

FILED
Dec 15, 2016
Court of Appeals
Division III
State of Washington

NO. 34221-2-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JOSE LUIS AGUILAR,

Defendant/Appellant.

REPLY BRIEF

Dennis W. Morgan WSBA #5286
Attorney for Appellant
P.O. Box 1019
Republic, Washington 99166
(509) 775-0777

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ARGUMENT

The State misinterprets the current state of the law as it pertains to legal financial obligations (LFOs).

Initially, the State claims that Mr. Aguilar has no right of appeal under RAP 2.5 (a).

The proper analysis is set out in *State v. Shirts*, 195 Wn. App. 849 (2016).

The *Shirts* Court overruled *State v. Mahone*, 98 Wn. App. 342, 989 P.2d 583 (1999) finding that Mr. Shirts was an aggrieved party whose petition to remit LFOs under RCW 10.01.160 (4) was appealable based upon the case of *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

Moreover, the trial court's denial of the remission petition is founded upon a clearly erroneous basis. The ruling violates RCW 10.01.160 (4) and existing caselaw.

The Court finds that the defendant may have the future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753. He has minimal ability to currently pay.

It is appropriate to re-address LFO issue
when Def. is released from custody.

(CP 33-34)

The State recognizes that a remission petition may be filed at any time. However, then the State's argument departs from common sense and maintains that since no collection action has occurred Mr. Aguilar's petition was untimely. The inconsistency is apparent.

The State may have been unaware of *State v. Shirts, supra* when it filed its brief. The *Shirts* court noted at 860:

Here, Shirts filed his petitions, with supporting affidavits and other filings, asserting that his LFOs imposed "sever[e] hardship" upon him and his family.... At that point, the statute requires the superior court to determine whether Shirts had made a satisfactory showing of "manifest hardship."... But the superior court did not do so. Instead, the superior court denied the motion as untimely because the State sought to collect. The superior court, by failing to exercise its discretion, abused its discretion.

Mr. Aguilar otherwise relies upon the argument contained in his original brief and urges the court to grant his appeal and direct remission of the non-mandatory LFOs.

DATED this 15th day of December, 2016.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99166

(509) 775-0777

(509) 775-0776

nodblspk@rcabletv.com

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COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	BENTON COUNTY
Plaintiff,)	NO. 13 1 00605 1
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JOSE LUIS AGUILAR,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 15th day of December, 2016, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

COURT OF APPEALS, DIVISION III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

BENTON COUNTY PROSECUTOR'S OFFICE

Attn: Andrew Kelvin Miller

prosecuting@co.benton.wa.us

E-FILE

JOSE LUIS AGUILAR #825397

Airway Heights Correction Center

PO Box 2049

Airway Heights, Washington 99001

U.S. MAIL

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99169

Phone: (509) 775-0777

Fax: (509) 775-0776

nodblspk@rcabletv.com