

**FILED**

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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

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STATE OF WASHINGTON,

Respondent,

vs.

DWAYNE MURRELL RANKIN,

Appellant,

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

The Honorable Heather K. Van Nuys

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APPELLANT'S OPENING BRIEF

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## I. ASSIGNMENT OF ERRORS

### A. ASSIGNMENT OF ERROR

- a. The Trial Court Erred In Dismissing Rankin's Petition Where It Made No Inquiry Into Rankin's Current or Future Ability To Pay The LFOs Imposed.
- b. The Trial Court Erred In Dismissing Rankin's Petition Where There Is Insufficient Evidence To Support The Trial Court's Findings That Rankin Has/Had Present or Future Ability To Pay LFOs.
- c. The Trial Court Erred Where It Failed To Strike The Unsupported Findings In Rankin's J & S To Impose LFOs.
- d. When Trial court Did Conduct an individualized inquiry into Rankin's Ability To Pay, It Determined He Did Not Have The Ability To Contribute.

### B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court's failure to make an individualized inquiry into Mr. Rankin's current or future ability to pay legal financial obligations pursuant to RCW 10.01.160(3) and State v. Blazina, 182 Wn.2d 827 (2015) constitutes reversible error?

2. Whether insufficient evidence to support the trial court's findings to impose LFOs on Rankin without determining his present or future ability to pay LFOs constitute reversible error?

3. Where there is unsupported findings in the record to impose LFOs is the proper remedy to strike the unsupported findings?

4. Where the trial court conduct an individualized inquiry into Rankin's ability to pay to retain counsel and determined he could not, does this determination constitutes his inability to pay current and future LFOs?

## II. STATEMENT OF CASE

Mr. Rankin was released from prison August 12, 2003, on a 1996 second degree manslaughter conviction after being resentenced. At resentencing, Mr. Rankin's legal financial obligations were not reevaluated and were not severed from his co-defendant's legal financial obligations.

Mr. Rankin has missed only one LFOs payment since his released

from prison, and he made-up that payment soon thereafter. Mr. Rankin has paid over \$5,000.00 in LFOs, and his co-defendant has paid less than \$500.00 in LFOs payments. Nevertheless, the trial court refused to sever Mr. Rankin's LFOs from his co-defendant's LFOs, refused to issue a Certificate of Discharge, to restore his civil rights under RCW 9.94A.637(4).

Mr. Rankin is currently active participating in his community as a law-biding-citizen; he has not been convicted of any additional offenses or arrested; he is a Minister, and is ministering in his community. Mr. Rankin works everyday to support his wife and 7 children.

Mr. Rankin completed the imposed community placement/custody sentence 12 years ago (2004). Nevertheless, Mr. Rankin is compelled to continue to pay unbearable LFOs; the Yakima Superior Court continue to have jurisdiction over Mr. Rankin, which effects his credit, and prohibits him from participating in the financial institutions.

The trial court imposed LFOs upon Mr. Rankin without making an individualized inquiry into his current and future ability to pay.

The trial court denied Mr. Rankin's petition to terminate LFOs without addressing RCW 10.01.160(3); the trial court later dismissed Mr. Rankin's motion for reconsideration without addressing RCW 10.01.160(3) or State v. Blazina.

### III. LEGAL ARGUMENT

THE TRIAL COURT'S FAILURE TO MAKE AN INQUIRY IN TO WHETHER MR. RANKIN HAD CURRENT OR FUTURE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS VIOLATED HIS EQUAL PROTECTION BY IMPOSING EXTRA PUNISHMENT.

Mr. Rankin's original petition to terminate legal financial obligations ("LFOs") was two fold, predicated on RCW 9.94A.760(4) and

RCW 10.01.160(3). This appeal is prosecuted on only one of those statute, i.e.: RCW 10.01.160(3). State v. Blazina, 182 Wn.2d 827 (2015).

The trial court may require an indigent defendant to reimburse the state for costs only if the defendant has the financial ability to do so. Fuller v. Oregon, 417 U.S. 40, 44-48, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974); State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992); State v. Blazina, 182 Wn.2d 827, 838-39, 344 P.3d 680 (2015); RCW 10.01.160(3). To do otherwise would violate equal protection by imposing extra punishment on a defendant due to his poverty.

a. The trial court made no inquiry into Mr. Rankin's current or future ability pay the LFOs imposed.

In Blazina, the superior court imposed discretionary legal financial obligations under RCW 10.01.160 consisting of the costs of appointed counsel. The State Supreme Court held that before the superior court may impose such costs, it must comply with the mandate of the statute to determine whether the defendant can or will be able to pay these costs by conducting on the record an individualized inquiry into the defendant's current and future ability to pay. Blazina, 182 Wn.2d at 838, 839; see RCW 10.01.160(3). The superior court in this case imposed costs appointed counsel, restitutions, and other discretionary costs under RCW 10.01.160. These costs, like the costs at issue in Blazian. RCW 10.01.160(3) provides:

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

The Supreme Court held in Blazian that the trial court erred when it imposed discretionary legal financial obligations upon the defendant

unless the record shows that the trial court "make an individualized inquiry into the defendant's current and future ability to pay." Id. 182 Wn.2d at 838-39. The trial court made no such inquiry into Mr. Rankin's ability to pay LFOs. Had the trial court made such inquiry into Mr. Rankin's ability to pay the imposed LFOs he would not be paying LFOs 20 years after his conviction, and 13 years after his release from total confinement. Mr. Rankin is 42 years old and will be 74 years old when he pays off the LFOs. The Blazina Court suggested that an indigent person would likely never be able to pay off LFOs. 182 Wn.2d at 839. That Court also opined:

[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.

Blazina, 182 Wn.2d at 828-829.

This imperative language prohibits the trial court from ordering LFOs absent an individualized inquiry into the person's ability to pay. The trial court must consider personal factors such length of sentence, age upon release, other debts (including restitution), past, present, and future ability to pay. Mr. Rankin had/has no assets, property, equity or saving. The trial court determined that Mr. Rankin did not have the ability to contribute to his defense. This determination was in the Judgment and Sentence by his waiving attorney fees and court costs, and finding Mr. Rankin indigent for appointment of trial counsel and for appointment of appellate counsel. This indigence issue will be further addressed in section (d) below.

The trial court ruling dismissing Mr. Rankin's petition for resentencing on LFOs, and his motion for reconsideration conflicts with

the statutory authority of RCW 10.01.160(3), and the holding in Blazina. The trial court departure from both is manifestly unreasonable and based upon untenable grounds. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). Therefore, Mr. Rankin's case should be reversed, and under these circumstances LFOs terminated because the following excerpts from Blazina directly relate to Mr. Rankin's circumstances after being

released from prison: "But on average, a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed...The inability to pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs...The court's long-term involvement in defendants' lives inhibits reentry: legal or background checks will show an active record in superior court for individuals who have not fully paid their LFOs. This active record can have serious negative consequences on employment, on housing, and on finances. LFO debt also impacts credit ratings, making it more difficult to find secure housing. WASH. STATE MINORITY & JUSTICE COMM'N, supra at 43. All of these reentry difficulties increase the chances of recidivism." Blazina, 182 Wn.2d at 836-37. See also by logging on to: [http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf).

b. There is insufficient evidence to support the trial court's findings that Mr. Rankin has the present or future ability to pay legal financial obligations.

The Curry court concluded that while the ability to pay was a necessary threshold to the imposition of costs, a court need make a specific finding of ability to pay: "neither the statute nor the constitution requires a trial court to enter formal, specific findings regarding a defendant's ability to pay court costs. State v. Curry, 118 Wn.2d 911, 916 (1992). Curry recognized, however, that both RCW 10.01.160 and the federal constitution "direct [a court] to consider ability to pay." Id. at 915-16. Here the court made no findings that Mr. Rankin has the present ability or likely future ability to pay legal financial obligations.

It does not matter whether a finding is expressed or implied, it must have support in the record. A trial court's findings of fact must be supported by substantial evidence. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006) (citing Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 939, 845 P.2d 1331 (1993)). The trial court's determination "as to the defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard." State v. Bertrand, 165 Wn.App. 393, 404, 267 P.3d 511, 517 fn. 13 (2011), citing State v. Baldwin, 63 Wn.App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991).

The court in Bertrand, held "Although Baldwin does not require formal findings of fact about a defendant's present or future ability to pay LFOs, the record must be sufficient for [the appellate court] to review whether 'the trial court judge took into account the financial resources of the defendant and the nature of the burden imposed by LFOs under clearly erroneous standard.'" 165 Wn.App. 393, 267 P.3d at 517; citing Baldwin, 63 Wn.App. at 321. A finding that is unsupported in the record must be stricken. Id. at 517. Under this authority alone, Mr. Rankin is entitled to resentencing and having his LFOs terminated.

Mr. Rankin's record does not show that the trial court took into account his financial resources and the nature of the burden of imposing LFOs. The record instead supports the opposite conclusion. The record contains no evidence to support the trial court's findings in that Mr. Rankin has had the present or future ability to pay LFOs. RCW 10.01.160(3); Blazina, 182 Wn.2d at 838-839.

The bottom line is assessment of costs and ability to pay must be based on an individualized inquiry into the defendant's current and

future ability to pay that is reflected in the record, consistent with the requirement of Blazina. Here, Mr. Rankin's record reflect no such inquiry at the sentencing or the resentencing hearing, and Judgment & Sentencing form contains only a boilerplate findings, which the Supreme Court in Blazina held to be inadequate. 182 Wn.2d at 838.

c. The remedy is to strike the unsupported findings.

Bertrand is clear: where there is no evidence to support the trial court's findings regarding ability and means to pay, the findings must be stricken. This remedy is supported by case law. Findings of fact that are unsupported by substantial evidence, or findings that are insufficient to support imposition of a sentence are stricken and the underlying conclusion or sentence is reversed. State v. Lohr, 164 Wn.App. 414, 263 P.3d 1287, 1289-1292 (2011); State v. Schelin, 147 Wn.2d 562, 584, 55 P.3d 632 (2002). There appears to be no controlling contrary authority holding that it is appropriate to send a factual finding without support in the record back to a trial court for purposes of "fixing" it with the taking of new evidence. In this case the court should reversed and terminated Mr. Rankin's LFOs forthwith.

d. When trial court did conduct an individualized inquiry into Rankin's ability to pay, it determined he did not have the ability to contribute to his defense.

Surmising, the court must have taken into consideration the length of sentence, age upon release, his past, present, and future ability to pay, and that Mr. Rankin had no assets, property, equity or savings, determined that Rankin did not have the ability to contribute to his defense. This determination was in the Judgment and Sentence by his waiving attorney fees and court costs, and finding Mr. Rankin indigent

for appointment of trial counsel and for appointment of appellate counsel.

RCW 10.101.010(3) & (4) define two types of indigence, "indigent", and "indigent and able to contribute." A person as "indigent" for the purposes of receiving appointed counsel if he or she receives at least one of four disjunctive criteria at any stage of the legal proceedings. Receipt of one of several public assistance benefits; earning less than 125 percent of the federal poverty level in income, satisfies another. "Indigent" further means as Judge Heather K. Van Nuys anticipated, Mr. Rankin was "unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel." RCW 10.101.010(3)(a)(c)&(d).

The plain terms of RCW 10.101.010(3), Mr. Rankin was [constitutionally] indigent. Mr. Rankin satisfied two of the criteria for constitutional indigence under RCW 10.101.010(3). Mr. Rankin was earning less than 125 percent of the federal poverty level before his arrest; and unable to pay the anticipated costs. Any one of these would have been sufficient to require indigence. Judge Van Nuys reflected that in the J&S by waiving attorney fees and court costs. This is considered a written finding by the trial court that is essence said: Mr. Rankin is indigent within the terms of the statute, and unable to contribute.

To reiterate, the Blazina Court suggested that an indigent person would likely never be able to pay LFO's. 182 Wn.2d at 839. "[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person ability to pay LFO's". Mr. Rankin was determined to

be indigent at both the beginning and end of the the proceedings in trial court. This Court should reverse and terminate Mr. Rankin's LFOs.

IV. CONCLUSION

For all of the forgoing reasons and circumstances, especially Mr. Rankin being compelled to pay co-defendant's LFOs, Mr. Rankin supporting his wife and 7 children causing hardships on his family, and all of the applicable statutes and case laws, this Honorable Court should sever co-defendant's LFOs, reverse the trial court sentence of imposed LFOs, terminate LFOs and issue a "Certificate of Discharge" and restore Mr. Rankin's civil rights forthwith.

Respectfully submitted this 21<sup>st</sup> day of March 2016.

  
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THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,  
Plaintiff,

v.

DWAYNE M. RANKIN,  
Defendant.

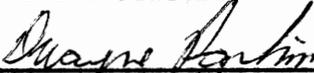
No. 33857-6-III

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 III, and a copy to the prosecuting attorney office the following documents.

1. APPELLANT'S OPENING BRIEF
  2. CERTIFICATE OF MAILING
- [x] The Court of Appeals, Division III  
500 N. Cedar Street  
Spokane, WA 98201-1905
- [x] Prosecuting Attorney Office  
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Tamara A. Hanlon  
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EXECUTED this 21<sup>ST</sup> day of March 2016. Seattle, WA

  
\_\_\_\_\_  
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