NO. 317005-III

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

STATE OF WASHINGTON,
Respondent,

v.

COLE L. HEALY
Petitioner

APPEAL FROM THE SUPERIOR COURT OF
PEND OREILLE, STATE OF WASHINGTON
HONORABLE AL NIELSEN

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

A. What applicability the Washington State Supreme Court's ruling in *State v. Blazina* has on the review of this case.

II. ARGUMENT

In *State v. Blazina*, the Washington Supreme Court ruled that although the Court of Appeals properly declined discretionary review, RAP 2.5(a) governs the review of issues not raised in the trial court for all appellate courts, including this one. While appellate courts normally decline to review issues raised for the first time on appeal, *see Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005), RAP 2.5(a) grants appellate courts discretion to accept review of claimed errors not appealed as a matter of right. [3] *State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). The court concluded that each appellate court must make its own decision to accept discretionary review. *State v. Blazina*, 182 Wn.2d 827 (2015).

A defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review. *State v. Blazina*, 182 Wn.2d 827 (2015). The court makes it clear in Blazina that it on accepted review despite the appellate court proper denial was to "reform the broken LFO systems", specifically because of "[s]ignificant disparities [that] exist in the administration of LFOs in Washington" and

"disproportionately high LFO penalties". *Id.* Noting that "counties with smaller populations, higher violent crime rates, and smaller proportions of their budget spent on law and justice assess higher LFO penalties than other Washington counties". *Id.*

In Blazina the defendant was ordered to pay $ 500 victim penalty assessment, $ 200 filing fee, $ 100 DNA (deoxyribonucleic acid) sample fee, $ 400 for the Pierce County Department of Assigned Counsel, and $ 2,087.87 in extradition costs.

In the matter consolidated with Blazina the defendant was order to pay $ 500 crime victim penalty assessment, $ 200 filing fee, $ 100 fee for the DNA sample, $ 1,500 Department of Assigned Counsel recoupment.

In this case the defendant was order to pay the non-discretionary crime victims' fee $500, the nondiscretionary filing fee $200 and the non-discretionary DNA collection fee $100. The only discretionary costs were the $250 public defender recoupment and the $50 booking fee.

As this case deals with only $300 of discretionary cost as opposed to the $2,487.87 in *Blazina* and $1,500 in the companion case, it is clear that this does not rise to the same level requiring the court to ignore that fact that review is not preferred in a non-objected to discretionary LFO imposition. The discretionary amount was small in comparison, it was not "disproportionally high" nor was it "higher than other counties". In fact the

amount imposed was minimal especially in comparison with the fine amounts in *Blazina*.

Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay. *State v. Blazina*, 182 Wn.2d 827 (2015). Here, as noted in the Brief of Respondent, the court did engage in such an inquiry. In fact the trial court at sentencing engaged in a conversation with the defendant wherein the defendant indicated that while at the time he was looking at being homeless, that he was working to get an ID and move from the area. RP 99. This is indicative that while the defendant was in a state of indigency at the time of sentencing that this condition would improve upon release from custody, getting an ID, and seeking employment elsewhere. The court in fact notes that based on the defendant's age and his minimal amount of criminal history that he could change his life and take it in a different direction. RP 98. The factors and inquiry noted in the record supports the finding that he would have the

future ability to pay legal financial obligations. Therefore, the trial court's finding of ability to pay was not clearly erroneous.

Further the court should exercise its discretion in deny review of this issue.

Finally the court made at least a minimal inquiry that would support its determination that Appellant had the ability to pay the $300 in discretionary fees and the Court should affirm the decision of the trial court.

Respectfully submitted this 15 day of May 2015.

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Certificate of Mailing

I, do hereby certify and declare under penalty of perjury of the laws of the State of Washington that on this date I deposited in the United States Post Office in the City of Newport, Pend Oreille County, Washington a properly stamped and addressed envelope(s) directed to:

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Containing a true and correct copy of:

Respondent's Brief

May 18, 2015 at Newport, WA
Date and Place

Tricia Shanholtzer