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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 II

STATE OF WASHINGTON, Respondent

v.

HUVALDO BLANCAS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.18-1-01949-4

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

I. The State Agrees the Trial Court Failed to Conduct An Adequate Individualized Inquiry into Blancas' Ability to Pay

STATEMENT OF THE CASE

Huvaldo Blancas (hereafter 'Blancas') was convicted of Assault in the Third Degree after a trial in Clark County Superior Court. CP 46, 53. With an offender score over 9 points, his standard range was 51 to 60 months. CP 55. The trial court imposed an exceptional downward sentence of 36 months. CP 55, 57. As part of his judgment and sentence, the trial court imposed legal financial obligations, including a \$500 victim assessment, a \$200 filing fee and a \$250 jury demand fee. CP 59. At the time of sentencing, the trial court did not inquire into Blancas' ability to pay, and only noted that "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 costs consistent with you being locked up for the next three years." RP 307. Blancas did not comment on the Court's statement regarding his ability to pay.

Blancas timely appealed.

ARGUMENT

I. The State Agrees the Trial Court Failed to Conduct An Adequate Individualized Inquiry into Blancas' Ability to Pay

Blancas argues the trial court improperly imposed legal financial obligations without conducting an appropriate inquiry into his ability to pay. The State agrees the trial court failed to conduct an adequate individualized inquiry into Blancas' ability to pay his legal financial obligations prior to imposing them. Accordingly, the matter should be remanded for resentencing on the legal financial obligations so that the trial court may conduct a sufficient and proper inquiry.

A trial court must conduct an individualized inquiry on the record concerning a defendant's current and future ability to pay discretionary LFOs. *State v. Ramirez*, 191 Wn.2d 732, 742, 426 P.3d 714 (2018) (citing *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015)). This inquiry must consider factors such as incarceration and other debts the defendant may have. *Id.* In *Ramirez*, the Supreme Court found the trial court's inquiry into the defendant's ability to pay was insufficient when the trial court only confirmed with the State that the defendant had the ability to make money and to make period payments on his LFOs when he was not incarcerated. *Id.* at 742-43. The Court in Blancas' case performed no more

of an inquiry than the trial court did in *Ramirez*. The Court in Blancas' case did not inquire into Blancas' employment, his income, his debts, or his expenses. The trial court only noted that Blancas had previously been employed or worked in some capacity before finding that he was not indigent and would be able to pay in the future. Under *Blazina, supra* and *Ramirez, supra*, this inquiry was insufficient.

In addition, the State agrees with Blancas that the trial court erred in ordering that interest shall accrue on nonrestitution legal financial obligations. RCW 10.82.090(1) states that "As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations...." RCW 10.82.090(1). Blancas was sentenced after June 7, 2018 and therefore interest should not have been ordered to accrue on his nonrestitution legal financial obligations. This provision should be stricken from his judgment and sentence.

Because the trial court did not conduct an adequate, individualized inquiry as required under *Blazina* and *Ramirez*, this matter should be remanded for resentencing solely on the issue of legal financial obligations.

CONCLUSION

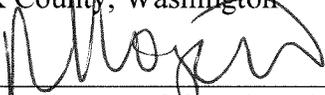
The State agrees this matter should be remanded to the Superior Court for resentencing on the imposition of the legal financial obligations so that the Superior Court may conduct an appropriate individualized inquiry of Blancas' ability to pay.

DATED this 31st day of May, 2019.

Respectfully submitted:

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