

FILED
Court of Appeals
Division II
State of Washington
11/1/2018 4:54 PM

No. 52471-6-II
Clallam County No. 18-1-00151-05

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

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN C. CONIGLIO,

Appellant.

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

The Honorable Judge Christopher Melly

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR..... 1

B. QUESTIONS PRESENTED..... 1

 1. Procedural Facts. 1

 2. Entry of plea. 2

D. ARGUMENT. 2

 1. THE COURT SHOULD REMAND FOR RESENTENCING WITHOUT THE ARKANSAS CONVICTION INCLUDED IN THE OFFENDER SCORE CALCULATION..... 2

 a. Relevant facts..... 2

 b. The state failed to prove factual comparability..... 4

 2. THIS COURT SHOULD STRIKE THE LEGAL FINANCIAL OBLIGATIONS UNDER RAMIREZ. 11

E. CONCLUSION. 15

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT

In re the Personal Restraint of Lavery, 154 Wn.2d 249, 111 P.3d 837 (2005)..... 6-7

State v. Blank, 131 Wn.2d 230, 930 P.2d 1210 (1997)..... 13

State v. Bergstrom, 162 Wn.2d 87, 169 P.3d 816 (2007)..... 5

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). 11-13

State v. Olsen, 180 Wn.2d 468, 325 P.3d 187 (2014).. 5, 6

State v. Ramirez, __ Wn.2d __, __ P.3d __ (No. 95249-3)(2018 WL 4499761) (September 20, 2018). 1, 11-15

State v. Ross, 152 Wn.2d 220, 95 P.3d 1225 (2004). 4

State v. Thiefault, 160 Wn.2d 409,158 P.3d 580 (2007)..... 6

State v. Wiley, 124 Wn.2d 679, 880 P.2d 983 (1994). 4

WASHINGTON COURT OF APPEALS

State v. Clark, 191 Wn. App. 369, 362 P.3d 309 (2015)..... 12

State v. Davis, 3 Wn. App.2d 763, 418 P.3d 199 (2018)..... 7

State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016).. 12

State v. Stoddard, 192 Wn. App. 222, 686 P.3d 474 (2016)..... 12

State v. Arndt, 179 Wn. App. 373, 320 P.3d 104 (2014). 15

State v. Thomas, 135 Wn. App. 474, 144 P.3d 1178 (2006). 6-7

FEDERAL AND OTHER STATE CASELAW

O'Connor v. State, 367 Ark. 173, 238 S.W.3d 103, 107 (2006)..... 4

RULES, STATUTES, CONSTITUTIONAL PROVISIONS

Arkansas Code Annotated (A.C.A.) § 12-27-113.. 9

Arkansas Criminal Rules (CrR) 24.6. 10

Engrossed Second Substitute House Bill 1783 (2018).. 1, 11, 13

Former ARS § 5-13-211 (2011).. 7-9

Former RCW 10.01.160(1)(2013). 11

Former RCW 10.01.160(3)(2013).. 12, 13

Former RCW 10.82.090 (2015).. 14

Former RCW 36.18.020(2)(h) (2014).. 14

Former RCW 9.94A.030(30)(2012). 11

RAP 12.7.. 14

RCW 9.94A.525.. 4

RCW 9.94A.525(3). 5

RCW 9.94A.530(1).. 4

RCW 9A.46.020. 2

A. ASSIGNMENTS OF ERROR

1. The sentencing court erred in finding a foreign conviction to be “factually comparable” and increasing the offender score of appellant Jonathan Coniglio as a result.
2. Under *State v. Ramirez*, ___ Wn.2d ___, ___ P.3d ___ (No. 95249-3)(2018 WL 4499761) (September 20, 2018)¹ 2018 changes² to the legal financial obligations statutes apply to appellant who was indigent and on federal assistance for disability at the time of sentencing.

B. QUESTIONS PRESENTED

1. In making a determination of factual comparability, did the sentencing court err in relying on allegations of fact contained in a document but not agreed to, stipulated or set forth in the plea agreement or established in any other part of the existing record and then using those “facts” to support the court’s conclusion?
2. 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 and on public assistance for disability at the time of sentencing?

C. STATEMENT OF THE CASE

1. Procedural Facts

Appellant Jonathan Coniglio was charged by information filed in Clallam County superior court with felony harassment. CP 49;

¹A copy of the decision is attached as Appendix B.

²A copy of Engrossed Second Substitute House Bill 1783 (2018) is attached as Appendix C.

RCW 9A.46.020. After pretrial proceedings before the Honorable Judge Brian Coughenour on April 13, 2018, the Honorable Judge Erik S. Rohrer on May 4, 2018, and Judge Coughenour on May 11, 2018, on May 21, 2018, the Honorable Judge Christopher Melly accepted Mr. Coniglio's plea to the offense. CP 37-40; RP 19-25.

The judge ordered a standard-range sentence on May 29, 2018. CP 16; RP 29-56. A copy of the judgment and sentence is attached hereto as Appendix A. This appeal timely follows. See CP 48-49.

2. Entry of plea

Jonathan Coniglio was 46 years old when he entered a plea to felony harassment for threats he made at a medical facility when he was drunk and, he said, did not remember what happened. RP 23-24; CP 37-40.

D. ARGUMENT

1. THE COURT SHOULD REMAND FOR RESENTENCING WITHOUT THE ARKANSAS CONVICTION INCLUDED IN THE OFFENDER SCORE CALCULATION

Reversal and remand for resentencing is required, because the trial court erred in counting a "foreign" offense from Arkansas in the offender score when the state failed to prove that offense was factually "comparable" to a Washington state offense.

a. Relevant facts

The main issue below was whether an Arkansas conviction for aggravated assault "upon a certified law enforcement officer" was

“comparable” to a Washington felony and thus should be counted in calculating Mr. Coniglio’s offender score. RP 30-31. The prosecutor conceded that the foreign offense was not legally comparable but argued that the state had presented sufficient evidence to prove “factual comparability.” RP 30-31. The argument was that, based on a sentence in the materials the state presented saying that the defendant had “spat on officer that arrested him,” the state had proved factual comparability with a Washington state third-degree assault. RP 30-32.

The prosecutor described one of the documents as a “factual summary,” stating the belief that, in Arkansas, the prosecution will state what it would have proved at trial when a plea is entered, and “that’s what the defendant admits to[.]” RP 31.

Counsel for Mr. Coniglio, however, objected that the only facts the court could rely on were those proven beyond a reasonable doubt, admitted to or stipulated by the defendant in entering the plea. RP 32-35. Counsel argued that the language upon which the prosecution was relying in part, the “to wit” language in the charging document from Arkansas, was insufficient, pointing out that “non-elements” of a foreign offense are not considered proven simply by declaration but have to be specifically admitted to, stipulated or proven beyond a reasonable doubt. RP 34-35. The other document upon which the state was relying, a “summary of the facts,” appeared to have been a declaration by the state and signed by the Arkansas court but it had no signature of the defendant or a representative

agreeing that those facts had occurred. RP 36-37.

Counsel also pointed out that the allegation of spitting on the officer was not an essential “element” of the offense. RP 36-37. In holding that the Arkansas conviction was comparable to a Washington felony, the judge relied on the Arkansas “report on the circumstances attending the offense” as proving that the Arkansas judge must have “found that the defendant then spat on the officer that arrested him.” RP 42-43. The judge thought “the reasonable inference” of the language was that there was intentional spitting on the arresting officer, which the court found was factually “comparable to assault in the third degree” in Washington state. RP 44-45.

b. The state failed to prove factual comparability

This Court should reverse, because the sentencing court erred in finding the Arkansas conviction factually “comparable.”

Under the Sentencing Reform Act (SRA), a defendant is sentenced based upon a combination of his “offender score” and the “seriousness level” of the current offense, as set forth in the sentencing statutes. See RCW 9.94A.530(1); State v. Wiley, 124 Wn.2d 679, 682, 880 P.2d 983 (1994). To calculate the “offender score,” the sentencing court looks at the defendant’s current and prior convictions. RCW 9.94A.525; State v. Ross, 152 Wn.2d 220, 229, 95 P.3d 1225 (2004). The “score” is determined by formulas set forth in the sentencing statutes. Ross, 152 Wn.2d at 229.

It is the state’s burden to prove the existence of prior

convictions, including convictions from another state that the prosecution wants to include in the offender score calculation. State v. Arndt, 179 Wn. App. 373, 320 P.3d 104 (2014). Where a prior conviction is from another state, that means the prosecution must prove the conviction was “comparable” to one in Washington state before that other state (or “foreign”) conviction can be counted. RCW 9.94A.525(3); see State v. Bergstrom, 162 Wn.2d 87, 92, 169 P.3d 816 (2007).

This Court reviews de novo the sentencing court’s determination that the state has met that burden and properly calculated the offender score Bergstrom, 162 Wn.2d at 92. Applying such review here, this Court should reverse, because the lower court erred in holding that the state had shown the Arkansas conviction was “factually comparable” and in calculating the offender score as a result.

To determine how to classify out-of-state convictions, the sentencing court looks at the comparable crimes in our state’s law. RCW 9.94A.525(3). The sentencing court uses a two-part test in determining if there is factual comparability. State v. Olsen, 180 Wn.2d 468, 472-73, 325 P.3d 187 (2014). First, the court asks if the foreign conviction was “legally comparable” to a similar Washington offense. Id. If the elements of the foreign and Washington crimes are identical or the foreign crime is less broad than the in-state crime, there is legal comparability. Id.

If the crimes are not “legally comparable,” however, and the

foreign crime is defined more broadly than the crime in Washington, however, the out-of-state offense cannot be counted in the offender score unless the state shows that the prior conviction was for conduct which would have amounted to a Washington state offense. State v. Thomas, 135 Wn. App. 474, 144 P.3d 1178 (2006).

This “factual comparability” analysis is constitutionally limited, however. Id. A court may only find factual comparability for a prior conviction if it does so consistent with the defendant’s Sixth Amendment rights to trial by jury and proof beyond a reasonable doubt. In re the Personal Restraint of Lavery, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). As a result, when a sentencing court is trying to determine “factual comparability,” the court can only consider facts admitted to, stipulated to or proven beyond a reasonable doubt in that out-of-state proceeding. State v. Thieffault, 160 Wn.2d 409, 415, 158 P.3d 580 (2007). Otherwise, if the judge finds “facts” and then uses them to find comparability - and thus increase the sentence - those acts violate the defendant’s rights to proof beyond a reasonable doubt and trial by jury. Id.; see, Olsen, 180 Wn.2d at 477-78; Lavery, 154 Wn.2d at 258.

There is an additional consideration when the foreign conviction is gained by way of a plea. Lavery, 154 Wn.2d at 258. In such cases, the Court also must ask whether the alleged facts are essential elements of the plea. Id. Other facts or allegations “contained in the record, if not directly related to the elements of the charged crime,” may not have been sufficiently proven or agreed to

in order to be deemed established in the foreign state. Lavery, 154 Wn.2d at 255.

Further where, as here, “the elements of the foreign crime are broader, there may be no incentive for a defendant to prove that he is guilty of more narrow conduct.” Thomas, 135 Wn. App. at 485; citing, Lavery, 154 Wn.2d at 255.

The question of factual comparability is thus whether the facts admitted, agreed to or proven beyond a reasonable doubt in the documents submitted regarding the foreign offense establish, as a matter of fact, that the conduct committed in the other state would have amounted to a Washington felony if committed here. Thomas, 135 Wn. App. at 483-84. Further, the “foreign statute establishing the offense carries with it the construction placed upon it by the other jurisdiction’s controlling court.” State v. Davis, 3 Wn. App.2d 763, 418 P.3d 199 (2018). While the sentencing court can examine the indictment or information to get some indication of the underlying conduct, “the elements of the crime remain the focus of the analysis.” Thomas, 135 Wn. App. at 485.

In this case, at the outset, it appears the wrong statute was used. Mr. Coniglio was accused of committing the crime in July of 2012. CP 49-50. Counsel’s memorandum cited and attached the 2010 version of the Arkansas statute. CP 37-38. That version did not have the same elements as the version under which Mr. Coniglio was convicted, because the statute was amended in 2011. See former ARS §5-13-211 (2011). The correct version of the statute provided that it

was the crime of “Aggravated Assault Upon A Certified Law Enforcement Officer or An Employee of a Correctional Facility,” a “D Felony,” when

[u]nder circumstances manifesting extreme indifference to the personal hygiene of the certified law enforcement officer or employee of the correctional facility, the person purposely engages in conduct that creates a potential danger of infection to the certified law enforcement officer or employee of any state or local correctional facility while the certified law enforcement officer or employee is engaged in the course of his or her employment by causing a person **whom the actor knows to be a certified law enforcement officer or employee of the state or local correctional facility** to come into contact with saliva, blood, urine, feces, seminal fluid, or other bodily fluid by purposely throwing, tossing, or expelling, or otherwise transferring the fluid or material.

Former ARS §5-13-211 (2011)(emphasis added). The 2010 version did not have a similar “knowledge” requirement for the status of the victim. See CP 36.

While not dispositive, the fact that neither counsel nor the prosecution determined that they had the wrong version of the statute. But it was not counsel’s duty to prove comparability. The state, not counsel, bears that burden.

In any event, the evidence the prosecution presented was not sufficient to establish that Mr. Coniglio either stipulated to the facts about having spit on the officer or that those facts were proven, beyond a reasonable doubt. Below, the prosecution presented two documents in support of its claim that this crime was factually “comparable” to a Washington crime: the charging document, a “Felony Information” from the Arkansas court, and a “Sentencing Order,” which had attached a document entitled “Prosecutor’s Short

Report of Circumstances.” See CP 8-13.³

The Felony Information alleged, *inter alia*, count 2, that “[t]he defendant spat saliva on the face and uniform of a verified law enforcement officer,” a violation of Arkansas Code Annotated (“ACA”) §5-13-211. CP 8-13. The Sentencing Order was a form, filled out and with preprinted boxes next to boilerplate language. CP 10-11. Indicated were boxes stating the plea was a negotiated plea of guilty, the number of the statute and the name of offense. CP 11-12. It indicated that, at the time of the entry of the plea, Mr. Coniglio had been held in custody for more than four months. See CP 12. Attached to the Sentencing document was a document titled “short report” of the prosecutor which declared the following “SUMMARY OF THE FACTS,” handwritten in, “Def. was drunk and hit and injured a man over 60 years of age. Def. then spat on Officer that arrested him.” CP 14-15.

The sentencing court thought this document was sufficient. RP 42-43. This Court should hold it was not. The document is explicitly the summary of the *prosecutor*, not a declaration or admission by the defense. See CP 15. The document was signed by the prosecutor and the judge - with no signature from the defendant or his counsel. CP 15. Arkansas Code Annotated (A.C.A.) § 12-27-113 is a procedural statute which addresses the transfer of inmates between facilities and that state’s Department of Corrections and

³A copy of the documents is attached as Appendix D.

Department of Community Correction. One section of the statute states that a prisoner who is committed to the Arkansas DOC must have “commitment papers” which “must include a report on the circumstances attending the offense, particularly such circumstances as tend to aggravate or extenuate the offense[.]” A.C.A. § 12-17-113(4)(c).

But the report is not required to be made based on any particular standard of proof. Under A.C.A. § 12-17-113(4)(c)(2), “[t]he report shall be prepared by the prosecutor or deputy prosecutor who represented the state in the proceeding against the prisoner” and “shall be approved by the sentencing judge.” The document is the prosecutor’s summary of the facts, used for the purposes of classification of offenders. It was not sufficient to provide proof that the facts it contained were proven beyond a reasonable doubt or admitted to or stipulated by Mr. Coniglio.

Notably, in Arkansas, the entry of a plea does not require the defendant to admit to the facts underlying the crime. While the Arkansas Criminal Rules (CrR) 24.6 requires that a court accepting a plea must ensure there is a “factual basis” for that plea, there is no mandate that the defendant himself must admit those facts when entering a plea. See O’Connor v. State, 367 Ark. 173, 238 S.W.3d 103, 107 (2006). Instead, the factual basis for a plea may be “established by addressing the accused, the defense counsel, the prosecutor, or all three.” Id. Thus, a guilty plea in Arkansas does not require an admission to or stipulation by the defendant that the allegations

made by the state are true.

The sentencing court erred in finding that the Arkansas conviction was factually comparable. This Court should so hold and should reverse and remand for resentencing with a corrected offender score.

2. 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[.]

There were some limits; 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.”

In Blazina, supra, the state’s highest court noted this requirement and further that most sentencing courts were failing to comply. 182 Wn.2d at 829-30. 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 strike the \$200 filing fee and \$500 fee for appointed counsel, as well as the provision imposing interest. Mr. Coniglio was found indigent at the time of sentencing and his case is still on direct appeal. CP 4, 27-28. 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). And it eliminated the authority to impose discretionary costs such as recoupment of attorney fees on indigent defendants. See Ramirez. This Court should strike those provisions of the judgment and sentence in this case.

E. CONCLUSION

For the reasons stated herein, this Court should grant relief.

DATED this 1st day of November, 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 Brief to opposing counsel via this Court's upload service, to Clallam County Prosecutor's Office and depositing the same in first-class mail, postage prepaid, to Mr. Coniglio, at 2321 W. 18th, Port Angeles, WA. 98363.

DATED this 1st day of November, 2018,



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APPENDIX A

2018 MAY 29 A 11:33

BARBARA CHRISTENSEN

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON, Plaintiff,

vs.

JONATHAN CHRISTOPHER CONIGLIO 12/30/71

Defendant DOB

PCN: 966180803

SID: WA25302432

PAPD No. 18-06399

NO.18-1-00151-05

**FELONY JUDGMENT AND SENTENCE - JAIL
ONE YEAR OR LESS
(FJS)**

- Clerk's Action Required, para 2.1, 4.1, 4.3, 4.8 5.2, 5.3, 5.5, 5.7, and 5.8
- Defendant Used Motor Vehicle
- Juvenile Decline Mandatory Discretionary

I. HEARING

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. FINDINGS

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon guilty plea jury-verdict bench trial (date) 5/21, 2018:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	HARASSMENT — THREATS TO KILL	9A.46.020	C	On or about the 2nd day of April, 2018

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)
(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV For the crime(s) charged in Count _____, **domestic violence - intimate partner** as defined in RCW 9A.36.041(4) was pled and proved.

GV For the crime(s) charged in Count _____, **domestic violence (other)** was pled and proved. RCW 10.99.020

The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.825, 9.94A.533

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____. RCW 9.94A.825, 9.94A.533

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
(06/2016)*

FAXED
[Signature]
5/29/18

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

Record Certification: I Certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Clallam County Clerk, by [Signature] Deputy #pages: 12



- In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.____.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- GY** In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533..
- Count _____ is a felony in the commission of which the defendant used a motor vehicle. RCW46.20.285.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	Crime	Cause Number	Court (county & state)	DV* Yes
1				
2				
3				

* DV: Domestic Violence was pled and proved.

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or I adult, juvenile	Type of Crime	DV* Yes
1	Assault on LEO	7-30-12	12-13-12	Washington, AR	A	NV	-
2							
3							
4							
5							
6							

* DV: Domestic Violence was pled and proved.

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
(06/2016)*

CLALLAM COUNTY
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The prior convictions listed as number(s) _____, above, or in Appendix 2.2, are one offense for purposes of determining the offender score. RCW 9.94A.525

2.3 Sentencing Data:

Count	Offender Score	Seriousness level	Standard range (not including enhancements)	Plus enhancements*	Total standard range (including enhancements)	Maximum term
1	1	III	3-8m	—	3-8m	5 years
2						
3						
4						
5						
6						
TOTAL ENHANCEMENTS to be served consecutively (RCW 9.94A.310(3)(e) and (4)(e))				_____ months		

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 9.94A.533(7), (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

Additional current offense sentencing data is attached in Appendix 2.3

2.4 **Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

- 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

within the standard range for Count(s) _____, but served consecutively to Count(s) _____.

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 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's 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. (RCW 10.01.160). The court makes the following specific findings:

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

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

_____ (name of agency)'s costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

2.6 **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010, and:

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
(06/2016)*

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- The defendant should register as a felony firearm offender. The court considered the following factors in making this determination:
 - 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 defendant must register as a felony firearm offender because the offense was committed in conjunction with an offense committed against a person under the age of 18, or a serious violent offense or offense involving sexual motivation as defined in RCW 9.94A.030.

III. JUDGMENT

- 3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1. .
- 3.2 The court **dismisses** Counts _____ in the charging document.

IV. SENTENCE AND ORDER

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

_____ **3** months on Count **I** _____ months on Count _____
 _____ months on Count _____ months on Count _____
 _____ months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: _____

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)) _____

Confinement shall commence immediately unless otherwise set forth here: _____

- Partial Confinement.** The defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

- work crew RCW 9.94A.725
- work release RCW 9.94A.731
- home detention RCW 9.94A.731, .190
- electronic monitoring RCW 9.94A.030

- Conversion of Jail Confinement (Nonviolent and Nonsex Offenses).** RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.
- The defendant shall receive credit for time served in an available county supervised community option prior to sentencing. The jail shall compute time served.
- Alternative Conversion.** RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community restitution (service) (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.
- Alternatives to total confinement** were not used because of: _____
- criminal history failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.
- (b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

4.2 Community Custody. RCW 9.94A.505, .702.

- (A) The defendant shall serve _____ months (up to 12 months) in community custody. The court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.701 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a) and for offenses after June 12, 2008 for unlawful possession of a firearm with a finding that the defendant was a member or associate of a criminal street gang. The defendant shall report to DOC not later than 72 hours after release from custody at the address provided in open court or by separate document
- (B) 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) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.
- The court orders that during the period of supervision the defendant shall:
- not possess or consume alcohol.
- not possess or consume controlled substances, including marijuana, without a valid prescription.

have no contact with: _____

remain within outside of a specified geographical boundary, to wit: _____

participate in the following crime-related treatment or counseling services: _____

undergo an evaluation for treatment for
 domestic violence substance abuse mental health anger management,
and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Other conditions: _____

(C) The conditions of community custody shall begin immediately upon release from confinement unless otherwise set forth here:

Court Ordered Treatment: If any court orders mental health or substance use disorder treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

PCV	\$ 500.00	Victim assessment (\$500.00 for felony and gross misdemeanor; \$250.00 for misdemeanor)	RCW 7.68.035
PDV	\$	Domestic Violence assessment	RCW 10.99.080
	\$	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
CRC	\$ 200.00	Court costs, including:	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee	\$ 200.00 FRC
		Witness costs	\$ WFR
		Sheriff's service fees	\$ SFR/SFS/SFW/WRF
		Jury demand fee	\$ JFR
		Extradition costs	\$ EXT
		Other	\$
PUB	\$ 500.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$	Court appointed defense expert and other defense	RCW 9.94A.760

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(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
(06/2016)*

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		costs	
		DUI fines, fees and assessments	
CLF		Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ 100.00	DNA collection fee	RCW 43.43.7541
FPV	\$	Specialized forest products	RCW 76.48.1401
	\$	Other fine or costs for: _____ i.e., Interpreter costs (CIS), Evaluations--court ordered (EVA), Lab/blood test (BBS), Investigator services (INS), Drug Court Program (DCT), Meth lab clean-up (MTH)	
DEF	\$	Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012) RCW 38.52.430	
		Agency: _____	

(Name and address - address may be withheld and provided confidentially to Clerk of the Court's Office)

RTN solely / R/N joint & several	\$	Restitution to:	
	\$	Restitution to:	
	\$	Restitution to:	
	\$	Court ordered assessment to::	Clallam County Drug Court
	\$	Statutory assessment to::	Drug enforcement fund of Olympic Peninsula Narcotics Enforcement Team (OPNET) County Code 118.000.010 Bars Code 351.50.01 [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency
	\$	Costs of:	Clallam County Jail for medical treatment rendered while incarcerated in County Jail:
			\$ pre- + post-conviction medical costs (RCW 70.48.130)
			\$ Other costs:
			\$
			\$
	\$ 1,300.00	TOTAL	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
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shall be set by the prosecutor is scheduled for _____, 20____.
 The defendant waives any right to be present at any restitution hearing (sign initials): _____

Restitution Schedule attached.
 Restitution ordered above shall be paid jointly and severally with:

RJN	NAME of other defendant(s)	Cause Number	(Victim's name)	(Amount - \$)
				\$
				\$
				\$

- 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).
- All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 40.00 per month commencing August 2018. RCW 9.94A.760.

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).

The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

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

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

The defendant shall not have contact with _____

_____ (name), including, but not limited to, personal, verbal, telephonic, written or contact through a third party until _____ (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within _____ (distance) of:
 _____'s home/ residence

(name of protected person)
 work place school (other location(s)) _____
 _____ or
 other location: _____
 until _____ (which does not exceed the maximum statutory sentence)
 A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or
 Stalking No-Contact Order is filed concurrent with this Judgment and Sentence.

4.6 Other: _____

4.7 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:

4.8 Exoneration: The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

V. NOTICES AND SIGNATURES

5.1 Collateral Attack on Judgment. If you wish to petition or move 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, you must do so 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. If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
 (Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
 (06/2016)*

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while you remain under the jurisdiction of the court for purposes of your 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 (DOC) 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.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.

(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).

(b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).

5.5a Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. **You must immediately surrender any concealed pistol license.** (The clerk of the court 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.

5.5b Felony Firearm Offender Registration. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved

5.7 Department of Licensing Notice: The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of _____.
- No BAC test result.
- BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- Drug Related. The defendant was under the influence of or affected by any drug.
- THC level was _____ within two hours after driving.
- Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: Commercial Veh. 16 Passenger Veh. Hazmat Veh

5.8 Department of Licensing Notice – Defendant under age 21 only.

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
(06/2016)*

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Count _____ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

Clerk's Action -The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

5.9 Other: _____

DONE IN OPEN COURT and in the presence of Defendant this date: 29 May, 2018.

Christopher Heif
JUDGE

Sarah Woolman

SARAH WOOLMAN
Deputy Prosecuting Attorney

WBA No. 45863

Alex Stalker 38677

ALEX STALKER
Attorney for Defendant

WBA No.

Jonathan Christopher Coniglio
JONATHAN CHRISTOPHER
CONIGLIO
Defendant

SW/amo

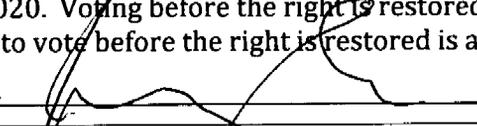
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Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

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: 

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter

Print Name

*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
(Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
(06/2016)*

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VI. IDENTIFICATION OF THE DEFENDANT

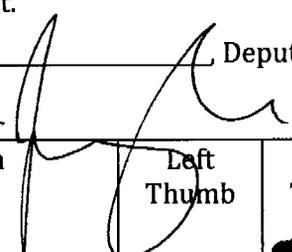
(If no SID complete a separate Applicant card (form FD-258) for State Patrol)

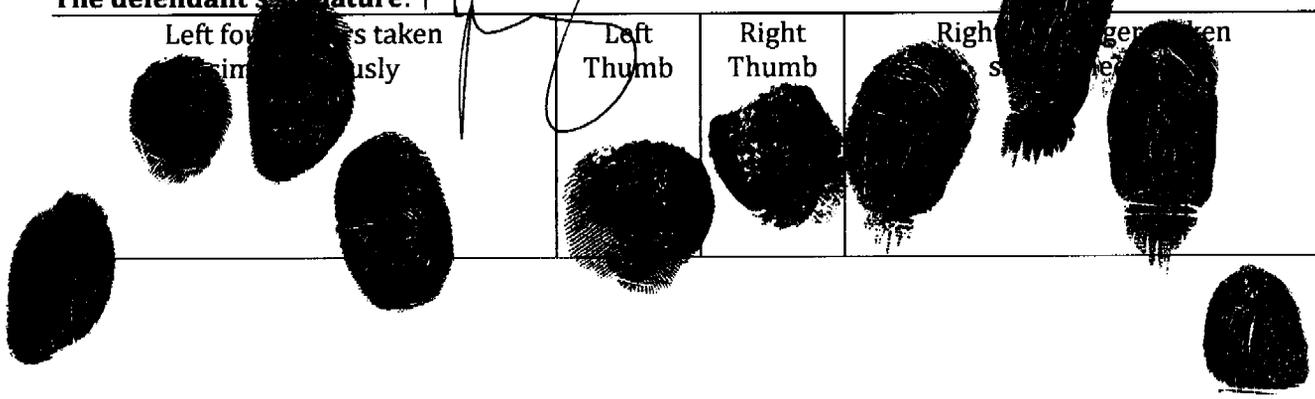
SID No. WA25302432 Date of Birth 12/30/71
 FBI No. 146428VA4 Local ID No.: PAPD
 OCA 18-06399
 PCN No. 966180803 Other _____
 Alias name, DOB: JONATHAN CHRISTOPHER CONIGLIO White Male, DOB 12/30/1971, 5'07", 172
12/30/71 lbs., Brown hair, Blue eyes, PA DOL 22771946, SID WA25302432, FBI 146428VA4
 LKA: 2321 W. 18th, Port Angeles, WA 98363

Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Native American Other: _____
Ethnicity: Non-Hispanic
Sex: Male Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court: _____, Deputy Clerk. Dated: _____, 2018

The defendant's signature: 



*Felony Judgment and Sentence (FJS) (Jail One Year or Less)
 (Nonsex Offender) (RCW 9.94A.500, .505)(WPF CR 84.0400
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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

--- P.3d ----, 2018 WL 4499761

APPENDIX C

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783

65th Legislature
2018 Regular Session

Passed by the House March 6, 2018
Yeas 83 Nays 15

Speaker of the House of Representatives

Passed by the Senate February 28, 2018
Yeas 32 Nays 17

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783

AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

State of Washington **65th Legislature** **2017 Regular Session**

By House Appropriations (originally sponsored by Representatives Holy, Goodman, Hansen, Hayes, Stokesbary, Senn, Orwall, Kagi, Appleton, Kilduff, Rodne, Jinkins, Taylor, Shea, Tharinger, Frame, Fitzgibbon, Bergquist, Fey, Macri, Ryu, Doglio, Pellicciotti, Peterson, Santos, Reeves, Kloba, Robinson, Stanford, Hudgins, McBride, Ormsby, and Pollet)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to legal financial obligations; amending RCW
2 10.82.090, 3.50.100, 3.62.040, 35.20.220, 10.01.160, 10.01.170,
3 10.01.180, 10.46.190, 10.64.015, 9.92.070, 10.73.160, 9.94A.6333,
4 9.94A.760, 9.94B.040, 3.62.085, 36.18.020, 43.43.7541, and 7.68.035;
5 reenacting and amending RCW 3.62.020; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 10.82.090 and 2015 c 265 s 23 are each amended to
8 read as follows:

9 (1) Except as provided in subsection (2) of this section,
10 (~~financial obligations~~) restitution imposed in a judgment shall
11 bear interest from the date of the judgment until payment, at the
12 rate applicable to civil judgments. As of the effective date of this
13 section, no interest shall accrue on nonrestitution legal financial
14 obligations. All nonrestitution interest retained by the court shall
15 be split twenty-five percent to the state treasurer for deposit in
16 the state general fund, twenty-five percent to the state treasurer
17 for deposit in the judicial information system account as provided in
18 RCW 2.68.020, twenty-five percent to the county current expense fund,
19 and twenty-five percent to the county current expense fund to fund
20 local courts.

1 (2) The court may, on motion by the offender, following the
2 offender's release from total confinement, reduce or waive the
3 interest on legal financial obligations levied as a result of a
4 criminal conviction as follows:

5 (a) The court shall waive all interest on the portions of the
6 legal financial obligations that are not restitution that accrued
7 ~~((during the term of total confinement for the conviction giving rise
8 to the financial obligations, provided the offender shows that the
9 interest creates a hardship for the offender or his or her immediate
10 family))~~ prior to the effective date of this section;

11 (b) The court may reduce interest on the restitution portion of
12 the legal financial obligations only if the principal has been paid
13 in full(~~+~~

14 ~~(c) The court may otherwise reduce or waive the interest on the
15 portions of the legal financial obligations that are not restitution
16 if the offender shows that he or she has personally made a good faith
17 effort to pay and that the interest accrual is causing a significant
18 hardship. For purposes of this section, "good faith effort" means
19 that the offender has either (i) paid the principal amount in full;
20 or (ii) made at least fifteen monthly payments within an eighteen-
21 month period, excluding any payments mandatorily deducted by the
22 department of corrections;~~

23 ~~(d) For purposes of (a) through (c) of this subsection, the court
24 may reduce or waive interest on legal financial obligations only))~~
25 and as an incentive for the offender to meet his or her other legal
26 financial obligations. The court may grant the motion, establish a
27 payment schedule, and retain jurisdiction over the offender for
28 purposes of reviewing and revising the reduction or waiver of
29 interest.

30 (3) This section only applies to adult offenders.

31 **Sec. 2.** RCW 3.50.100 and 2012 c 136 s 3 are each amended to read
32 as follows:

33 (1) Costs in civil and criminal actions may be imposed as
34 provided in district court. All fees, costs, fines, forfeitures and
35 other money imposed by any municipal court for the violation of any
36 municipal or town ordinances shall be collected by the court clerk
37 and, together with any other noninterest revenues received by the
38 clerk, shall be deposited with the city or town treasurer as a part
39 of the general fund of the city or town, or deposited in such other

1 fund of the city or town, or deposited in such other funds as may be
2 designated by the laws of the state of Washington.

3 (2) Except as provided in RCW 9A.88.120 and 10.99.080, the city
4 treasurer shall remit monthly thirty-two percent of the noninterest
5 money received under this section, other than for parking
6 infractions, and certain costs to the state treasurer. "Certain
7 costs" as used in this subsection, means those costs awarded to
8 prevailing parties in civil actions under RCW 4.84.010 or 36.18.040,
9 or those costs awarded against convicted defendants in criminal
10 actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other
11 similar statutes if such costs are specifically designated as costs
12 by the court and are awarded for the specific reimbursement of costs
13 incurred by the state, county, city, or town in the prosecution of
14 the case, including the fees of defense counsel. Money remitted under
15 this subsection to the state treasurer shall be deposited in the
16 state general fund.

17 (3) The balance of the noninterest money received under this
18 section shall be retained by the city and deposited as provided by
19 law.

20 (4) (a) Except as provided in (b) of this subsection, penalties,
21 finer, ((bail forfeitures,)) fees, and costs may accrue interest at
22 the rate of twelve percent per annum, upon assignment to a collection
23 agency. Interest may accrue only while the case is in collection
24 status.

25 (b) As of the effective date of this section, penalties, fines,
26 bail forfeitures, fees, and costs imposed against a defendant in a
27 criminal proceeding shall not accrue interest.

28 (5) Interest retained by the court on penalties, fines, bail
29 forfeitures, fees, and costs shall be split twenty-five percent to
30 the state treasurer for deposit in the state general fund, twenty-
31 five percent to the state treasurer for deposit in the judicial
32 information system account as provided in RCW 2.68.020, twenty-five
33 percent to the city general fund, and twenty-five percent to the city
34 general fund to fund local courts.

35 **Sec. 3.** RCW 3.62.020 and 2012 c 262 s 1, 2012 c 136 s 4, and
36 2012 c 134 s 6 are each reenacted and amended to read as follows:

37 (1) Except as provided in subsection (4) of this section, all
38 costs, fees, fines, forfeitures and penalties assessed and collected
39 in whole or in part by district courts, except costs, fines,

1 forfeitures and penalties assessed and collected, in whole or in
2 part, because of the violation of city ordinances, shall be remitted
3 by the clerk of the district court to the county treasurer at least
4 monthly, together with a financial statement as required by the state
5 auditor, noting the information necessary for crediting of such funds
6 as required by law.

7 (2) Except as provided in RCW 9A.88.120, 10.99.080, 7.84.100(4),
8 and this section, the county treasurer shall remit thirty-two percent
9 of the noninterest money received under subsection (1) of this
10 section except certain costs to the state treasurer. "Certain costs"
11 as used in this subsection, means those costs awarded to prevailing
12 parties in civil actions under RCW 4.84.010 or 36.18.040, or those
13 costs awarded against convicted defendants in criminal actions under
14 RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if
15 such costs are specifically designated as costs by the court and are
16 awarded for the specific reimbursement of costs incurred by the state
17 or county in the prosecution of the case, including the fees of
18 defense counsel. With the exception of funds to be transferred to the
19 judicial stabilization trust account under RCW 3.62.060(2), money
20 remitted under this subsection to the state treasurer shall be
21 deposited in the state general fund.

22 (3) The balance of the noninterest money received by the county
23 treasurer under subsection (1) of this section shall be deposited in
24 the county current expense fund. Funds deposited under this
25 subsection that are attributable to the county's portion of a
26 surcharge imposed under RCW 3.62.060(2) must be used to support local
27 trial court and court-related functions.

28 (4) Except as provided in RCW 7.84.100(4), all money collected
29 for county parking infractions shall be remitted by the clerk of the
30 district court at least monthly, with the information required under
31 subsection (1) of this section, to the county treasurer for deposit
32 in the county current expense fund.

33 (5) (a) Except as provided in (b) of this subsection, penalties,
34 finances, ((bail forfeitures,)) fees, and costs may accrue interest at
35 the rate of twelve percent per annum, upon assignment to a collection
36 agency. Interest may accrue only while the case is in collection
37 status.

38 (b) As of the effective date of this section, penalties, fines,
39 bail forfeitures, fees, and costs imposed against a defendant in a
40 criminal proceeding shall not accrue interest.

1 (6) Interest retained by the court on penalties, fines, bail
2 forfeitures, fees, and costs shall be split twenty-five percent to
3 the state treasurer for deposit in the state general fund, twenty-
4 five percent to the state treasurer for deposit in the judicial
5 information system account as provided in RCW 2.68.020, twenty-five
6 percent to the county current expense fund, and twenty-five percent
7 to the county current expense fund to fund local courts.

8 **Sec. 4.** RCW 3.62.040 and 2012 c 136 s 5 are each amended to read
9 as follows:

10 (1) Except as provided in subsection (4) of this section, all
11 costs, fines, forfeitures and penalties assessed and collected, in
12 whole or in part, by district courts because of violations of city
13 ordinances shall be remitted by the clerk of the district court at
14 least monthly directly to the treasurer of the city wherein the
15 violation occurred.

16 (2) Except as provided in RCW 9A.88.120 and 10.99.080, the city
17 treasurer shall remit monthly thirty-two percent of the noninterest
18 money received under this section, other than for parking infractions
19 and certain costs, to the state treasurer. "Certain costs" as used in
20 this subsection, means those costs awarded to prevailing parties in
21 civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded
22 against convicted defendants in criminal actions under RCW 10.01.160,
23 10.46.190, or 36.18.040, or other similar statutes if such costs are
24 specifically designated as costs by the court and are awarded for the
25 specific reimbursement of costs incurred by the state, county, city,
26 or town in the prosecution of the case, including the fees of defense
27 counsel. Money remitted under this subsection to the state treasurer
28 shall be deposited in the state general fund.

29 (3) The balance of the noninterest money received under this
30 section shall be retained by the city and deposited as provided by
31 law.

32 (4) All money collected for city parking infractions shall be
33 remitted by the clerk of the district court at least monthly to the
34 city treasurer for deposit in the city's general fund.

35 (5) (a) Except as provided in (b) of this subsection, penalties,
36 fines, (~~bail forfeitures,~~) fees, and costs may accrue interest at
37 the rate of twelve percent per annum, upon assignment to a collection
38 agency. Interest may accrue only while the case is in collection
39 status.

1 (b) As of the effective date of this section, penalties, fines,
2 bail forfeitures, fees, and costs imposed against a defendant in a
3 criminal proceeding shall not accrue interest.

4 (6) Interest retained by the court on penalties, fines, bail
5 forfeitures, fees, and costs shall be split twenty-five percent to
6 the state treasurer for deposit in the state general fund, twenty-
7 five percent to the state treasurer for deposit in the judicial
8 information system account as provided in RCW 2.68.020, twenty-five
9 percent to the city general fund, and twenty-five percent to the city
10 general fund to fund local courts.

11 **Sec. 5.** RCW 35.20.220 and 2012 c 136 s 7 are each amended to
12 read as follows:

13 (1) The chief clerk, under the supervision and direction of the
14 court administrator of the municipal court, shall have the custody
15 and care of the books, papers and records of the court. The chief
16 clerk or a deputy shall be present during the session of the court
17 and has the power to swear all witnesses and jurors, administer oaths
18 and affidavits, and take acknowledgments. The chief clerk shall keep
19 the records of the court and shall issue all process under his or her
20 hand and the seal of the court. The chief clerk shall do and perform
21 all things and have the same powers pertaining to the office as the
22 clerks of the superior courts have in their office. He or she shall
23 receive all fines, penalties, and fees of every kind and keep a full,
24 accurate, and detailed account of the same. The chief clerk shall on
25 each day pay into the city treasury all money received for the city
26 during the day previous, with a detailed account of the same, and
27 taking the treasurer's receipt therefor.

28 (2) Except as provided in RCW 9A.88.120 and 10.99.080, the city
29 treasurer shall remit monthly thirty-two percent of the noninterest
30 money received under this section, other than for parking infractions
31 and certain costs to the state treasurer. "Certain costs" as used in
32 this subsection, means those costs awarded to prevailing parties in
33 civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded
34 against convicted defendants in criminal actions under RCW 10.01.160,
35 10.46.190, or 36.18.040, or other similar statutes if such costs are
36 specifically designated as costs by the court and are awarded for the
37 specific reimbursement of costs incurred by the state, county, city,
38 or town in the prosecution of the case, including the fees of defense

1 counsel. Money remitted under this subsection to the state treasurer
2 shall be deposited in the state general fund.

3 (3) The balance of the noninterest money received under this
4 section shall be retained by the city and deposited as provided by
5 law.

6 (4) (a) Except as provided in (b) of this subsection, penalties,
7 finer, ((bail forfeitures,)) fees, and costs may accrue interest at
8 the rate of twelve percent per annum, upon assignment to a collection
9 agency. Interest may accrue only while the case is in collection
10 status.

11 (b) As of the effective date of this section, penalties, fines,
12 bail forfeitures, fees, and costs imposed against a defendant in a
13 criminal proceeding shall not accrue interest.

14 (5) Interest retained by the court on penalties, fines, bail
15 forfeitures, fees, and costs shall be split twenty-five percent to
16 the state treasurer for deposit in the state general fund, twenty-
17 five percent to the state treasurer for deposit in the judicial
18 information system account as provided in RCW 2.68.020, twenty-five
19 percent to the city general fund, and twenty-five percent to the city
20 general fund to fund local courts.

21 **Sec. 6.** RCW 10.01.160 and 2015 3rd sp.s. c 35 s 1 are each
22 amended to read as follows:

23 (1) Except as provided in subsection (3) of this section, the
24 court may require a defendant to pay costs. Costs may be imposed only
25 upon a convicted defendant, except for costs imposed upon a
26 defendant's entry into a deferred prosecution program, costs imposed
27 upon a defendant for pretrial supervision, or costs imposed upon a
28 defendant for preparing and serving a warrant for failure to appear.

29 (2) Costs shall be limited to expenses specially incurred by the
30 state in prosecuting the defendant or in administering the deferred
31 prosecution program under chapter 10.05 RCW or pretrial supervision.
32 They cannot include expenses inherent in providing a constitutionally
33 guaranteed jury trial or expenditures in connection with the
34 maintenance and operation of government agencies that must be made by
35 the public irrespective of specific violations of law. Expenses
36 incurred for serving of warrants for failure to appear and jury fees
37 under RCW 10.46.190 may be included in costs the court may require a
38 defendant to pay. Costs for administering a deferred prosecution may
39 not exceed two hundred fifty dollars. Costs for administering a

1 pretrial supervision other than a pretrial electronic alcohol
2 monitoring program, drug monitoring program, or 24/7 sobriety program
3 may not exceed one hundred fifty dollars. Costs for preparing and
4 serving a warrant for failure to appear may not exceed one hundred
5 dollars. Costs of incarceration imposed on a defendant convicted of a
6 misdemeanor or a gross misdemeanor may not exceed the actual cost of
7 incarceration. In no case may the court require the offender to pay
8 more than one hundred dollars per day for the cost of incarceration.
9 Payment of other court-ordered financial obligations, including all
10 legal financial obligations and costs of supervision take precedence
11 over the payment of the cost of incarceration ordered by the court.
12 All funds received from defendants for the cost of incarceration in
13 the county or city jail must be remitted for criminal justice
14 purposes to the county or city that is responsible for the
15 defendant's jail costs. Costs imposed constitute a judgment against a
16 defendant and survive a dismissal of the underlying action against
17 the defendant. However, if the defendant is acquitted on the
18 underlying action, the costs for preparing and serving a warrant for
19 failure to appear do not survive the acquittal, and the judgment that
20 such costs would otherwise constitute shall be vacated.

21 (3) The court shall not order a defendant to pay costs (~~(unless)~~)
22 if the defendant ((is or will be able to pay them)) at the time of
23 sentencing is indigent as defined in RCW 10.101.010(3) (a) through
24 (c). In determining the amount and method of payment of costs for
25 defendants who are not indigent as defined in RCW 10.101.010(3) (a)
26 through (c), the court shall take account of the financial resources
27 of the defendant and the nature of the burden that payment of costs
28 will impose.

29 (4) A defendant who has been ordered to pay costs and who is not
30 in contumacious default in the payment thereof may at any time after
31 release from total confinement petition the sentencing court for
32 remission of the payment of costs or of any unpaid portion thereof.
33 If it appears to the satisfaction of the court that payment of the
34 amount due will impose manifest hardship on the defendant or the
35 defendant's immediate family, the court may remit all or part of the
36 amount due in costs, (~~(or)~~) modify the method of payment under RCW
37 10.01.170, or convert the unpaid costs to community restitution
38 hours, if the jurisdiction operates a community restitution program,
39 at the rate of no less than the state minimum wage established in RCW
40 49.46.020 for each hour of community restitution. Manifest hardship

1 exists where the defendant is indigent as defined in RCW
2 10.101.010(3) (a) through (c).

3 (5) Except for direct costs relating to evaluating and reporting
4 to the court, prosecutor, or defense counsel regarding a defendant's
5 competency to stand trial as provided in RCW 10.77.060, this section
6 shall not apply to costs related to medical or mental health
7 treatment or services a defendant receives while in custody of the
8 secretary of the department of social and health services or other
9 governmental units. This section shall not prevent the secretary of
10 the department of social and health services or other governmental
11 units from imposing liability and seeking reimbursement from a
12 defendant committed to an appropriate facility as provided in RCW
13 10.77.084 while criminal proceedings are stayed. This section shall
14 also not prevent governmental units from imposing liability on
15 defendants for costs related to providing medical or mental health
16 treatment while the defendant is in the governmental unit's custody.
17 Medical or mental health treatment and services a defendant receives
18 at a state hospital or other facility are not a cost of prosecution
19 and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter
20 43.20B RCW, and any other applicable statute.

21 **Sec. 7.** RCW 10.01.170 and 1975-'76 2nd ex.s. c 96 s 2 are each
22 amended to read as follows:

23 (1) When a defendant is sentenced to pay ((a)) fines, penalties,
24 assessments, fees, restitution, or costs, the court may grant
25 permission for payment to be made within a specified period of time
26 or in specified installments. If the court finds that the defendant
27 is indigent as defined in RCW 10.101.010(3) (a) through (c), the
28 court shall grant permission for payment to be made within a
29 specified period of time or in specified installments. If no such
30 permission is included in the sentence the fine or costs shall be
31 payable forthwith.

32 (2) An offender's monthly payment shall be applied in the
33 following order of priority until satisfied:

34 (a) First, proportionally to restitution to victims that have not
35 been fully compensated from other sources;

36 (b) Second, proportionally to restitution to insurance or other
37 sources with respect to a loss that has provided compensation to
38 victims;

39 (c) Third, proportionally to crime victims' assessments; and

1 (d) Fourth, proportionally to costs, fines, and other assessments
2 required by law.

3 **Sec. 8.** RCW 10.01.180 and 2010 c 8 s 1006 are each amended to
4 read as follows:

5 (1) A defendant sentenced to pay ((a)) any fine, penalty,
6 assessment, fee, or costs who willfully defaults in the payment
7 thereof or of any installment is in contempt of court as provided in
8 chapter 7.21 RCW. The court may issue a warrant of arrest for his or
9 her appearance.

10 (2) When ((a)) any fine, penalty, assessment, fee, or assessment
11 of costs is imposed on a corporation or unincorporated association,
12 it is the duty of the person authorized to make disbursement from the
13 assets of the corporation or association to pay the ((~~fine or costs~~))
14 obligation from those assets, and his or her failure to do so may be
15 held to be contempt.

16 (3) (a) The court shall not sanction a defendant for contempt
17 based on failure to pay fines, penalties, assessments, fees, or costs
18 unless the court finds, after a hearing and on the record, that the
19 failure to pay is willful. A failure to pay is willful if the
20 defendant has the current ability to pay but refuses to do so.

21 (b) In determining whether the defendant has the current ability
22 to pay, the court shall inquire into and consider: (i) The
23 defendant's income and assets; (ii) the defendant's basic living
24 costs as defined by RCW 10.101.010 and other liabilities including
25 child support and other legal financial obligations; and (iii) the
26 defendant's bona fide efforts to acquire additional resources. A
27 defendant who is indigent as defined by RCW 10.101.010(3) (a) through
28 (c) is presumed to lack the current ability to pay.

29 (c) If the court determines that the defendant is homeless or a
30 person who is mentally ill, as defined in RCW 71.24.025, failure to
31 pay a legal financial obligation is not willful contempt and shall
32 not subject the defendant to penalties.

33 (4) If a term of imprisonment for contempt for nonpayment of
34 ((a)) any fine, penalty, assessment, fee, or costs is ordered, the
35 term of imprisonment shall be set forth in the commitment order, and
36 shall not exceed one day for each twenty-five dollars of the ((~~fine~~
37 ~~or costs~~)) amount ordered, thirty days if the ((~~fine or assessment~~))
38 amount ordered of costs was imposed upon conviction of a violation or
39 misdemeanor, or one year in any other case, whichever is the shorter

1 period. A person committed for nonpayment of ((a)) any fine, penalty,
2 assessment, fee, or costs shall be given credit toward payment for
3 each day of imprisonment at the rate specified in the commitment
4 order.

5 ((4)) (5) If it appears to the satisfaction of the court that
6 the default in the payment of ((a)) any fine, penalty, assessment,
7 fee, or costs is not willful contempt, the court may, and if the
8 defendant is indigent as defined in RCW 10.101.010(3) (a) through
9 (c), the court shall enter an order: (a) Allowing the defendant
10 additional time for payment((7)); (b) reducing the amount thereof or
11 of each installment ((€)); (c) revoking the fine, penalty,
12 assessment, fee, or costs or the unpaid portion thereof in whole or
13 in part; or (d) converting the unpaid fine, penalty, assessment, fee,
14 or costs to community restitution hours, if the jurisdiction operates
15 a community restitution program, at the rate of no less than the
16 state minimum wage established in RCW 49.46.020 for each hour of
17 community restitution. The crime victim penalty assessment under RCW
18 7.68.035 may not be reduced, revoked, or converted to community
19 restitution hours.

20 ((5)) (6) A default in the payment of ((a)) any fine, penalty,
21 assessment, fee, or costs or any installment thereof may be collected
22 by any means authorized by law for the enforcement of a judgment. The
23 levy of execution for the collection of ((a)) any fine, penalty,
24 assessment, fee, or costs shall not discharge a defendant committed
25 to imprisonment for contempt until the amount ((of the fine or

26 costs)) has actually been collected.

27 **Sec. 9.** RCW 10.46.190 and 2005 c 457 s 12 are each amended to
28 read as follows:

29 Every person convicted of a crime or held to bail to keep the
30 peace ((shall)) may be liable to all the costs of the proceedings
31 against him or her, including, when tried by a jury in the superior
32 court or before a committing magistrate, a jury fee as provided for
33 in civil actions for which judgment shall be rendered and collected.
34 The court shall not order a defendant to pay costs, as described in
35 RCW 10.01.160, if the court finds that the person at the time of
36 sentencing is indigent as defined in RCW 10.101.010(3) (a) through
37 (c). The jury fee, when collected for a case tried by the superior
38 court, shall be paid to the clerk and applied as the jury fee in
39 civil cases is applied.

1 **Sec. 10.** RCW 10.64.015 and Code 1881 s 1104 are each amended to
2 read as follows:

3 When the defendant is found guilty, the court shall render
4 judgment accordingly, and the defendant (~~shall~~) may be liable for
5 all costs, unless the court or jury trying the cause expressly find
6 otherwise. The court shall not order a defendant to pay costs, as
7 described in RCW 10.01.160, if the court finds that the person at the
8 time of sentencing is indigent as defined in RCW 10.101.010(3) (a)
9 through (c).

10 **Sec. 11.** RCW 9.92.070 and 1987 c 3 s 4 are each amended to read
11 as follows:

12 Hereafter whenever any judge of any superior court or a district
13 or municipal judge shall sentence any person to pay any fines,
14 penalties, assessments, fees, and costs, the judge may, in the
15 judge's discretion, provide that such fines, penalties, assessments,
16 fees, and costs may be paid in certain designated installments, or
17 within certain designated period or periods(~~;~~~~and~~). If the court
18 finds that the defendant is indigent as defined in RCW 10.101.010(3)
19 (a) through (c), the court shall allow for payment in certain
20 designated installments or within certain designated periods. If such
21 fines, penalties, assessments, fees, and costs shall be paid by the
22 defendant in accordance with such order no commitment or imprisonment
23 of the defendant shall be made for failure to pay such fine or costs.
24 PROVIDED, that the provisions of this section shall not apply to any
25 sentence given for the violation of any of the liquor laws of this
26 state.

27 **Sec. 12.** RCW 10.73.160 and 2015 c 265 s 22 are each amended to
28 read as follows:

29 (1) The court of appeals, supreme court, and superior courts may
30 require an adult offender convicted of an offense to pay appellate
31 costs.

32 (2) Appellate costs are limited to expenses specifically incurred
33 by the state in prosecuting or defending an appeal or collateral
34 attack from a criminal conviction. Appellate costs shall not include
35 expenditures to maintain and operate government agencies that must be
36 made irrespective of specific violations of the law. Expenses
37 incurred for producing a verbatim report of proceedings and clerk's

1 papers may be included in costs the court may require a convicted
2 defendant to pay.

3 (3) Costs, including recoupment of fees for court-appointed
4 counsel, shall be requested in accordance with the procedures
5 contained in Title 14 of the rules of appellate procedure and in
6 Title 9 of the rules for appeal of decisions of courts of limited
7 jurisdiction. An award of costs shall become part of the trial court
8 judgment and sentence.

9 (4) A defendant who has been sentenced to pay costs and who is
10 not in contumacious default in the payment may at any time after
11 release from total confinement petition the court that sentenced the
12 defendant or juvenile offender for remission of the payment of costs
13 or of any unpaid portion. If it appears to the satisfaction of the
14 sentencing court that payment of the amount due will impose manifest
15 hardship on the defendant or the defendant's immediate family, the
16 sentencing court may remit all or part of the amount due in costs,
17 (~~or~~) modify the method of payment under RCW 10.01.170, or convert
18 the unpaid costs to community restitution hours, if the jurisdiction
19 operates a community restitution program, at the rate of no less than
20 the state minimum wage established in RCW 49.46.020 for each hour of
21 community restitution. Manifest hardship exists where the defendant
22 or juvenile offender is indigent as defined in RCW 10.101.010(3) (a)
23 through (c).

24 (5) The parents or another person legally obligated to support a
25 juvenile offender who has been ordered to pay appellate costs and who
26 is not in contumacious default in the payment may at any time
27 petition the court that sentenced the juvenile offender for remission
28 of the payment of costs or of any unpaid portion. If it appears to
29 the satisfaction of the sentencing court that payment of the amount
30 due will impose manifest hardship on the parents or another person
31 legally obligated to support a juvenile offender or on their
32 immediate families, the sentencing court may remit all or part of the
33 amount due in costs, or may modify the method of payment.

34 **Sec. 13.** RCW 9.94A.6333 and 2008 c 231 s 19 are each amended to
35 read as follows:

36 (1) If an offender violates any condition or requirement of a
37 sentence, and the offender is not being supervised by the department,
38 the court may modify its order of judgment and sentence and impose
39 further punishment in accordance with this section.

1 (2) If an offender fails to comply with any of the nonfinancial
2 conditions or requirements of a sentence the following provisions
3 apply:

4 (a) The court, upon the motion of the state, or upon its own
5 motion, shall require the offender to show cause why the offender
6 should not be punished for the noncompliance. The court may issue a
7 summons or a warrant of arrest for the offender's appearance;

8 (b) The state has the burden of showing noncompliance by a
9 preponderance of the evidence;

10 (c) If the court finds that a violation has been proved, it may
11 impose the sanctions specified in RCW 9.94A.633(1). Alternatively,
12 the court may:

13 (i) Convert a term of partial confinement to total confinement;
14 or

15 (ii) Convert community restitution obligation to total or partial
16 confinement; (~~or~~

17 ~~(iii) Convert monetary obligations, except restitution and the~~
18 ~~crime victim penalty assessment, to community restitution hours at~~
19 ~~the rate of the state minimum wage as established in RCW 49.46.020~~
20 ~~for each hour of community restitution;))~~

21 (d) If the court finds that the violation was not willful, the
22 court may modify its previous order regarding (~~payment of legal~~
23 ~~financial obligations and regarding~~) community restitution
24 obligations; and

25 (e) If the violation involves a failure to undergo or comply with
26 a mental health status evaluation and/or outpatient mental health
27 treatment, the court shall seek a recommendation from the treatment
28 provider or proposed treatment provider. Enforcement of orders
29 concerning outpatient mental health treatment must reflect the
30 availability of treatment and must pursue the least restrictive means
31 of promoting participation in treatment. If the offender's failure to
32 receive care essential for health and safety presents a risk of
33 serious physical harm or probable harmful consequences, the civil
34 detention and commitment procedures of chapter 71.05 RCW shall be
35 considered in preference to incarceration in a local or state
36 correctional facility.

37 (3) If an offender fails to pay legal financial obligations as a
38 requirement of a sentence the following provisions apply:

39 (a) The court, upon the motion of the state, or upon its own
40 motion, shall require the offender to show cause why the offender

1 should not be punished for the noncompliance. The court may issue a
2 summons or a warrant of arrest for the offender's appearance;

3 (b) The state has the burden of showing noncompliance by a
4 preponderance of the evidence;

5 (c) The court may not sanction the offender for failure to pay
6 legal financial obligations unless the court finds, after a hearing
7 and on the record, that the failure to pay is willful. A failure to
8 pay is willful if the offender has the current ability to pay but
9 refuses to do so. In determining whether the offender has the current
10 ability to pay, the court shall inquire into and consider: (i) The
11 offender's income and assets; (ii) the offender's basic living costs
12 as defined by RCW 10.101.010 and other liabilities including child
13 support and other legal financial obligations; and (iii) the
14 offender's bona fide efforts to acquire additional resources. An
15 offender who is indigent as defined by RCW 10.101.010(3) (a) through
16 (c) is presumed to lack the current ability to pay;

17 (d) If the court determines that the offender is homeless or a
18 person who is mentally ill, as defined in RCW 71.24.025, failure to
19 pay a legal financial obligation is not willful noncompliance and
20 shall not subject the offender to penalties;

21 (e) If the court finds that a failure to pay is willful
22 noncompliance, it may impose the sanctions specified in RCW
23 9.94A.633(1); and

24 (f) If the court finds that the violation was not willful, the
25 court may, and if the court finds that the defendant is indigent as
26 defined in RCW 10.101.010(3) (a) through (c), the court shall modify
27 the terms of payment of the legal financial obligations, reduce or
28 waive nonrestitution legal financial obligations, or convert
29 nonrestitution legal financial obligations to community restitution
30 hours, if the jurisdiction operates a community restitution program,
31 at the rate of no less than the state minimum wage established in RCW
32 49.46.020 for each hour of community restitution. The crime victim
33 penalty assessment under RCW 7.68.035 may not be reduced, waived, or
34 converted to community restitution hours.

35 (4) Any time served in confinement awaiting a hearing on
36 noncompliance shall be credited against any confinement ordered by
37 the court.

38 ((+4)) (5) Nothing in this section prohibits the filing of
39 escape charges if appropriate.

1 **Sec. 14.** RCW 9.94A.760 and 2011 c 106 s 3 are each amended to
2 read as follows:

3 (1) Whenever a person is convicted in superior court, the court
4 may order the payment of a legal financial obligation as part of the
5 sentence. The court may not order an offender to pay costs as
6 described in RCW 10.01.160 if the court finds that the offender at
7 the time of sentencing is indigent as defined in RCW 10.101.010(3)
8 (a) through (c). An offender being indigent as defined in RCW
9 10.101.010(3) (a) through (c) is not grounds for failing to impose
10 restitution or the crime victim penalty assessment under RCW
11 7.68.035. The court must on either the judgment and sentence or on a
12 subsequent order to pay, designate the total amount of a legal
13 financial obligation and segregate this amount among the separate
14 assessments made for restitution, costs, fines, and other assessments
15 required by law. On the same order, the court is also to set a sum
16 that the offender is required to pay on a monthly basis towards
17 satisfying the legal financial obligation. If the court fails to set
18 the offender monthly payment amount, the department shall set the
19 amount if the department has active supervision of the offender,
20 otherwise the county clerk shall set the amount.

21 (2) Upon receipt of ~~((an offender's monthly))~~ each payment~~((7~~
22 ~~restitution shall be paid prior to any payments of other monetary~~
23 ~~obligations. After restitution is satisfied))~~ made by or on behalf of
24 an offender, the county clerk shall distribute the payment
25 ~~((proportionally among all other fines, costs, and assessments~~
26 ~~imposed, unless otherwise ordered by the court))~~ in the following
27 order of priority until satisfied:

28 (a) First, proportionally to restitution to victims that have not
29 been fully compensated from other sources;

30 (b) Second, proportionally to restitution to insurance or other
31 sources with respect to a loss that has provided compensation to
32 victims;

33 (c) Third, proportionally to crime victims' assessments; and

34 (d) Fourth, proportionally to costs, fines, and other assessments
35 required by law.

36 ~~((2))~~ (3) If the court determines that the offender, at the
37 time of sentencing, has the means to pay for the cost of
38 incarceration, the court may require the offender to pay for the cost
39 of incarceration ~~((at))~~. The court shall not order the offender to
40 pay the cost of incarceration if the court finds that the offender at

1 the time of sentencing is indigent as defined in RCW 10.101.010(3)
2 (a) through (c). Costs of incarceration ordered by the court shall
3 not exceed a rate of fifty dollars per day of incarceration, if
4 incarcerated in a prison, or the ~~((court may require the offender to~~
5 ~~pay the))~~ actual cost of incarceration per day of incarceration, if
6 incarcerated in a county jail. In no case may the court require the
7 offender to pay more than one hundred dollars per day for the cost of
8 incarceration. ~~((Payment of other court-ordered financial~~
9 ~~obligations, including all legal financial obligations and costs of~~
10 ~~supervision shall take precedence over the payment of the cost of~~
11 ~~incarceration ordered by the court.))~~ All funds recovered from
12 offenders for the cost of incarceration in the county jail shall be
13 remitted to the county and the costs of incarceration in a prison
14 shall be remitted to the department.

15 ~~((3))~~ (4) The court may add to the judgment and sentence or
16 subsequent order to pay a statement that a notice of payroll
17 deduction is to be issued immediately. If the court chooses not to
18 order the immediate issuance of a notice of payroll deduction at
19 sentencing, the court shall add to the judgment and sentence or
20 subsequent order to pay a statement that a notice of payroll
21 deduction may be issued or other income-withholding action may be
22 taken, without further notice to the offender if a monthly court-
23 ordered legal financial obligation payment is not paid when due, and
24 an amount equal to or greater than the amount payable for one month
25 is owed.

26 If a judgment and sentence or subsequent order to pay does not
27 include the statement that a notice of payroll deduction may be
28 issued or other income-withholding action may be taken if a monthly
29 legal financial obligation payment is past due, the department or the
30 county clerk may serve a notice on the offender stating such
31 requirements and authorizations. Service shall be by personal service
32 or any form of mail requiring a return receipt.

33 ~~((4))~~ (5) Independent of the department or the county clerk,
34 the party or entity to whom the legal financial obligation is owed
35 shall have the authority to use any other remedies available to the
36 party or entity to collect the legal financial obligation. These
37 remedies include enforcement in the same manner as a judgment in a
38 civil action by the party or entity to whom the legal financial
39 obligation is owed. Restitution collected through civil enforcement
40 must be paid through the registry of the court and must be

1 distributed proportionately according to each victim's loss when
2 there is more than one victim. The judgment and sentence shall
3 identify the party or entity to whom restitution is owed so that the
4 state, party, or entity may enforce the judgment. If restitution is
5 ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of
6 rape of a child or a victim's child born from the rape, the
7 Washington state child support registry shall be identified as the
8 party to whom payments must be made. Restitution obligations arising
9 from the rape of a child in the first, second, or third degree that
10 result in the pregnancy of the victim may be enforced for the time
11 periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other
12 legal financial obligations for an offense committed prior to July 1,
13 2000, may be enforced at any time during the ten-year period
14 following the offender's release from total confinement or within ten
15 years of entry of the judgment and sentence, whichever period ends
16 later. Prior to the expiration of the initial ten-year period, the
17 superior court may extend the criminal judgment an additional ten
18 years for payment of legal financial obligations including crime
19 victims' assessments. All other legal financial obligations for an
20 offense committed on or after July 1, 2000, may be enforced at any
21 time the offender remains under the court's jurisdiction. For an
22 offense committed on or after July 1, 2000, the court shall retain
23 jurisdiction over the offender, for purposes of the offender's
24 compliance with payment of the legal financial obligations, until the
25 obligation is completely satisfied, regardless of the statutory
26 maximum for the crime. The department may only supervise the
27 offender's compliance with payment of the legal financial obligations
28 during any period in which the department is authorized to supervise
29 the offender in the community under RCW 9.94A.728, 9.94A.501, or in
30 which the offender is confined in a state correctional institution or
31 a correctional facility pursuant to a transfer agreement with the
32 department, and the department shall supervise the offender's
33 compliance during any such period. The department is not responsible
34 for supervision of the offender during any subsequent period of time
35 the offender remains under the court's jurisdiction. The county clerk
36 is authorized to collect unpaid legal financial obligations at any
37 time the offender remains under the jurisdiction of the court for
38 purposes of his or her legal financial obligations.

39 ((+5)) (6) In order to assist the court in setting a monthly sum
40 that the offender must pay during the period of supervision, the

1 offender is required to report to the department for purposes of
2 preparing a recommendation to the court. When reporting, the offender
3 is required, under oath, to respond truthfully and honestly to all
4 questions concerning present, past, and future earning capabilities
5 and the location and nature of all property or financial assets. The
6 offender is further required to bring all documents requested by the
7 department.

8 ((+6)) (7) After completing the investigation, the department
9 shall make a report to the court on the amount of the monthly payment
10 that the offender should be required to make towards a satisfied
11 legal financial obligation.

12 ((+7)) (8)(a) During the period of supervision, the department
13 may make a recommendation to the court that the offender's monthly
14 payment schedule be modified so as to reflect a change in financial
15 circumstances. If the department sets the monthly payment amount, the
16 department may modify the monthly payment amount without the matter
17 being returned to the court. During the period of supervision, the
18 department may require the offender to report to the department for
19 the purposes of reviewing the appropriateness of the collection
20 schedule for the legal financial obligation. During this reporting,
21 the offender is required under oath to respond truthfully and
22 honestly to all questions concerning earning capabilities and the
23 location and nature of all property or financial assets. The offender
24 shall bring all documents requested by the department in order to
25 prepare the collection schedule.

26 (b) Subsequent to any period of supervision, or if the department
27 is not authorized to supervise the offender in the community, the
28 county clerk may make a recommendation to the court that the
29 offender's monthly payment schedule be modified so as to reflect a
30 change in financial circumstances. If the county clerk sets the
31 monthly payment amount, or if the department set the monthly payment
32 amount and the department has subsequently turned the collection of
33 the legal financial obligation over to the county clerk, the clerk
34 may modify the monthly payment amount without the matter being
35 returned to the court. During the period of repayment, the county
36 clerk may require the offender to report to the clerk for the purpose
37 of reviewing the appropriateness of the collection schedule for the
38 legal financial obligation. During this reporting, the offender is
39 required under oath to respond truthfully and honestly to all
40 questions concerning earning capabilities and the location and nature

1 of all property or financial assets. The offender shall bring all
2 documents requested by the county clerk in order to prepare the
3 collection schedule.

4 ~~((+8))~~ (9) After the judgment and sentence or payment order is
5 entered, the department is authorized, for any period of supervision,
6 to collect the legal financial obligation from the offender.
7 Subsequent to any period of supervision or, if the department is not
8 authorized to supervise the offender in the community, the county
9 clerk is authorized to collect unpaid legal financial obligations
10 from the offender. Any amount collected by the department shall be
11 remitted daily to the county clerk for the purpose of disbursements.
12 The department and the county clerks are authorized, but not
13 required, to accept credit cards as payment for a legal financial
14 obligation, and any costs incurred related to accepting credit card
15 payments shall be the responsibility of the offender.

16 ~~((+9))~~ (10) The department or any obligee of the legal financial
17 obligation may seek a mandatory wage assignment for the purposes of
18 obtaining satisfaction for the legal financial obligation pursuant to
19 RCW 9.94A.7701. Any party obtaining a wage assignment shall notify
20 the county clerk. The county clerks shall notify the department, or
21 the administrative office of the courts, whichever is providing the
22 monthly billing for the offender.

23 ~~((+10))~~ (11) The requirement that the offender pay a monthly sum
24 towards a legal financial obligation constitutes a condition or
25 requirement of a sentence and the offender is subject to the
26 penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737,
27 or 9.94A.740. If the court determines that the offender is homeless
28 or a person who is mentally ill, as defined in RCW 71.24.025, failure
29 to pay a legal financial obligation is not willful noncompliance and
30 shall not subject the offender to penalties.

31 ~~((+11))~~ (12)(a) The administrative office of the courts shall
32 mail individualized periodic billings to the address known by the
33 office for each offender with an unsatisfied legal financial
34 obligation.

35 (b) The billing shall direct payments, other than outstanding
36 cost of supervision assessments under RCW 9.94A.780, parole
37 assessments under RCW 72.04A.120, and cost of probation assessments
38 under RCW 9.95.214, to the county clerk, and cost of supervision,
39 parole, or probation assessments to the department.

1 (c) The county clerk shall provide the administrative office of
2 the courts with notice of payments by such offenders no less
3 frequently than weekly.

4 (d) The county clerks, the administrative office of the courts,
5 and the department shall maintain agreements to implement this
6 subsection.

7 (~~(12)~~) (13) The department shall arrange for the collection of
8 unpaid legal financial obligations during any period of supervision
9 in the community through the county clerk. The department shall
10 either collect unpaid legal financial obligations or arrange for
11 collections through another entity if the clerk does not assume
12 responsibility or is unable to continue to assume responsibility for
13 collection pursuant to subsection (~~(4)~~) (5) of this section. The
14 costs for collection services shall be paid by the offender.

15 (~~(13)~~) (14) The county clerk may access the records of the
16 employment security department for the purposes of verifying
17 employment or income, seeking any assignment of wages, or performing
18 other duties necessary to the collection of an offender's legal
19 financial obligations.

20 (~~(14)~~) (15) Nothing in this chapter makes the department, the
21 state, the counties, or any state or county employees, agents, or
22 other persons acting on their behalf liable under any circumstances
23 for the payment of these legal financial obligations or for the acts
24 of any offender who is no longer, or was not, subject to supervision
25 by the department for a term of community custody, and who remains
26 under the jurisdiction of the court for payment of legal financial
27 obligations.

28 **Sec. 15.** RCW 9.94B.040 and 2002 c 175 s 8 are each amended to
29 read as follows:

30 (1) If an offender violates any condition or requirement of a
31 sentence, the court may modify its order of judgment and sentence and
32 impose further punishment in accordance with this section.

33 (2) In cases where conditions from a second or later sentence of
34 community supervision begin prior to the term of the second or later
35 sentence, the court shall treat a violation of such conditions as a
36 violation of the sentence of community supervision currently being
37 served.

1 (3) If an offender fails to comply with any of the nonfinancial
2 requirements or conditions of a sentence the following provisions
3 apply:

4 (a)(i) Following the violation, if the offender and the
5 department make a stipulated agreement, the department may impose
6 sanctions such as work release, home detention with electronic
7 monitoring, work crew, community restitution, inpatient treatment,
8 daily reporting, curfew, educational or counseling sessions,
9 supervision enhanced through electronic monitoring, jail time, or
10 other sanctions available in the community.

11 (ii) Within seventy-two hours of signing the stipulated
12 agreement, the department shall submit a report to the court and the
13 prosecuting attorney outlining the violation or violations, and
14 sanctions imposed. Within fifteen days of receipt of the report, if
15 the court is not satisfied with the sanctions, the court may schedule
16 a hearing and may modify the department's sanctions. If this occurs,
17 the offender may withdraw from the stipulated agreement.

18 (iii) If the offender fails to comply with the sanction
19 administratively imposed by the department, the court may take action
20 regarding the original noncompliance. Offender failure to comply with
21 the sanction administratively imposed by the department may be
22 considered an additional violation;

23 (b) In the absence of a stipulated agreement, or where the court
24 is not satisfied with the department's sanctions as provided in (a)
25 of this subsection, the court, upon the motion of the state, or upon
26 its own motion, shall require the offender to show cause why the
27 offender should not be punished for the noncompliance. The court may
28 issue a summons or a warrant of arrest for the offender's appearance;

29 (c) The state has the burden of showing noncompliance by a
30 preponderance of the evidence. If the court finds that the violation
31 has occurred, it may order the offender to be confined for a period
32 not to exceed sixty days for each violation, and may (i) convert a
33 term of partial confinement to total confinement, (ii) convert
34 community restitution obligation to total or partial confinement, or
35 ~~(iii) ((convert monetary obligations, except restitution and the~~
36 ~~crime victim penalty assessment, to community restitution hours at~~
37 ~~the rate of the state minimum wage as established in RCW 49.46.020~~
38 ~~for each hour of community restitution, or (iv))~~) order one or more
39 of the penalties authorized in (a)(i) of this subsection. Any time

1 served in confinement awaiting a hearing on noncompliance shall be
2 credited against any confinement order by the court;

3 (d) If the court finds that the violation was not willful, the
4 court may modify its previous order regarding (~~payment of legal~~
5 ~~financial obligations and regarding~~) community restitution
6 obligations; and

7 (e) If the violation involves a failure to undergo or comply with
8 mental status evaluation and/or outpatient mental health treatment,
9 the community corrections officer shall consult with the treatment
10 provider or proposed treatment provider. Enforcement of orders
11 concerning outpatient mental health treatment must reflect the
12 availability of treatment and must pursue the least restrictive means
13 of promoting participation in treatment. If the offender's failure to
14 receive care essential for health and safety presents a risk of
15 serious physical harm or probable harmful consequences, the civil
16 detention and commitment procedures of chapter 71.05 RCW shall be
17 considered in preference to incarceration in a local or state
18 correctional facility.

19 (4) If the violation involves failure to pay legal financial
20 obligations, the following provisions apply:

21 (a) The department and the offender may enter into a stipulated
22 agreement that the failure to pay was willful noncompliance,
23 according to the provisions and requirements of subsection (3)(a) of
24 this section;

25 (b) In the absence of a stipulated agreement, or where the court
26 is not satisfied with the department's sanctions as provided in a
27 stipulated agreement under (a) of this subsection, the court, upon
28 the motion of the state, or upon its own motion, shall require the
29 offender to show cause why the offender should not be punished for
30 the noncompliance. The court may issue a summons or a warrant of
31 arrest for the offender's appearance;

32 (c) The state has the burden of showing noncompliance by a
33 preponderance of the evidence. The court may not sanction the
34 offender for failure to pay legal financial obligations unless the
35 court finds, after a hearing and on the record, that the failure to
36 pay is willful. A failure to pay is willful if the offender has the
37 current ability to pay but refuses to do so. In determining whether
38 the offender has the current ability to pay, the court shall inquire
39 into and consider: (i) The offender's income and assets; (ii) the
40 offender's basic living costs as defined by RCW 10.101.010 and other

1 liabilities including child support and other legal financial
2 obligations; and (iii) the offender's bona fide efforts to acquire
3 additional resources. An offender who is indigent as defined by RCW
4 10.101.010(3) (a) through (c) is presumed to lack the current ability
5 to pay;

6 (d) If the court determines that the offender is homeless or a
7 person who is mentally ill, as defined in RCW 71.24.025, failure to
8 pay a legal financial obligation is not willful noncompliance and
9 shall not subject the offender to penalties;

10 (e) If the court finds that the failure to pay is willful
11 noncompliance, the court may order the offender to be confined for a
12 period not to exceed sixty days for each violation or order one or
13 more of the penalties authorized in subsection (3)(a)(i) of this
14 section; and

15 (f) If the court finds that the violation was not willful, the
16 court may, and if the court finds that the defendant is indigent as
17 defined in RCW 10.101.010(3) (a) through (c), the court shall modify
18 the terms of payment of the legal financial obligations, reduce or
19 waive nonrestitution legal financial obligations, or convert
20 nonrestitution legal financial obligations to community restitution
21 hours, if the jurisdiction operates a community restitution program,
22 at the rate of no less than the state minimum wage established in RCW
23 49.46.020 for each hour of community restitution. The crime victim
24 penalty assessment under RCW 7.68.035 may not be reduced, waived, or
25 converted to community restitution hours.

26 (5) The community corrections officer may obtain information from
27 the offender's mental health treatment provider on the offender's
28 status with respect to evaluation, application for services,
29 registration for services, and compliance with the supervision plan,
30 without the offender's consent, as described under RCW 71.05.630.

31 ~~((5))~~ (6) An offender under community placement or community
32 supervision who is civilly detained under chapter 71.05 RCW, and
33 subsequently discharged or conditionally released to the community,
34 shall be under the supervision of the department of corrections for
35 the duration of his or her period of community placement or community
36 supervision. During any period of inpatient mental health treatment
37 that falls within the period of community placement or community
38 supervision, the inpatient treatment provider and the supervising
39 community corrections officer shall notify each other about the

1 offender's discharge, release, and legal status, and shall share
2 other relevant information.

3 ~~((6))~~ (7) Nothing in this section prohibits the filing of
4 escape charges if appropriate.

5 **Sec. 16.** RCW 3.62.085 and 2005 c 457 s 10 are each amended to
6 read as follows:

7 Upon conviction or a plea of guilty in any court organized under
8 this title or Title 35 RCW, a defendant in a criminal case is liable
9 for a fee of forty-three dollars, except this fee shall not be
10 imposed on a defendant who is indigent as defined in RCW
11 10.101.010(3) (a) through (c). This fee shall be subject to division
12 with the state under RCW 3.46.120(2), 3.50.100(2), 3.62.020(2),
13 3.62.040(2), and 35.20.220(2).

14 **Sec. 17.** RCW 36.18.020 and 2017 3rd sp.s. c 2 s 3 are each
15 amended to read as follows:

16 (1) Revenue collected under this section is subject to division
17 with the state under RCW 36.18.025 and with the county or regional
18 law library fund under RCW 27.24.070, except as provided in
19 subsection (5) of this section.

20 (2) Clerks of superior courts shall collect the following fees
21 for their official services:

22 (a) In addition to any other fee required by law, the party
23 filing the first or initial document in any civil action, including,
24 but not limited to an action for restitution, adoption, or change of
25 name, and any party filing a counterclaim, cross-claim, or third-
26 party claim in any such civil action, shall pay, at the time the
27 document is filed, a fee of two hundred dollars except, in an
28 unlawful detainer action under chapter 59.18 or 59.20 RCW for which
29 the plaintiff shall pay a case initiating filing fee of forty-five
30 dollars, or in proceedings filed under RCW 28A.225.030 alleging a
31 violation of the compulsory attendance laws where the petitioner
32 shall not pay a filing fee. The forty-five dollar filing fee under
33 this subsection for an unlawful detainer action shall not include an
34 order to show cause or any other order or judgment except a default
35 order or default judgment in an unlawful detainer action.

36 (b) Any party, except a defendant in a criminal case, filing the
37 first or initial document on an appeal from a court of limited

1 jurisdiction or any party on any civil appeal, shall pay, when the
2 document is filed, a fee of two hundred dollars.

3 (c) For filing of a petition for judicial review as required
4 under RCW 34.05.514 a filing fee of two hundred dollars.

5 (d) For filing of a petition for unlawful harassment under RCW
6 10.14.040 a filing fee of fifty-three dollars.

7 (e) For filing the notice of debt due for the compensation of a
8 crime victim under RCW 7.68.120(2) (a) a fee of two hundred dollars.

9 (f) In probate proceedings, the party instituting such
10 proceedings, shall pay at the time of filing the first document
11 therein, a fee of two hundred dollars.

12 (g) For filing any petition to contest a will admitted to probate
13 or a petition to admit a will which has been rejected, or a petition
14 objecting to a written agreement or memorandum as provided in RCW
15 11.96A.220, there shall be paid a fee of two hundred dollars.

16 (h) Upon conviction or plea of guilty, upon failure to prosecute
17 an appeal from a court of limited jurisdiction as provided by law, or
18 upon affirmance of a conviction by a court of limited jurisdiction,
19 an adult defendant in a criminal case shall be liable for a fee of
20 two hundred dollars, except this fee shall not be imposed on a
21 defendant who is indigent as defined in RCW 10.101.010(3) (a) through
22 (c).

23 (i) With the exception of demands for jury hereafter made and
24 garnishments hereafter issued, civil actions and probate proceedings
25 filed prior to midnight, July 1, 1972, shall be completed and
26 governed by the fee schedule in effect as of January 1, 1972.
27 However, no fee shall be assessed if an order of dismissal on the
28 clerk's record be filed as provided by rule of the supreme court.

29 (3) No fee shall be collected when a petition for relinquishment
30 of parental rights is filed pursuant to RCW 26.33.080 or for forms
31 and instructional brochures provided under RCW 26.50.030.

32 (4) No fee shall be collected when an abstract of judgment is
33 filed by the county clerk of another county for the purposes of
34 collection of legal financial obligations.

35 (5) (a) Until July 1, 2021, in addition to the fees required to be
36 collected under this section, clerks of the superior courts must
37 collect surcharges as provided in this subsection (5) of which
38 seventy-five percent must be remitted to the state treasurer for
39 deposit in the judicial stabilization trust account and twenty-five
40 percent must be retained by the county.

1 (b) On filing fees required to be collected under subsection
2 (2)(b) of this section, a surcharge of thirty dollars must be
3 collected.

4 (c) On all filing fees required to be collected under this
5 section, except for fees required under subsection (2)(b), (d), and
6 (h) of this section, a surcharge of forty dollars must be collected.

7 **Sec. 18.** RCW 43.43.7541 and 2015 c 265 s 31 are each amended to
8 read as follows:

9 Every sentence imposed for a crime specified in RCW 43.43.754
10 must include a fee of one hundred dollars unless the state has
11 previously collected the offender's DNA as a result of a prior
12 conviction. The fee is a court-ordered legal financial obligation as
13 defined in RCW 9.94A.030 and other applicable law. For a sentence
14 imposed under chapter 9.94A RCW, the fee is payable by the offender
15 after payment of all other legal financial obligations included in
16 the sentence has been completed. For all other sentences, the fee is
17 payable by the offender in the same manner as other assessments
18 imposed. The clerk of the court shall transmit eighty percent of the
19 fee collected to the state treasurer for deposit in the state DNA
20 database account created under RCW 43.43.7532, and shall transmit
21 twenty percent of the fee collected to the agency responsible for
22 collection of a biological sample from the offender as required under
23 RCW 43.43.754. This fee shall not be imposed on juvenile offenders if
24 the state has previously collected the juvenile offender's DNA as a
25 result of a prior conviction.

26 **Sec. 19.** RCW 7.68.035 and 2015 c 265 s 8 are each amended to
27 read as follows:

28 (1)(a) When any person is found guilty in any superior court of
29 having committed a crime, except as provided in subsection (2) of
30 this section, there shall be imposed by the court upon such convicted
31 person a penalty assessment. The assessment shall be in addition to
32 any other penalty or fine imposed by law and shall be five hundred
33 dollars for each case or cause of action that includes one or more
34 convictions of a felony or gross misdemeanor and two hundred fifty
35 dollars for any case or cause of action that includes convictions of
36 only one or more misdemeanors.

37 (b) When any juvenile is adjudicated of an offense that is a most
38 serious offense as defined in RCW 9.94A.030, or a sex offense under

1 chapter 9A.44 RCW, there shall be imposed upon the juvenile offender
2 a penalty assessment. The assessment shall be in addition to any
3 other penalty or fine imposed by law and shall be one hundred dollars
4 for each case or cause of action.

5 (c) When any juvenile is adjudicated of an offense which has a
6 victim, and which is not a most serious offense as defined in RCW
7 9.94A.030 or a sex offense under chapter 9A.44 RCW, the court shall
8 order up to seven hours of community restitution, unless the court
9 finds that such an order is not practicable for the offender. This
10 community restitution must be imposed consecutively to any other
11 community restitution the court imposes for the offense.

12 (2) The assessment imposed by subsection (1) of this section
13 shall not apply to motor vehicle crimes defined in Title 46 RCW
14 except those defined in the following sections: RCW 46.61.520,
15 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504,
16 46.52.101, 46.20.410, 46.52.020, 46.10.495, 46.09.480, 46.61.5249,
17 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010,
18 46.44.180, 46.10.490(2), and 46.09.470(2).

19 (3) When any person accused of having committed a crime posts
20 bail in superior court pursuant to the provisions of chapter 10.19
21 RCW and such bail is forfeited, there shall be deducted from the
22 proceeds of such forfeited bail a penalty assessment, in addition to
23 any other penalty or fine imposed by law, equal to the assessment
24 which would be applicable under subsection (1) of this section if the
25 person had been convicted of the crime.

26 (4) Such penalty assessments shall be paid by the clerk of the
27 superior court to the county treasurer (~~(who shall monthly transmit~~
28 ~~the money as provided in RCW 10.82.070)~~). Each county shall deposit
29 (~~(fifty)~~) one hundred percent of the money it receives per case or
30 cause of action under subsection (1) of this section (~~(and retains~~
31 ~~under RCW 10.82.070)~~), not less than one and seventy-five one-
32 hundredths percent of the remaining money it retains under RCW
33 10.82.070 and the money it retains under chapter 3.62 RCW, and all
34 money it receives under subsection (7) of this section into a fund
35 maintained exclusively for the support of comprehensive programs to
36 encourage and facilitate testimony by the victims of crimes and
37 witnesses to crimes. A program shall be considered "comprehensive"
38 only after approval of the department upon application by the county
39 prosecuting attorney. The department shall approve as comprehensive
40 only programs which:

1 (a) Provide comprehensive services to victims and witnesses of
2 all types of crime with particular emphasis on serious crimes against
3 persons and property. It is the intent of the legislature to make
4 funds available only to programs which do not restrict services to
5 victims or witnesses of a particular type or types of crime and that
6 such funds supplement, not supplant, existing local funding levels;

7 (b) Are administered by the county prosecuting attorney either
8 directly through the prosecuting attorney's office or by contract
9 between the county and agencies providing services to victims of
10 crime;

11 (c) Make a reasonable effort to inform the known victim or his or
12 her surviving dependents of the existence of this chapter and the
13 procedure for making application for benefits;

14 (d) Assist victims in the restitution and adjudication process;
15 and

16 (e) Assist victims of violent crimes in the preparation and
17 presentation of their claims to the department of labor and
18 industries under this chapter.

19 Before a program in any county west of the Cascade mountains is
20 submitted to the department for approval, it shall be submitted for
21 review and comment to each city within the county with a population
22 of more than one hundred fifty thousand. The department will consider
23 if the county's proposed comprehensive plan meets the needs of crime
24 victims in cases adjudicated in municipal, district or superior
25 courts and of crime victims located within the city and county.

26 (5) Upon submission to the department of a letter of intent to
27 adopt a comprehensive program, the prosecuting attorney shall retain
28 the money deposited by the county under subsection (4) of this
29 section until such time as the county prosecuting attorney has
30 obtained approval of a program from the department. Approval of the
31 comprehensive plan by the department must be obtained within one year
32 of the date of the letter of intent to adopt a comprehensive program.
33 The county prosecuting attorney shall not make any expenditures from
34 the money deposited under subsection (4) of this section until
35 approval of a comprehensive plan by the department. If a county
36 prosecuting attorney has failed to obtain approval of a program from
37 the department under subsection (4) of this section or failed to
38 obtain approval of a comprehensive program within one year after
39 submission of a letter of intent under this section, the county
40 treasurer shall monthly transmit one hundred percent of the money

1 deposited by the county under subsection (4) of this section to the
2 state treasurer for deposit in the state general fund.

3 (6) County prosecuting attorneys are responsible to make every
4 reasonable effort to insure that the penalty assessments of this
5 chapter are imposed and collected.

6 (7) Every city and town shall transmit monthly one and seventy-
7 five one-hundredths percent of all money, other than money received
8 for parking infractions, retained under RCW 3.50.100 and 35.20.220 to
9 the county treasurer for deposit as provided in subsection (4) of
10 this section.

11 NEW SECTION. **Sec. 20.** Nothing in this act requires the courts
12 to refund or reimburse amounts previously paid towards legal
13 financial obligations or interest on legal financial obligations.

14 NEW SECTION. **Sec. 21.** If specific funding for the purposes of
15 this act, referencing this act by bill or chapter number, is not
16 provided by June 30, 2018, in the omnibus appropriations act, this
17 act is null and void.

--- END ---

APPENDIX D

ARREST TRACKING #: 5462083

18-1-00151-05

FILED
CLALLAM CO CLERK

2018 MAY 29 A 11: 36

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

BARBARA CHRISTENSEN

STATE OF ARKANSAS

COUNT 1: BATTERY IN THE SECOND DEGREE (D FELONY)

COUNT 2: AGGRAVATED ASSAULT UPON A CERTIFIED LAW OFFICER (D FELONY)

VS.

No. CR 2012- 1379 - 1

JON C. CONIGLIO
DOB: 12/30/71, W/M
SID: 3465214

FILED FOR RECORD
4
2012 AUG 28 PM 2: 27
WASHINGTON CO AR
CIRCUIT CLERK
B. STAMPS

FELONY INFORMATION

I, John Threet, Prosecuting Attorney within and for the Fourth Judicial District of the State of Arkansas, of which Washington County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the Defendant, **JON C. CONIGLIO**, of the crime of

COUNT 1: BATTERY IN THE SECOND DEGREE - (D FELONY); COUNT 2:

AGGRAVATED ASSAULT UPON A CERTIFIED LAW OFFICER - (D FELONY), committed

as follows: The said Defendant on or about July 30, 2012, in Washington County, Arkansas, unlawfully and feloniously:

Count 1: intentionally and knowingly, without legal justification, caused physical injury to one he knew to be an individual sixty (60) years of age or older,

in violation of ACA §5-13-202, **to-wit:** The defendant caused physical injury to a person who was over sixty (60) years old,

against the peace and dignity of the State of Arkansas.

I CERTIFY THAT THIS INSTRUMENT IS A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE DATE May 10, 2018

Kyle Sylvester, 101 Clerk
McGowan 101 100



Record Certification: I Certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control. Clallam County Clerk, by KL Deputy #pages: 8

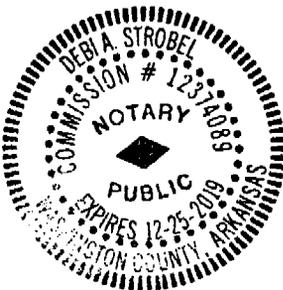
Count 2: under circumstances manifesting extreme indifference to the personal hygiene of the employee, he purposely engaged in conduct that created a potential danger of infection to an employee of any state or local correctional facility while the employee was engaged in the course of his employment by causing the employee to come into contact with saliva, blood, urine, feces, seminal fluid, or other bodily fluid by throwing, tossing, or expelling the fluid or material,
in violation of ACA §5-13-211, **to-wit:** The defendant spat saliva on the face and uniform of a certified law enforcement officer,
against the peace and dignity of the State of Arkansas.

JOHN THREET
Prosecuting Attorney, 4th Judicial District

By: Charles Duell
Charles Duell
Deputy Prosecuting Attorney

Sworn and subscribed to before me this 28th day of August, 2012.

My Commission Expires:
December 25, 2019



Debi A. Strobel
Notary Public

SENTENCING ORDER

I CERTIFY THAT THIS INSTRUMENT IS A TRUE COPY OF THE Sentencing Order ON FILE IN THIS OFFICE DATE May 10, 2018

IN THE CIRCUIT COURT OF Washington COUNTY, ARKANSAS, 4th JUDICIAL DISTRICT, DIVISION ON 12-13-2012 the Defendant appeared before the Court, was advised of the nature of the charge(s), Constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. D.C.

Court Info	Judge <u>W. Storey</u>	File Stamp SHINGTON CO. ARK. CIRCUIT CLERK B. STAMPS DEC 13 AM 11:00 FILED IN RECD	
	Prosecuting Attorney/Deputy <u>C. Duell</u>		
	Defendant's Attorney <u>D. Hyslip</u>		<input type="checkbox"/> Private <input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Public Defender <input type="checkbox"/> Pro Se
	Change of Venue <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, from:		

Legal Statements	Pursuant to A.C.A. <input type="checkbox"/> §§16-93-301 et seq., <input type="checkbox"/> §§5-64-413 et seq., or <input type="checkbox"/> _____ this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation.
	There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment: is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Correction (D.C.C) rules and regulations.
	<input checked="" type="checkbox"/> of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C.) for the term specified on each offense shown below.

Defendant made a voluntary, knowing, and intelligent waiver of the right to counsel. Yes No

Offender	Defendant [Last, First, MI] <u>CONIGLIO, JON C.</u>	DOB <u>12/30/1971</u>	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Total Number of Counts <u>2</u>
	SID # <u>3465214</u>	Race & Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander		
	Supervision Status at Time of Offense <u>none</u>	<input type="checkbox"/> Unknown <input type="checkbox"/> Other <input type="checkbox"/> Hispanic		

Offense # 1: Most Serious Offense	A.C.A. # of Offense/ Name of Offense <u>5-13-202(4)(C) Battery in 2nd Degree</u>	Case # <u>CR-2012-1379-1</u>	
	A.C.A. # of Original Charged Offense <u>5-13-202</u>	ATN <u>5462083</u>	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted <u>n/a</u>
	Offense Date <u>July 30, 2012</u>	Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Criminal History Score <u>1.0 (all mid)</u>	Seriousness Level <u>4</u>	Offense is <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd.
	Presumptive Sentence <input checked="" type="checkbox"/> Prison Sentence of <u>18</u> months	<input checked="" type="checkbox"/> Community Corrections Center	<input checked="" type="checkbox"/> Alternative Sanction
	Number of Counts <u>1</u>	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense	<u>n/a</u>
	Defendant Sentence* (See page 2) Imposed <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail	If probation accompanied by period of confinement, state time: <u>n/a</u> days or _____ months.	
	Probation <u>-24-</u> months	Sentence was enhanced _____ months, pursuant to A.C.A. § _____	
	SIS <u>-48-</u> months	Enhancement is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive. <u>n/a</u>	
	Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death	Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <u>n/a</u>	
Victim Info# (See page 2) <input type="checkbox"/> N/A	Age <u>66</u>	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	
Defendant voluntarily, intelligently, and knowingly entered a <input checked="" type="checkbox"/> negotiated plea of <input checked="" type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.		Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input checked="" type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic	
Defendant: <u>n/a</u> <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., <input type="checkbox"/> §§5-64-413 et seq., or <input type="checkbox"/> other _____ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.			

Sentence will run: Consecutive Concurrent to Offense # 2 or Case # Same case

2012 48795

Defendant's Full Name: Coniglio, Jon C.

A.C.A. # of Offense/ Name of Offense <u>5-13-211 (a) Aggravated Assault Upon Certified Police</u>		Case # <u>CR-2012-1379-1</u>	
A.C.A. # of Original Charged Offense <u>Same</u>	ATN <u>5462083</u>	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted <u>n/a</u>	
Offense Date <u>July 30, 2012</u>	Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Criminal History Score <u>1.0 (Misd.)</u>	Seriousness Level <u>3</u>	Offense is <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd.	Offense Classification <input type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D <input type="checkbox"/> U
Presumptive Sentence	<input type="checkbox"/> Prison Sentence of <u>0</u> months	<input checked="" type="checkbox"/> Community Corrections Center	<input checked="" type="checkbox"/> Alternative Sanction
Number of Counts <u>1</u>	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense <u>n/a</u>		
Defendant Sentence* (See page 2) Imposed <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail		If probation accompanied by period of confinement, state time: <u>n/a</u> days or _____ months.	
Probation <u>24</u> months	Sentence was enhanced _____ months, pursuant to A.C.A. § _____		
SIS <u>-0-</u> months	Enhancement is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive. <u>n/a</u>		
Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death	Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <u>n/a</u>		
Victim Info# (See page 2) <input type="checkbox"/> N/A	Age <u>32</u>	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently, and knowingly entered a <input checked="" type="checkbox"/> negotiated plea of <input checked="" type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.		Defendant: <u>n/a</u> <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., <input type="checkbox"/> §§5-64-413 et seq., or <input type="checkbox"/> other _____ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.	
Sentence is a Departure <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Sentence Departure is <input checked="" type="checkbox"/> Durational or <input type="checkbox"/> Dispositional. If durational, state how many months above/below the presumptive sentence: <u>24 months over</u>		
Departure Reason (See page 2 for a list of reasons) <u>14</u>	Aggravating # <u>14</u> or Mitigating # _____ For Agg. #16 or Mit. #10, or if departing from guidelines, please explain:		
Sentence will run: <input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Concurrent to Offense # <u>1</u> or Case # <u>Same call</u>			

Additional Offense # 2

A.C.A. # of Offense/ Name of Offense		Case #	
A.C.A. # of Original Charged Offense	ATN	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted	
Offense Date	Appeal from District Court <input type="checkbox"/> Yes <input type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input type="checkbox"/> No	
Criminal History Score	Seriousness Level	Offense is <input type="checkbox"/> Felony <input type="checkbox"/> Misd.	Offense Classification <input type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U
Presumptive Sentence	<input type="checkbox"/> Prison Sentence of _____ months	<input type="checkbox"/> Community Corrections Center	<input type="checkbox"/> Alternative Sanction
Number of Counts	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense		
Defendant Sentence* (See page 2) Imposed <input type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail		If probation accompanied by period of confinement, state time: _____ days or _____ months.	
Probation _____ months	Sentence was enhanced _____ months, pursuant to A.C.A. § _____		
SIS _____ months	Enhancement is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive.		
Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death	Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)		
Victim Info# (See page 2) <input type="checkbox"/> N/A	Age	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently, and knowingly entered a <input type="checkbox"/> negotiated plea of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.		Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., <input type="checkbox"/> §§5-64-413 et seq., or <input type="checkbox"/> other _____ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.	
Sentence is a Departure <input type="checkbox"/> Yes <input type="checkbox"/> No	Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional. If durational, state how many months above/below the presumptive sentence: <u>2012 48796</u>		
Departure Reason (See page 2 for a list of reasons)	Aggravating # _____ or Mitigating # _____ For Agg. #16 or Mit. #10, or if departing from guidelines, please explain:		
Sentence will run: <input type="checkbox"/> Consecutive <input type="checkbox"/> Concurrent to Offense # _____ or Case # _____			

Additional Offense #

Defendant's Full Name: Coniglio, Jon C.

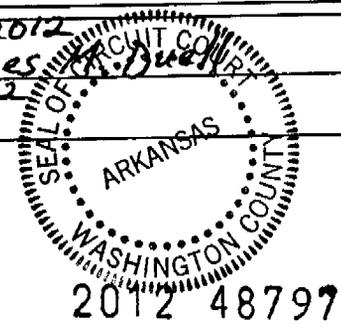
Special Conditions	Sex Offenses	Domestic Violence Offenses
	Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Defendant has been adjudicated guilty of a domestic-violence related offense. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Defendant has committed an aggravated sex offense as defined in A.C.A. §12-12-903. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If no, was defendant originally charged with a domestic-violence related offense? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, state the name of the offense:
	Defendant is alleged to be a sexually violent predator and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. §12-12-918. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes to either question, identify the relationship of the victim to the defendant.
	DNA Sample/Qualifying Offense	Drug Crime
	Defendant has been adjudicated guilty of a qualifying offense or repeat offense (as defined in A.C.A. §12-12-1103). <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Defendant is ordered to have a DNA sample drawn at <input type="checkbox"/> a D.C.C. facility <input checked="" type="checkbox"/> the A.D.C. or <input type="checkbox"/> other _____	Defendant has been convicted of a drug crime, as defined in §12-17-101. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Defendant, who has been adjudicated guilty of an offense requiring registration, has been adjudicated guilty of a prior sex offense under a separate case number. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list prior case numbers:	

Fines, Fees, Restitution	Court Costs	\$ - 0 -	Restitution	\$ - 0 -
	Fines	\$ - 0 -	Payable to	[If multiple beneficiaries, give names and payment priority]
	Booking/Admin Fees (\$20)	\$ 20.00	Terms <input type="checkbox"/> Due Immediately <input checked="" type="checkbox"/> Installments of: <u>75/month beg. 90 days after release from ADC</u> <input type="checkbox"/> Payments must be made within _____ days of release from A.D.C. <input type="checkbox"/> Upon release from confinement, Defendant must return to court to establish payment of restitution <input type="checkbox"/> Restitution is joint and several with co-defendant(s) who was found guilty - List name(s) and case number(s)	
	Drug Crime Assessment Fee (\$125)	\$ - 0 -		
	DNA Sample Fee (\$250)	\$ 250.00		
	Mandatory Sex Offender Fee (\$250)	\$ - 0 -		
	Public Defender User Fee	\$ 10.00		
	Public Defender Attorney Fee	\$ - 0 -		
Other (explain)	\$ - 0 -			

Sentence Options	Act 531, §§16-93-1201 et seq.: Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Extended Juvenile Jurisdiction Applied <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	The Court hereby orders a judicial transfer to the Department of Community Correction. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Pursuant to the Community Punishment Act, the Defendant shall be eligible to have his/her records sealed. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	JAIL TIME CREDIT	TOTAL TIME TO BE SERVED FOR ALL OFFENSES	Death Penalty	If Yes, State Execution Date:	
	In days: <u>-136-</u>	In months: <u>-24-</u> <input type="checkbox"/> Life <input type="checkbox"/> LWOP	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	DEFENDANT IS ASSIGNED TO: <input checked="" type="checkbox"/> ADC <input type="checkbox"/> CCC <input type="checkbox"/> COUNTY JAIL <input type="checkbox"/> PROBATION <input type="checkbox"/> SIS <input type="checkbox"/> SPECIAL CONDITIONS				
	Conditions of disposition or probation are attached. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
	A copy of the pre-sentence investigation on sentencing information is attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Defendant has previously failed a drug court program. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	A copy of the Prosecutor's Short Report is attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			DEFENDANT WAS INFORMED OF APPELLATE RIGHTS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Appeal Bond \$ _____	
The County Sheriff is hereby ordered to: <input type="checkbox"/> transport the defendant to county jail <input type="checkbox"/> take custody for referral to CCC <input checked="" type="checkbox"/> transport to ADC					
Defendant shall report to DCC probation officer for report date to CCC <input type="checkbox"/> Yes <input type="checkbox"/> No					

Signature	Prosecuting Attorney/Deputy Signature: <u>Charles M. Duell</u>	Date: <u>12/13/2012</u> Print Name: <u>Charles M. Duell</u>
	Circuit Judge Signature: <u>William A. Stoney</u>	Date: <u>12/13/2012</u> Print Name: _____

Additional Info:



Defendant's Full Name: Coniglio, Jon C.

Reasons for Departure

(Please see complete list of departure criteria found at A.C.A. §16-90-804)

Aggravating	Mitigating
1. Offender's conduct manifested extreme cruelty during commission of current offense.	1. Victim played an aggressive role or provoked the incident or was a willing participant.
2. Offender knew victim vulnerable due to extreme youth, advanced age, disability or ill health.	2. Offender lacked capacity of judgment due to mental or physical impairment.
3. Offense was major economic offense established by one of the following criteria: (a) multiple victims/incidents, (b) monetary loss substantially greater than typical, (c) degree of sophistication or time, (d) misuse of fiduciary duty, or (e) other similar conduct.	3. Offender played a minor or passive role in crime.
4. Offense was major controlled substance offense if two or more of the following are present: (a) Three or more separate transactions involve sale, transfer or possession with intent; (b) Amounts substantially larger than the statutory minimums which define the offense; (c) Offense involved a high degree of planning or lengthy period or broad geographic area; (d) Offender occupied a high position in the drug distribution hierarchy; (e) Offender misused position of trust or status or fiduciary duty to facilitate commission; (f) Offender has received substantial income or resources from drug trafficking.	4. Offender compensated/made effort to compensate for damage or injury before detection.
	5. Offender was lesser participant showing caution/concern for safety or well-being of victim.
5. Offender employed firearm in furtherance or flight unless such use is element of offense	6. Offender acted in response to continuing physical/sexual abuse by victim.
6. Offense was sexual offense and part of pattern with the same or different victims under eighteen	7. Policy on multiple offenses in single course of conduct in offender's prior criminal history results in sentence which is excessive for this offense.
7. Policy on multiple offenses in a single course of conduct in offender's prior criminal history results in a sentence that is clearly too lenient.	8. Offender voluntarily admitted sexual offense and sought treatment before detection.
8. Offense was committed in manner that exposed risk of injury to others.	9. Offender made effort to provide assistance in investigation or prosecution of another as indicated by motion of state (can weigh timeliness of assistance, nature and extent of assistance, and truthfulness, completeness, and demonstrable reliability of info or testimony).
9. Offense was a violent or sexual offense committed in victim's zone of privacy.	10. Other
10. Offender attempted to cover offense by intimidation of witnesses, tampering of evidence, or misleading authorities.	
11. Offense committed to avoid arrest or effect escape.	
12. Offender lacks minimum insurance in a vehicular homicide.	
13. Statutory minimum sentence overrides the presumptive sentence.	
④ Multiple concurrent sentences being entered at this time require a higher sentence.	
15. Sentence is higher as a result of other charges being dropped or merged.	
16. Other	

NOTE:

* **Defendant Sentence.** "Imposed ADC" means incarceration in an Arkansas Department of Correction facility. "Imposed Judicial Transfer" means incarceration in a Department of Community Correction Center. "Imposed County Jail" means incarceration in a county jail facility. Indicate in months the total time the Defendant was sentenced to a term of incarceration. **DO NOT INCLUDE TIME FOR SIS.**

Victim Info. For more than one victim, please use the "Additional Victim Information" page to disclose additional victim demographics. If there is no victim, check not applicable.

PROSECUTOR'S SHORT REPORT OF CIRCUMSTANCES

This information is provided pursuant to ACA § 12-27-113(c)(1) & (2) (Supp. 1993)

Defendant's Name Coniglio, Jon C. SID # 3465214
Case Nos. CR-2012-1379-1 County Washington

I. SUMMARY OF THE FACTS: Def. was drunk and hit and injured a man over 60 years of age. Def. then spat on Officer that arrested him. Battery 2nd Degree - D Felony

- II. FACTORS: AGGRAVATING Agg. Assault on Certified Officer - D Felony MITIGATING
- () Production or use of any weapon during the criminal episode.
 - () Threat or violence toward witness(es) or victim(s).
 - () Defendant knew or had reason to know the victims were particularly vulnerable (aged, handicapped, very young, etc.)
 - () Ability to make restitution, reparation or return property and failed to do so.
 - () Violation of position or public trust or recognized professional ethic.
 - () Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime.
 - () There is a single conviction for a crime involving multiple victims or incidents.
 - () Defendant on probation or parole at the time of the crime.
 - () Persistent involvement in similar criminal offenses.
 - () Repetition of behavior pattern which contributes to criminal conduct, e.g., return to drug or alcohol abuse.
 - () Prior record of similar offenses
 - () Serious prior record.
 - () Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted.
 - () New criminal activity while on pre-trial release.
 - () Persistent criminal misconduct while under supervision.
 - () Efforts to conceal crime.
 - () Other: _____

2 D Felonies

- () Victim(s) provoked the crime to substantial degree, or other evidence that misconduct by victim contributed to the criminal episode.
- () Cooperation with criminal justice agencies in resolution or other criminal activity.
- () Effort to make restitution or reparation (particularly before request to do so by sentencing).
- () Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.
- () Special effort on part of perpetrator to minimize the harm or risk.
- () Peripheral involvement in criminal episode (e.g., passive accessory).
- () Evidence of withdrawal, duress, necessity or lack of sustained criminal intent or diminished mental capacity (e.g., mental retardation) which is insufficient to constitute a defense but is indicative of reduced culpability.
- () No prior parole or probation difficulty.
- () Efforts to deal with problems associated with past criminal conduct.
- () No, or minimal, prior record.
- () Other: No Felony Record, Large Misd. Record.



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SIGNED [Signature]
Circuit Judge

SIGNED [Signature]
Prosecuting Attorney or Deputy Prosecutor

RUSSELL SELK LAW OFFICE

November 01, 2018 - 4:54 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52471-6
Appellate Court Case Title: State of Washington, Respondent v. Jonathan C. Coniglio, Appellant
Superior Court Case Number: 18-1-00151-9

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