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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. 37151-4-III

STATE OF WASHINGTON, Respondent,

v.

ANDREW PAUL RICE, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

The sentencing court found Andrew Rice lacked the ability to pay discretionary legal financial obligations, but apparently erroneously believed that it was required to impose mandatory minimum DUI fines when the fines can be reduced, waived, or suspended due to the defendant's indigency. Because it is likely the sentencing court would have declined to impose the full fine in light of its finding of Rice's indigency, the case should be remanded for reconsideration of the DUI fine.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The sentencing court erroneously imposed a DUI fine despite finding Rice to lack the ability to pay discretionary legal financial obligations, when it apparently did not recognize that the fine is not mandatory but can be waived, reduced, or suspended due to indigency.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Whether the \$1,195 fine imposed for Rice's DUI conviction is mandatory or discretionary.

IV. STATEMENT OF THE CASE

A Superior Court jury convicted Andrew Rice of attempting to elude a pursuing police vehicle and driving under the influence (“DUI”) with a blood alcohol concentration exceeding .15. CP 112, 115-16. In its sentencing brief, the State recommended that the court impose a “mandatory fine of \$1,195.50.” CP 122. It referenced the “DUI attachment” form attached to its brief. CP 124-29. The form indicates that there is a “Mandatory Minimum” fine of \$1,195.50 for a first offense with a blood alcohol concentration exceeding .15, but it also notes that the “mandatory minimum” fines can be reduced, waived, or suspended for indigency and identifies the statutory basis for the various assessments associated with a DUI conviction. CP 124, 125, 126. The defense did not challenge the “mandatory fine” of \$1,195.50. CP 131, 132.

At sentencing, the State requested “the mandatory fine of \$1,195.50,” noting that the fine included a required fee and other fees “that are just compacted together.” RP 244. The sentencing court noted that Rice probably did not have the ability to pay discretionary legal financial obligations and the State agreed. RP 244. The State again referenced the DUI attachment form and advised the court that “the mandatory minimum fine is \$1,195.50.” RP 245.

In imposing the sentence, the court stated, “I’m informed by the State on what the mandatory DUI assessments and/or penalties have to be, and it’s \$1,995.50, the mandatory minimum maximum [sic] fine.” RP 255. It imposed the \$1,995.50 fine requested by the State but waived the \$200 criminal filing fee, stating, “I don’t see you as being solvent and ability [sic] to pay that. I think then under the statute I can waive that.” RP 256; CP 142-43. Within two weeks, the court found Rice to be indigent for appeal purposes. CP 167, 169.

Rice now timely appeals. CP 153.

V. ARGUMENT

The sentencing court and the parties erroneously believed that \$1,195.50 in fines and fees were mandatory due to the DUI conviction. This is not the case. Because the various DUI fines and fees are discretionary, inapplicable in this case, or flatly precluded by Rice’s indigency, the case should be remanded to strike the \$1,195.50 assessment.

DUI fines and fees are imposed by a variety of statutes with different requirements. The statutory basis for the fines and fees requested by the State in this case are set forth in the “DUI attachment” submitted with the State’s sentencing memorandum. CP 126.

Statutory Basis	Amount	Waivable for indigency?
RCW 3.62.085	\$43	“[S]hall not be imposed on a defendant who is indigent.” Also, only applies to District Courts organized under Title 3 or municipal courts organized under Title 3 or 35.
RCW 46.61.5055(1)	\$500 - \$5,000	“[M]ay not be suspended unless the court finds the offender to be indigent.”
RCW 3.62.090	70% of fine (\$350 - \$3,500) + \$35 as 70% of fee assessed by RCW 46.64.050	“Shall not be suspended or waived.” But, only applies to District Courts organized under Title 3 or municipal courts organized under Title 3 or 35.
RCW 46.61.5054(1)	\$250	May be suspended based on inability to pay “upon a verified petition by the person assessed the fee.”
RCW 46.64.050	\$50	“The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent.”

Under the statutes establishing the authority for the various DUI fines and assessments, only one is not waivable due to indigency and one is precluded when the defendant is indigent. The only “mandatory” fee is the public safety and education assessment (“PSEA”) established by RCW 3.62.090. However, the PSEA does not apply here.

First, the statutory language expressly provides that the PSEA shall be assessed and collected “by all courts organized under Title 3 or 35 RCW.” RCW 3.62.090(1). Title 3 establishes courts of limited jurisdiction such as district and municipal courts. Title 35 independently provides for municipal courts. Rice was convicted in a Superior Court, which is organized under Title 2 RCW. Consequently, the PSEA statute does not require the Superior Court to assess or collect the fee.

Second, the PSEA is calculated as a percentage of “fines, forfeitures, or penalties assessed” by the court. RCW 3.62.090(1). Yet, those fines, forfeitures, and penalties can all be waived or suspended for indigency. Thus, a court declining to impose any of the discretionary assessments due to indigency would not be under any obligation to impose a PSEA because any percentage of zero is always zero.

Here, with respect to the fines, fees and assessments that can be waived due to indigency, the trial court abused its discretion by declining

to consider waiving them despite waiving the criminal filing fee, another discretionary obligation, due to its finding that Rice would be unable to pay it. In general, a sentencing court's failure to exercise its discretion is reversible. *See State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005) (categorical refusal to consider sentence alternative is reversible error); *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017) (sentence reversed when sentencing court erroneously believed it lacked authority to exercise its discretion to impose concurrent sentences).

Furthermore, the trial court lacked statutory authority to impose the \$43 conviction fee under RCW 3.62.085. As with the PSEA, the fee only applies “[u]pon conviction or a plea of guilty in any court organized under this title or Title 35 RCW.” *Id.* Rice’s conviction in Superior Court renders the conviction fee inapplicable. Additionally, unlike the PSEA, the conviction fee “shall not be imposed on a defendant who is indigent” as defined under RCW 10.101.010(3)(a)-(c). *Id.* Having found that Rice lacked the ability to pay discretionary obligations, the sentencing court was thereby precluded from imposing the conviction fee.

Under these circumstances, the sentencing court erred when it declined to consider waiving “mandatory” fines and assessments that are not actually mandatory under the enabling statutes. Further, it erred in

imposing fees that are inapplicable to DUI convictions occurring in Superior Court. This court should remand the judgment and sentence to strike the \$1,195.50 assessment or direct the sentencing court to exercise its discretion to consider waiving the discretionary fines, fees, and assessments.

VI. CONCLUSION

For the foregoing reasons, Rice respectfully requests that the court STRIKE the \$1,195.50 DUI fines and fees from his judgment and sentence, or alternatively, REMAND the judgment and sentence to the sentencing court to exercise its discretion whether to waive the discretionary fines, fees, and assessments.

RESPECTFULLY SUBMITTED this 26 day of March, 2020.

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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 the foregoing Appellant's Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Andrew P. Rice, DOC # 419524
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And, pursuant to prior agreement of the parties, by e-mail through the Court of Appeals' electronic filing portal to the following:

Larry Steinmetz
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 and sworn this 20 day of March, 2020 in Kennewick,
Washington.



Andrea Burkhart

BURKHART & BURKHART, PLLC

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