

FILED

SEP 22 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 33857-6-III

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

DWAYNE MURRELL RANKIN,

Appellant,

vs.

STATE OF WASHINGTON,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR
YAKIMA COUNTY

The Honorable Heather K. Van Nuys

APPELLANT'S REPLY BRIEF

Dwayne M. Rankin, Pro se
33248 - 45th Way South
Federal Way, WA 98001

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I. REPLY ARGUMENT

The Respondent has submitted a brief which lacks any focus on the issue or anything to do with the issue before this Court. It is obvious that Respondent is attempting to muddy the water to cloud the issue that the trial court failed to inquiry into Mr. Rankin's ability to pay cost. Mr. Rankin's goal is to refocus the Court on the issue sub judice.

The Court should take judicial notice that the only issue before the Court is whether the trial court made an individualize inquiry into Mr. Rankin's current and future ability to pay. Mr. Rankin's entire opening brief is predicated on RCW 10.01.160(3); State v. Blazina, 182 Wn.2d 827 (2015). See Mr. Rankin's opening brief at page 3, which put the Court and Respondent on notice that: "This appeal is prosecuted on only one of those statutes, i.e.: RCW 10.01.160(3)." Which clearly states:

The Court shall not order a defendant to pay cost unless the defendant is or will be able to pay them. In determining the amount and method of payment to costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of cost will impose.

RCW 10.01.160(3). This was not done in Mr. Rankin's case.

The legislature can assume its statutory commands are carried out, and if they had been, there would have been no need to use the word "shall". The legislature made no distinction to whether RCW 10.01.160(3) costs apply to mandatory or discretionary costs. The Blazina court's imperative language also prohibits the trial court from ordering costs absent an individualized inquiry into the defendant's ability to pay.

Whether the trial court possessed the power to impose costs without first inquiring into Mr. Rankin's ability to pay costs is reviewed based on the judge's failure to abide by its own statutory commands. Therefore, remand is appropriate and resentencing is a must. The trial court must

decide to impose costs and must consider the defendant's current and future ability to pay those costs based on the particular facts of the defendant's case. This was not done. The State Supreme Court held unequivocally that:

[W]e reach the merit and hold that a trial court has a statutory obligation to make an individualized inquiry into defendant's current and future ability to pay before the court imposes LFOs. Because the trial judge failed to make this inquiry, we remand to the trial court for new sentence hearing. (Emphasis added).

State v. Blazina, 182 Wn.2d at 838-39.

The Respondent has not objected to or opposed to any portion of Mr. Rankin's brief or argument set forth to this Court. In fact, Respondent's absence to address Mr. Rankin's one issue is tantamount to concession, and therefore, the court should grant Mr. Rankin the relief which he requested, that is, sever co-defendant's LFOs, than terminate Mr. Rankin's LFOs, and direct the trial court to issue "Certificate of Discharge", and restore his civil rights.

Mr. Rankin's inability to pay off the LFOs means that the superior court retain jurisdiction over impoverished Mr. Rankin long after his release from prison because the court maintains jurisdiction until he completely satisfy them. Id. Mr. Rankin was released from incarceration August 2003; Mr. Rankin has 7 children and a wife to support; Mr. Rankin has complied with all the rules and the laws of the State of Washington and United States, nevertheless, the prosecutor opposes giving Mr. Rankin relief, while knowing the record shows the trial court failed to make an individualize inquiry whether he could pay costs or the hardship imposed on his family. RCW 10.01.160(4). Mr. Rankin's case is over 20 years old.

The trial court found that the LFOs creates a hardship on Mr. Rankin's and his family, but could not remit payments because he "is not in contumacious default. The trial court opined:

The Court also finds that the present financial obligations do create a financial hardship upon you and your ability to support your family. Based on those findings the Court is going to order, in this case, that -- that your presently owe fines costs, and assessment, including interest of \$11,517.96.

Transcript of Proceedings at page 9, line 6-17.

Contrary to the State's assertions and the erroneous believe, the trial court does in fact has the authority to remit the remaining of Mr. Rankin's payments. RCW 10.01.160(4) provides:

A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

The trial court, in this case, did find: "[t]he Court will remit payment because further payment will impose a manifest hardship on the defendant and the defendant is not in contumacious default, as the Court must find to deny that request." Id. The court court erred.

On other point why this Court should reverse and remand this case for resentencing. The State misled the trial court to reason that State v. Blazina, "does not apply to criminal cases retroactively[.]" The Court further states: "So the fact that Blazina apply -- does not apply retroactively really does not have an impact on my decision." Id. at 10.

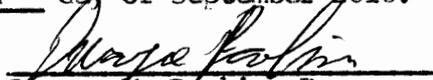
The Court decision in Blazina, does impact the trial court decision, because when the trial court failed to inquiry into Mr. Rankin's current and future ability to pay costs it cause a manifest hardship which the trial court has admitted. Under Blazina this Court must remand for resentencing, and than the trial court may reevaluate the hardship and circumstances and remit all payment.

Rather than repeat argument of Blazina, Mr. Rankin hereby incorporate by reference this Court to his Appellant's Opening Brief at pages 2 through 6. It is note worthy that the trial court never issued an order pertaining to the August 14, 2015, motion hearing, therefore, at this stage of proceedings an order is moot, and this Court should remand for resentencing with directions.

II. CONCLUSION

Because the State failed to file an appropriate response to Mr. Rankin's opening brief, and failed to address the only issue before this Court, the Court should grant Mr. Rankin the relief sought. Because of the applicable statutes and case law, this Court should reverse and remand this case to the trial court for resentencing.

Respectfully submitted this 19th day of September 2016.


Dwayne M. Rankin, Pro se
33248 - 45th Way South
Federal Way, WA 98001

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,
Plaintiff,

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DWAYNE M. RANKIN,
Defendant.

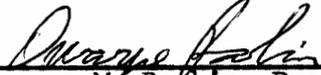
No. 33857-6-III

CERTIFICATION OF MAILING

That on the date below I served the following documents by deposition the original in the U.S. Mail to the Court of Appeals, Division II, and a copy to the prosecuting attorney office the following documents.

1. APPELLANT'S REPLY BRIEF
 2. CERTIFICATE OF MAILING
- [x] The Court of Appeals, Division III
500 N. Cedar Street
Spokane, WA 98201-1905
- [x] Prosecuting Attorney Office
Appellate Division
Tamara A. Hanlon
128 N. Second St., RM 211
Yakima, WA 98901

EXECUTED this 19th day of September 2016. Federal Way, WA



Dwayne M. Rankin, Pro se
33248 45th Way South
Federal Way, WA 98001