

31909-1-III
COURT OF APPEALS

FILED
JAN 04, 2017
Court of Appeals
Division III
State of Washington

DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

TASHIA STUART, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF FRANKLIN COUNTY

APPELLANT'S SUPPLEMENTAL BRIEF

Janet G. Gemberling
Attorney for Appellant

JANET GEMBERLING, P.S.
PO Box 8754
Spokane, WA 99203
(509) 838-8585

INDEX

A.	ASSIGNMENTS OF ERROR	1
B.	ISSUES	1
C.	FACTS RELEVANT TO ISSUES	2
D.	ARGUMENT	3
E.	CONCLUSION.....	6

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. BLAZINA, 182 Wn.2d 827,
344 P.3d 680 (2015)..... 3, 4, 5, 6

COURT RULES

GR 34 5
RAP 2.5(a) 6

STATUTES

RCW 10.01.160 3

A. ASSIGNMENTS OF ERROR

1. Did the court err in imposing costs without making an individualized inquiry into Ms. Stuart's present and future ability to pay?
2. Did the court err in determining Ms. Stuart had the ability to pay costs?
3. Did the court err in imposing discretionary costs?
4. Should this court exercise its discretion to review the trial court's imposition of costs?

B. ISSUES

1. The defendant was 40 years old, and the court imposed a sentence of 45 years' incarceration. Prior to awarding costs the trial court did not inquire as to the defendant's present or future ability to pay costs beyond asking whether there was any reason why she would not be able to work after her release from prison. Did the court fail to fulfill its statutory obligation to make an individualized inquiry into the defendant's present or future ability to pay costs?
2. The evidence before the court showed the defendant had no present assets and would likely be too old to find

employment after she was released from prison. Did the court err in determining the defendant would be able to pay substantial discretionary costs?

3. The defendant had no assets and would likely never be employed. The court imposed costs exceeding \$180,000. Should this court have exercised its discretion to review the issue of whether the imposition of costs was error?

C. FACTS RELEVANT TO ISSUES

In the days before her arrest, Ms. Stuart repeatedly begged her husband for money or access to a credit card, which he declined to provide. (Exh. 367) She texted him stating that her mother was angry with her because they owed her so much money and she could not pay it. (Exh. 367) Shortly after her arrest, Ms. Stuart told Detective Gregory that she and her husband had come to live with her mother three months earlier because her husband hadn't paid the rent and they had been evicted. (Exh. 20)

Ms. Stuart was born March 6, 1973 and was 40 years old at the time of sentencing. (CP 1146)

The court sentenced Ms. Stuart to 540 months' total confinement and imposed attorney fees and other defense costs of \$180,434.19 along

with other costs, for total discretionary costs of \$181,626.22 . (CP 28-29, 33)

Prior to imposing sentence, the court asked Ms. Stuart whether she had any physical disabilities, or if there was any reason why she would not be able to work after being released from prison. (9/4/2013 RP 78) Ms. Stuart acknowledged there was not. (9/4/2013 RP 78) Ms. Stuart will be more than 65 years old when she is released from prison.

Defense counsel presented the motion and supporting declaration for an order of indigency at the time of sentencing and the order was signed contemporaneously with the judgment and sentence. (9/4/2013 RP 80-82) Ms. Stuart declared that she had no income and no assets. (CP 11)

D. ARGUMENT

The imposition of legal financial obligations (LFOs) is governed by statute:

(3) The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160.

In *State v. Blazina*, the Supreme Court recognized serious defects in the state's system of imposing costs and fees on indigent defendants in

criminal cases. 182 Wn.2d 827, 344 P.3d 680 (2015). Looking at the situation involving imposition of legal financial obligations at the trial court level, the *Blazina* majority chronicled national recognition of “problems associated with LFOs imposed against indigent defendants,” including inequities in administration, impact of criminal debt on the ability of the state to have effective rehabilitation of defendants and other serious, societal problems “caused by inequitable LFO systems.” 182 Wn.2d at 835.

RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant’s current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant’s other debts, including restitution, when determining a defendant’s ability to pay.

182 Wn.2d at 839. To determine the amount and method for paying the costs, “the court *shall* take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Id.* (emphasis added). In short, the superior court must conduct on the record an individualized inquiry into an indigent defendant’s current and future ability to pay in light of all relevant factors including

nondiscretionary legal financial obligations, her other debts, and the factors for determining indigency status under GR 34.¹ 182 Wn.2d at 838.

The record does not indicate the trial court made any effort to assess Ms. Stuart's ability to pay costs, and certainly did not consider whether she would ever be able to pay costs in excess of \$180,000. (9/4/2013 RP 74-82) It is evident from the record the trial court failed to consider Ms. Stuart's financial resources or to make an individualized inquiry as to her current or future ability to pay.

¹ GR 34 provides in relevant part:

- (3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:
 - (A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:
 - (i) Federal Temporary Assistance for Needy Families (TANF);
 - (ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);
 - (iii) Federal Supplemental Security Income (SSI);
 - (iv) Federal poverty-related veteran's benefits; or
 - (v) Food Stamp Program (FSP); or
 - (B) his or her household income is at or below 125 percent of the federal poverty guideline; or
 - (C) his or her household income is above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render him or her without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or
 - (D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or surcharges.
- (4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

The imposition of court costs in this case does not comply with statutory requirements.

The remedy is remand to the trial court for a new sentencing hearing for inquiry into defendant's ability to pay. 182 Wn.2d at 839.

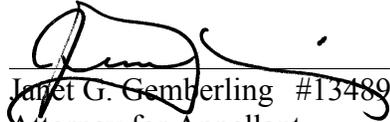
While an appellate court may refuse to review any claim of error which was not raised in the trial court, RAP 2.5(a) grants appellate courts discretion to accept review of claimed errors not appealed as a matter of right. 182 Wn.2d at 839. In *Blazina* the court opined that each appellate court must make its own decision to accept discretionary review. *Id.* But the court stated that national and local cries for reform of broken LFO systems demand that it exercise its RAP 2.5(a) discretion. *Id.* This court should agree and reach the merits of the issue in the present case.

E. CONCLUSION

If the conviction is affirmed, the court should remand this case to the trial court for a new sentencing hearing for inquiry into defendant's ability to pay.

Dated this 4th day of January, 2017.

JANET GEMBERLING, P.S.


Janet G. Gemberling #13489
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 31909-1-III
)	
vs.)	CERTIFICATE
)	OF MAILING
TASHIA STUART,)	
)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on January 4, 2017, I served a copy of the Appellant's Supplemental Brief in this matter by email on the following parties, receipt confirmed, pursuant to the parties' agreement:

Shawn Sant
appeals@co.franklin.wa.us

Teresa Chen
tchen@co.franklin.wa.us

I certify under penalty of perjury under the laws of the State of Washington that on January 4, 2017, I mailed a copy of the Appellant's Supplemental Brief in this matter to:

Tashia Stuart
#368746
Washington Correction Center-Women
9601 Bujacich Rd NW
Gig Harbor, WA 98332

Signed at Spokane, Washington on January 4, 2017.


Janet G. Gemberling
Attorney at Law

