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NO. 35729-5-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

JOEL GROVES,

Appellant.

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

The Honorable Scott Sparks, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
C. <u>ARGUMENT</u>	4
1. THE DEPARTMENT OF CORRECTIONS’S COLLECTION OF LEGAL FINANCIAL OBLIGATIONS WITHOUT ABILITY-TO-PAY DETERMINATIONS VIOLATES THE CONSTITUTION.....	4
2. CRIMINAL FILING FEES WERE NOT IMPOSED IN THE JUDGMENTS AND SENTNECES AND THEREFORE THE TRIAL COURT SHOULD HAVE EXERCISED ITS DISCRETION TO STRIKE \$200 IN DISCRETIONARY “COURT COSTS” FROM EACH JUDGMENT AND SENTENCE.....	9
D. <u>CONCLUSION</u>	12

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>City of Richland v. Wakefield</u> 186 Wn.2d, 596, 380 P.3d 459 (2016).....	9
<u>Grant v. Smith</u> 24 Wn.2d 839, 167 P.2d 123 (1946).....	10
<u>In re Rights to Waters of Stranger Creek</u> 77 Wn.2d 649, 466 P.2d 508 (1970).....	8
<u>State v. Barklind</u> 87 Wn.2d 814, 557 P.2d 314 (1976).....	4
<u>State v. Blank</u> 131 Wn.2d 230, 930 P.2d 1213 (1997).....	6, 7, 8
<u>State v. Blazina</u> 182 Wn.2d 827, 344 P.3d 680 (2015).....	3, 8
<u>State v. Crook</u> 146 Wn. App. 24, 189 P.3d 811 (2008).....	1
<u>State v. Crook</u> 146 Wn. App. 24, 189 P.3d 811 (2008).....	1, 7, 8
<u>State v. Curry</u> 118 Wn.2d 911, 829 P.2d 166 (1992).....	6
<u>State v. Duncan</u> 185 Wn.2d 430, 374 P.3d 83 (2016).....	4
<u>FEDERAL CASES</u>	
<u>Fuller v. Oregon</u> 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974).....	5, 7, 8

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
Alexes Harris, <u>Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States</u> 115 AM. J. Soc. 1753 (2010)	6
RAP 9.6.....	3
RCW 9.94A.030	8
RCW 9.94A.505	10
RCW 9.94A.750,	11
RCW 9.94A.753	11
RCW 9.94A.760	8, 10, 11
RCW 10.01.160	10, 11
RCW 10.46.190	10, 11
RCW 36.18.020	10
RCW 43.43.7541	11
RCW 72.09.015	7
RCW 72.09.110	7
RCW 72.09.111	7
RCW 72.11.020	7
Sentencing Reform Act of 1981	10

A. ASSIGNMENTS OF ERROR

1. The imposition of interest and the forced collection of legal financial obligations (LFOs) from Joel Matthew Groves through the Department of Corrections (DOC) without any consideration of his ability to pay them violates due process under clear United States and Washington Supreme Court precedent.

2. The trial court erred in refusing to strike \$200 of “[c]ourt costs” imposed in the judgments and sentences, mistakenly believing that \$200 of “[c]ourt costs” imposed in the judgments and sentences consisted of criminal filing fees.

Issues Pertaining to Assignments of Error

1a. Does assessing additional penalties, such as interest, and forcing collection without any ability-to-pay inquiry violate due process under United States and Washington Supreme Court precedent?

1b. Should this court’s decision in State v. Crook, 146 Wn. App. 24, 189 P.3d 811 (2008), be overruled because it is inconsistent with United States and Washington Supreme Court precedent and is therefore incorrect and harmful?

2. The trial court intended to terminate all discretionary legal financial obligations (LFOs) from Joel Matthew Groves’s judgments and

sentences in two separate superior court matters.¹ The trial court entered orders striking all LFOs except for a \$500 victim assessment, a \$200 criminal filing fee, and a \$100 DNA collection fee. The \$200 criminal filing fee was not imposed in the judgments and sentences; \$200 in “[c]ourt costs” were imposed. Should this matter therefore be remanded so that the \$200 in discretionary court costs may be stricken from the judgments and sentences?

B. STATEMENT OF THE CASE

In the 07 matter, the State charged Groves by way of amended information with possession of methamphetamine and fourth degree assault. CP 4. Groves pleaded guilty. CP 5-14. In the judgment and sentence, the trial court imposed a \$500 victim assessment, \$600 fee for a court-appointed attorney, \$100 DNA collection fee. and \$200 in unspecified “[c]ourt costs.” CP 18.

In the 09 matter, the State charged Groves with felony harassment, possession of marijuana, possession of methamphetamine, and use of drug paraphernalia. CP 66-67. A jury found him guilty on all counts. CP 68. In the judgment and sentence, the trial court imposed a \$500 victim assessment,

¹ These two matters, Kittitas County cause nos. 07-1-00269-2 and 09-1-00317-2, have been consolidated on appeal. For clarity and shorthand, Groves will refer to the different matters as the “07” matter/case and the “09” matter/case.

\$100 domestic violence assessment, \$600 fee for a court-appointed attorney, \$100 DNA collection fee, and \$200 in unspecified “[c]ourt costs.” CP 72. This judgment and sentence was later amended. CP 98-109. The types and amounts of LFOs imposed in the amended judgment and sentence were not changed, however. CP 102.

In March 2017, in both the 07 and 09 matters, Groves moved to reconsider the LFOs imposed in the judgments and sentences in light of State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). CP 29, 159. Groves’s motion was granted in part: the trial court modified the LFOs to “consist only of” the \$500 victim’s penalty assessment, the \$100 DNA collection fee, and the \$200 criminal filing fee. CP 30, 160. Notably, the criminal filing fee was never imposed in the judgments and sentences; rather, \$200 in unspecified “[c]ourt costs” was imposed. CP 18, 72, 102.

In July 2017 and October 2017, Groves filed additional motions to terminate the remaining LFOs. CP 31-33, 35-42.² In these motions, he asked that DOC be ordered to stop collecting on the LFOs. CP 31-32. He also asserted that the imposition and continued collection of the “mandatory” LFOs

² The motions filed in the 07 and 09 matters were identical. Groves has designated as clerk’s papers only the motions filed in the 07 matter to avoid duplicative documents in the record. See RAP 9.6(a) (“Each party is encouraged to designate only clerk’s papers . . . needed to review the issues presented to the appellate court.”).

was unconstitutional, relying on precedent from both the United States and Washington Supreme Courts. CP 37-41.

On November 20, 2017, the trial court had an ex parte hearing at which it and the prosecutor discussed Groves's motions. RP 3-5. Though everything that was discussed is unclear given the alarming number of "(Inaudible)" notations in the transcript, the State represented that "six or eight months ago the court reduced the amount of LFOs to the lowest amount allowable under the law" and "I don't think there's anything the court can do; I don't think there's a remedy the court can address." RP 3.

In January 2018, the trial entered nunc pro tunc orders denying Groves's motions to terminate LFOs. CP 58, 161. The orders indicated that the trial court had already modified the LFOs to consist only of the \$500 victim assessment, \$200 criminal filing fee, and \$100 DNA collection fee. CP 58, 161.

Groves timely appealed these orders. CP 46-57.

C. ARGUMENT

1. THE DEPARTMENT OF CORRECTIONS'S
COLLECTION OF LEGAL FINANCIAL OBLIGATIONS
WITHOUT ABILITY-TO-PAY DETERMINATIONS
VIOLATES THE CONSTITUTION

"The imposition and collection of LFOs have constitutional implications and are subject to constitutional limitations." State v. Duncan,

185 Wn.2d 430, 436, 374 P.3d 83 (2016). State v. Barklind, 87 Wn.2d 814, 817, 557 P.2d 314 (1976), distilled seven requirements of a constitutional LFO system from Fuller v. Oregon, 417 U.S. 40, 44-47, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974): (1) repayment must not be mandatory; (2) repayment may be imposed only on convicted defendants; (3) repayment may only be ordered if the defendant is or will be able to pay; (4) the financial resources of the defendant must be taken into account; (5) a repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end; (6) the defendant must be permitted to petition the court for remission of the payment of costs or any unpaid portion; (7) the defendant cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

To pass constitutional muster under Fuller, "Defendants with no likelihood of having the means to repay are not put under even a conditional obligation to do so, and those upon whom a conditional obligation is imposed are not subjected to collection procedures until their indigency has ended and no 'manifest hardship' will result." Fuller, 417 U.S. at 46. The Washington Supreme Court has also provided that the constitutionality of Washington's LFO statutes depends on conducting ability-to-pay inquiries at certain times, including "when sanctions are sought for nonpayment," "if the State seeks to

impose some additional penalty for failure to pay,” and “before enforced collection or any sanction is imposed for nonpayment.” State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997). Washington courts are not in constitutional compliance. Fees, costs, and collections are routinely imposed and enforced with no financial inquiry whatsoever.

Washington’s laws provide for an elaborate and aggressive collections process that includes the immediate assessment of interest, enforced collection methods through different entities, including DOC, and the authorization of numerous additional sanctions and penalties. It is a vicious cycle that has had devastating effects on the persons involved in the process and, often, their families. See generally Alexes Harris, Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States, 115 AM. J. Soc. 1753 (2010) (reviewing Washington’s LFO cycle and its damaging impact on those who do not have the ability to pay). Washington’s LFO system does not conform to the necessary constitutional safeguards established in Blank, as this case demonstrates.

The Washington Supreme Court has held that monetary assessments may be imposed against defendants without a per se constitutional violation. Blank, 131 Wn.2d at 240. It reasoned that fundamental fairness concerns arise only if the government seeks to enforce collection and the defendant is unable, through no fault of his own, to comply. Id. at 241 (citing State v. Curry, 118

Wn.2d 911, 917-18, 829 P.2d 166 (1992)). However, its holding was conditioned on trial courts conducting ability-to-pay inquiries at certain key times. This inquiry must occur (1) before “enforced” collection; (2) prior to any additional “penalty” for nonpayment; and (3) before any other “sanction” for nonpayment is imposed. Id. at 242. The courts are not in compliance.

Indigent persons in DOC custody must forfeit their wages or monetary support from their families to pay LFOs without any determination of their current or future ability to pay. This court has held that these mandatory DOC deductions “for payment of LFOs are not collection actions by the State requiring inquiry into a defendant’s financial status.” State v. Crook, 146 Wn. App. 24, 27-28, 189 P.3d 811 (2008). This was so, according to the Crook court, because “[s]tatutory 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. RCW 72.11.020; RCW 72.09.111(1); RCW 72.09.015(10).” Crook, 146 Wn. App. at 28.

Crook cannot be squared with Blank and Fuller. A state agency’s mandatory deduction from inmate wages or accounts to pay LFOs is a state collection action. The mere fact that statutes³ provide formulas to facilitate

³ See RCW 72.11.020 (DOC secretary is custodian for inmate funds and may disburse money to satisfy LFOs); RCW 72.09.110 (requiring inmates to

this enforced collection does not exempt the collection from qualifying as enforced collection. The Sentencing Reform Act of 1981 indicates that DOC's deductions indeed constitute enforced collection. To "collect"

when used in reference to the department [DOC, per RCW 9.94A.030(17)], means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

RCW 9.94A.030(2) (emphasis added). The fact that no court inquires into financial status before DOC enforces collection from inmates violates the constitutional principles espoused in Fuller and Blank.

This court should not apply Crook but overrule (or otherwise disavow) it because it is both incorrect and harmful. See In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970) (holding stare decisis "requires a clear showing that an established rule is incorrect and harmful before it is abandoned"). Crook is incorrect because, as discussed, it directly conflicts with United States and Washington Supreme Court precedent that requires inquiry into financial status before enforcing collection. Crook is harmful because it contributes to all the harms identified

"participate in the cost of corrections"); RCW 72.09.111 (enumerating deduction schedules and formulas for varying classes of wages).

in Blazina. It forces collection of generally small amounts that make no impact on the overall LFO balance, allowing the amount of LFOs to continue increasing. This result is neither appropriate nor just. City of Richland v. Wakefield, 186 Wn.2d, 596, 607, 380 P.3d 459 (2016).

Groves's challenge to DOC's continuing enforced collection of money to pay LFOs is meritorious, as Washington's practice of enforcing collection in this manner without ability-to-pay inquiry plainly violates the constitution. Because the trial court's orders permit these unconstitutional collection actions to continue unchecked, this court must reverse.

2. CRIMINAL FILING FEES WERE NOT IMPOSED IN THE JUDGMENTS AND SENTENCES AND THEREFORE THE TRIAL COURT SHOULD HAVE EXERCISED ITS DISCRETION TO STRIKE \$200 IN DISCRETIONARY "COURT COSTS" FROM EACH JUDGMENT AND SENTENCE

The trial court made clear its intention of eliminating all discretionary LFOs from Groves's judgment and sentence, retaining only those "mandatory" LFOs, including the \$100 DNA collection fee, the \$500 victim penalty assessment, and the \$200 criminal filing fee. CP 30, 58, 160-61; RP 3-4. However, the trial court's orders are predicated on the mistaken premise that \$200 criminal filing fees were imposed in the judgments and sentences. Because the criminal filing fee was never imposed against Groves—\$200 in "[c]ourt costs" were imposed, CP 18, 72, 102—remand is appropriate for the

trial court to determine whether to eliminate the \$200 in court costs from Groves's judgments and sentences.

The provisions of a judgment and sentence for a violation of the law must be definite and certain. Grant v. Smith, 24 Wn.2d 839, 840, 167 P.2d 123 (1946). Here, the judgments and sentences read, "\$200 Court costs, including: RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190," and proceed to indent the various types of "costs" that may be imposed, including the criminal filing fee, witness costs, sheriff services fees, the jury demand fee, extradition costs, and "[o]ther" costs. CP 18, 72, 102. There is a specific place in each of the judgments and sentences where the trial court could have imposed the criminal filing fee; however, in each, the criminal filing fee was left blank. CP 18, 72, 102. Instead, the trial court imposed unspecified "[c]ourt costs" in the amount of \$200. The judgments and sentences are not definite and certain as to imposition of criminal filing fees; it appears that discretionary court costs in the amount of \$200 was imposed but that the "mandatory" \$200 criminal filing fee was not.

The statutes listed on the same line as the "\$200 Court costs" confirm this. See CP 18, 72, 102 (listing RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190). None of the referenced statutes is RCW 36.18.020, the criminal filing fee provision. The statutes listed have nothing to do with filing fees. RCW 9.94A.760 (SRA provision pertaining to imposition of restitution and

collection of LFOs); RCW 9.94A.505(4) (providing that sentences including payment of LFOs must be imposed “as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541,” none of which is the criminal filing fee statute); RCW 10.01.160 (providing for imposition and remission of court costs); RCW 10.46.190 (providing liability for jury fee).

Because the \$200 in court costs imposed on Groves did not consist of the criminal filing fee, at least not in a definite and certain manner, the trial court has discretion to remit all or a portion of that \$200 based on manifest hardship. RCW 10.01.160(4). Because the trial court repeatedly indicated its intention to eliminate all discretionary LFOs from Groves’s judgments and sentences, remand is appropriate for the trial court to consider doing so.

D. CONCLUSION

Groves ask that this court reverse and remand with instructions to order the DOC to cease enforced collection of LFOs until constitutionally mandated ability-to-pay inquiries occur. In addition, the trial court never imposed the criminal filing fee and remand is necessary for the trial court to determine whether it wishes to terminate the \$200 in unspecified court costs imposed in Groves's judgments and sentences.

DATED this 18th day of June, 2018.

Respectfully submitted,

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