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Court of Appeals
Division II
State of Washington
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No. 52463-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

HUVALDO BLANCAS,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred by imposing a \$200 filing fee and \$250 jury demand fee on Mr. Blancas and by ordering that the \$950 in legal financial obligations shall bear interest.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. By statute, a court may not order a defendant to pay a filing fee or court costs “if the defendant at the time of sentencing is indigent,” meaning the defendant receives “an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.” RCW 36.18.020(h); RCW 10.01.060(3); RCW 10.101.010(3)(c). Did the court err by imposing a filing fee and court costs on Mr. Blancas, where he qualified for court-appointed counsel at trial and on appeal, his only income is from a landscaping business, and his wages are garnished for child support for four children and LFOs from prior cases?

2. Before imposing discretionary legal financial obligations (“LFOs”), a sentencing court must conduct an on-the-record individualized inquiry into a defendant’s ability to pay, including consideration of the person’s other debts and obligations, incarceration, and employment history. Did the court here fail to perform an adequate inquiry before imposing LFOs, where the court asked no questions about

Mr. Blancas's financial circumstances and simply stated, "I'll find you currently -- you're not indigent. You do work when you're out and about, so I'll waive some of the fines and fees and costs consistent with you being locked up for the next three years"? RP 307.

3. "As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations." RCW 10.82.090(1). Did the sentencing court err by ordering, in a judgment entered on September 14, 2018 with no restitution, that "[t]he 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"? CP 60.

C. STATEMENT OF THE CASE

Huvaldo Blancas is a 43-year-old landscaper and father of four who lives with his parents. CP 5, 76, 80. One night at about 2:40 a.m., his brother called 911 because Mr. Blancas was dismantling their parents' shed and making noise. CP 80. Although the brother alleged nothing more than this misdemeanor, a SWAT team of 15 officers arrived at the home. RP 141, 177. They arrested and handcuffed an incredulous but compliant Mr. Blancas, placed him in the back of a patrol car, and left him there for 20 minutes before an officer finally got into the driver's seat and started filling out a report. RP 114, 121-22, 156, 160, 177. Mr. Blancas was upset,

yelled some expletives, and spat. RP 160. Some spit hit the officer's face.
RP 160.

The State did not charge Mr. Blancas for damaging the shed, which was the issue that prompted the call in the first place. RP 116, CP 5. Instead, the State charged Mr. Blancas with third-degree assault, a felony, for spitting at the officer. RP 116, CP 5.

Mr. Blancas was convicted as charged and sentenced to three years in prison. CP 53, 57. The court also imposed a total of \$950 in LFOs, of which \$450 was discretionary costs and fees that must be waived for indigent defendants. CP 59. The court ordered Mr. Blancas to pay interest on these obligations until paid in full. CP 60. Mr. Blancas appeals. CP 72.

D. ARGUMENT

The trial court erred by ordering the accrual of interest and by imposing a \$200 filing fee and \$250 jury demand fee without conducting an inquiry into Mr. Blancas's financial status and despite evidence that Mr. Blancas is indigent.

It is well-settled that the imposition of LFOs upon indigent defendants creates grave problems, including "increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration." *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). Thus, both the legislature and appellate courts have clarified that most costs and fees may *not* be imposed upon indigent

defendants, and that sentencing courts must perform a thorough inquiry into a defendant's financial status before imposing such costs and fees. Here, the court imposed a \$200 filing fee and \$250 jury demand fee on Mr. Blancas despite his indigence and without an inquiry. The court also ordered the accrual of interest, despite a statute prohibiting it. This Court should reverse.

1. The trial court erred by imposing a filing fee and jury demand fee upon an indigent defendant, and by ordering the accrual of interest.

The sentencing court imposed a \$500 victim penalty assessment ("VPA"), \$200 filing fee, and \$250 jury demand fee. CP 59. The court further ordered, "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." CP 60.

The VPA is mandatory regardless of indigence. RCW 7.68.035. But the \$200 filing fee and court costs like a jury demand fee must be waived for indigent defendants, i.e., persons who receive "an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.". RCW 10.101.010(3)(c) (definition of indigence); *see* RCW 36.18.020(h) (filing fee must be waived); RCW 10.01.060(3) (court costs must be waived). Moreover,

“[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1).

Mr. Blancas is indigent. He qualified for court-appointed counsel both at trial and on appeal. Supp. CP ____ (sub no. 1); Supp. CP ____ (sub no. 2); CP 73-79. He lives with his parents and his only income is from landscaping. CP 76, 80. His wages are garnished for child support for four children, and by the Department of Corrections for prior LFOs. CP 76. Thus, the trial court violated RCW 36.18.020(h) and RCW 10.01.060(3) by imposing a filing fee and jury demand fee. *See State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018) (statutes “prohibit” courts from imposing these costs on indigent defendants). The trial court also violated RCW 10.82.090(1) by imposing interest. Accordingly, this Court should reverse and remand with instructions to strike the improper portions of the judgment. *See Ramirez*, 191 Wn.2d at 749-50 (reversing and remanding “for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs”).

2. The trial court erred by failing to conduct an adequate inquiry into Mr. Blancas’s financial status.

The trial court further erred by finding Mr. Blancas “not indigent” without performing an adequate inquiry – or any inquiry at all. “Trial courts must meaningfully inquire” into a defendant’s ability to pay, by

considering factors such as employment history, income, expenses, incarceration, and other debts. *Ramirez*, 191 Wn.2d at 750.

In *Ramirez*, prior to imposing LFOs the judge asked the prosecutor, “when he is not in jail, he has the ability to make money to make periodic payments on this LFOs, right?” *Id.* at 737. The State responded that the defendant had the ability to pay, and the trial court confirmed, “But as far as you are concerned, the LFOs should be imposed.” *Id.* The State answered, “Yes.” *Id.* The court did not ask the defendant or his counsel about his ability to pay, but proceeded to impose discretionary costs. *Id.*

On appeal, the State argued the imposition of these LFOs was appropriate because at an earlier point in the proceeding, the defendant had talked about his job at Weyerhaeuser, his new apartment, and his DirecTV subscription with a football package. *Id.* at 736. But the Supreme Court held this information was irrelevant given that it was presented for a different purpose at a different point in the proceeding. *Id.* at 743-44. The problem was that when imposing LFOs, 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).” *Id.* at 743.

The Supreme Court emphasized, “[t]he record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay[.]” *Ramirez*, 191 Wn.2d at 743 (citing *Blazina*, 182 Wn.2d at 838). This includes consideration of “(1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts.” *Ramirez*, 191 Wn.2d at 744. “[T]he record *must* reflect that the trial court inquired into *all five* of these categories before deciding to impose discretionary costs.” *Id.* (emphases added). “That did not happen here.” *Id.*

Similarly, that did not happen in Mr. Blancas’s case. The court did not inquire into any relevant financial factor, let alone all five. The court simply concluded, for no apparent reason, that Mr. Blancas was not indigent. RP 307.

It is possible the court was relying on a comment Mr. Blancas made at trial during the State’s cross-examination – that he was a gardener who had worked a ten-hour day on the day he was arrested:

Q. So is it fair to say that it was the deputies that you were upset with that night, correct?

A. No. It had been a long day. I mentioned I’m a gardener, so I had worked, like, ten –

Q. If you could just answer the question, please.

RP 187.

This would obviously be an insufficient basis for imposing LFOs under *Ramirez*.

As to the remedy, as noted, in *Ramirez* the Court reversed and remanded with instructions to strike all non-mandatory LFOs. *Ramirez*, 191 Wn.2d at 749-50. Mr. Blancas requests the same remedy here. In the alternative, at a minimum, this Court should reverse and remand for a new hearing at which the trial court must perform a thorough, individualized inquiry on the record. *See id.* at 744.

E. CONCLUSION

Because the trial court erred by imposing a filing fee and jury demand fee upon an indigent defendant, and by ordering the accrual of interest, this Court should reverse and remand with instructions to strike those portions of the judgment. In the alternative, this Court should reverse and remand for a new hearing at which the court must perform an individualized inquiry into Mr. Blancas's financial status.

DATED this 8th day of April, 2019.

Respectfully submitted,



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