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Court of Appeals  
Division II  
State of Washington  
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No.537362

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

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STATE OF WASHINGTON, Respondent

v.

CYNTHIA GUZMAN, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF KITSAP COUNTY  
THE HONORABLE JUDGE BASSETT

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BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

A. The trial court erred when it ordered Ms. Guzman to begin paying a legal financial obligation on a date when she will still be incarcerated and unable to pay the 100 dollars per month.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A. Did the trial court abuse its discretion by entering a legal financial obligation scheduled payment order knowing the defendant is indigent and will be incarcerated ?

II. STATEMENT OF FACTS

On May 1, 2017, a jury found Cynthia Guzman guilty of 18 offenses. CP1-2. She appealed her convictions and this Court issued an unpublished opinion in *State v Guzman*, 7 Wn.App.2d 2072 (2019), reversing four convictions with a remand for resentencing. *Guzman*, 7 Wn.App.2d at \*1; CP 17-31.

At the resentencing, as a part of the amended judgment and sentence, the court imposed the mandatory crime victim assessment fee of 500 dollars. RP 20. The written judgment and sentence contained the following paragraph addressing Ms. Guzman's payment schedule:

All payments shall commence immediately ....and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 per month.

CP 65.

The court found Ms. Guzman indigent at both at her trial and on appeal. Supp. CP 7/18/2016; 8/10/2016; CP 74-75. Ms. Guzman makes this timely appeal. CP 72-73.

### III. ARGUMENT

A. The Trial Court Abused Its Discretion When It Ordered Ms. Guzman To Immediately Begin Paying A Legal Financial Obligation At 100 Dollars Per Month While She Remained Incarcerated.

A trial court is statutorily mandated to impose a crime victim penalty assessment of 500 dollars when an individual is found guilty in a superior court of having committed a crime. RCW 7.68.035 (1). The legal financial obligation (LFO) must be imposed regardless of the defendant's indigency. RCW 9.94A.760(1); *State v. Hill*, 6 Wn. App. 629, 649, 431 P.3d 1044 (2018).

If a defendant is indigent<sup>1</sup> the court shall grant permission for payment to be made within a specified period of time or in

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<sup>1</sup> as defined in RCW 10.101.010(3)(a)-(c).

specified installments. RCW 10.01.170. Thus, while a court must impose the 500-dollar fee without regard to an offender's indigency, the court has independent authority to allow an installment payment schedule considering the indigency. *State v. Clark*, 191 Wn.App. 369, 372, 362 P.3d 309 (2015); *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 110, 52 P.3d 485 (2002).

An LFO payment order must take into account a defendant's financial resources and impose payments that the defendant will be able to make. *State v. Duncan*, 185 Wn.2d 430, 437, 374 P.3d 83 (2016). An order requiring specific payments must be structured to enable a defendant to pay them off. *City of Richland v. Wakefield*, 186 Wn.2d 596, 607, 380 P.3d 459 (2016); *State v Sorrell*, 2Wn.App.2d 156, 173, 408 P.3d 1100 (2018). Under *Blazina*, even where the State has not yet sought collection of an LFO, the challenge is ripe for review. *State v. Blazina*, 182 Wn.2d 827, 830, 832 n.1, 344 P.3d 680 (2015).

A payment schedule order of LFOs before release is reviewed under an abuse of discretion standard. *State v. Clark*, 191 Wn.App. at 372. A trial court abuses its discretion only if (1) the decision is manifestly unreasonable or (2) the decision is based on "untenable grounds": that is, the factual findings are not supported

by the record; or (3) the decision is based on untenable reasons: that is it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

Here, the trial lacked a sufficient factual justification for imposing the LFO payment schedule of 100 dollars a month, beginning immediately after the court entered the judgment. The trial court did not consider, on the record, Ms. Guzman's financial resources or ability to pay. The trial court had found Ms. Guzman indigent. She had been in custody for about three years. She had been sentenced to a mandatory 42 years of confinement. The court had no reason to believe Ms. Guzman could make the 100 dollar a month payment.

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Ms. Guzman respectfully asks this Court to remand to the trial court with instructions to strike the repayment schedule in the judgment and sentence. Striking the LFO payment portion will permit the Department of Corrections to set an appropriate payment schedule based on Ms. Guzman's individual circumstances as outlined in RCW 9.94A.760(1),(7).

Respectfully submitted this 29<sup>th</sup> day of March 2020.

A handwritten signature in black ink that reads "Marie Trombley". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

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### **CERTIFICATE OF SERVICE**

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on March 29, 2020 I mailed to the following US Postal Service first class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's

Opening Brief to the following: Kitsap County Prosecuting Attorney  
at [kcpa@co.kitsap.wa.us](mailto:kcpa@co.kitsap.wa.us) and to Cynthia Guzman/DOC#870436,  
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**MARIE TROMBLEY**

**March 28, 2020 - 7:58 PM**

**Transmittal Information**

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**Comments:**

The filing date was incorrectly noted on the certificate of service and brief. That is the only correction.

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