

No. 46696-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Jeremy Bakke,

Appellant.

Clark County Superior Court Cause No. 13-1-02265-6

The Honorable Judge Gregory Gonzales

Appellant's Supplemental Brief

Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Attorneys for Appellant

BACKLUND & MISTRY

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

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ISSUE AND ASSIGNMENTS OF ERROR 1

STATEMENT OF FACTS AND PRIOR PROCEEDINGS..... 2

ARGUMENT..... 2

**The trial court erred by ordering Jeremy Bakke to pay \$1300
in legal financial obligations without inquiring into his
ability to pay. 2**

CONCLUSION 6

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 3, 4, 5

WASHINGTON STATUTES

RCW 10.01.160 3

OTHER AUTHORITIES

GR 34 4

RAP 2.5..... 4

ISSUE AND ASSIGNMENTS OF ERROR

1. The court erred by ordering Jeremy Bakke to pay \$1300 in legal financial obligations absent any inquiry into whether he had the means to do so.
2. The court erred by entering finding of fact 2.5. CP 45.

ISSUE: A court may not order a person to pay legal financial obligations (LFOs) without conducting an individualized inquiry into his/her means to do so. Did the court err by ordering Jeremy Bakke to pay \$1300 in LFOs while also finding him indigent and without analyzing whether he had the money to pay?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

At sentencing, the court did not conduct any inquiry into Jeremy Bakke's financial situation. RP 318-334. In fact, Mr. Bakke received food stamp assistance and had been unemployed for a year. Interview Sheet filed 12/2/13, Supp. CP. At the time of sentencing, Mr. Bakke had no assets and significant debt. Motion for Order of Indigency filed 9/19/14, Supp. CP.

Still, without any discussion or findings, the court ordered him to pay \$1300 in legal financial obligations. CP 47. The court also found Jeremy Bakke indigent for purposes of appeal that same day. CP 68-71.

Jeremy Bakke timely appealed. CP 67.

ARGUMENT

THE TRIAL COURT ERRED BY ORDERING JEREMY BAKKE TO PAY \$1300 IN LEGAL FINANCIAL OBLIGATIONS WITHOUT INQUIRING INTO HIS ABILITY TO PAY.

Jeremy Bakke was found indigent at the end of trial. CP 68-71.

Still, the court ordered him to pay \$1300 in legal financial obligations (LFOs). CP 47.

The court appeared to rely on boilerplate language in the Judgment and Sentence stating, essentially, that every offender has the ability to pay LFOs. CP 45. But the court did not conduct any particularized inquiry

into Jeremy Bakke's financial situation at sentencing or at any other time. RP 318-334. The court erred by ordering Jeremy Bakke to pay LFOs absent any indication that he had the means to do so.

The legislature has mandated 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); *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015) (emphasis added by court).

This imperative language prohibits a trial court from ordering LFOs absent an individualized inquiry into the person's ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.*

The court must consider personal factors such as incarceration, the person's other debts (including restitution), and the receipt of means-tested benefits. *Id.*

Here, the court failed to conduct any meaningful inquiry into Jeremy Bakke's ability to pay LFOs. RP 318-334. The court did not consider his financial status in any way. Indeed, the court also found Jeremy Bakke indigent the same day that it imposed \$1300 in LFOs. CP 68-71.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, Jeremy Bakke’s lengthy incarceration would have weighed heavily against a finding that he had the ability to pay LFOs. Further, his long-term unemployment and the fact that he qualified for means-tested benefits, food stamps, further make repayment unlikely.

In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* at 839 (“[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs”). Jeremy Bakke was determined to be indigent at both the beginning and the end of the proceedings in trial court. CP 68-69.

RAP 2.5(a) permits an appellate court to review errors even when they are not raised in the trial court. RAP 2.5(a); *Blazina*, 182 Wn.2d at 835. The *Blazina* court recently chose to review the LFO-related issue raised in this case, finding that “National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case.” *Id.*

The Supreme Court noted the significant disparities both nationally and in Washington in the administration of LFOs and the significant barriers they place to reentry of society. *Id.* at 835-36. This court should

follow the Supreme Court's lead and consider the merits of Jeremy Bakke's LFO claim even though it was not raised below.]

The court erred by ordering Jeremy Bakke to pay \$1300 in LFOs absent any showing that he had the means to do so. *Blazina*, 182 Wn.2d at 841. The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

CONCLUSION

The court erred by ordering Jeremy Bakke to pay \$1300 in legal financial obligations without any inquiry into his means to do so. Jeremy Bakke's case must be remanded for resentencing.

Respectfully submitted on June 30, 2015,

BACKLUND AND MISTRY



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



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



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

Jeremy Bakke, DOC#737768
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney
prosecutor@clark.wa.gov

I filed the Appellant's Supplemental 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 June 30, 2015.



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

BACKLUND & MISTRY

June 30, 2015 - 1:51 PM

Transmittal Letter

Document Uploaded: 4-466961-Supplemental Appellant's Brief.pdf

Case Name: State v. Jeremy Bakke

Court of Appeals Case Number: 46696-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: Supplemental Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: _____

Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: backlundmistry@gmail.com

A copy of this document has been emailed to the following addresses:

prosecutor@clark.wa.gov