

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35318-4-III

STATE OF WASHINGTON, Respondent,

v.

DANIEL M. CAMPBELL, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

Daniel Campbell was convicted of assault by a jury. At sentencing, the court imposed only mandatory legal financial obligations (“LFOs”) but ordered Campbell to begin repaying them while he was still incarcerated, despite acknowledging that it did not know how Campbell would be able to comply. This error requires remand to modify the order for payment of Campbell’s LFOs.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred in ordering Campbell to begin paying legal-financial obligations (“LFOs”) on a date when he would still be incarcerated and unable to pay them.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Is it unreasonable for the trial court to enter an LFO payment order that it knows the defendant will not be able to pay?

IV. STATEMENT OF THE CASE

The State charged Daniel Campbell with first degree assault, alleging that he punched Amber Hellman in the mouth a single time and knocked out her tooth. CP 2, 18. At trial, Hellman testified that she was staying at a friend’s house where Campbell was also staying. RP 104,

106-07. On the day in question, she got into an argument with Campbell. RP 114. Shortly afterward, she was walking out to the car when Campbell approached her from behind and said something to her. RP 116, 118-19. As she turned around, she was struck in the mouth and her tooth was knocked out. RP 119-20. Hellman testified that she was not knocked down or rendered unconscious, but she bent down to pick up her tooth and her backside hit the sidewalk. RP 120.

Hellman then described getting a ride to the hospital because she was bleeding, but they would not treat her until she called the police and her phone was dead. RP 123-24. Her daughter picked her up and took her to another hospital, where she was eventually treated. RP 125-26. The treating doctor testified that she suffered a fracture to her oral cavity and required surgery. RP 54, 57-58.

The defense focused on Hellman's injuries to argue that the State failed to show that the injuries she suffered rose to the level required to establish a first degree assault. RP 255-56. Apparently agreeing, the jury convicted Campbell of the lesser offense of second degree assault. CP 122.

At sentencing, Campbell had a score of 8 and faced a standard range of 53-70 months. CP 130-31, 135. The trial court imposed a mid-

range term of 63 months. CP 136. With respect to LFOs, the court heard that Campbell had struggled with housing and supported himself with odd jobs. RP 291. The court did not find that he had the ability to pay discretionary LFOs and imposed only the mandatory assessments, ordering Campbell to begin paying them at \$5 per month beginning May 15, 2018. RP 294; CP 139. Thereafter, the following colloquy ensued:

THE COURT: And I'm going to reiterate for you, sir, that those begin accumulating interest and that's a difficult thing, so if there's any way to begin those payments as quickly as possible, and I understand \$5 a month is not an insignificant amount.

THE DEFENDANT: Could I ask how I'm expected to make payments while I'm incarcerated?

THE COURT: That's a very fair question. It's a difficult one that I can't answer. If you can't make the payments --

THE DEFENDANT: Can you set the payments for after my release date?

THE COURT: I don't know when your release date will be, sir, and I can't calculate that.

THE DEFENDANT: You just said 63 months. You could add 63 months, you know, to the date of right now and then, you know, then I would be, you know, a good place to set the date for starting to make payments.

THE COURT: Sir, I gave you the opportunity to talk to the court before I began imposing a sentence, and I appreciate your interpretation, but I cannot say 63 months from now is when you will be out of incarceration. So I have set the date at May 15th of 2018.

RP 295-96.

Campbell now appeals, and has been found indigent for that purpose. CP 146, 154.

V. ARGUMENT

The trial court's order that Campbell must begin paying LFOs while still incarcerated was an abuse of discretion. The trial court plainly understood that Campbell lacked the ability to comply with its order, but refused to consider a realistic payment term. Under these circumstances, the court's entry of an order knowing compliance was impossible was unreasonable. Accordingly, the case should be remanded for modification of the terms of payment.

In *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Washington Supreme Court held that to comply with RCW 10.01.160, trial courts must conduct an individualized inquiry into the defendant's ability to pay LFOs before imposing them. Under *Blazina*, signing a judgment containing boilerplate language is insufficient; the record must demonstrate that the court considered "the financial resources of the defendant and the nature of the burden that payment of costs will impose," including the defendant's incarceration and other debts. *Id.* at 838. The *Blazina* Court further recognized that if a defendant meets the GR 34

standard for indigency, “courts should seriously question that person’s ability to pay LFOs.” *Id.* at 839.

Here, the trial court only imposed mandatory LFOs consisting of a \$200 criminal filing fee, a \$100 DNA collection fee, and a \$500 victim assessment. CP 139. *State v. Clark*, 191 Wn. App. 369, 373, 362 P.3d 309 (2015); *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). Those assessments must be imposed regardless of the defendant’s ability to pay. *Lundy*, 176 Wn. App. at 102; *State v. Kuster*, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013). Thus, the trial court did not commit error in imposing these LFOs. Instead, the trial court committed error in ordering him to begin repaying them at a time when it knew he would be unable to comply, necessarily exposing him to contempt proceedings.

Under RCW 10.01.170, a trial court has discretion to order payment to be made within a specified period of time or in specified installments. *See also Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 110, 52 P.3d 485 (2002) (“[T]he court has independent authority to allow installment payment under RCW 10.01.170.”). Thus, its order is evaluated for abuse of that discretion, which occurs when the decision is manifestly unreasonable, or based on untenable grounds or reasons. *State v. Stearman*, 187 Wn. App. 257, 264-65, 348 P.3d 394 (2015).

It is unreasonable to impose an order with knowledge that the defendant will be unable to comply with it. Here, the trial court abused its discretion when it ordered Campbell to begin paying his LFOs while he was still incarcerated with substantial time remaining to serve, after acknowledging that he did not know how Campbell would be able to do so. Although the trial court knew at the time it entered the order that Campbell would be unable to comply with it, its order subjected Campbell to the panoply of consequences of failing to comply including the “demoralizing cycle of court hearings, contempt charges, and arrest warrants.” American Civil Liberties Union of Washington, *Modern Day Debtor’s Prisons: The Ways Court-Imposed Debts Punish People for Being Poor* at 3 (Feb. 2014), available online at <https://www.aclu-wa.org/file/99491/download?token=NI8TOkeq> (last visited Sept. 30, 2017) (“ACLU report”).

Nonpayment of an installment is punishable by contempt. RCW 10.01.180(1). The trial court may issue a warrant or order requiring the defendant to appear and show that the default was not contemptuous. RCW 10.01.180(1), (4). The burden in such a proceeding is on the defendant to show that he is unable to comply with the court’s order. *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995).

The *Blazina* Court recognized that unpayable LFO orders have significant consequences for both the offender and society as a whole. Interest that accrues on unpayable LFOs acts as a tax on indigency that wealthier offenders escape. *See Blazina*, 182 Wn.2d at 836. The offender's continuing involvement with the courts inhibits successful reentry, damages credit, and makes housing, employment, and financial stability more difficult to obtain. *Id.* at 837. Moreover, given the paucity of funds actually collected from LFO assessments, it is nearly certain that counties spend far more chasing collections from indigent offenders than they ever receive back in payments. *See id.* (in 75% of 2004 cases studied, less than 20% of LFOs had been paid 3 years after sentencing); ACLU Report at p. 10 ("It is clear that Benton County and its cities are spending hundreds of thousands of dollars every year on LFO collections.").

Here, the trial court sentenced Campbell to a prison term of just over five years, but ordered him to begin paying his LFOs in one year. RP 284, 294. Notably, the court stated it had no idea how he would be able to make payments while incarcerated. RP 294. Nevertheless, it refused to set the payments to begin after Campbell's release because it could not calculate exactly when that would be. RP 294-95. But the court's discretion would have allowed it to fashion an appropriate commencement

of the payment without setting a specific date, such as by simply stating the payments would be required to commence after Campbell's release from prison.

“When a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law.” *State v. McFarland*, __ Wn.2d __, 399 P.3d 1106, 1110 (2017). Here, the court should have considered the individual and social costs of imposing an unpayable LFO order recognized in *Blazina* as well as its own broad discretion to craft a time-payment order that established a realistic prospect of compliance. Failing to do so, under the limited circumstances of this case, was unreasonable, and served only to ensure that Campbell would be in jeopardy of a contempt proceeding. Accordingly, the order requiring Campbell to begin repaying his LFOs on May 15, 2018 should be stricken and the case remanded to enter a payment date or appropriate language requiring that repayment begin after Campbell's release.

In the event the court does not grant the relief requested, Campbell respectfully requests that the court decline to impose appellate costs pursuant to RAP 14.2. Consistent with RAP 14.2, barring a showing that establishes a significant improvement in his financial circumstances by a

preponderance of the evidence, his indigency is presumed to continue, rendering a cost assessment inappropriate.

VI. 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 October, 2017.

A handwritten signature in black ink, appearing to read "Andrea Burkhart". The signature is written in a cursive style with a large initial 'A'.

ANDREA BURKHART, WSBA #38519
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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 Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Daniel M. Campbell, DOC # 320010
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And, pursuant to prior agreement of the parties, by e-mail to the following:

Brian O'Brien, Deputy Prosecuting Attorney
SCPAAppeals@spokanecounty.org

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 October, 2017 in Walla Walla,
Washington.



Andrea Burkhart

BURKHART & BURKHART, PLLC

October 02, 2017 - 9:07 AM

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