

FILED
Court of Appeals
Division II
State of Washington
6/28/2019 3:40 PM

NO. 52849-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

BRANDON GANIS,

Appellant.

RESPONDENT'S BRIEF

RYAN JURVAKAINEN
Prosecuting Attorney
AILA R. WALLACE/WSBA #46898
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
KELSO, WA 98626
(360) 577-3080

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I. RESPONSE TO ASSIGNMENT OF ERROR

1. The trial court properly imposed a community custody condition that Ganis pay a supervision fee, because the fee is not a “cost” and may be waived by the Department of Corrections if the defendant is indigent.

II. STATEMENT OF THE CASE

Brandon Ganis was found guilty of possession of methamphetamine as a lesser-included charge of possession with intent to deliver. RP 273. He was sentenced to seven months in jail with twelve months’ of community custody. CP 63–64. All costs except the mandatory Crime Victim Assessment were waived. CP 65. Ganis now timely appeals.

III. ARGUMENT

Ganis argues that the trial court improperly authorized imposition of the Department of Corrections (DOC) supervision fee when the court found that Ganis was indigent and waived all discretionary costs. This Court should decline to address this issue because it is being raised for the first time on appeal and the modest fee can be waived by DOC if Ganis is unable to pay. Moreover, because the supervision fee is not a “costs” as defined by RCW 10.01.160, there is no prohibition to authorizing the fee.

RCW 9.94A.703 authorizes trial courts to impose various conditions of community custody. One of the waivable conditions is that the defendant “pay supervision fees as determined by the department.” RCW 9.94A.703(2)(d). DOC policy provides that offenders who committed crimes after 2011 are assessed a one-time supervision intake fee of \$475 for each cause number on which DOC supervision was ordered. *See* DOC Policy 200.380, <https://doc.wa.gov/information/policies/default> (attached as an exhibit). The offender’s Community Corrections Officer (CCO) can defer, but not waive, the fee. However, if the offender’s circumstances make it unlikely that he will be able to pay the supervision fee, the Program Administrator may waive it upon written request by the CCO. *Id.*

A. This Court should decline to review this unpreserved issue.

This court may refuse to review a non-constitutional claim that is raised for the first time on appeal. *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 660 (2016). A criminal defendant has no right to appellate review of an unpreserved error in imposing legal financial obligations (LFOs). *Id.* at 833. Ganis did not object to the payment of a supervision fee at the sentencing in this case. RP 285. Therefore, this Court can

decline to review his claim that the trial court erred in authorizing imposition of that fee. *Id.* at 834.

In *Blazina*, the Washington Supreme Court exercised its discretion to consider Blazina's unpreserved claim due to the "problematic consequences" of Washington's LFO system. *Id.* at 836. In this case, there is no pressing need for this Court of address this issue, as the DOC supervision fee is a modest, one-time fee that can be waived by DOC if Ganis is unable to pay. This Court should decline to address this issue because it was not preserved below.

B. The DOC fee is not a "cost" governed by RCW 10.01.160.

In *Blazina*, the Court held that RCW 10.01.160(3) requires the sentencing court to consider a defendant's ability to pay before imposing discretionary costs. *Blazina*, 182 Wn.2d at 830. A review of the statutory scheme indicates that RCW 10.01.160 does not apply to the DOC supervision fee at issue in this case because it is not a "cost" as defined by that statute.

The purpose of statutory construction is to give effect to the intent of the legislature. *State v. Evans*, 177 Wn.2d 186, 298 P.3d 724 (2013). When possible, legislative intent is derived from the plain language of the

statute enacted by the legislature, considering the text of the provision in question, related statutes, and the statutory scheme as a whole. *Id.*

RCW 10.01.160(1) provides that “the court may require a defendant to pay costs.” RCW 10.01.160(2) then defines what “costs” are: “Costs shall be limited to expenses specially incurred by the State in prosecuting the defendant or in administering the deferred prosecution program under Chapter 10.05 RCW or pretrial supervision.” By its plain language, this definition does not include the supervision fee imposed by DOC because it is not a cost incurred by the State during the prosecution of the charge or a costs of pretrial supervision. In contrast, the recoupment of public defense costs and extradition costs at issue in *Blazina* fall squarely within the definition as they are expenses incurred by the State in prosecuting the defendant.

The fact that not all fees are “costs” is further evident in an examination of the two statutes that follow RCW 10.01.160. First, RCW 10.01.170(1) provides that “When a defendant is sentenced to pay fines, penalties, assessment, fees, restitution, or costs, the court may grant permission for payment to made within a specified period of time or in specified installments.” Second, RCW 10.01.180 provides that “A defendant sentenced to pay any fine, penalty, assessment, fee, or cost who willfully defaults in the payment thereof or of any installment is in

contempt of court as provided in chapter 7.21 RCW.” When the language of these chapters is compared, it is clear that not all “fees” are “costs” and the legislature does not use these terms interchangeably. The sentencing court’s obligation to inquire into a defendant’s ability to pay under RCW 10.01.160 is limited to the imposition of “costs.” There is no obligation to inquire into a defendant’s ability to pay fines or restitution. Likewise, there is no obligation to inquire into a defendant’s ability to pay fees that are outside the definition of “costs” set forth in RCW 10.01.160(2).

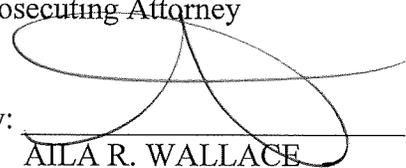
In conclusion, the DOC supervision fee is not a cost as defined in RCW 10.01.160(2), the sentencing court is not required to inquire into a defendant’s ability to pay the fee, and the sentencing court is not prohibited from authorizing imposition of the fee on an indigent defendant. This statutory interpretation makes sense. There is no need for the sentencing court to make a preliminary determination about a defendant’s ability to pay the fee when DOC can waive it if the defendant is unable to pay it at the end of his or her community custody term. Therefore, the trial court did not err in authorizing DOC to impose the supervision fee because it is not a cost governed by RCW 10.01.160(2) and *Blazina*.

IV. CONCLUSION

This Court should affirm Ganis' conviction and sentence as the trial court did not err in authorizing imposition of the DOC supervision fee.

Respectfully submitted this 27 day of June, 2019.

Ryan Jurvakainen
Prosecuting Attorney

By: 

AILA R. WALLACE
WSBA #46898
Deputy Prosecuting Attorney

EXHIBIT A



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
FIELD

REVISION DATE
6/22/15

PAGE NUMBER
1 of 5

NUMBER
DOC 200.380

POLICY

TITLE

**LEGAL FINANCIAL OBLIGATIONS AND
COST OF SUPERVISION**

REVIEW/REVISION HISTORY:

Effective: 7/8/99
 Revised: 4/6/05
 Revised: 3/30/07
 Revised: 8/6/08
 Revised: 6/21/09
 Revised: 1/28/11
 Revised: 10/1/11
 Revised: 6/22/15

SUMMARY OF REVISION/REVIEW:

III.A.2. - Clarified employees responsible for initiating billing interrupts
 IV.B. - Adjusted language for clarification
 Added V.B. to include electronic payment options
 Attachment 3 - Reformatted as a list

APPROVED:

Signature on file

BERNARD WARNER, Secretary
 Department of Corrections

5/13/15

 Date Signed



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DEPARTMENT OF CORRECTIONS

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DOC 200.380

POLICY

TITLE

**LEGAL FINANCIAL OBLIGATIONS AND
COST OF SUPERVISION**

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 7.68.035; RCW 9.94A; RCW 9.94B.040; RCW 9.94B.100; RCW 9.95.214; RCW 10.82.090; RCW 72.04A.120; WAC 137-65; DOC 350.380 Discharge, Termination, and Closure of Supervision; United States Code, Title 11

POLICY:

- I. Community Corrections Officers (CCOs) are responsible for monitoring Legal Financial Obligations (LFOs), as defined in RCW 9.94A.030, and Cost of Supervision (COS)/supervision intake fee payments while an offender is on active supervision in the community.

DIRECTIVE:

- I. LFO Payments and Payment Schedule
 - A. CCOs will encourage offenders to make restitution to the victims of their crime(s) and/or to the community and pay other court ordered LFOs. CCOs will:
 1. Set or modify an offender's payment schedule if not set by the court, and
 2. Submit a special report to modify a court ordered payment schedule when there is a major change in the offender's financial status.
 - B. Employees will not accept or receive LFO payments. Offenders will make LFO payments directly to the County Clerk of the sentencing county.
- II. Income Withholding
 - A. CCOs may issue income withholding documents, as outlined in Attachments 1-3, for felony offenders sentenced under RCW 9.94A who are non-compliant with their payment schedule.
 - B. Income withholding documents will be issued in addition to, not as a substitute for, the appropriate Notice of Violation.
- III. Bankruptcy
 - A. Upon receipt of bankruptcy filings regarding LFOs, CCOs will continue the routine supervision of the offender.
 1. Restitution and other LFOs are non-dischargeable under Chapters 7 and 13 of the Bankruptcy Code, and no action will be taken by the CCO that



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could be perceived as an attempt to collect, bill, or coerce payment of LFOs. Collection efforts will begin when the bankruptcy proceedings have ended.

2. The Headquarters COS/LFO Unit will initiate a billing interrupt to stop automatic billings and violation letters. When collection efforts resume, automatic billings will resume.
3. The CCO may submit a special report notifying the court about payment status. However, the CCO will not recommend any action or sanction for non-payment.

IV. COS/Supervision Intake Fee Assessment

- A. Offenders who committed their offense before October 1, 2011, will be assessed a one-time fee of no more than \$600.00.
 1. For offenders on supervision before October 1, 2011, the fee will be based on the most recent monthly fee rate, multiplied by the number of months of supervision left to serve.
 2. For offenders beginning supervision on or after October 1, 2011, the fee will be based on the monthly fee associated with the assigned risk level, multiplied by the total number of months of supervision ordered on all affected causes.
 3. Offenders with a balance remaining under the monthly COS fee system will continue to be responsible for paying the balance in full.
- B. Offenders who committed their offense on or after October 1, 2011, will be assessed a \$475.00 supervision intake fee for each cause eligible for Department supervision.

V. COS/Supervision Intake Fee Payments and Payment Schedule

- A. CCOs will encourage offenders to pay their outstanding COS/supervision intake fees. CCOs will set or modify an offender's monthly payment schedule.
- B. Offenders can make payments electronically:
 1. Online at www.JPay.com,
 2. By phone at (800) 574-5729, or
 3. Through the money transfer service MoneyGram.



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**LEGAL FINANCIAL OBLIGATIONS AND
COST OF SUPERVISION**

- C. Payments in the form of a personal check, money order, or cashier's check will only be accepted by Headquarters accounting employees.
 - 1. Offenders will mail these payments to the Department of Corrections at P.O. Box 9700, Olympia, WA 98507-9700.
 - 2. Cash payments will not be accepted.

VI. COS/Supervision Intake Fee Deferment or Waiver of Payment

- A. CCOs can defer, but not waive, an offender's payment of COS/supervision intake fees.
 - 1. If an offender is unable to meet his/her COS/supervision intake fee responsibilities for a specific period of time, the CCO can defer the payments to a certain date.
- B. For all offenders who committed their offense on or after July 1, 2000, payment of an assessed COS/supervision intake fee obligation is a lifetime obligation until paid in full.
 - 1. If an offender's circumstances make it unlikely that s/he will be able to pay his/her COS/supervision intake fee obligations, the assigned CCO may submit a written request to the LFO/COS Program Administrator that the COS/supervision intake fee be waived. The request will include a description of the offender's circumstances.

VII. Failure to Pay COS/Supervision Intake Fees

- A. When an offender has reached his/her supervision scheduled end date, CCOs will recommend termination of the offender, not a discharge, if there are outstanding COS/supervision intake fees owed to the Department.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Notice of Payroll Deduction (NOPD) (Attachment 1)
Order to Withhold and Deliver (OWD) (Attachment 2)
Wage Assignment (Attachment 3)



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COST OF SUPERVISION**

DOC FORMS:

[DOC 05-530 Notice of Payroll Deduction](#)

[DOC 05-531 Termination of Notice of Payroll Deduction](#)

[DOC 05-532 Answer to Notice of Payroll Deduction](#)

[DOC 05-533 Order to Withhold and Deliver - Entity](#)

[DOC 05-534 Order to Withhold and Deliver - Employer](#)

[DOC 05-535 Answer to Order to Withhold and Deliver](#)

[DOC 05-536 Additional Answer to Order to Withhold and Deliver](#)

[DOC 05-537 Notice of Debt](#)

[DOC 05-538 Notice of Right to Petition for Judicial Review](#)

[DOC 05-539 Notice of Potential Withholding and Right to File Petition](#)

[DOC 07-024 Conditions, Requirements, and Instructions](#)

[DOC 09-042 Petition for Mandatory Wage Assignment](#)

[DOC 09-043 Wage Assignment Order](#)

[DOC 09-044 Answer to Wage Assignment Order](#)

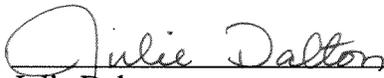
CERTIFICATE OF SERVICE

I, Julie Dalton, certify that opposing counsel was served electronically via the Division II portal:

David B. Koch
Attorney at Law
Nielsen Broman & Koch, PLLC
1908 E. Madison St
Seattle, WA 98122-2842
koched@nwattorney.net
sloanej@nwattorney.net

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on June 28, 2019.


Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

June 28, 2019 - 3:40 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52849-5
Appellate Court Case Title: State of Washington, Respondent v Brandon James Anthony Daryle Ganis,
Appellant
Superior Court Case Number: 18-1-00545-8

The following documents have been uploaded:

- 528495_Briefs_20190628153816D2120866_6331.pdf
This File Contains:
Briefs - Respondents Reply
The Original File Name was State of WA vs Ganis COA 52849-5-II Resp Brief.pdf

A copy of the uploaded files will be sent to:

- kochd@nwattorney.net

Comments:

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