

FILED
Court of Appeals
Division II
State of Washington
9/12/2019 2:04 PM

NO. 53051-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JOHN WESLEY SUMMERS, JR.,

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

TABLE OF CONTENTS

I. REPLY TO ASSIGNMENTS OF ERROR..... 1

II. STATEMENT OF THE CASE..... 1

III. ARGUMENT..... 3

 A. SUMMERS’ RIGHT TO TRIAL BY AN IMPARTIAL JURY
 WAS NOT VIOLATED BECAUSE JURORS 18 AND 35 WERE NOT
 BIASED. 3

 B. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR ALLOWING
 JURORS 18 AND 35 TO BE SEATED ON THE JURY AND
 SUMMERS WAS NOT PREJUDICED BY THE ACTIONS OF TRIAL
 COUNSEL. 7

 1. *Summers cannot show that his counsel’s conduct was not
 legitimate trial strategy.*.....9

 2. *Summers does not show that he was prejudiced by jurors 18 and
 35 being seated on the jury.*.....10

 C. THE TRIAL COURT DID NOT ERR IN IMPOSING
 SUPERVISION FEES BECAUSE THOSE FEES ARE NOT “COSTS”
 AS DEFINED BY RCW 10.01.160. 11

 1. *This Court should decline to review this unpreserved issue*12

 2. *The DOC fee is not a “cost” governed by RCW 10.01.160.*13

IV. CONCLUSION 15

TABLE OF AUTHORITIES

Statutes

RCW 10.01.160	13, 14
RCW 10.01.170(1).....	14
RCW 10.01.180	14
RCW 4.44.170	3
RCW 9.94A.703.....	11

Washington State Cases

<i>Blazina</i> , 182 Wn.2d at 830.....	13
<i>State v. Barragan</i> , 102 Wn. App. 754, 762, 9 P.3d 942 (2000).....	7
<i>State v. Blazina</i> , 182 Wn.2d 827, 832, 344 P.3d 660 (2016).....	12
<i>State v. Brett</i> , 126 Wn.2d 137, 157, 892 P.2d 29 (1995).....	4, 5
<i>State v. Evans</i> , 177 Wn.2d 186, 298 P.3d 724 (2013)	13
<i>State v. Gonzales</i> , 111 Wn. App. 276, 277, 45 P.3d 205 (2002)	3, 4, 5
<i>State v. Gosser</i> , 33 Wn. App. 428, 433, 656 P.2d 514 (1982).....	3, 4
<i>State v. Jury</i> , 19 Wn. App. 256, 262, 576 P.2d 1302 (1978).....	8
<i>State v. Killen</i> , 39 Wn. App. 416, 418, 693 P.2d 731 (1985)	3
<i>State v. McFarland</i> , 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995)...	7, 10
<i>State v. McNeal</i> , 145 Wn.2d 352, 362, 37 P.3d 280 (2002)	9
<i>State v. Sardinia</i> , 42 Wn. App. 533, 542, 713 P.2d 122 (1986)	9

State v. Studd, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999)..... 8
State v. Thomas, 109 Wn.2d 222, 225, 743 P.2d 816 (1987) 7
State v. Visitacion, 55 Wn. App. 166, 173, 776 P.2d 986, 990 (1989)..... 8

United States Cases

Strickland v. Washington, 446 U.S. 668, 687, 104 S. Ct. 2052 (1984) 7

I. REPLY TO ASSIGNMENTS OF ERROR

- A. Summers' right to trial by an impartial jury was not violated when potential jurors 18 and 35 were seated on the jury because they were not biased.
- B. Defense counsel was not ineffective by allowing potential jurors 18 and 35 to be seated on the jury.
- C. The trial court properly imposed a community custody condition that Summers 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

On August 2, 2018, John Summers was walking southbound on the median of I-5, near Woodland, Washington. RP 178. Trooper Jamie Gola was on routine patrol and stopped to contact Summers. RP 177–78. Trooper Gola told Summers that it was illegal and unsafe for him to be walking on the freeway and offered to give him a ride into Woodland. RP 180. Summers questioned why it was illegal for him to be there and said that he was not going to get into the trooper's car. RP 181. Trooper Gola then offered to stop traffic so Summers could walk across the freeway to the nearby exit ramp; Summers did not want to do that either. RP 182.

Trooper Gola called for backup and as Trooper Berg was pulling up, Gola reached out to grab Summers to put him into the patrol car. Summers pulled his arm out of Trooper Gola's grasp and punched him in the face. RP 183. Trooper Berg then tackled Summers against the cable barrier. RP 195. A scuffle occurred and as Trooper Berg and Summers were standing up, Summers hit Berg in the neck or shoulder area. RP 197–98. Summers eventually took off running down the freeway but was ultimately detained. RP 200, RP 204. Summers was charged with two counts of Assault in the Third Degree, obstructing a law enforcement officer, and resisting arrest. CP 9–11.

The case proceeded to trial on November 16, 2018. RP 62. During voir dire, Juror 45 stated that he would “side with the police more” based on his personal relationships with law enforcement officers. RP 96. He also stated that he would give more deference to an officer's recollection of how an event unfolded because officers are trained observers, they take notes, and they write reports right after an incident happens, when it is fresh in their minds. RP 148 – 9. When asked who agreed with Juror 45, Jurors 1, 2, 3, 7, 10, 18, 22, 23, 25, 26, 32, and 35 raised their cards. RP 149. All but 18 and 35 were removed. CP 61–64.

At trial, the troopers testified about what happened and dashboard camera videos from both troopers' patrol cars were played for the jury.

RP 189, 207. These videos showed Summers striking both Gola and Berg. Summers testified that he struck Trooper Gola but could not remember what occurred after that. He was found guilty of all charges. RP 260–61.

III. ARGUMENT

A. SUMMERS' RIGHT TO TRIAL BY AN IMPARTIAL JURY WAS NOT VIOLATED BECAUSE JURORS 18 AND 35 WERE NOT BIASED.

The right to a trial by an impartial jury is guaranteed by both the Sixth Amendment to the United States Constitution and article 1, section 22 of the Washington Constitution. *State v. Gonzales*, 111 Wn. App. 276, 277, 45 P.3d 205 (2002). If a trial court determines that a potential juror is biased, that juror must be excused for cause. *State v. Gosser*, 33 Wn. App. 428, 433, 656 P.2d 514 (1982). A trial court's decision to grant or deny a cause challenge of a potential juror is reviewed for manifest abuse of discretion because the trial court is in the best position to evaluate whether a juror is able to be fair and impartial, based on the juror's comments and demeanor during voir dire. *Gonzales*, 111 Wn. App. at 278. A trial court's excusal of jurors on its own motion is likewise reviewed for abuse of discretion. *State v. Killen*, 39 Wn. App. 416, 418, 693 P.2d 731 (1985).

A prospective juror must be excused for cause if the juror is actually or impliedly biased. RCW 4.44.170. Actual bias is “the existence

of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging.” RCW 4.44.170(2). In other words, if a juror’s views prevent or substantially impair his ability to perform the duties of a juror in accordance with the instructions and the jury oath, he may be excused for cause. *State v. Brett*, 126 Wn.2d 137, 157, 892 P.2d 29 (1995).

Still, a potential juror may express preconceived ideas, equivocal answers, or preference in favor of police testimony and remain unbiased. *See Gonzales*, 111 Wn. App. at 281; *Gosser*, 33 Wn. App. at 433; *Brett*, 126 Wn.2d at 158. In *Gosser*, a retired state patrol officer was a potential juror. He stated that he had been a law enforcement officer for twenty-five years and, if it came down to a question of yes or no, he would “go with the police officer.” 33 Wn. App. at 432–3. He also stated that he would not believe an officer’s testimony simply because he was an officer, that he had an open mind as to the issue of guilt, and that he would follow the presumption of innocence. *Id.* Division II of the Washington Court of Appeals found that the trial court’s denial of the defense’s motion to remove this juror for cause was not an abuse of discretion. *Id.* at 434.

In *Brett*, each of the challenged jurors had preconceived ideas that favored imposition of the death penalty or gave equivocal answers. Each

also said they could set their ideas aside and decide the case based on the evidence and the law. The Washington Supreme Court held that the trial court did not abuse its discretion in denying the defense's for-cause challenge to these jurors. 126 Wn.2d at 158.

Here, Summers argues that his case is analogous to *Gonzales*, where a juror exhibited actual bias by saying that she would find police testimony more credible, that this mindset would persist throughout the trial, and that she was unsure if the defendant would still enjoy the presumption of innocence after a police officer testified. *Gonzales*, 111 Wn. App. at 278. However, this case is more akin to *Gosser*, where this Court held that a preference in favor of a police officer's testimony is not in and of itself sufficient to find bias.

Here, Juror 45 stated that he "would side with the police more" because he had friends who were police officers. RP 96. Defense counsel later asked, "Is there anyone who, given the situation where a police officer is testifying about his or her recollection of how an event unfolded, would give more deference to that police officer as an observer?" Juror 45 answered that he would, because police officers take notes, write reports right after an incident occurs, and are trained observers. When defense followed up by asking whether the juror would be more aligned with the police officer's ability to recollect an observation, Juror 45 said yes. RP

148. Juror 45 was eventually removed for cause. CP 66. When asked who agreed with Juror 45's statement, Jurors 1, 2, 3, 7, 10, 18, 22, 23, 25, 26, 32, and 35 raised their cards. All were removed, whether for cause or by preemptory challenge, except Jurors 18 and 35. CP 65.

The only other comment made by Juror 18 was that he had connections with the criminal justice system but did not think those connections would affect his ability to be fair and impartial. RP 94. Juror 35 did not make any comments that are reflected in the record. The statements made and endorsed by Juror 18 and 35 simply do not rise to the level of those made in *Gonzales*. In fact, the responses Summers now argues are evidence of bias were in the context of a discussion about whether law enforcement officers are better observers than lay people, not whether police officers are more credible than lay people. Defense counsel specifically stated, "We're not talking about telling the truth versus not telling the truth. We're talking about their ability as an observer of an event to be accurate." RP 148. Expressing an opinion that an officer may be better able to recall or observe an event does not equate to an opinion that officers are more credible.

In *Gosser*, this court held that a preference in favor of a police officer's testimony is not in and of itself sufficient to find bias. The statements made and endorsed by Jurors 18 and 35 do not demonstrate

preference for a police officer's testimony over a layperson's. No bias was shown in those juror's statements or in the fact that they tended to agree with Juror 45's statement. Therefore, this Court should follow *Gosser* and find that Summers had a fair and impartial jury.

B. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR ALLOWING JURORS 18 AND 35 TO BE SEATED ON THE JURY AND SUMMERS WAS NOT PREJUDICED BY THE ACTIONS OF TRIAL COUNSEL.

To establish ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficiency prejudiced the defendant. *Strickland v. Washington*, 446 U.S. 668, 687, 104 S. Ct. 2052 (1984); *State v. Thomas*, 109 Wn.2d 222, 225, 743 P.2d 816 (1987). There is a strong presumption of effectiveness that a defendant must overcome. *Strickland*, 446 U.S. at 689. To prove that counsel was deficient, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.*; *State v. Barragan*, 102 Wn. App. 754, 762, 9 P.3d 942 (2000). Thus, one claiming ineffective assistance must show that in light of the entire record, no legitimate strategic or tactical reasons support the challenged conduct. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995). Deficient performance "is not shown by

matters that go to trial strategy or tactics.” *State v. Studd*, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999).

The Washington Court of Appeals has devised the following test to determine whether counsel was ineffective: “After considering the entire record, can it be said that the accused was afforded an effective representation and a fair and impartial trial?” *State v. Jury*, 19 Wn. App. 256, 262, 576 P.2d 1302 (1978). Like the *Strickland* test, this test requires a defendant to prove that he was denied effective representation, given the entire record, and that he suffered prejudice as a result. *Id.* at 263. The first prong of this two-part test requires the defendant to show that his lawyer “failed to exercise the customary skills and diligence that a reasonably competent attorney would exercise under similar circumstances.” *State v. Visitacion*, 55 Wn. App. 166, 173, 776 P.2d 986, 990 (1989). The second prong requires the defendant to show “there is a reasonable probability that, but for the counsel’s errors, the result of the proceeding would have been different.” *Id.* at 173. Therefore, even if a defendant can show that counsel was deficient, he or she also must show that the deficiency caused prejudice.

1. *Summers cannot show that his counsel's conduct was not legitimate trial strategy.*

“If trial counsel’s conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel.” *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). Trial counsel has “wide latitude in making tactical decisions.” *State v. Sardinia*, 42 Wn. App. 533, 542, 713 P.2d 122 (1986). “Such decisions, though perhaps viewed as wrong by others, do not amount to ineffective assistance of counsel.” *Id.*

Looking at the entire record in this case, trial counsel gave effective representation and his actions were legitimate trial strategy. Trial counsel conducted a thorough voir dire, including inquiring about the presumption of innocence, whether jurors’ connections with law enforcement would cause them to find a person charged with assaulting an officer guilty, and the burden of proof. RP 132–150. He asked specifically whether officers can make mistakes in their recollection of how an event unfolded. RP 148. Juror 45 stated that he would absolutely give more deference to the officer. That juror also stated earlier in the process that he would side with the police. RP 96. He was removed for cause. Many of the jurors who raised their hands when asked if they agreed with Juror 45 were removed, whether for cause or as a preemptory

challenge. Jurors 18 and 35 were not removed, though the defense only used five of their six peremptory challenges. Trial counsel made a strategic decision to not use all of his peremptory challenges, perhaps because there were jurors he perceived as bad for him further down the list. There is no indication here that trial counsel's use of his challenges was anything other than strategic.

2. *Summers does not show that he was prejudiced by jurors 18 and 35 being seated on the jury.*

In addition to overcoming the strong presumption of effective assistance, Summers must also show that he was prejudiced. Prejudice is not established unless it can be shown that "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). A reasonable probability is one that is "sufficient to undermine confidence in the outcome of the trial." *Strickland*, 466 U.S. at 694. Summers cannot show that the outcome of the trial would have been different but for Jurors 18 and 35 being on his panel.

The State presented evidence, in the forms of testimony and dashboard camera video, that Summers assaulted both Troopers Gola and Berg. Summers did not deny assaulting either officer and in fact admitted

to striking Trooper Gola. RP 222. He also stated he did not remember anything that happened after he struck Trooper Gola, saying, “After that, only the video can tell.” *Id.* The outcome of the trial would not have changed if Jurors 18 and 35 were removed from the jury, because any reasonable juror would have taken Summers’ own testimony in conjunction with the State’s evidence and found that he was guilty. Therefore, Summers has not shown that his trial counsel was deficient or that he was prejudiced. His conviction should be affirmed.

C. THE TRIAL COURT DID NOT ERR IN IMPOSING SUPERVISION FEES BECAUSE THOSE FEES ARE NOT “COSTS” AS DEFINED BY RCW 10.01.160.

Summers argues that the trial court improperly authorized imposition of the Department of Corrections (DOC) supervision fee when the court found that Summers was indigent and waived all discretionary costs. This Court should decline to address this issue because it is being raise for the first time on appeal and the modest fee can be waived by DOC if Summers is unable to pay. Moreover, because the supervision fee is not a “cost” 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> (attached as Exhibit A). 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.*

1. 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. Summers did not object to the payment of a supervision fee at the sentencing in this case. RP 53–57. Therefore, this Court can decline to review his claim that the trial court erred in authorizing imposition of that fee. *Blazina*, 182 Wn.2d 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 to address this issue, as the DOC supervision fee is a modest, one-time fee that can be waived by DOC if Summers is unable to pay. This Court should decline to address this issue because it was not preserved at the trial court level.

2. *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) 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 cost of pretrial supervision. In contrast, the recoupment of public defense costs and extradition costs at issue in *Blazina* falls 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 when one examines 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, assessments, fees, restitution, or costs, the court may grant permission for payment to be 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).

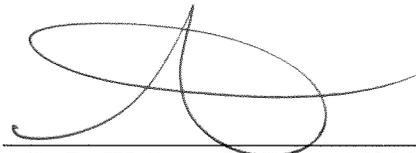
In conclusion, the DOC supervision fee is not a cost as defined in RCW 10.01.160(2), the sentencing court is not required to inquire into a defendant's ability to pay the fee, and the sentencing court is not prohibited from authorizing imposition of the fee on an indigent defendant. This statutory interpretation 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

Summers' convictions should be affirmed as the empaneled jury was impartial and trial counsel was not ineffective. Additionally, this

Court should affirm the imposition of supervision fees as they are not
“costs” as defined by RCW 10.01.160.

Respectfully submitted this 12 day of September, 2019.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line and a small flourish.

Aila R. Wallace, WSBA #46898
Attorney for the State

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



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
FIELD

REVISION DATE
6/22/15

PAGE NUMBER
2 of 5

NUMBER
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



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
FIELD

REVISION DATE
6/22/15

PAGE NUMBER
3 of 5

NUMBER
DOC 200.380

POLICY

TITLE

**LEGAL FINANCIAL OBLIGATIONS AND
COST OF SUPERVISION**

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.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
FIELD

REVISION DATE
6/22/15

PAGE NUMBER
4 of 5

NUMBER
DOC 200.380

POLICY

TITLE

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)



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
FIELD

REVISION DATE
6/22/15

PAGE NUMBER
5 of 5

NUMBER
DOC 200.380

POLICY

TITLE

**LEGAL FINANCIAL OBLIGATIONS AND
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

Julie Dalton certifies that opposing counsel was served electronically via the Division II portal:

Peter Tiller
The Tiller Law Firm
P.O. Box 58
Centralia, WA 98531-0058
ptiller@tillerlaw.com
bleigh@tillerlaw.com

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 September 12, 2019.


Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

September 12, 2019 - 2:04 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53051-1
Appellate Court Case Title: State of Washington, Respondent v. John Wesley Summers, Jr., Appellant
Superior Court Case Number: 18-1-01067-2

The following documents have been uploaded:

- 530511_Briefs_20190912140118D2108712_1111.pdf
This File Contains:
Briefs - Respondents
The Original File Name was State of WA v Summers COA 53051-1-II Respondents Brief.pdf

A copy of the uploaded files will be sent to:

- bleigh@tillerlaw.com
- ptiller@tillerlaw.com

Comments:

Sender Name: Julie Dalton - Email: dalton.julie@co.cowlitz.wa.us

Filing on Behalf of: Aila Rose Wallace - Email: WallaceA@co.cowlitz.wa.us (Alternate Email: appeals@co.cowlitz.wa.us)

Note: The Filing Id is 20190912140118D2108712