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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

NO. 32583-1-III

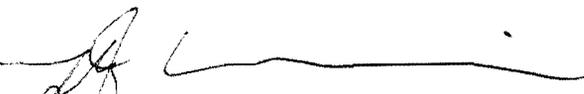
**STATE OF WASHINGTON,
Respondent,**

vs.

**MARIANO DIAZ-FARIAS,
Appellant.**

**APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR ADAMS COUNTY
CAUSE NO. 13-1-00082-2**

BRIEF OF RESPONDENT



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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. Unpreserved Legal Financial Obligation errors do not command review as a matter of right.
2. Appellant did not preserve his claimed LFO errors for appellate review.

II. STATEMENT OF THE CASE

The Respondent accepts the statement of the case as presented by the Appellant with the following addition; at sentencing, Mr. Diaz Farias did not object to the court's imposition of the legal financial obligations. 5/27/14 RP pp. 23.

III. ARGUMENT

A. Unpreserved LFO errors do not command review as a matter of right.

Appellant cites State v. Ford, 137 Wn.2d 472, 477-78, 973 P.2d 452 (1999) arguing that "it is well established that illegal and erroneous sentences may be challenged for the first time on appeal," reasoning that this means they can challenge unpreserved LFOs on appeal as a matter of right. Brief of Appellant at 8. However, in Blazina, the Supreme Court refutes this claim, stating that "Unpreserved LFO errors do not command review as a matter of right under Ford and its progeny," reasoning that Ford applies to errors in sentencing, which if let stand, would create inconsistent

sentences for the same crime. State v. Blazina, ___ Wn.2d. ___, ___ P.3d ___ (No. 89109-5 filed March 12, 2015). Unlike sentences, discretionary LFO orders were not intended to be uniform by the legislature. Id. Therefore, the appellant does not have grounds for this appeal as a matter of right.

B. The Appellant did not preserve his claimed LFO errors for appellate review.

In Washington State, RAP 2.5(a) grants appellate courts discretion in accepting review of issues raised for the first time on appeal. State v. Blazina, ___ Wn.2d. ___, ___ P.3d ___ (No. 89109-5 filed March 12, 2015) (Citing State v. Russell, 171 Wn.2d 118, 249 P.3d 604 (2011)). Appellate courts normally decline to review issues raised for the first time on appeal. Id. (citing Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.2d 844 (2005)).

In Blazina, the Washington State Supreme Court accepted review of a case involving the imposition of discretionary legal financial obligations when the issue was first raised on appeal. Id. However, the Court stressed that they were exercising their discretion and it is still up to the appellate court to make its decision whether or not to accept discretionary review. Id. Given the Court's decision in Blazina, if this court in its discretion accepts

review of this issue, the State will concede error because the trial court did not examine Mr. Diaz Farias' ability to pay on the record.

IV. CONCLUSION

Because the defendant did not preserve this issue for appeal, State respectfully requests that this Court deny review and affirm the Legal Financial Obligations imposed by the trial court.

DATED this 6 day of MAY, 2015.

RANDY J. FLYCKT
Adams County Prosecuting Attorney

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