

FILED

May 23, 2016

Court of Appeals
Division III
State of Washington

No. 33329-9-III

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

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

ANTHONY RAY AGUILAR,
Defendant/Appellant.

APPEAL FROM THE BENTON COUNTY SUPERIOR COURT
Honorable Cameron Mitchell, Judge (CrR 3.5 hearing)
Honorable Carrie L. Runge, Judge (Trial and Sentencing hearing)

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY TO STATE’S RESPONSE

1. Mr. Aguilar’s statement to the police was inadmissible because it was obtained as a result of custodial interrogation without *Miranda* warnings.

Mr. Aguilar relies upon his Brief of Appellant to address this issue. Brief of Appellant, pp. 5–10.

2. Remand for inquiry into ability to pay is appropriate.

Mr. Aguilar accepts the state’s concession that because the trial court failed to inquire about his ability to pay before imposing discretionary superior court costs, the matter should be remanded for meaningful inquiry. Brief of Respondent, p. 4.

3. Appeal costs should not be imposed.

The state incorrectly alleges “Title 13 RAP, RCW 10.73.160 and *State v. Blank*¹” deprive this Court of its discretion to decline to impose costs on appeal. Brief of Respondent, pp. 4–5.

RCW 10.73.160(1) states the “court of appeals ... may require an adult ... to pay appellate costs.” (Emphasis added) “[T]he word ‘may’

¹ 131 Wn.2d 230, 930 P.2d 1213 (1997).

has a permissive or discretionary meaning.” *Staats v. Brown*, 139 Wn.2d 757, 789, 991 P.2d 615 (2000). RAP 14.2 recognizes the appellate court may “direct[] otherwise in its decision terminating review.” The state has requested appellate costs. Brief of Respondent, p. 5. This Court has ample discretion to deny the state’s request for costs.

Mr. Aguilar was sentenced to 12 months and a day of confinement. CP 35. He is 45 years old.² CP 1. The court found him indigent for purposes of defending against the charge. CP 25. The court also found Mr. Aguilar to be indigent and unable to pay for the expenses of appellate review and entitled to appointment of appellate counsel at public expense. CP 27. If Mr. Aguilar does not prevail on appeal, he asks that no costs of appeal be authorized under title 14 RAP. *See State v. Sinclair*, __ P.3d __, 2016 WL 393719 (filed January 27, 2016) (instructing defendants on appeal to make this argument in their opening briefs). *See* Brief of Appellant, pp. 18–31.

Trial courts must make individualized findings of current and future ability to pay before they impose LFOs. *State v. Blazina*, 182 Wn.2d 127, 830, 834, 344 P.3d 680 (2015). Only by conducting such a “case-by-case” analysis” may courts “arrive at an LFO order appropriate to

² Mr. Aguilar’s date of birth is March 29, 1971.

PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on May 21, 2016, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of reply brief of appellant:

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