

FILED
Court of Appeals
Division III
State of Washington
5/22/2020 10:37 AM

NO. 36757-6-III

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

STATE OF WASHINGTON,
Respondent,

v.

JUAN GONZALEZ,
Appellant.

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

The Honorable Steven B. Dixon, Judge

BRIEF OF APPELLANT

LISE ELLNER, WSBA No. 20955
Attorney for Appellant

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A. ASSIGNMENT OF ERROR

The trial court erred by imposing a \$1000 in fines and costs without inquiring into indigent Gonzalez' ability to pay

Issue Presented on Appeal

Did he trial court err by imposing \$1000 in fines and costs without inquiring into indigent Gonzalez' ability to pay?

B. STATEMENT OF THE CASE

The trial court appointed counsel for Gonzalez on September 7, 2018 finding him indigent. Supp. CP (Order Appointing Counsel September 7, 2018) On April 22, 2019, the trial court entered an order of indigency for Gonzalez to proceed on appeal. CP 339-40. Thereafter, without making any inquiry into Gonzalez' ability to pay, the court imposed \$1000 in discretionary "other fines and costs." CP 323-34; RP 200.

C. ARGUMENT

THE SENTENCING COURT ERRED
BY FAILING TO INQUIRE INTO THE
DEFENDANT'S ABILITY TO PAY AND
ABUSED ITS DISCRETION BY
ORDERING \$1000 IN
DISCRETIONARY LFOS

The trial court erred by failing to inquire into indigent Gonzalez' ability to pay discretionary LFOs and abused its discretion by imposing \$1000 in fees and costs without such an inquiry. RCW 10.01.160(3); *State v. Ramirez*, 191 Wn.2d 732, 739, 426 P.3d 714 (2018); *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015). RP 200; CP 323-334.

In *Blazina*, 182 Wn.2d at 839, the State Supreme Court has expressly held that a sentencing court may not impose a discretionary LFO without inquiring into the defendant's ability to pay. *Id.* Here, the court appointed counsel because Gonzalez is indigent and did not make any inquiry into Gonzalez' ability to pay. RP 200.

In *Ramirez*, the State Supreme Court reiterated the specific inquiries a trial court must make before imposing discretionary LFOs on an indigent defendant under *Blazina*, and held that review of this inquiry is de novo. *Ramirez*, 191 Wn.2d at 740. The decision

to impose the LFOs is reviewed for abuse of discretion. *Ramirez*, 191 Wn.2d at 741. “As part of this inquiry, the court shall inquire of the following: “(1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts.” *Ramirez*, 191 Wn.2d at 744.

Discretion is abused when it is manifestly unreasonable or based on untenable grounds or reasons. *Id.* It is a “per se” abuse of discretion to impose discretionary LFOs without making an inquiry into the defendant’s ability to pay. *Id.* Here the sentencing court committed a per se abuse of discretion by imposing the \$1000 in discretionary LFOs and erred as a matter of law without inquiring into Gonzalez’ ability to pay. RP 200. *Ramirez*, 191 Wn.2d at 740, 744.

Since *Blazina*, the Washington Legislature in March 2018 enacted Engrossed Second Substitute House Bill 1783 (H.B. 1783), which amended RCW 10.01.160(3) to prohibit the imposition of many discretionary costs on a defendant who was indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 6(3); *Ramirez*, 191 Wn.2d at 739.

Since these decisions, the Court in *State v. Smith*, 9 Wn.

App. 2d 122, 442 P.3d 265 (2019) discussed other fines and costs such as a court appointed counsel fee and a sheriff's fee which the explained "meet the same fate as the \$200 filing fee" under RCW 10.01.060, meaning that without an inquiry in the defendant's ability to pay, these costs and fines must be stricken. *Smith*, 9 Wn. App. 2d at 126-27.

The Court reiterated that under "the 2018 LFO amendments, such costs cannot be imposed against a defendant who is indigent, as defined in RCW 10.101.010(3)(a)-(c), at the time of sentencing. RCW 10.01.160(3)." *Smith*, 9 Wn. App. 2d at 126-27. The remedy is to strike the \$1000 in discretionary fines and costs. *Smith*, 9 Wn. App. 2d at 127.

D. CONCLUSION

For the reasons discussed herein, this Court should remand to strike the \$1000 in discretionary LFOs.

DATED this 22nd day of May 2020.

Respectfully submitted,



LISE ELLNER, WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Adams County Prosecutor's Office padocs@co.adams.wa.us and Juan Gonzalez, 685 S. Saddle Road, Othello, WA 99344 a true copy of the document to which this certificate is affixed on May 22, 2020. Service was made by electronically to the prosecutor and Juan Gonzalez by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink, appearing to read "Lise Ellner", is written on a light-colored rectangular background.

Signature

LAW OFFICES OF LISE ELLNER

May 22, 2020 - 10:37 AM

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Appellate Court Case Title: State of Washington v. Juan Omar Gonzalez
Superior Court Case Number: 18-1-00138-2

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