

FILED  
Court of Appeals  
Division III  
State of Washington  
5/26/2020 8:00 AM

NO. 37171-9-III

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**BRIAN GREGORY BRODIL,**

Defendant/Appellant.

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**BRIEF OF APPELLANT**

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### CASES

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## **ASSIGNMENT OF ERROR**

1. The trial court's imposition of discretionary legal financial obligations (LFOs) was in error even though it predated *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).

## **ISSUES RELATING TO ASSIGNMENTS OF ERROR**

1. Is Brian Gregory Brodil entitled to relief from discretionary LFOs that were imposed following his guilty plea and conviction on January 24, 2012 where the trial court failed to properly advise him of his appeal rights and his right to appeal was subsequently granted on December 18, 2019?

## **STATEMENT OF THE CASE**

Mr. Brodil was charged with two (2) counts of first-degree assault, each count carrying a firearm enhancement; and two (2) counts of first-degree robbery, each carrying a firearm enhancement; pursuant to an Information filed on September 21, 2011. (CP 1)

The State filed a probable cause affidavit on September 21, 2011 outlining the underlying facts for the respective charges. (CP 5; CP 94)

Mr. Brodil's jury trial was originally scheduled for November 23, 2011. It was continued to February 8, 2012. (CP 7; CP 8)

On January 18, 2012 Mr. Brodil pled guilty to two (2) counts of first-degree assault. Two (2) counts of first-degree robbery were dismissed, as were all sentencing enhancements. There was a joint agreement for a sentence of two hundred and forty (240) months. The trial court conducted an appropriate colloquy at the time the plea was entered. (CP 9; RP 13, l. 4 to RP 19, l. 10)

Judgment and Sentence was entered on January 24, 2012. Mr. Brodil was sentenced to consecutive one hundred and twenty (120) month sentences in accord with the plea agreement. Thirty-six (36) months of community custody were imposed. In addition the Court assessed LFOs consisting of a \$500.00 crime victim assessment; \$200.00 court costs; and \$750.00 court-appointed attorneys fees. No colloquy was conducted by the trial court prior to imposition of the costs. (CP 19; RP 27, ll. 6-10)

It was later determined that the trial court failed to advise Mr. Brodil of his appeal rights. (CP 35)

Mr. Brodil filed a Notice of Appeal on October 4, 2019. His motion for court-appointed counsel was denied the same date. (CP 62; CP 64; CP 66)

A Commissioner's Ruling in this case was entered on December 18, 2019 allowing Mr. Brodil to proceed with his appeal. (CP 87)

An order of indigency was entered on January 28, 2020. (CP 92)

## **SUMMARY OF ARGUMENT**

The trial court's imposition of discretionary costs in the Judgment and Sentence entered on January 24, 2012 was not in error at the time they were assessed. However,

the trial court's failure to provide Mr. Brodil with notice of his appeal rights deprived him of any opportunity to pursue an appeal.

The Court Commissioner's ruling of December 18, 2019 reinstated Mr. Brodil's appeal rights.

The time elapsed between Mr. Brodil's sentencing and his appeal does not count against any aspect of any error that may have occurred at the time of sentencing.

The cases of *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) and *State v. Ramirez*, *supra*, fully apply to Mr. Brodil's appeal and he should be granted the relief requested.

## ARGUMENT

The trial court did not conduct an appropriate colloquy concerning Mr. Brodil's ability to pay LFOs at the time he was sentenced.

... RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.

*State v. Blazina*, *supra*, 839.

The trial court failed to conduct the appropriate inquiry as required under *Blazina*. Mr. Brodil is entitled to the benefit of the *Blazina* decision as well as the more recent decision in *State v. Ramirez*, *supra*.

The *Ramirez* Court addressed House Bill 1783 which was enacted in 2018. The court stated at 748:

House Bill 1783 amends former RCW 10.01.160(3) to expressly prohibit courts from imposing discretionary costs on defendants who are indigent at the time of sentencing: “the court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).” LAWS OF 2018, ch. 269, § 6(3). ...

... House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit charging the \$200 criminal filing fee to defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 17.

Mr. Brodil is also entitled to the benefit of the *Ramirez* decision. *Blazina* and *Ramirez* dictate that the discretionary LFOs consisting of \$750.00 court-appointed attorneys fees and the \$200.00 criminal filing fee must be deleted from the Judgment and Sentence.

As the *Ramirez* Court stated at 749:

... In *State v. Blank*, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997) ... we clarify that “[a] statute operates prospectively when the precipitating event for [its] application ... occurs after the effective date of the statute.” *Id.* at 248 ... (quoting *Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass’n*, 83 Wn.2d 523, 535, 520 P.2d 162 (1974)). We concluded that the “precipitating event” for a statute “concerning attorney fees and costs of litigation” was the termination of the defendant’s case and held that the statute therefore applied prospectively to cases that were pending on appeal when the cost statute was enacted. *Id.* at 249 (citing *Kilpatrick v. Dep’t of Labor & Indus.*, 125 Wn.2d 222, 232, 883 P.2d 1370, 915 P.2d 519 (1994) ....

## CONCLUSION

Mr. Brodil’s case is unique in that he is entitled to receive the benefits of *Blazina* and *Ramirez* even though he was originally sentenced in 2012.

The trial court's failure to properly advise Mr. Brodil of his appeal rights precluded him from challenging the lack of an appropriate inquiry into this ability to pay.

The lack of notice of appeal rights also precluded him from raising any other issue that he may deem necessary.

The Court should grant Mr. Brodil's request and direct the trial court to remove the discretionary LFOs from his Judgment and Sentence.

DATED this 26th day of May, 2020.

Respectfully submitted,

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**NO. 37171-9-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	GRANT COUNTY
Plaintiff,	)	NO. 11 1 00510 3
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
BRIAN GREGORY BRODIL,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 26th day of May, 2020, I caused a true and correct copy of the *BRIEF OF APPELLANT* to be served on:

COURT OF APPEALS, DIVISION III  
Attn: Renee Townsley, Clerk  
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**May 26, 2020 - 6:51 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 37171-9  
**Appellate Court Case Title:** State of Washington v. Bryan Gregory Brodil  
**Superior Court Case Number:** 11-1-00510-3

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