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Division III
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III
No. 35729-5-III

STATE OF WASHINGTON,

Respondent,

vs.

JOEL MATTHEW GROVES,

Appellant.

RESPONDENT'S BRIEF

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I. IDENTITY OF RESPONDENT:

The State of Washington was the Plaintiff in the Superior Court, and is the Respondent herein. The State is represented by the Kittitas County Prosecutor's Office.

II. STATEMENT OF RELIEF SOUGHT:

The State is asking this Court to affirm the decisions of the Superior Court.

III. RESPONSE TO ISSUES PRESENTED FOR REVIEW:

1A. The Department of Corrections' (DOC) collection of legal financial obligations (LFO) from Appellant, Mr. Groves, does not violate his due process rights. The assessment of mandatory LFOs by the trial court and the subsequent collection of those LFOs by DOC does not violate due process under the United States and Washington Court precedent when the statutory framework for assessment and collection is followed.

1B. This Court's decision in *State v. Crook*, 146 Wn.App.24, 189 P.3rd 811 (2008), is consistent with United States and Washington Supreme Court precedent and does not create harms or injustice and should not be overruled.

2. The trial court granted Mr. Groves' prior request to terminate his discretionary LFOs as required by law. The only remaining LFOs owed by Mr. Groves are the mandatory obligations resulting from his two convictions. Both judgements and sentences impose \$200 in court costs, which per the forms; expressly include the criminal filing fee. The trial court's attempt to be more specific when responding to Appellant's request for termination of discretionary LFOs does not entitle Mr. Groves to relief from a lawfully imposed and mandatory cost.

IV. STATEMENT OF THE CASE

The Appellant's statement of the case is generally accepted for purposes of this Appeal, unless otherwise noted below.

V. ARGUMENT

1. Department of Corrections' collection of legal financial obligations is not unconstitutional.

Collection of mandatory LFOs by the Department of Corrections, whereby the DOC correctly adheres to the Order of the Court and strict statutory requirements for collection does not

violate a defendant's due process rights. This is especially true when such collection is subsequent to the implementation of the statutory safeguards, including those found in RCW 9.94A.760 and RCW 10.01.160, that exist to prevent a trial court from imposing costs on a defendant without inquiring about the defendant's financial situation and assessing his or her ability to pay those fees. The law affords additional protections for the defendant by providing a post-conviction mechanism for defendants to challenge LFOs in the event of a change in financial situation. See RCW 10.10.160(4). Even further protections are contemplated by the narrowly tailored standards that DOC must observe before collecting any fees from an inmate. RCW 72.09.111.

RCW 72.09.111(1) provides: "The secretary shall deduct taxes and legal financial obligations from the wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work

programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level as in defined in RCW 72.09.015.” RCW 72.09.015(15) provides: “ ‘Indigent inmate’, ‘indigent,’ and ‘indigency’ mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.” DOC does not simply assess a monetary deduction of their own design; instead they follow the requirements set by the law that mandate an inmate protective formula be followed.

Here, only the mandatory fees and costs remain imposed. Mr. Groves correctly acknowledges that the trial court did consider his ability to pay when it removed the imposition of any and all discretionary fees owed by him. Br. of Appellant, at 9. Mr. Groves argues that . . . “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.” Br. of

Appellant, at 6. Yet, Mr. Groves only points to one entity attempting to collect any fees from him, and that is DOC. As explained previously, that collection process can hardly be described as aggressive especially given that DOC has only limited authority to make specific deductions.

Mr. Groves' argument about additional penalties and sanctions authorized under Washington's LFO collections scheme also lacks any merit where he does not point to any sanctions or penalties levied on him by DOC or any court for non-payment. There's not even a claim that he has been threatened with additional penalties or sanctions from the DOC. The lack of such an assertion should be construed in the most likely manner: that there hasn't been and will not be any such risk of negative actions. DOC simply deducts the statutorily proscribed monetary amounts and ceases collection when an inmate's account would fall below indigency levels. The DOC in effect inquires whether the inmate can pay every time a deduction from the inmate account is made, by assuring that no deductions occur contrary to the described statutory requirements. Furthermore, pursuant to RCW 10.82.090, the court may, on motion of the offender, reduce or waive the

interest that accrues on LFOs. The argument that inmates rack up huge legal financial obligation balances while incarcerated due to high interest rates unmoved by nominal payments is inaccurate.

The fallacy continues when Mr. Groves makes the claim that . . . “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.” Br. of Appellant at 7. DOC determines the inmate’s ability to pay before any deduction is made, via a mathematical formula consistently and equally applied to all inmates.

Pursuant to *State v. Crook*, inmate wage deductions by DOC do not require formal inquiry into the defendant’s financial status. There are specific statutory formulas that allow for individualized deductions or sometimes no deduction, rather than mandatory set deductions regardless of account balance.

Mr. Groves argues that failing to overrule *Crook* is harmful, Br. of Appellant at 8, but does not provide any details regarding how Appellant has been harmed by DOC’s deductions. *Crook* is consistent with *Fuller v. Oregon*, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974) and *State v. Blank*, 131 Wn.2d 814, 557 P.2d 508 (1970). The statutory scheme utilized by DOC

implementing inmate LFO collection is consistent with the constitutional safeguards enumerated in *Fuller* and *Blank*, thus ensuring that unlawful harms do not occur.

To that end, Mr. Groves has failed to show any specific harm suffered as a result of *Crook* being followed while the DOC makes particularized deductions of lawfully levied and mandatory fees that only resulted after properly imposed convictions. As cited by the Appellant, *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970) “requires a clear showing that an established rule is incorrect and harmful before it is abandoned”. Br. of Appellant at 8. The burden required to overturn *Crook* is not met here. The harms suffered by the defendants in *State v. Blazina*, 182 Wn.2d 827, 344 P.3rd 680 (2015) and in *City of Richland v. Wakefield*, 186 Wn.2d, 596, 380 P.3rd 459 (2016) do not apply to Mr. Groves. Unlike the defendants in *Blazina* and *Wakefield*, he is not arguing, and cannot argue, that the court failed to apply the manifest hardship standard as defined in RCW 10.01.160(4) or that he cannot meet his basic needs required for living.

DOC does not enforce collection without an ability to pay inquiry as claimed by Mr. Groves. The DOC only deducts

payments from an inmate when such action will not reduce the inmate's account below the indigency level as defined in RCW 72.09.015. See RCW 72.09.111(1). The statutes regulating DOC's inmate account deductions ensure that applicable constitutional provisions are upheld, therefore this court should affirm.

2. A criminal filing is a mandatory cost and is included on judgement and sentence forms as a court cost.

The \$200 court costs imposed in both judgements and sentences were not discretionary costs and cannot be stricken as they in fact represent the \$200 criminal filing fee, which is expressly included as an available court cost on each of the judgements and sentences in question.

Mr. Groves correctly states that the trial court eliminated all discretionary LFOs owed by him. However, Mr. Groves is incorrect in his assertion that the criminal filing fee was never imposed. As he points out, 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, witness costs, sheriff services fees, the jury demand fee,

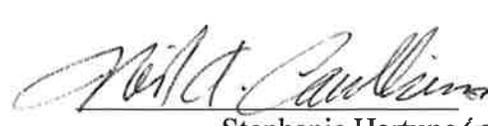
extradition costs, and other costs.” Br. of Appellant at 10. The criminal filing fee in the amount of \$200 is a mandatory cost required by RCW 36.18.020(h). The court is not authorized to waive that fee. Since no other fees listed as included costs (witness costs, sheriff service fees, the jury demand fee, extradition costs) are mandatory costs that apply to this case, it’s only logical that the trial court was imposing the \$200 criminal filing fee. It is a mandatory fee and the trial court clearly intended to impose it and merely elucidated which costs were mandatory when it responded to Mr. Groves’ motion to remit discretionary fees. The court properly imposed the mandatory \$200 criminal filing fee and Mr. Groves should remain responsible for its repayment. If this Court were to conclude that the trial court did not impose the mandatory filing fee, it would in fact be necessary to remand for its imposition, regardless of any argument to the contrary from Appellant.

VI. CONCLUSION

For the reasons stated, DOC should continue to deduct Mr. Groves’ inmate wages and any other funds in his inmate account pursuant to statute and apply the deductions in the required

amount toward his legal financial obligations, including the \$200 filing fee, which is a mandatory cost, imposed by the trial court.

Respectfully submitted August 24, 2018


Stephanie Hartung ←
Attorney for Respondent
WSBA #38115

WSBA 31759 for

DECLARATION OF SERVICE

On the day set forth below, I deposited in the U.S. Mail a true and accurate copy of:

- Respondent's Brief

to the following parties:

Kevin A. March
Neilson, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA 98122

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

DATED this 24th day of August, 2018, at Ellensburg, Washington



Angela Bugni
Legal Secretary

KITTITAS COUNTY PROSECUTOR'S OFFICE

August 24, 2018 - 11:29 AM

Transmittal Information

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