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Court of Appeals
Division I
State of Washington

NO. 73840-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

D'YANI ALLEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

The juvenile court has no discretion about whether to impose mandatory legal financial obligations, including restitution, victim penalty assessments, and statutory minimum criminal fines. The law is clear that such obligations must be imposed regardless of the respondent's ability to pay. Here, the juvenile court imposed statutorily-mandated financial obligations and set a payment plan of \$5 per month. Allen has not established that she is unable to pay. Should this Court affirm?

B. STATEMENT OF THE CASE

The State charged D'yani Allen with robbery in the second degree and possession of a stolen vehicle. CP 8-9. The State alleged that Allen participated with two others in an armed carjacking at a public playground, and was later found driving the stolen car. CP 10-16. Allen entered an Alford¹ guilty plea to both charges. CP 34-40; 1RP² 14-17. As part of her plea agreement, Allen "agree[d] to pay restitution in full to all victims," in an amount to be determined at a later date. CP 52.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

² There are two volumes of the verbatim report of proceedings, to which the State refers as follows: 1RP = 6/5/2015; 2RP = 7/22/2015.

Despite Allen's agreement to pay restitution, she objected to all mandatory legal financial obligations (LFOs) *including* restitution on grounds that the court must first consider her current and likely future ability to pay. 1RP 29, 39. Allen requested a "standard range sentence, mandatory minimums on the possession of stolen vehicle, including just ten days," and for no sanctions for her failure to comply with an earlier deferred disposition. 1RP 30. The court entered a disposition order imposing a \$100 mandatory Victim Penalty Assessment (VPA), the statutorily-mandated \$400 minimum fine for possession of a stolen vehicle, and restitution in an amount to be determined at a later hearing. CP 18. The court ordered that "[a]ll financial obligations will be paid at 50% of earnings while at JRA³ with the first payment of \$5 due 30 days after release." CP 18; 1RP 38.

At a hearing on restitution and on Allen's motion opposing all LFOs, the State produced evidence of \$5,272.92 in damages to the victim and his insurance company. CP 22-26. The trial court rejected Allen's argument that State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), required it to consider her ability to pay before imposing mandatory LFOs, but was "perfectly happy to make an

³ Juvenile Rehabilitation Administration.

individualized finding.” 2RP 17-18. The court pointed out that “[Allen] not only has the capability, but was ordered to pay 50% of her ... earnings while at JRA to restitution, to financial obligations.” 2RP 18. Noting Allen’s youth and the “wonderful future ahead of her,” the trial court “cannot find that she has no future ability to pay, because she’s only sixteen. And she certainly has the ability to pay some now from where she is. And, I hope that when she comes out she will continue her education and realize the bright future that she so clearly has.” 2RP 19. The court entered a written order denying Allen’s motion, concluding “that any individual inquiry is not yet ripe before the Court.” CP 57-58. Nevertheless, the trial court suggested continuing the restitution hearing until new legislation took effect, which allowed the court to divide the restitution among the co-respondents rather than impose joint and several liability upon each for the full amount. 2RP 19-20. The court ultimately ordered Allen to pay one-third of the full restitution amount; her share amounted to \$1,757.92. CP 59. As the court noted, there is no interest on juvenile LFOs until the offender turns 18, “[a]nd at that point, I would waive interest on mandatory LFOs and trust fees, and any other non-mandatory costs[.]” CP 18-19.

C. ARGUMENT

Allen contends that the juvenile court erred in imposing mandatory LFOs without first considering her ability to pay them. The argument assumes that Blazina, and the statute it interprets, applies to restitution and LFOs that the legislature has made mandatory. That assumption is belied by statutory language and numerous appellate decisions and should be rejected. Allen's argument also assumes that she has demonstrated an inability to pay LFOs, but the trial court made no such finding and the record demonstrates no impediment to the young woman's future ability to pay. Finally, Allen argues that statutes providing for mandatory LFOs are unconstitutional. Allen's abbreviated argument on this issue, which is currently pending in several cases before this Court, fails to establish any constitutional infirmity and should also be rejected. This Court should affirm.

1. JUVENILE COURTS LACK DISCRETION TO OMIT MANDATORY FINES, FEES, AND RESTITUTION FROM JUVENILE DISPOSITION ORDERS.

Allen argues that the trial court erred by imposing restitution, the \$100 victim penalty assessment, and the \$400 statutory mandatory minimum fine for possession of a stolen vehicle. Her

argument fails because each of these LFOs is mandatory, leaving the juvenile court no discretion about whether or not to impose it.

a. The LFOs At Issue Are Mandatory.

“Restitution is mandatory for juvenile offenses.” State v. A.M.R., 147 Wn.2d 91, 96, 51 P.3d 790 (2002). “In its dispositional order, the court *shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent.*” RCW 13.40.190(1)(a) (emphasis added). By using the mandatory term “shall,” rather than permissive language used in a former version of the statute, the legislature “removed the juvenile court’s discretion to order only partial restitution based on ability to pay.” A.M.R., 147 Wn.2d at 96. The underlying purposes of juvenile restitution are victim compensation and juvenile accountability. State v. Sanchez, 73 Wn. App. 486, 489, 869 P.2d 1333 (1994). “To that end, the restitution provisions of the juvenile justice act should be liberally construed in favor of imposing restitution.” Id.

The victim penalty assessment is also mandatory. State v. Curry, 118 Wn.2d 911, 917, 829 P.2d 166 (1992). At the time of Allen’s offense, RCW 7.68.035 provided that “when any juvenile is adjudicated of any offense in any juvenile offense disposition under

Title 13 RCW ... there *shall be imposed* upon the juvenile offender a penalty assessment.” Former RCW 7.68.035(1)(b) (emphasis added).⁴ The assessment “*shall be* one hundred dollars for each case or cause of action that includes one or more adjudications for a felony[.]” *Id.* (emphasis added). “In contrast to RCW 10.01.160, no provision is made in the statute to waive the penalty for indigent defendants.” *Curry*, 118 Wn.2d at 917.

The legislature has established mandatory minimum sentences for juveniles adjudicated of certain offenses involving stolen vehicles:

If a respondent is adjudicated of ... possession of a stolen vehicle as defined under RCW 9A.56.068, the court *shall impose* the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points *shall be sentenced* to a standard range sentence that includes no less than six months of community supervision, no less than ten days of

⁴ This section was amended, effective after Allen's sentencing, to provide as follows:

(b) When any juvenile is adjudicated of an offense that is a most serious offense as defined in RCW 9.94A.030, or a sex offense under chapter 9A.44 RCW, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action.

RCW § 7.68.035(1)(b) (2015). This change would make no difference in Allen's case, as second-degree robbery is a “most serious offense” under RCW 9.94A.030(33)(o).

detention, ninety hours of community restitution, *and a four hundred dollar fine ...*

RCW 13.40.308(2)(b) (emphasis added). Allen stipulated that she had an offender score of one. CP 42. Given that score and her conviction for possession of a stolen vehicle, the statute required the court to impose the mandatory minimum sentence, including the \$400 fine. Notably, Allen agreed to this fine when her counsel recommended the “standard range sentence, mandatory minimums on the possession of stolen vehicle” at sentencing.⁵ 2RP 30.

Each of the LFOs imposed in this case was mandated by the legislature, which used the mandatory term “shall” to preclude the trial courts from deciding whether or not to impose them. Washington courts “treat the word ‘shall’ as presumptively imperative – we assume it creates a duty rather than confers discretion.” Blazina, 182 Wn.2d at 838. Thus, the juvenile court had no discretion to omit restitution, the victim penalty assessment,

⁵ By requesting a sentence that included the mandatory minimums for her possession of a stolen vehicle adjudication, and by agreeing in her plea agreement to pay restitution in full, Allen should be considered to have invited any error pertaining to these two LFOs. See State v. Henderson, 114 Wn.2d 867, 868-71, 792 P.2d 514 (1990) (invited error doctrine prohibits a party from setting up an error at trial and then complaining of it on appeal); State v. Stoddard, ___ Wn. App. ___, 366 P.3d 474, 476 (Jan. 12, 2016) (invited error doctrine precludes review of restitution judgment where defendant agreed to restitution amount).

or the mandatory minimum fine from Allen's sentence. The court did not err by satisfying its duty to impose these LFOs.

b. RCW 10.01.160 Does Not Apply To Mandatory LFOs.

Allen acknowledges that the legislature has made the LFOs at issue mandatory by using the word "shall" in the relevant statutes, but argues that those statutes must be read together with RCW 10.01.160, which provides that "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3) (emphasis added). Allen's argument is based on the faulty premise that the "costs" to which RCW 10.01.160 refers include the three mandatory LFOs at issue here. That proposition is belied by the plain language of the statute and by numerous appellate decisions.

First, RCW 10.01.160 itself defines the "costs" to which it applies:

Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

RCW 10.01.160(2). The statute goes on to identify such costs: expenses for serving warrants for failure to appear, costs for administering a deferred prosecution and pretrial supervision, jury fees, and costs of incarceration. Id. None of the LFOs at issue here – restitution, VPA, and mandatory criminal fines – are “expenses specially incurred by the state in prosecuting” Allen. By its plain language, the costs statute has nothing to do with the LFOs of which Allen complains.

Further, Washington courts have held that criminal fines are not “costs” under RCW 10.01.160. In State v. Clark, Division Three of this Court pointed out that “Washington long has recognized fines and costs as representing different obligations.” 191 Wn. App. 369, 374, 362 P.3d 309 (2015). The statutory definition of “legal financial obligation,” for instance, includes restitution, crime victims’ compensation fees under RCW 7.68.035 (the VPA), court costs, and “any other financial obligation that is assessed to the offender as a result of a felony conviction.” RCW 9.94A.030(30). This definition demonstrates both that fines and victim penalty assessments are not “costs” and that “costs” is not synonymous with “legal financial obligations.” In Clark, therefore, the court held:

The definition of “costs” in RCW 10.01.160(2) does not include “fines.” Accordingly, we hold that a fine is not a court cost subject to the strictures of RCW 10.01.160(3) and the trial court is not required to conduct an inquiry into the defendant’s ability to pay.

191 Wn.2d at 376. The costs statute thus provides no authority for the juvenile court to omit the \$400 mandatory minimum fine from Allen’s disposition order.

Likewise, in State v. Curry, our supreme court concluded that the VPA is not a cost subject to RCW 10.01.160.⁶ 118 Wn.2d 911, 917, 829 P.2d 166 (1992). See also State v. Kuster, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (statutorily mandated financial obligations are not discretionary costs governed by RCW 10.01.160); State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755 (2013) (“For victim restitution, victim assessments, DNA fees, and

⁶ Allen argues that Blazina supersedes Curry “to the extent they are inconsistent.” BOA at 6. They are not inconsistent because they interpret different statutes. Blazina’s holding, that trial courts must make an individualized inquiry into the defendant’s ability to pay, was dictated by the unambiguous language of RCW 10.01.160. 182 Wn.2d at 838. Curry, in contrast, mentions the costs statute only to distinguish it from RCW 7.68.035, which makes imposition of the victim penalty assessment mandatory. 118 Wn.2d at 917. Allen also points out that the Blazina court repeatedly referred to “LFOs,” rather than any particular costs, to argue that the decision applies broadly to all LFOs. But even though mandatory LFOs were imposed in that case, the only LFOs that were contested were “discretionary LFOs.” 182 Wn.2d at 830 (trial courts imposed discretionary LFOs); 834 (considering unpreserved challenge to “discretionary LFO orders” does not implicate concerns for sentencing uniformity); 837 (appellants argue statute requires individualized inquiry “in order to impose discretionary LFOs under RCW 10.01.160(3)”). Had the court intended its ruling to extend beyond the statute there under consideration, it surely would have made that intent clear.

criminal filing fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account"). "The penalty is mandatory. ... In contrast to RCW 10.01.160, no provision is made in the statute to waive the penalty for indigent defendants." Id. Allen suggests that this clear language is "arguable dictum," but it is hard to see how one could so conclude. The defendants in Curry specifically challenged imposition of the VPA; the court upheld imposition because the fee was mandatory regardless of the offender's ability to pay. If RCW 10.01.160 applied to the VPA and required a pre-imposition determination of ability to pay, the court presumably would have resolved the case on statutory grounds and avoided the subsequent constitutional analysis of whether the statute could operate to imprison them for their inability to pay. See State v. Hall, 95 Wn.2d 536, 539, 627 P.2d 101 (1981) ("A reviewing court should not pass on constitutional issues unless absolutely necessary to the determination of the case."). Under Curry, the juvenile court lacked discretion to omit the VPA from Allen's disposition order.

Washington courts have also concluded that imposition of restitution is not subject to any requirement to first determine the offender's ability to pay. Lundy, 176 Wn. App. at 102. In A.M.R.,

the juvenile court ordered only partial restitution based upon its consideration of the offender's ability to pay. 147 Wn.2d at 93. Our supreme court noted that a former version of the statute had given the court such authority, but that the legislature had removed that discretion when it "use[d] the mandatory term 'shall' to direct the court to order restitution." Id. at 96. Based on A.M.R., Division Two of this Court held that a juvenile court abuses its discretion by reducing the amount of restitution based upon the offender's ability to pay. State v. R.G.P., 175 Wn. App. 131, 137-38, 302 P.3d 885 (2013). Thus, the juvenile court had no authority to reduce the restitution from Allen's disposition order, let alone to omit it altogether.

Allen does not explain how this Court can hold that RCW 10.01.160 applies to restitution,⁷ the VPA, or mandatory minimum fines in the face of contrary authority and clear statutory language. This Court should reject Allen's argument.

⁷ Allen points out that the legislature has provided that "the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider ... if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider." RCW 13.40.190(1)(g). It is unclear how this helps Allen's case. She did not ask the court to limit restitution to the victim's out-of-pocket expenses, and clearly did not satisfy the trial court that she would not be able to pay. The disposition order requires Allen to pay only \$5 per month upon her release. CP 18. If "at any time" Allen can satisfy the court that she lacks the means to make this nominal payment, she may seek relief under RCW 13.40.190(1)(g).

c. GR 34 Does Not Support DRA's Position.

Allen contends that GR 34, a rule that requires courts to waive all fees and surcharges for civil litigants who meet the rule's standard of indigence, supports her claim that trial courts must consider a criminal defendant's ability to pay before imposing mandatory LFOs. Because GR 34 addresses a different situation, and because Allen has not established indigence under that standard, this Court should reject her argument.

By its terms, GR 34 applies to "filing fees and surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief[.]" The rule's focus is on providing equal access to justice, and its purpose is to "establish a statewide, uniform approach to presentation, consideration and approval for waiver of fees and costs for low income civil litigants." Jafar v. Webb, 177 Wn.2d 520, 527-28, 303 P.3d 1042 (2013) (internal quotation omitted). The reason for the rule is that due process and equal protection principles require that indigent and non-indigent litigants have equal access to the court. Id. at 529.

In contrast to filing fees and other surcharges that may bar access to the courts for civil litigants, the LFOs at issue in criminal cases are the lawful consequence of the offender's criminal

conduct and resulting conviction/adjudication. This basic distinction supplies a “rational basis” to allow waiver of court-access fees for civil litigants and not require a pre-imposition determination of a criminal respondent’s ability to meet the legal financial consequences of her adjudication or conviction. There is no equal protection issue.⁸

Moreover, in order to gain relief under GR 34, a litigant must actually establish indigence by its terms. As Allen points out, the Blazina court urged trial courts to consider GR 34 in determining whether a person has the ability to pay LFOs. 182 Wn.2d at 838. The type of evidence that establishes indigence under that rule includes receipt of assistance from a needs-based, means-tested assistance program, household income at or below 125 percent of the federal poverty guideline, or a higher household income along with basic living expenses that render her unable to pay. GR 34(3). *Allen has provided no such evidence.* GR 34 provides no authority for holding that the juvenile court erred in imposing mandatory LFOs.

⁸ Allen also argues that the Equal Protection Clause is implicated by “[t]he fact that some counties view statewide statutes as requiring waiver of the [criminal filing] fee for indigent defendants and others view the statutes as requiring imposition regardless of indigency[.]” BOA at 9. Allen provides no citation to the record or authority to support this inchoate argument, which this Court should decline to consider.

2. ALLEN HAS NOT ESTABLISHED
CONSTITUTIONAL ERROR.

Allen raises several additional half-formed constitutional challenges to the statutes that unambiguously provide for mandatory LFOs regardless of ability to pay. A statute is presumed constitutional, and the party challenging the legislation bears the burden of proving the legislation is unconstitutional beyond a reasonable doubt. State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transp., 142 Wn.2d 328, 335, 12 P.3d 134 (2000). Allen does not meet this burden.

Allen contends that "treating the costs at issue here as non-waivable would also be constitutionally suspect under Fuller v. Oregon, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974)." BOA at 10. In Fuller, the Court considered an equal protection challenge to Oregon's recoupment statute, which authorized a sentencing court to impose upon a convicted defendant the obligation to repay the costs of appointed counsel. Id. at 41. In describing that statute, the Court noted its many procedural safeguards, including a presentence ability-to-pay determination. Id. at 44. Fuller upheld the Oregon statute against the claims that it invidiously discriminated between criminal and civil judgment

debtors or between those who are convicted and those who are not. Id. at 47-49.

But the Fuller court did not adopt the Oregon statute's protective features as the constitutional standard. As our supreme court observed in State v. Blank, "the Court in Fuller did not expressly say all of these requirements are constitutionally necessary. Instead it concluded that a statute having these features survives the particular equal protection and right to counsel challenges made in Fuller." 131 Wn.2d 230, 239, 930 P.2d 1213 (1997). The Blank court further pointed out that several states and federal courts have concluded that a pre-imposition determination of a defendant's ability to pay is not constitutionally required. Id. at 239-40 (collecting cases). Blank upheld RCW 10.73.160 against a Fuller-based attack because procedural protections ensured that courts inquire into a defendant's ability to pay before an indigent defendant is *punished* for nonpayment. Id. at 246. To the extent that Allen argues that the Fourteenth Amendment requires consideration of ability to pay before *imposing* mandatory LFOs, the argument is without merit.

Allen argues that Blank's analysis has been undercut by subsequent studies showing that "indigent defendants in

Washington are regularly imprisoned because they are too poor to pay LFOs.” BOA at 10-11. To support this assertion, Allen cites only the Washington State Minority & Justice Commission’s 2008 report, The Assessment and Consequences of Legal Financial Obligations in Washington State, at 49-55.⁹ Allen significantly overstates the report’s findings. The report was based on only 50 surveys and interviews with people with at least one felony conviction from one of four Washington counties. Id. at 34. The Commission acknowledged that the “demographic characteristics of those interviewed for this study are not identical to those convicted in Washington State Superior Courts as a whole,” and that “[d]ue to the non-random nature of the sample, ... the interview results may not capture the experience of persons convicted of felonies across Washington State.” Id.

Further, even among this small, non-representative sample, the Commission did not find that respondents were “regularly imprisoned” for nonpayment. The report found that “many” of the 50 respondents did not make regular LFO payments, that “some” remained involved in the criminal justice system as a result, and that “some” who were still on supervision had reported that the

⁹ Available at: https://www.courts.wa.gov/committee/pdf/2009LFO_report.pdf.

“failure to make LFO payments was the basis of a correctional violation, warrant, re-arrest and/or re-incarceration by the Department of Corrections.” Id. at 49. Even this statement was further qualified: “Respondents’ reports of being violated by DOC officers solely for non-payment of LFOs are somewhat puzzling” because the DOC does not issue warrants or incarcerate violators unless failure to pay is accompanied by other violations. Id. at 50. The authors recognized the possibility that “our respondents may have had other violations in addition to failure to pay, but did not realize, recall, or report this.” Id. at 51. For those not under DOC supervision, “some” reported that courts had issued bench warrants as a result of failure to make regular LFO payments. Id. at 53. Significantly, there is no indication in the report whether those who suffered negative consequences for failure to pay were found to have done so willfully, and not simply due to poverty.

Allen has not established that Blank’s analysis has been fatally undercut. Blank remains good law in Washington.

Allen also devotes one paragraph to arguing that imposing LFOs on indigent defendants violates substantive due process. Because this issue is currently under consideration in State v. Shelton, No. 72848-2-I, and State v. Lewis, No. 72637-4-I (both

argued January 14, 2016), the State offers a similarly abbreviated response.

Even if Allen has standing to make this constitutional challenge,¹⁰ and even if her claim is ripe¹¹ and not barred by

¹⁰ Generally, a person may challenge the constitutionality of a statute only if she is harmed by the provisions claimed to be unconstitutional. State v. Cates, 183 Wn.2d 531, 540, 354 P.3d 832 (2015). In the context of due process challenges based on legal financial obligations assessed against indigent individuals, a person must demonstrate “constitutional indigence” based on “the totality of the defendant’s financial circumstances” to establish standing. State v. Johnson, 179 Wn.2d 534, 553, 555, 315 P.3d 1090 (2014). Here, despite having objected to LFOs on grounds of indigence, Allen has provided no evidence of indigence, constitutional or otherwise. An order authorizing review at public expense does not establish constitutional indigence. Johnson, 179 Wn.2d at 555. Further, at the disposition hearing in this case, Allen asserted that she planned to graduate high school, “get a couple jobs,” and study early child development in community college. 1RP 33, 35. Her caseworker indicated that Allen has “great potential and a lot of skills and talent.” 1RP 33. Her mother agreed that she has “quite a bit of potential.” 1RP 32. Her attorney represented that Allen is intelligent, capable, and “clearly able to achieve her goals.” 1RP 27. And the trial court agreed, noting that Allen “has a wonderful future ahead of her,” that she “is a talented, smart person,” and, most importantly, that the court “think[s], and certainly hope[s] that she will have an ability to pay.” 2RP 18-19. Because the relevant “constitutional considerations protect only the constitutionally indigent,” a condition that Allen has not established, Allen can demonstrate no injury in fact and therefore lacks standing. Johnson, 179 Wn.2d at 55.

¹¹ Washington courts have held that a challenge to LFOs based on inability to pay is not ripe unless or until the State seeks to collect or enforce the obligation. State v. Lundy, 176 Wn. App. 96, 108, 308 P.3d 755 (2013). The point of enforced collection or sanctions for nonpayment is the appropriate time to discern the individual’s ability to pay because before that point, “it is nearly impossible to predict ability to pay[.]” Blank, 131 Wn.2d at 242. That premise is nowhere more clear than in this case, where the juvenile court observed, “I cannot find that she has no future ability to pay, because she’s only sixteen. And, she certainly has the ability to pay some now from where she is. And, I hope that when she comes out she will continue her education and realize the bright future that she so clearly has.” 2RP 19. See also CP 57-58 (court finding that ability-to-pay inquiry “is not yet ripe”). Because it is impossible to predict Allen’s future ability to pay and there is no evidence that the State has attempted to sanction her for nonpayment, Allen’s challenge is unripe.

RAP 2.5(a),¹² she has not established any constitutional violation. To survive rational basis review of an alleged violation of substantive due process, the only requirement is that the law in question bear a reasonable relationship to a legitimate state interest. Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 226, 143 P.3d 571 (2006). Without distinguishing among the three different types of LFOs, Allen concedes that the government has a legitimate interest in collecting them. BOA at 11. She argues that imposing mandatory LFOs on indigent people is not rationally related to that goal because the State cannot collect money from defendants who cannot pay. But Allen has not established that she cannot pay the court-ordered \$5 per month and she does not explain why it is not rational to require an able-bodied young offender to pay this nominal monthly amount to compensate the victim of the crime she chose to commit. Allen has established no constitutional violation.

¹² Although Allen objected to all LFOs below, she relied on Blazina and made no constitutional challenge to the relevant statutes. RAP 2.5(a) bars most claims made for the first time on appeal unless an alleged constitutional error is manifest. RAP 2.5(a)(3); State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). If the facts necessary to adjudicate the issue are not in the record, the error is not manifest. State v. O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). Since Allen's constitutional claims depend on her present and future inability to pay mandatory LFOs, the absence of evidence establishing her constitutional indigence means that the error cannot be manifest within the meaning of RAP 2.5(a).

D. CONCLUSION

For the reasons expressed above, the State respectfully asks this Court to affirm.

DATED this 29th day of March, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Maureen Cyr [maureen@washapp.org], attorney for the appellant, D'yani Allen containing a copy of the Brief of Respondent, in STATE v. ALLEN, Cause No. 73840-2-I, in the Court of Appeals, Division I, for the State of Washington.

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

U Brame

Name

Done in Seattle, Washington

3/29/16
Date