

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

Court of Appeals No. 34221-2-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

JOSE LUIS AGUILAR, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 13-1-00605-1

BRIEF OF RESPONDENT

ANDY MILLER
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WASHINGTON STATUTES

RCW 10.01.160(3).....1

I. RESPONSE TO ASSIGNMENT OF ERROR

1. The trial court did not abuse its discretion by denying the defendant's motion to terminate his discretionary legal financial obligations.

II. STATEMENT OF FACTS

The defendant, Jose Luis Aguilar, was found guilty of one count of Murder in the Second Degree and one count of Rape of a Child in the First Degree by guilty plea. CP 3. On September 24, 2014, the trial court imposed a sentence consisting of 357 months total confinement on count one and 123 months to life on count two. CP 8. The trial court imposed discretionary costs in the amount of \$34,718.97¹ and mandatory costs in the amount of \$800². CP 6, 16. Restitution was ordered in the amount of \$2,189.44. CP 6.

On January 20, 2016, the defendant filed a motion under RCW 10.01.160(3) to remit his legal financial obligations (LFOs), asserting that the court failed to conduct an individualized inquiry into his ability to pay at the time of sentencing. CP 21. The State filed a response, arguing that while a complete remission of his LFOs was not appropriate, he may be entitled to a hearing under RCW 10.01.160(3). CP 25-26. The court

¹ \$60 sheriff service fee, \$14,496.35 court-appointed attorney fee, and \$20,162.62 special costs reimbursement. CP 6, 16.

determined that the record did not reflect the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay his LFOs and ordered a resentencing hearing to conduct the inquiry. CP 27-28.

A resentencing hearing was held on February 18, 2016. CP 33-34; RP 02/18/2016 at 2. After conducting the individualized inquiry, the court found that the defendant "may have the future ability to pay the legal financial obligations imposed herein" CP 34. The court made a notation which indicated, "He has minimal ability to currently pay." CP 34. Additionally, the court found that it would be appropriate to re-address the LFO issue when the defendant is released from custody. CP 34.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY FAILING TO WAIVE THE DEFENDANT'S DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS.

The defendant argues that the trial court abused its discretion by failing to waive his discretionary LFOs. The trial court did not abuse its discretion by failing to waive the discretionary LFOs because the court determined that the defendant had the minimal present and possible future ability to pay after conducting the individualized inquiry.

² \$500 victim penalty assessment, \$100 felony DNA fee, and \$200 criminal filing fee. CP 6, 16.

A court's decision is manifestly unreasonable so as to constitute an abuse of discretion if it is outside the range of acceptable choices, given the facts and the applicable reasonable standard. *State v. Lamb*, 175 Wn.2d 121, 285 P.3d 27 (2012).

The defendant's motion filed on January 20, 2016, claimed that at the time of sentencing, he was receiving Social Security benefits. CP 24. He provided no documentation at the time of sentencing or resentencing to support his allegation. The defendant asserted that while in prison, he receives a paycheck of approximately \$150 per month. RP 02/18/2016 at 2. The Department of Corrections garnishes 75 percent of his earnings. *Id.*

In determining his ability to pay, the court noted:

It seem[s] to me that the present ability [to pay] is minimal but I don't see a problem taking 75 percent of [h]is earnings from jail. At this point in time I don't think it's appropriate to address or eliminate some LFO's. It certainly would be at the time he is released. At that time we will have another hearing to determine if he able to work if not we will take whatever we can.

RP at 3-4.

The mandatory Department of Corrections's deductions for repayment of LFOs are not collection actions by the State. *State v. Crook*, 146 Wn. App. 24, 189 P.3d 811 (2008), *review denied*, 165 Wn.2d 1044 (2009). The court in *Crook* held:

Mandatory Department of Corrections' deductions from inmate wages for repayment of legal financial obligations are not collection actions by the State requiring inquiry into a defendant's financial status. Statutory guidelines set forth specific formulas allowing for fluctuating amounts to be withheld, based on designated percentages and inmate account balances, assuring inmate accounts are not reduced below indigency levels.

Id. at 27-28 (citations omitted).

The record reflects that at the time of resentencing, the defendant was working while incarcerated with the Department of Corrections. RP 02/18/2016 at 2. The trial court properly ruled that the defendant had the present, albeit minimal, ability to pay his LFOs. Thus, the court did not abuse its discretion by failing to waive the discretionary LFOs.

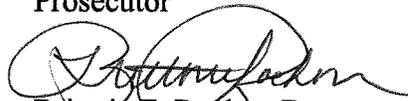
IV. CONCLUSION

Based upon on the aforementioned facts and authorities, the defendant's appeal should be denied. The State respectfully requests that costs be taxed as requested by the State.

RESPECTFULLY SUBMITTED this 21st day of November,
2016.

ANDY MILLER

Prosecutor



Brittnie E. Roehm, Deputy

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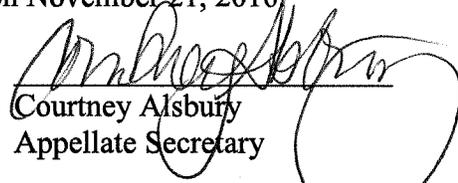
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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E-mail service by agreement
was made to the following
parties: nodblspk@rcabletv.com

Signed at Kennewick, Washington on November 21, 2016


Courtney Alsbury
Appellate Secretary