessary in this case. House Bill 1783, which prohibits the imposition of discretionary LFOs on an indigent defendant, applies on appeal to invalidate Ramirez's

discretionary LFOs (and the \$200 criminal filing fee). We remand for the trial court to strike the \$2,100 discretionary LFOs and the \$200 filing fee from Ramirez's judgment and sentence.

WE CONCUR:

Fairhurst, C.J.

Johnson, J.

Madsen, J.

Owens, J.

Wiggins, J.

González, J.

Gordon McCloud, J.

Yu, J.

All Citations

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