

FILED
Apr 21, 2016
Court of Appeals
Division III
State of Washington

33553-4-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSEPH M. WONCH, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF FERRY COUNTY

APPELLANT'S REPLY BRIEF

Janet G. Gemberling
Attorney for Appellant

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

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A. ARGUMENT

The sole issue in this appeal is whether Mr. Wonch's appointed counsel provided ineffective assistance when he failed to object to the imposition of discretionary legal financial obligations at the May 29, 2015 sentencing hearing. This appeal arises from the decision in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), which preceded the sentencing from which the current appeal is taken. This court need not consider the propriety of the imposition of LFOs at prior sentencing hearings which preceded the *Blazina* decision.

Under *Blazina*:

The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.

Courts should also look to the comment in court rule GR 34 for guidance. This rule allows a person to obtain a waiver of filing fees and surcharges on the basis of indigent status, and the comment to the rule lists ways that a person may prove indigent status. GR 34. For example, under the rule, courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps. *Id.* (comment listing facts that prove indigent status). In addition, courts must find a person indigent if his or her household income falls below 125 percent of the

federal poverty guideline. *Id.* Although the ways to establish indigent status remain nonexhaustive, *see id.*, if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs.

Id. at 838-39; see also GR 34(4).

Respondent claims the Blazina requirement was met when the court considered "Mr. Wonch's ability to work and therefore pay his obligations as evidenced by his health and qualification for state assistance." Respondent provides no citation to the record for this assertion; it should be disregarded. RAP 10.3. Respondent also asserts that the sentencing judge "conversed with Mr. Wonch about Mr. Wonch's educational pursuits and goals upon leaving custody at the resentencing hearing." (Resp. Br. at 5, citing RP 10-11)

Mr. Wonch told the sentencing judge that while incarcerated he had educated himself at the community college and that he had been recommended to, and accepted by, the University of Washington because of his grades and performance. (RP 10-11) The remainder of his allocation related to his claim that the Department of Corrections had withheld \$227 from him for community supervision although he had never served any such supervision. (RP 11)

Mr. Wonch's statement was allocution, not a conversation, and did not include any reference to his debts or household income. Mr. Wonch

did not indicate any employment for which this education would qualify him in light of his status as a convicted felon. There was no discussion of how Mr. Wonch would be able to afford the costs of this education.

Respondent suggests that this court should not presume Mr. Von Sauer was aware of *Blazina* because it was a recent decision. The issue before the court, then, may well be whether, in this day of high-speed electronic research facilities, counsel representing an indigent defendant at a sentencing hearing more than a month after *Blazina* was decided, who failed to make himself aware of the *Blazina* decision, could be considered to have rendered the effective assistance required by the Sixth Amendment.

Dated this 21st day of April, 2016.

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. 33553-4-III
)	
vs.)	CERTIFICATE
)	OF MAILING
JOSEPH M. WONCH,)	
)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on April 21, 2016, I served a copy of the Appellant's Reply Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

Cynthia Nelson
cnelson@wapa-sep.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that on April 21, 2016, I mailed a copy of the Appellant's Reply Brief in this matter to:

Joseph M. Wonch
904 1/2 W Dalton
Spokane, WA 99204

Signed at Spokane, Washington on April 21, 2016.


Janet G. Gemberling
Attorney at Law