

FILED
Court of Appeals
Division II
State of Washington

NO. 32078-2-II
2/12/2019 3:05 PM
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH UELTZEN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 17-1-00492-05

BRIEF OF RESPONDENT

MARK B. NICHOLS
Prosecuting Attorney

JESSE ESPINOZA
Deputy Prosecuting Attorney

223 East 4th Street, Suite 11
Port Angeles, WA 98362-301

TABLE OF CONTENTS

TABLE OF CONTENTS..... i
TABLE OF AUTHORITIES ii
I. COUNTERSTATEMENT OF THE ISSUES.....1
II. STATEMENT OF THE CASE1
III. ARGUMENT.....2
 A. THIS COURT SHOULD AFFIRM THE LEGAL
 FINANCIAL OBLIGATIONS BECAUSE UELTZEN
 HAS NOT ESTABLISHED THAT HE IS INDIGENT
 UNDER RCW 10.101.010(3)(A) THROUGH (C).2
IV. CONCLUSION.....4

CERTIFICATE OF DELIVERY5

TABLE OF AUTHORITIES

Cases

State v. Lewis, 194 Wn. App. 709,721,379 P.3d 129,
review denied, 186 Wn.2d 1025, 385 P.3d 118(2016)3

State v. Ramirez, 191 Wn.2d 732,750,426 P.3d 714 (2018).....3

State v. Thibodeaux, 430 P.3d 700, 703, 2018 WL 6174962, at *3
(Wn. App. 2018)3

State v. Thornton, 188 Wn. App. 371,374,353 P.3d 642 (2015)3

Statutes

RCW 10.01.010(a)–(d)3

RCW 10.01.160(3).....2

Rules

RAP 9.13

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the legal financial obligations ordered in the judgment and sentence should be affirmed because the record does not establish that Ueltzen is indigent as defined under RCW 10.101.010(a)–(c)?

II. STATEMENT OF THE CASE

On July 5, 2018, Ueltzen was sentenced for convictions of Harassment–Threat to Kill, Domestic Violence, Intimidating a Prospective Witness, Domestic Violence, and Assault in the Fourth Degree, Domestic Violence. CP 13.

Before pronouncing the sentence, the court inquired of Ueltzen if he had any trouble getting work. RP 347. Ueltzen answered that he did not have trouble getting work and he was “pretty high skilled” at what he does. RP 347. Ueltzen answered to the court’s inquiry that he did not believe he would have trouble finding work after he gets out of prison. RP 348.

The court inquired of Ueltzen if he had any other legal financial obligations and Ueltzen indicated that he owed \$820.00. RP 348. Ueltzen also said he had no other judgments, child support, or other debts. RP 348.

Before imposing legal financial obligations, the court considered the facts that Ueltzen is a drywaller, has no trouble getting employment and did not have other family obligations. RP 353.

The court imposed a \$500 victim assessment fee, \$200 court costs, \$100 DNA fee, and \$100 Domestic Violence Assessment, and a \$500 court appointed attorney fee. CP 19–20.

III. ARGUMENT

A. THIS COURT SHOULD AFFIRM THE LEGAL FINANCIAL OBLIGATIONS BECAUSE UELTZEN HAS NOT ESTABLISHED THAT HE IS INDIGENT UNDER RCW 10.101.010(3)(a) THROUGH (c).

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). In determining the amount and method of payment of costs for defendants who are not indigent as defined in RCW 10.101.010(3) *(a) through (c)*, 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) (emphasis added).

"Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any

amount for the retention of counsel.

RCW 10.01.010(a)–(d).

“House Bill 1783, which prohibits the imposition of discretionary LFOs on an indigent defendant, applies on appeal to invalidate [] discretionary LFOs (and the \$200 criminal filing fee).” *State v. Ramirez*, 191 Wn.2d 732,750,426 P.3d 714 (2018). However, claims of error on direct appeal must be supported by the existing record on review. *See* RAP 9.1. A claim of error based on a factual assertion that the defendant is indigent necessarily fails on direct appeal if there is nothing in the record to show the defendant actually established indigency. *See State v. Thibodeaux*, 430 P.3d 700, 703, 2018 WL 6174962, at *3 (Wn. App. 2018); *State v. Lewis*, 194 Wn. App. 709,721,379 P.3d 129, *review denied*, 186 Wn.2d 1025, 385 P.3d 118(2016); *State v. Thornton*, 188 Wn. App. 371,374,353 P.3d 642 (2015).

In *Ramirez*, the court ordered certain fees stricken because the record showed that the defendant established indigency on the record when he filed a declaration including a financial statement section in his motion for indigency. *Ramirez*, 191 Wn.2d at 744.

Here, Ueltzen argues that he is indigent because the trial court entered an order finding Ueltzen indigent for purposes of prosecuting an appeal. This would fall under RCW 10.01.010(d) rather than (a) through (c). Therefore, Ueltzen has not established that he is indigent for purposes of imposing court

costs under RCW 10.01.160(3).

Moreover, Ueltzen stated that he is highly skilled as a drywaller and has no trouble getting employment. Ueltzen also said that he has no other debts or obligations except for \$820. Although the trial court found that Ueltzen did not have sufficient funds to prosecute his appeal, there is no finding or facts in the record showing that he meets the requirements for indigency under RCW 10.10.010(3)(a)–(c).

Therefore, this Court should find that the record does not support Ueltzen’s claim for relief from the imposition of legal financial obligations.

IV. CONCLUSION

The record does not establish indigency under of RCW 10.101.010(a)–(c). Therefore, this Court should affirm the imposition of legal financial obligations.

Respectfully submitted this 12th day of February, 2019.

MARK B. NICHOLS
Prosecuting Attorney

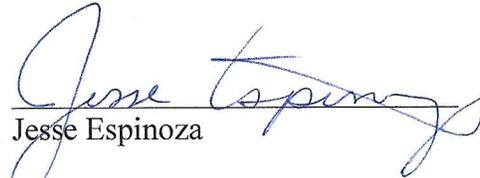


JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Christopher H. Gibson on February 12, 2019.

MARK B. NICHOLS, Prosecutor


Jesse Espinoza

CLALLAM COUNTY DEPUTY PROSECUTING ATTORN

February 12, 2019 - 3:05 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52098-2
Appellate Court Case Title: State of Washington, Respondent v. Joseph Ueltzen, Appellant
Superior Court Case Number: 17-1-00492-7

The following documents have been uploaded:

- 520982_Briefs_20190212144910D2754714_1345.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Ueltzen - 52098-2-II - Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- gibsonc@nwattorney.net

Comments:

Sender Name: Jesse Espinoza - Email: jespinoza@co.clallam.wa.us
Address:
223 E 4TH ST STE 11
PORT ANGELES, WA, 98362-3000
Phone: 360-417-2301

Note: The Filing Id is 20190212144910D2754714