

FILED
Court of Appeals
Division III
State of Washington
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No. 36128-4-III

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

STATE OF WASHINGTON,
Respondent,

v.

JOHN LAURICELLA,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
STEVENS COUNTY, STATE OF WASHINGTON
Superior Court No. 17-1-00316-1

SUPPLEMENTAL BRIEF OF RESPONDENT

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Revised Code of Washington

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RCW 36.18.020(2)(h)2

A. ASSIGNMENTS OF ERROR

1. Did the court have an individualized information regarding the defendant before imposing LFO's?
2. Should the \$200 criminal filing fee be stricken?

B. STATEMENT OF THE CASE

Sentencing was held on June 5, 2018. (VRP 328). The Court heard from the State (VRP 329 – 330); defense counsel (VRP 330 – 335); the defendant's wife (VRP 335 – 338); the defendant's friend, Mr. Kosh (VRP 338 – 339); and the defendant (VRP 339 – 341). The court imposed LFO's in the amount of \$1100 (VRP 345).

C. ARGUMENT

a. *Blazina* factors

State v. Blazina and RCW 10.01.160(3) requires that there be an individualized assessment of the defendant's current and future ability to pay before the court imposes LFO's.

It was indicated at sentencing that the defendant owned a home in Spokane, and that the defendant was in the trapping business right now, but historically in the pest control business (VRP 331). The defendant's wife spoke at sentencing and indicated that the defendant has a history of working (VRP 336). Mr. Kosh also spoke on behalf of the defendant. Mr. Kosh indicated that the defendant had got a wildlife license recently, and was starting a pest control business (VRP 338). Mr. Kosh also indicated that

the defendant spent time volunteering, working on cabinets, and helping build a fence (VRP 338 – 339). Mr. Lauricella himself indicates that he contributes to society (VRP 341).

The appellant argues that the court knew Mr. Lauricella was unemployed, stressed, had lost his home due to financial issues, and had heart issues.

The court did have information that Mr. Lauricella had an ability to pay legal financial obligations based on representations made during sentencing; however, the State concedes that the Court did not make a specific inquiry to Mr. Lauricella.

b. \$200 Criminal Filing Fee

RCW 36.18.020(2)(h) was amended to provide that the \$200 court fee could not be imposed when defendant's were indigent, effective June 7, 2018. *State V. Ramirez*, No. 95249-3, holds that the amendment applies to pending appeals concerning LFO's. *State v. Caitling*, 438 P. 3d 1174 (2019). *Ramirez* was a case in which the appeal was only based on LFO's. Mr. Lauricella's appeal was based on sufficiency of the evidence, not an LFO claim. It is only this supplemental brief which raises the issue of LFO's. With the supplemental briefing, there is an appeal on LFO's and the holding under *Ramirez* would apply.

D. CONCLUSION

The State concedes that the court did not make an individualized inquiry directly to Mr. Lauricella when deciding on the imposition of LFO's; but did have individualized information based on the statements made during sentencing when making the decision regarding LFO's. The State concedes that if there is a pending appeal on LFO's, and the defendant was indigent, the \$200 filing fee should not be imposed.

If this court determines that the LFO's were wrongly imposed, the state requests that in lieu of remanding for a new sentencing hearing, the discretionary LFO's be stricken and the court be directed to enter an amended Judgment and Sentence correcting the LFO portion to reflect only the \$500 crime victim fund assessment and the \$100 DNA collection fee, for a total of \$600.

Respectfully submitted this 5th day of June, 2019.

STEVENS COUNTY
PROSECUTING ATTORNEY



ERIKA GEORGE
WSBA NO. 43871
Deputy Prosecuting Attorney

Affidavit of Certification

I certify under penalty of perjury under the laws of the State of Washington, that I electronically filed a true and correct copy of the Supplemental Brief of Respondent to the Court of Appeals, Division III, and emailed a true and correct copy to Lisa Ellner, Attorney for Appellant, on June 5, 2019.



Michele Lembcke, Legal Assistant
for Erika George

STEVENS COUNTY PROSECUTOR'S OFFICE

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