

FILED
March 8, 2016
Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 33552-6-III

STATE OF WASHINGTON, Respondent,

v.

MAGDELANO CRUZ TELLEZ, Appellant.

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

The State contends that this court should decline to review the imposition of \$860 in discretionary court costs because “evidence in the record supports the trial court’s finding that he had the present and future ability to pay these fees.” *Respondent’s Brief*, at 8. While it is true that the trial court did conduct an inquiry prior to imposing the costs, the trial court’s inquiry fails to satisfy the minimum requirements set forth in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

“Within this inquiry, the court must also consider important factors . . . such as incarceration and a defendant’s other debts.” *Id.* The sentencing court here inquired into Cruz Tellez’s employment history and his work prospects upon release, but did not request any information concerning one of the obligatory inquiries under *Blazina* – the existence of other debt. The State contends that the record is adequate because “the trial court asked the defendant whether there was any other reason he would not be able to pay the LFOs, and the defendant stated there was not.” *Respondent’s Brief*, at 8. But this inquiry did not provide the court with the specific information about debt required under *Blazina* and served to shift the burden of satisfying the inquiry requirement from the trial court to the defendant.

When evidence in the record supports the finding of ability to pay based upon an adequate *Blazina* inquiry, reversal of the cost imposition is inappropriate. *See State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). To evaluate whether the finding is clearly erroneous, the record must be sufficient to show that the trial court took into account the defendant's financial resources and the burden imposed by the assessment. *State v. Bertrand*, 165 Wn. App. 393, 404, 267 P.3d 511 (2011). Where, as here, the record does not reflect an inquiry into the defendant's debts, the record cannot be said to be sufficient to demonstrate the defendant has the ability to pay based upon the minimal inquiry requirements imposed under *Blazina*.

II. CONCLUSION

For the foregoing reasons, Cruz Tellez respectfully requests that the court REVERSE his sentence and REMAND the case to strike the finding of ability to pay legal financial obligations and resentence him accordingly.

RESPECTFULLY SUBMITTED this 8th day of March, 2016.



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DECLARATION OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Reply Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 8th day of March, 2016 in Walla Walla, Washington.


Breanna Eng