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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35318-4-III

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STATE OF WASHINGTON, Respondent,

v.

DANIEL M. CAMPBELL, Appellant.

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**APPELLANT'S REPLY BRIEF**

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**TABLE OF CONTENTS**

**AUTHORITIES CITED**.....ii

**I. ARGUMENT**.....1

**II. CONCLUSION**.....4

**CERTIFICATE OF SERVICE** .....5

**AUTHORITIES CITED**

**State Cases**

*State v. Bertrand*, 165 Wn. App. 393, 267 P.3d 511 (2011).....2

*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).....1

*State v. Lundy*, 176 Wn. App. 96, 308 P.3d 755 (2013).....1, 2

*State v. Shirts*, 195 Wn. App. 849, 381 P.3d 1223 (2016).....1, 2

**Administrative Code**

WAC 137-56-040.....3

## I. ARGUMENT

In its response, the State contends that Campbell's challenge to the trial court's LFO repayment order is unripe, citing *State v. Lundy*, 176 Wn. App. 96, 108-09, 308 P.3d 755 (2013). But *Lundy* was decided before *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), which undercuts much of its reasoning. The *Blazina* Court thoroughly documented the harms that accrue from "broken LFO systems" that increase the difficulty offenders face in reentering society. 182 Wn.2d at 835. Precedents that fail to consider the individual and social harms that accrue to incarcerated offenders subject to unpayable LFO debt represent an obsolete logic that has been superseded by the substantial study and data accumulation recognized by the *Blazina* Court.

A similar argument to the State's was presented in *State v. Shirts*, 195 Wn. App. 849, 381 P.3d 1223 (2016), in which the Court of Appeals reconsidered the rule that a criminal defendant subject to unpayable LFOs did not become an "aggrieved party" until the State attempted to enforce the order by commencing collection proceedings. Similarly, as the State argues Campbell's challenge is not "ripe" because the State has not yet begun proceedings to enforce the obligation, the State in *Shirts* argued that denial of a motion to remit LFOs was not appealable because the defendant was not injured until collection proceedings commenced. 195

Wn. App. at 854-55. Rejecting this argument, as well as the pre-*Blazina* precedent on which it depended, the *Shirts* court concluded that “the recognized and real impacts LFOs have on offenders” render the harm of an unpayable LFO debt real, not speculative. 195 Wn. App. at 856-57. Under the same reasoning, Campbell’s inability to pay LFOs during his incarceration subjects him to the actual harms recognized in *Blazina*, regardless of whether the State takes affirmative steps to pursue contempt proceedings or otherwise compel payment.

Significantly, the *Lundy* Court compared and distinguished cases in which courts declined to review LFOs with *State v. Bertrand*, 165 Wn. App. 393, 267 P.3d 511 (2011), in which the defendant was disabled and ordered to begin repaying LFOs while still incarcerated. 176 Wn. App. at 108. In *Bertrand*, the payment order potentially violated the fifth factor identified in *State v. Curry*, 118 Wn.2d 911, 915, 829 P.2d 166 (1992) as required for a constitutionally permissible cost and fee structure – namely, that the obligation may not be imposed if it appears there is no likelihood the defendant’s indigency will end. *Lundy*, 176 Wn. App. at 106.

Similarly here, where the court acknowledged it had no reason to believe Campbell would be able to begin making the payments at the time ordered, the trial court’s payment order imposes an obligation on Campbell while

he is incarcerated and there is no likelihood he will not be indigent at that time.

Lastly, the State argues that because the legislature has authorized work release programs for inmates, Campbell may be able to pay LFOs during his incarceration. But the State presents no evidence as to whether Campbell is eligible for work release or what income he could expect to obtain from it. From a qualification standpoint, Department of Corrections regulations appear to prohibit Campbell from participating in work release until the final six months of his sentence, and then only if he has achieved a minimum security status. WAC 137-56-040. Because Campbell's total sentence was 63 months, he would not be eligible to participate in work release until he had served approximately 57 months, which would be long after the repayment obligation commenced in May 2018. RP 295-96.

For these reasons, entry of an order of repayment beginning while Campbell is at the beginning of a five-year sentence is clearly erroneous, as there is no support in the record for the proposition that he will be able to pay at the time required. Accordingly, Campbell respectfully requests that the obligation to begin repaying LFOs beginning in May 2018 be stricken from the judgment and sentence.

II. CONCLUSION

For the foregoing reasons, Campbell respectfully request that the court REMAND the case to modify the date to commence paying his LFOs.

RESPECTFULLY SUBMITTED this 2 day of January, 2018.



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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Reply Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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And, pursuant to prior agreement of the parties, by e-mail to the following:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 2 day of January, 2018 in Walla Walla, Washington.

  
\_\_\_\_\_  
Andrea Burkhart

**BURKHART & BURKHART, PLLC**

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**Transmittal Information**

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