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**Mar 16, 2016**  
Court of Appeals  
Division III  
State of Washington

No. 33553-4-III

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent

v.

JOSEPH M. WONCH

Appellant

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APPEAL FROM THE SUPERIOR COURT  
FERRY COUNTY

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BRIEF OF RESPONDENT

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## I. STATEMENT OF THE CASE

See Brief of Appellant pursuant to RAP 10.3.

## II. ARGUMENT

A. The Superior Court did not commit any error when it imposed legal financial obligations on Mr. Wonch.

### 1. Statutory basis

“Legal financial obligations” (LFO’s) can refer to court costs, fines, restitution, and the interest accrued on all of the above as well as other assessments that the court may make. RCW 10.01.160(4). Some of these legal financial obligations have been designated by statute and case law to be modified, remitted, or enforced. The only guidance the court has in imposing legal financial obligations is the statutory requirement that the court take into account the financial resources of the defendant. The court is to take into account the defendant’s financial resources and the burden the legal financial obligations will impose. RCW 10.01.160(3).

### 2. LFO’s in caselaw

In *State v. Curry*, the court specifically found that neither the constitution nor any other statutes require the entry of formal findings regarding the defendant’s ability to pay the court costs.

The imposition of fines and costs is within the court's discretion. State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992). State v. Kuster, 175 Wn. App. 420 states that the victim penalty assessment is statutorily mandated and not discretionary and is not to be addressed under the ability to pay requirement of RCW 10.01.160.

RCW 10.01.160's requirement is only required for discretionary LFO's. State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755 (2013) (mandatory fees, which include victim restitution, victim assessments, DNA fees, and criminal filing fees, operate without the court's discretion by legislative design); State v. Kuster, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (victim assessment and DNA collection fee mandatory).

3. Judge Monasmith's inquiry was sufficient under Blazina. State v. Blazina is a recent interpretation of RCW 10.01.160's requirements. It holds that the sentencing judge must make an individualized inquiry into the defendant's current and a future ability to pay as determined in the consideration of factors such as the defendant's incarceration, and other debts. State v. Blazina, 182 Wn.2d 827, 830, 344 P.3d 680 (2015). In Blazina, the trial court made absolutely no attempt to satisfy these obligations. In contrast, the court in the present case discussed Mr. Wonch's

finances including his physical ability to pay and whether or not there would be restitution ordered before ordering the legal financial obligations. In addition, in Blazina, the court concluded that the LFO issue is not to be presented for the first time on appeal as it does not affect uniformity. Id. at 827. Mr. Wonch has brought up the issue several times and each other time the Court has refused to hear it.

As Blazina is fairly recent, there is not much citing authority. However, in one case that has been published, the Court of Appeals did remand the issue of legal financial obligations. In State v. Leonard, the Court granted review and remanded because the costs that the superior court had imposed were primarily the costs of incarceration and medical care. The court had not inquired at all regarding the defendant's ability to pay. Therefore, because the costs were not typical and discretionary, and because the court failed to inquire regarding the defendant's ability to pay, the Court remanded the issue to the Superior Court. State v. Leonard, 184 Wn.2d 505, 508, 358 P.3d 1167, 1169 (2015).

Mr. Wonch's legal financial obligations have been reviewed several times since their original imposition. When originally presented to the court, the court inquired into Mr. Wonch's ability to pay and concluded following remarks from the defense and the prosecutor that Mr. Wonch was healthy, able-bodied, and not

qualified for SSI or SSD. (RP #310469, pg 126-128). Mr. Wonch's attorney at that time, Dennis Morgan, had not made any arguments that Mr. Wonch would be unable to pay in the future. The court considered that Mr. Wonch had not been adjudicated to be eligible for SSI or SSD and subsequently found that he would have the ability "at some point" to pay the court-ordered legal financial obligations. (RP #310469, pg 69) This is all that is necessary to find that the costs and obligations are within the court's discretion. At that time, Mr. Wonch was ordered to pay the crime victims compensation assessment of \$500, \$500 attorney fees, and the \$200 filing fee, the \$1000 drug assessment and \$100 crime lab fee. The LFO's were not challenged at the subsequent 7/13/12 and 7/20/12 hearings regarding some of the other issues Mr. Wonch had with his sentencing. Upon appeal, the Court declined to address Mr. Wonch's challenge to the LFO's finding that no express finding regarding his current ability to pay was required and any other challenge was not ripe for review until the State attempted to collect funds from Mr. Wonch. (CP 117-122, pg 2).

At Mr. Wonch's resentencing the amount of payments and pay schedule was set on May 29, 2015. At that time, the then elected Prosecutor, Emma Paulsen, stated that "The legal/financial obligations are exactly the same as they were in the initial sentencing order." She then requested a payment schedule of \$25

a month commencing the 15<sup>th</sup> of September. (RP 4) The court subsequently agreed to the Judgment and Sentence which reflected the legal financial obligations as they had been previously ordered. What is most important is that Judge Monasmith did, however informally, consider Mr. Wonch's ability to work and therefore pay his obligations as evidenced by his health and qualification for state assistance. Additionally, he also conversed with Mr. Wonch about Mr. Wonch's educational pursuits and goals upon leaving custody at the resentencing hearing. (RP 10-11) Therefore, the judge was sufficiently apprised of Mr. Wonch's ability to pay before he set the amount and method of payment of the LFO's.

B. There was no ineffective assistance of counsel.

1. Test

The test for ineffective assistance of counsel has two parts: Deficient performance (State v. Hendrickson, 129 Wn.2d 61, 77, 917 P.2d 563(1996)) and prejudice (Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)). Appellant claims that appointed counsel should have objected to the imposition of discretionary costs to Mr. Wonch due to the Court's findings in State v. Blazina.

## 2. Mr. Morgan

Mr. Wonch had counsel at his initial sentencing, Mr. Dennis Morgan. Mr. Morgan brought up some medical issues that Mr. Wonch has, questioned his future employability, and encouraged the court to only impose the mandatory fees and costs, not the discretionary fees. (RP #310469, pg 55) The state had previously asked for the mandatory \$500 crime victims assessment, the \$250 court-appointed counsel fee, the \$200 filing fee, and, indicating that jury costs were part of the plea agreement, the \$1243.54 incurred by the county for the jury, the \$1000 drug fine (which the State points out is waivable if the defendant is indigent), potential crime lab fee, and the DNA fee. (RP #310469, pg 56) The court addressed the information he received from defense counsel, finding that the defendant will have the ability to pay in the future. He subsequently ordered the \$500 (mandatory), \$500 for attorney fees, waiving the \$1000 drug fee, imposing the \$200 filing fee and jury costs, finally waiving the DNA fee. RP 69. Defense Counsel Morgan objected to the jury costs, so, in exchange, the judge imposed the drug assessment and not the jury costs. Mr. Wonch's final legal financial obligations were the \$500 crime victims' compensation, \$500 attorney fee, \$200 filing fee, \$1000 drug assessment and the \$100 crime lab fee. (RP #310469, pg 74) A method and amount of payment was not set on that date.

The judge then stated that “Mr. Wonch might be indigent for certain purposes and not for others. He’s going to be off for a while and not able to earn. But as I said, he’s not on any type of fixed income that I can see.” (RP #310469, pg 73) At the initial sentencing, Mr. Wonch’s attorney argued his legal financial obligations and therefore ineffective assistance fails.

### 3. Appellate court denied review

Mr. Wonch brought a challenge to his ability to pay his legal financial obligation as part of his appeal in No. 31046-9-III. The court found that his challenge was not a manifest error that could be raised on appeal. The appellate court did find that the trial court had not made an express finding that he had the current ability to pay his LFO’s, but that an express finding was not needed. Additionally, the challenge was not ripe until the State sought to collect.

### 4. Mr. Von Sauer

The court remanded Mr. Wonch’s personal restraint petition for resentencing. Due to Mr. Morgan being an adverse witness, he was withdrawn and replaced by Mr. James Von Sauer. The Order remanding the case for resentencing does not mention legal financial obligations, but vacates the prison sentence. The

transcript for the court proceedings on May 29, 2015 mentions legal financial obligations. Each party, the prosecutor and defense counsel, each mention them seemingly with the understanding that the legal financial obligations were to remain the same. The prosecutor referenced the LFO's by stating that: "[T]he legal/financial obligations are exactly the same as they were in the initial sentencing order. And just requires [sic] at this point that he start making payments on the 15<sup>th</sup> of September and every month thereafter until the amount is paid in full – now \$25 a month." (RP, pg 4) In her recommendation to the judge Ms. Paulsen stated that: "[S]o, at this point state's recommending... the legal/financial obligations that were imposed previously" Id. at 8. Defense counsel, in his recommendation stated that: "[S]o, at this point I think Mr. Wonch is finished with any obligation to the court system except for his legal/financial obligations." (RP, pg 10).

Mr. Wonch argues that counsel (without specifying which counsel) should have objected following Blazina to the imposition of discretionary costs. The State argues that counsel fulfilled his duties to Mr. Wonch. First, the Court of Appeals had previously refused to rule on the legal financial obligations giving counsel no reason to re-argue the issue. Second, the remand order gave no indication that there was any need to change the legal financial obligations as the Personal Restraint Petition had dealt only with

prison time. Third, the mere 6 weeks between the entrance of Blazina and the resentencing is not enough to presume that Mr. Von Sauer was aware of Blazina. Mr. Wonch, in his appeal makes several unsupported inferences to attempt to prove that Mr. Von Sauer's failure to argue Blazina was unduly prejudicial. The court acknowledged, when Mr. Wonch was first sentenced, that he would be incarcerated for a while, but found he would have the ability to pay in the future. Additionally, the court also found that although Mr. Wonch may have been indigent for some purposes (such as the appointment of public defense counsel) he was not indigent for others. Indigency on its face is not sufficient proof of an inability to pay. Finally, an ineffective assistance of counsel claim requires deficient performance and prejudicial effect. These two elements must be based on more than "reasonable probability" and inferences.

### III. CONCLUSION

Judge Monasmith sufficiently examined Mr. Wonch's ability to pay his legal financial obligations. The original imposition of the LFO's was proper and the later resentencing and setting of time and method of payment was also proper. The issue of LFO's was not remanded to Superior Court for re-sentencing; therefore it was proper for the State and the Defense not to re-argue the issue.

Secondly, there was no ineffective assistance of counsel. Because it was not proper for counsel to re-argue the issue, defense counsel was not bound by any rules to re-argue the LFO's six (6) weeks after Blazina was decided. The matter should not be remanded to the trial court for inquiry into ability to pay costs.

DATED this 16 March 2016,

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COURT OF APPEALS, DIVISION III  
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

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v.

JOSEPH M. WONCH

Appellant.

No. 33553-4-III  
Ferry County #11-1-00015-0

PROOF OF SERVICE

I, Cynthia Nelson, do hereby certify under penalty of perjury that on March 16, 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:

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