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NO. 54095-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

JAMEZ EDWARD BROWN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Jack Nevin, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by imposing discretionary financial obligations (LFOs) including the costs of community custody and the costs of collections, on indigent defendant Appellant Jamez Brown.

2. The trial court made several scrivener's errors on the misdemeanor judgment and sentence, including references to 364 days suspended, to community custody conditions, and to inappropriate LFOs (including an unnecessary "concurrent" \$500 victim penalty assessment and prohibited interest on nonrestitution LFOs), despite ordering the statutory maximum sentence of 354 days with zero days suspended on both gross misdemeanor convictions.

Issues Pertaining to Assignments of Error.

1. Where the Brown was indigent at the time of sentencing, does the LFO statute prohibit imposition of the costs of community custody and the costs of collections?

2. Where the trial court failed to conduct an individualized inquiry prior to imposing these discretionary costs, is remand appropriate?

3. Did the trial court inadvertently impose the costs of collections and community custody? If yes, is the proper remedy to strike these costs?

4. Should this court use its discretion to address these LFO issues for the first time on appeal?

5. Where the trial court imposed the statutory maximum of 364 days with zero days suspended on each of the gross misdemeanors (both orally and in the judgment and sentence), were the court's contradictory written references to 364 days suspended the result of scrivener's errors that must be corrected?

6. If yes, were references to conditions of community custody on the misdemeanor court orders also scrivener's errors that must be corrected?

7. Did the court err in imposing nonrestitution interest on LFOs in the misdemeanor court order?

8. Did the court err, or create potentially detrimental confusion, by imposing a \$500 victim penalty assessment (VPA) on the misdemeanor orders "concurrent" with the felony \$500 VPA, despite the fact these charges were all under the same cause number?

9. Given the above, is the most appropriate remedy to remand to strike in its entirety the misdemeanor court order purportedly imposing conditions of community custody on the misdemeanor convictions? Furthermore, is the appropriate remedy also to remand to correct the misdemeanor judgment and sentence?

B. STATEMENT OF FACTS

1. Charges, Pleas & Verdicts

The Pierce County Prosecutor's office charged Jamez Brown with one felony and two misdemeanors: felony violation of a no contact order (NCO)-DV (count 1), assault IV-DV (count 2), and obstruction of law enforcement (count 3). CP 3, 4. Brown pleaded not guilty and represented himself during the jury trial with the assistance of standby counsel. RP 3, 380. The jury found Brown guilty of all three counts and also found the DV designations on counts 1 and 2 by special verdict. CP 47-51.

2. Sentence & Appeal

On the felony NCO, the court imposed the statutory maximum sentence of 60 months of incarceration. CP 60. The court also imposed zero months of community custody on count 1, but noted that if Brown earned early release credits, DOC was directed to convert up to 12 months of earned release into community custody. CP 61. For both gross misdemeanor counts 2 and 3, the trial court imposed the statutory maximum of 364 days of jail with zero days suspended, to run concurrent with each other and the felony sentence. CP 60, 73; RP 451.

Brown timely appealed. CP 86.

C. ARGUMENT

1. THE TRIAL COURT ERRED BY IMPOSING VARIOUS LFOs ON AN INDIGENT DEFENDANT.

RCW 10.01.160(3) prohibits the imposition of costs on indigent defendants. The trial court violated this statute by imposing the costs of supervision and collections where Brown was and remains indigent, both costs are discretionary, and both are “costs” under the meaning of RCW 10.01.160(3).

Even if this Court disagrees with the above analysis regarding the statutory interpretation of the term “costs,” still the trial court was required to conduct an individualized inquiry on the record before imposing any discretionary costs, and failed to do so here. Moreover, the record indicates the trial court imposed these two costs inadvertently.

This Court should exercise its discretion to address the error for the first time on appeal and should strike both LFOs.

i. Brown was and remains indigent.

In its oral ruling, the trial court found Brown indigent and noted its intent to impose only the \$500 Victim Penalty Assessment (VPA) on the felony conviction. RP 451. The court noted this finding was based on “the sentence the defendant is going to serve.” CRP 451. In its written order, the trial court also found Brown “indigent.” CP 56.

In addition, Brown filed a motion and affidavit attesting to the fact that his financial circumstance had not substantially improved, and he did not anticipate it would improve, since the time the trial court found him indigent. CP 82-83. The trial court then found Brown indigent on appeal and authorized the appeal to proceed entirely at public expense. CP 84.

Thus, the record indicates Brown was indigent at the time of sentencing and remains so.

- ii. The costs of supervision and collections are discretionary.

Despite the finding of indigency, the trial court imposed both the costs of community custody and the costs of collections on Brown in its written order. CP 58, 61, 66. However, as discussed more below, the trial court did so solely in its written order which contradicted its oral ruling. Regardless, this Court should conclude the costs of supervision and collections are both discretionary and are both “costs,” and as such they may not be imposed on an indigent defendant.

First, both costs are discretionary. RCW 9.94A.703(2) states “unless waived by the court, as part of any term of community custody, the court shall order an offender to: (d) Pay supervision fees as determined by the department.” (Emphasis added.) Both Divisions One and Two of the Court of Appeals have authored published opinions asserting that the

costs of community custody are discretionary, that it is appropriate for the trial court to consider a defendant's indigency and general ability to pay before imposing the cost, and that waiver of the cost may be appropriate. State v. Lundstrom, 6 Wn. App. 2d 388, 396 n.3, 429 P.3d 1116 (2018), review denied, 193 Wn.2d 1007, 443 P.3d 800 (Div. II.2019); State v. Dillon, 12 Wn. App. 2d 133, 152, 456 P.3d 1199 (Div. I.2020); see also State v. Abarca, 11 Wn. App. 2d 1012, 2019 WL 5709517, *10 (Div.II.2019) (unpublished)¹ (holding "the waivable community custody supervision assessment is discretionary").

Division Three has also indicated its agreement with this proposition with numerous unpublished opinions noting the costs of community custody are waivable and thus discretionary, and by accepting repeated State concessions that the cost was inadvertently imposed and must be stricken. E.g. State v. Santos, __ Wn. App. 2d __, 2020 WL 2079271, *16-17 (accepting State's concession that costs of community custody are waivable, discretionary, and should not have been imposed) (Div. III.2020) (unpublished); also State v. Vasquez, __ Wn. App. 2d __, 2020 WL 1649830,*1 (Div. III.2020) (unpublished) (concluding costs of community custody are waivable and discretionary, and accepting State's concession they were unintentionally imposed); State v. Wolf, 12 Wn.

¹ Pursuant to GR 14.1 the brief cites to this unpublished opinion not as binding authority, but rather only for any persuasive value this Court deems appropriate.

App. 2d 1016, 2020 WL 638891, *9 (Div. III.2020) (unpublished) (same).²

In keeping with its decision in Lundstrom, and the numerous cases in agreement, this Court should once again hold the costs of community custody are waivable and thus discretionary.

This Court should find the costs of collections are similarly discretionary. RCW 36.18.190 provides in relevant part, “The superior court may, at sentencing or at any time within ten years, assess as court costs the moneys paid for remuneration for services or charges paid to collection agencies or for collection services.” (Emphasis added).

iii. The costs of supervision and collections are “costs.”

This Court should expressly hold that the costs of community custody and collections are “costs” within the meaning of RCW 10.01.160(3).

The State may argue that RCW 10.01.160 discusses a narrow definition of “costs” that applies only to those costs incurred by the State during prosecution, deferred prosecution, pretrial supervision, or issuance of a warrant.

Division One has rejected this view and concluded the term “costs” encompasses the costs of community custody. Dillon, 12 Wn. App. 2d at

² Pursuant to GR 14.1 the brief cites to these unpublished opinion not as binding authority, but rather only for any persuasive value this Court deems appropriate.

152; see also State v. Reamer, 9 Wn. App. 2d 1077, 2019 WL 3416868, *5 (Div. I.2019) (unpublished).³ In a case issued prior to the recent statutory amendments, Division Three of the Court of Appeals used reasoning similar to that now deployed by the State to conclude the definition of “costs” was defined and restricted by the first two sentences of the relevant statute. State v. Clark, 191 Wn. App. 369, 375, 362 P.3d 309 (Div. III.2015). Division Two of this Court has followed Division Three and adopted the reasoning of the State post-LFO amendments in a recent unpublished decision. Abarca, 2019 WL 5709517, *10 (Div. II.2019).

Neither opinions from other Divisions, nor unpublished opinions from this Division are binding on this Court. GR 14.1 (unpublished opinions are not binding authority); In re Pers. Restraint of Arnold, 190 Wn.2d 136, 154, 410 P.3d 1133 (2018) (rejecting the doctrine of horizontal *stare decisis*). As a result, this Court is not bound by these prior interpretations, and may elect to assign whatever persuasive value to the opinions it deems appropriate.

For the reasons discussed below, Brown urges Division Two to reverse course and reject the reasoning of Abarca and Clark as inconsistent with various provisions of the relevant statutes. Instead, this Court should hold the statute’s prohibition on “costs” applies to all

³ Pursuant to GR 14.1 the brief cites to this unpublished opinion not as binding authority, but rather only for any persuasive value this Court deems appropriate.

discretionary LFOs, including the costs of community custody and costs of collections.

RCW 10.01.160(1) and (2) provides in relevant part:

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

(2) 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. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. ...

(emphasis added).

Read in context, the provisions are meant to impose restrictions on the court's general ability to impose costs; these provisions are not definitional.

Specifically, in prior cases, the State has relied upon subpart (2) stating “[c]osts shall be limited to” expenses incurred by the State in prosecution, deferred prosecution, or pretrial supervision. The State has argued this shows the definition of costs is limited to these three categories: prosecution, deferred prosecution, and pretrial supervision.

However, such an interpretation cannot stand in light of subsection (1). Subsection (1) discusses “costs” of deferred prosecution, of pretrial supervision, and of service of warrants. Given that the prior subsection discusses “costs” using three different, overlapping categories reveals that the Legislature’s intent in these provisions was not to restrict the definition of “costs” but rather was to describe the new limitations on the court for imposing various types of costs. Under the provisions, for example, courts may not shift to criminal defendants the burden of shouldering constitutionally protected expenses inherent in a jury trial or inherent in operating state agencies. RCW 10.01.160(2). It does not mean that these expenses are not “costs,” but rather that they are not costs that may be imposed.

Further support for this interpretation is found by the absence of any express statutory definition of the term “costs” in RCW 10.101.010. This subsection does provide various other definitions, such as defining the basic terms “indigent” and “income” used elsewhere in the statute. Moreover, RCW 10.101.010 uses the term “costs” in a general manner in order to define various other terms and phrases. For example, subsection (d) defines “Basic living costs” to include “living costs such as shelter, food utilities... .” RCW 10.101.010(2)(d). Subsection (b) defines “Income” to include ... “basic living costs.” RCW 10.101.010(2)(b)

(emphasis added). Subsection (c) defines “Disposable net monthly income” to include “union dues and basic livings costs.” RCW 10.101.010(2)(c) (emphasis added).

Thus the provisions discussed above show the Legislature used the term “costs” in the statute in a general, commonsense way to explain a variety of monetary expenses and LFOs; it is not a term that is defined or limited in the statute.⁴ In line with this reasoning, the Washington Supreme Court has stated, “in the absence of a statutory definition this court will give the term its plain and ordinary meaning ascertained from a standard dictionary.” State v. Watson, 146 Wn.2d. 947, 954, 51 P.3d 66 (2002).

Moreover, where a term is undefined in a statute and the court is tasked with interpreting the meaning of that term, the court should “consider the statute as a whole and provide such meaning to the term as is in harmony with other statutory provisions.” Heinsma v. City of

⁴ Webster’s Third New International Dictionary of the English Language, Unabridged, p. 515 (defining “cost” as “1 a: the amount or equivalent paid or given or charged or engaged to be paid or given for anything bought or taken in barter or for service rendered: charge, price b: whatever must be given, sacrificed suffered, or forgone to secure a benefit or accomplish a result ... 2: loss, deprivation, or suffering as the necessary price of something gained or as the unavoidable result or penalty of an action ... 3: the expenditure or outlay of money, time, or labor ... 4 costs pl : expenses incurred in litigation as a : those payable to the attorney or counsel by his client esp. when fixed by law b” those given by the law or the court to the prevailing against the losing party in equity and frequently by statute – called also bill of costs 5 : an item of outlay incurred in the operation of a business enterprise... in... 6: something that is sacrificed to obtain something else ...).

Vancouver, 144 Wn.2d 556, 564, 29 P.3d 709 (2001). For the reasons discussed above, a narrow definition of the term “costs” that excludes the costs of collections or supervision is inconsistent with this principle because it does not account for the general way in which the Legislature has used the term “cost” in various related provisions of the statute.

Thus, this Court should conclude both the costs of supervision and costs of collections are “costs” under the statute.

There is additional support to conclude the costs of collections are included in the term “costs.” RCW 36.18.190 provides in relevant part, “The superior court may, at sentencing or at any time within ten years, assess as court costs the moneys paid for remuneration for services or charges paid to collection agencies or for collection services.” (Emphasis added). Notably, the costs of collections are also labeled as “court costs” by the statute. RCW 36.18.190.

The interpretations of Abarca and Clark should also be rejected in light of contrary indications from a higher authority. The Washington Supreme Court has repeatedly construed “costs” as defined by RCW 10.01.160 to mean all discretionary legal financial obligations. See State v. Catling, 193 Wn.2d 252, 260, 438 P.3d 1174 (2019) (discussing “costs” under RCW 10.01.160 as discretionary LFOs, exclusive only of “fines”)

(citing City of Richland v. Wakefield, 186 Wn.2d 596, 599-601, 380 P.3d 459 (2016) (discussing same)).⁵

Given the above, this Court should find both the costs of community custody supervision, and the costs of collections are “costs” under the meaning of RCW 10.01.160. The imposition of these costs on Brown, an indigent defendant, violates RCW 10.01.160(3) and requires remand to strike the costs.

- iv. The record also indicates these costs were imposed inadvertently and without the required individualized inquiry.

Even if this Court were to accept the reasoning in Abarca, Division Two still notes the costs of community custody are discretionary. Abarca, 2019 WL 5709517 at *10. As a result, the Abarca Court indicated that on remand, it would be appropriate for the trial court to reconsider whether these costs should be imposed in light of Abarca’s indigency or ability to pay. Id. As noted above, this reasoning applies with equal force to the costs of collections, which are also discretionary as indicated by statute. RCW 36.18.190. In addition, striking the cost outright is another

⁵ Wakefield also held, among other holdings, that “federal law prohibits courts from ordering defendants to pay LFOs if the person’s only source of income is social security disability.” 186 Wn.2d at 609. Catling’s holding clarified that courts may impose mandatory LFOs on such individuals without violating federal law, but at a subsequent contempt or remittance hearing, courts may not order an individual to pay even “mandatory” LFOs by dipping into his or her social security income. 193 Wn.2d at 261.

appropriate where the record indicates were imposed inadvertently Dillon, 12 Wn. App. 2d at 152. Both circumstances are present here.

First, nowhere in the record did the trial court make the multi-step, particularized, individualized inquiry into Brown's ability to pay, as required by State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018) and RCW 10.01.160 before imposing any discretionary LFOs. Rather, the trial court's only reference to Brown's ability to pay during the hearing was to find him indigent in light of his prison sentence it had just imposed. RP 451. The only individualized notation of Brown's ability to pay in the written order language memorializing this finding and indicating Brown's indigency was an "extraordinary circumstance[s]" making "payment of nonmandatory legal financial obligations inappropriate." CP 56.

Although Brown's judgment and sentence contains boilerplate text referencing consideration of his ability to pay, Ramirez expressly held such language was inadequate to meet the individualized inquiry requirement. Ramirez, 191 Wn.2d at 742; CP 56 ("The court has considered"). Therefore, even if this Court finds the reasoning of Abarca persuasive, still the indicated remedy would be remand for reconsideration of the costs of community custody and collections after due consideration of Brown's individual circumstances and ability to pay.

However, where, as here, the record indicates the trial court imposed these costs inadvertently, striking the costs outright (regardless of whether this Court considers them to be “costs” under the statutory prohibition) is the most appropriate remedy.

Where “[t]he record demonstrates that the trial court intended to impose only mandatory LFOs,” the proper remedy is to strike the costs of community custody from the judgment and sentence. Dillon, 12 Wn. App. 2d at 152. Relevant factors include whether the trial court orally stated its intention to impose only mandatory fees, whether it made no mention of the discretionary costs it imposed, whether the LFOs section in the judgment and sentence excludes the discretionary costs from the total, and whether the requirement that the defendant pay such costs is “buried in a lengthy paragraph on community custody.” Id. at 17-18.

All of these factors are present here. First, the trial court repeatedly noted it intended to impose only mandatory LFOs. Orally, the trial court expressly stated it intended to impose no LFOs other than the mandatory VPA and restitution on the felony, and intended to impose no LFOs on the misdemeanor counts. RP 451. In addition to its express oral ruling, several factors in the written order indicate these costs were imposed inadvertently. In the felony judgment and sentence, the trial court found Brown “indigent” and on the written order, indicated this

indigency was an “extraordinary circumstance[s]” that made “payment of nonmandatory legal financial obligations inappropriate.” CP 56.

Second, the trial court made no oral mention of the discretionary costs of collections or community custody in its oral ruling. See RP 451.

Third, the LFO section excludes these costs from its total LFO calculation. In the LFO section of the judgment and sentence, the trial court imposed only the \$500 mandatory victim penalty assessment and restitution to be determined, consistent with its oral ruling. CP 57. The court crossed out the \$100 DNA fee and \$200 criminal filing fee, left all other lines blank, and wrote in “\$500” in the line to indicate the total LFOs imposed (exclusive of restitution to be set later). CP 57.

Fourth, all written references to the collections and community custody costs were buried in preprinted blocks of text. In one block of pre-printed text, the court imposed “COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute.” CP 58. In another lengthy block of pre-printed text, as item (7) in a list of (10) conditions of community custody, the trial court ordered Brown to “pay supervision fees as determined by DOC.” CP 61. This condition also appears in the fifth of seven community custody conditions listed in pre-printed text in Appendix F to the judgment and sentence. CP 66. Neither block of text required an

affirmative mark from the trial court to impose the pre-printed condition.
CP 61, 66.

All of these factors indicate the trial court intended to impose only mandatory LFOs and inadvertently imposed the discretionary costs of collections and community custody. Where the costs are both indisputably discretionary, where they were imposed inadvertently, and where they were imposed without the required on-the-record ability to pay inquiry, this Court should strike the costs. This result is required and appropriate regardless of this Court's statutory interpretation analysis regarding the definition of the term "costs."

- v. This Court should address even those LFOs being raised for the first time on appeal.

In Brown's case, the parties and court never expressly discussed the costs of collections or costs of supervision. The State may argue this Court should not review these LFOs because they were not raised below. However, "[i]n the wake of Blazina, appellate courts have heeded its message and regularly exercise their discretion to reach the merits of unpreserved LFO arguments." State v. Glover, 4 Wn. App. 2d 690, 693, 423 P.3d 290 (2018). There is no compelling reason to treat Brown differently. Rather, the interests of justice suggest this issue warrants attention, including Brown's *pro se* status at trial, and the fact that this

issue arises regularly in criminal appeals and repeat players in the trial court system may benefit from clarification as to their obligations.

2. THE TRIAL COURT MADE SEVERAL SCRIVENER'S ERRORS IN THE MISDEMEANOR ORDERS.

The trial court's ultimate oral ruling as to the two misdemeanor counts was to suspend zero days, to impose no community custody, and to impose no LFOs. RP 451. The trial court record contains two documents relevant to the misdemeanor convictions, one entitled "Judgment and Sentence ... As To Count 2 and 3 Only" and another entitled "~~Conditions on Suspended Sentence.~~" CP 73, 75 (title strikethrough in original). In some aspects, these two documents conflict and fail to accurately reflect the court's ultimate ruling. This Court should direct the trial court to correct the scrivener's errors. By striking the conditions document in its entirety, this Court can also resolve additional LFO errors.

i. The trial court imposed zero days suspended.

The trial court initially stated it would impose 364 days with all 364 days suspended on misdemeanor counts 2 and 3, to run concurrent with one another and the felony sentence. RP 451. However, the State then pointed out the recommendation was to suspend zero days on both misdemeanor counts. RP 451. In response, the trial court revised its oral ruling and imposed 364 days with zero days suspended on both counts. RP 451.

This revision is reflected accurately on the first page of the misdemeanor judgment and sentence. CP 73. However, the associated document entitled “~~Conditions on Suspended Sentence~~” includes the following language “the Court having sentenced the defendant JAMEZ EDWARD BROWN to the term of Counts II & III Concurrent*.” CP 75. The asterisk corresponds to the following language at the bottom of the page: “*to each other and Count I. 364 days with 364 days suspended.” CP 75 (emphasis added). Given the court’s oral ruling, the reference to “364 days suspended” is plainly a mistake. CP 75. The record indicates this was a scrivener’s error. RP 451 (court revising oral ruling).

The documents must be corrected to state all 364 days were imposed and zero days were suspended on each of the gross misdemeanor courts.

ii. The trial court imposed no community custody.

Because the trial court imposed zero days suspended, and also imposed 364 days which is the statutory maximum on both gross misdemeanors, its ultimate oral ruling did not allow for the imposition of community custody conditions on either gross misdemeanor count. RP 451; CP 73. However, this fact is inconsistently referenced in the trial court documents.

The misdemeanor judgment and sentence states “(X) Said sentence shall be (suspended) on the attached conditions of (suspended) sentence” CP 73 (emphasis added). This reference is inaccurate because it suggests the trial court suspended some portion of the sentence and imposed conditions of community custody. The existence of the document “~~CONDITIONS ON SUSPENDED SENTENCE~~” which refers to only counts 2 and 3 in the initial paragraph, also incorrectly suggests that the trial court imposed some term of community custody on the misdemeanor counts. CP 75. However, the document does accurately state on its second page, “Further Conditions as follows: All time imposed so conditions only on felony J&S for Count I.” CP 76. Moreover, the effect of striking through the title of the second document, without striking through the rest of the language in the document, is unclear.

The documents must be corrected to state, and to state consistently, that there are no conditions of community custody imposed for the gross misdemeanor counts 2 and 3 because the trial court imposed the statutory maximum, suspended zero days, and did not impose any term of community custody on these counts.

iii. The trial court made additional errors in noting the LFOs associated with the misdemeanor counts.

In the aforementioned misdemeanor documents, the trial court made two additional errors associated with LFOs.

First, in its oral ruling, the trial court stated, “I’m not going to impose any financial obligations associated with the gross misdemeanor[s]. And, in fact, as I said a moment ago, the only financial obligation imposed with the other offense is going to be the crime victim penalty assessment.” RP 451 (emphasis added). Despite this, both documents list references to a \$500 victim penalty assessment to be imposed on the gross misdemeanors. CP 73 (imposing “crime victim penalty assessment as per RCW 7.68.035 in the amount of \$500), 76 (“\$500 Crime Victim Compensation penalty assessment per RCW 7.68.035... \$500 Total”). Both references note the \$500 is “Concurrent to Count I.” CP 73, 75. However, the trial court did not impose a \$500 penalty concurrent to count 1; it elected to impose no penalty at all. RP 451. This is relevant because it creates the opportunity for confusion and error, and has the effect of extending the trial court’s jurisdiction over Brown for these counts as well, if Brown is unable to pay the fee in the future.

Moreover, it is neither necessary nor required for the trial court to impose the \$500 VPA fee on the misdemeanor counts as well. RCW 7.68.035(1)(a) requires the imposition of the \$500 VPA fee “for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor.” Here, the gross misdemeanors and the felony were brought under one cause number, 19-1-02100-6, listed on both the misdemeanor and felony judgment and sentence documents. CP 54, 73. The statute plainly contemplates that one \$500 fine will be imposed on any particular cause number, even where there are both felony and misdemeanor convictions associated with that cause number. RCW 7.68.035(1)(a).

The reference to a \$500 “concurrent” VPA on the misdemeanor convictions is duplicative, unnecessary, and confusing. This Court should strike any reference to the \$500 VPA on the misdemeanor orders.

iv. The trial court unlawfully imposed interest on non-restitution LFOs.

The inaccurate imposition of the \$500 VPA fee (concurrent or otherwise) on the misdemeanor counts also gives effect to an additional error in the documents: the imposition of non-restitution interest. The document purporting to impose conditions of community custody on the misdemeanor counts states, “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.” CP 76 (emphasis added).

As of June 7, 2018, RCW 10.82.090 expressly prohibits the imposition of any non-restitution interest on LFOs. Brown’s misdemeanor judgment and sentence (and associated conditions) were imposed in 2019. CP 73, 75. The imposition of non-restitution interest is prohibited and must be stricken.

- v. The appropriate remedy is to correct the misdemeanor judgment and sentence, and to strike the misdemeanor conditions order.

As noted above, the trial court made several errors in the misdemeanor judgment and sentence and the associated document purporting to impose conditions of community custody, most of which appear to be scrivener’s errors. The simplest way to address these issues is to correct and clarify the misdemeanor judgment and sentence (by striking the second to last paragraph wherein both incorrect statements to community custody conditions and the \$500 fine are located), and to strike the other document in its entirety (because there is no need for a document detailing the conditions were no term of community custody was imposed). Striking this second document in its entirety may have been the

trial court's intention, as indicated by the fact that the title of the document has a handwritten line through the text. C.f. CP 75 (title strike-through in original). Regardless, this Court should find the document is confusing, contradictory, and unnecessary, and should strike it in its entirety to avoid the numerous errors and potential confusion it creates.

D. CONCLUSION

Where the trial court found Brown indigent, the plain language of the relevant statutes required waiver of all discretionary costs.

Brown respectfully requests this Court remand with instructions to strike the costs of community custody and collections, to strike references to community custody and the \$500 VPA fee on the misdemeanor judgment and sentence, and to strike in its entirety the document entitled "~~CONDITIONS ON SUSPENDED SENTENCE.~~"

DATED this 26th day of May, 2020.

Respectfully submitted,

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