

No. 46632-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Anthony Tolman,

Appellant.

Pierce County Superior Court

Cause No. 14-1-02363-6

The Honorable Judge K.A. van Doorninck

Appellant's Supplemental Reply Brief

Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

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ARGUMENT

A sentencing court must make a particularized inquiry into an offender's ability to pay discretionary LFOs. *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015). The obligation to conduct the required inquiry rests with the court. *Id.*

Because of this, the sentencing court "must do more than sign a judgment and sentence with boilerplate language." *Id.* Instead, the record must reflect the court's individualized inquiry. *Id.* The burden is on the prosecution to show an ability to pay. *State v. Duncan*, 180 Wn. App. 245, 250, 327 P.3d 699 (2014) *review granted*, (Wash. Aug. 5, 2015).

Furthermore, a defendant's silence or a pre-imposition statement expressing hopes for employment should not be taken as proof of ability to pay. *Cf. Duncan*, 180 Wn. App. at 250 (noting most offenders' motivation "to portray themselves in a more positive light.") It is only after the court imposes a term of incarceration that an offender can make a meaningful presentation on likely future ability to pay, since the length of incarceration will affect that ability.

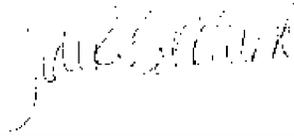
Finally, any such silence or pre-imposition statements cannot substitute for the required individualized inquiry. Following *Blazina*, the Supreme Court will remand any case in which the record does not reflect

an adequate inquiry. *See, e.g., State v. Vansycle*, No. 89766-2, 2015 WL 4660577 (Wash. Aug. 5, 2015).¹

For all these reasons, the court should vacate the trial court's imposition of discretionary LFOs. The case must be remanded for the trial court to make the individualized inquiry required under *Blazina*.

Respectfully submitted on September 1, 2015.

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

¹ Similar orders were also entered on August 5th in *State v. Cole*, No. 89977-1; *State v. Joyner*, No. 90305-1; *State v. Mickle*, No. 90650-5; *State v. Norris*, No. 90720-0; *State v. Chenault*, No. 91359-5; *State v. Thomas*, No. 91397-8; *State v. Bolton*, No. 90550-9; *State v. Stoll*, No. 90592-4; *State v. Bradley*, No. 90745-5; *State v. Calvin*, No. 89518-0; and *State v. Turner*, No. 90758-7.

CERTIFICATE OF SERVICE

I certify that on today's date:

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Anthony Tolman, DOC #845341
Olympic Corrections Center
11235 Hoh Mainline
Forks, WA 98331

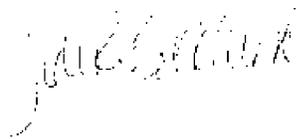
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Pierce County Prosecutor
pcpatcecf@co.pierce.wa.us

I filed the Appellant's Supplemental Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on September 1, 2015.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

September 01, 2015 - 1:10 PM

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