

No. 47007-1-II

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

STATE OF WASHINGTON, Respondent

v.

JAYCEE FULLER, Appellant

SUPPLEMENTAL BRIEF OF APPELLANT

Marie J. Trombley, No. 41410
Attorney for Appellant
PO Box 829
Graham, WA
253-445-7920

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Washington Cases

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

State v. Nolan, 141 Wn.2d 620, 8P.3d 300 (2000) _____ 2

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I. Assignment of Error

A. This Court Should Not Impose Costs On Appeal.

Issue Pertaining to Assignment of Error

1. Should an appellate court impose costs on appeal if an indigent appellant does not have a present or future ability to pay those costs?

II. Statement of the Case

At sentencing, the trial court imposed the mandatory legal financial costs associated with Mr. Fuller's trial and \$7,436.00 in restitution for a total of \$8,253.00 in legal financial obligations. (CP 598; 12/19/14 RP 50). The trial court granted an order authorizing Mr. Fuller to seek review wholly at public expense, to include all filing fees, attorney fees, cost of transcripts and preparation of clerk's papers. (CP 616-618). Mr. Fuller's opening brief was filed November 18, 2015, and is set for oral argument before this Court on September 7, 2016.

III. Argument

A. This Court Should Not Impose Appellate Costs.

RAP 15.2(f) provides that where a trial court has made an unchallenged finding of indigency, there is a presumption of

continued indigency throughout review *unless* the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent. *State v. Sinclair*, 192 Wn.App. 380, 393, 367 P.3d 612 (2016). Here, the trial court imposed only the mandatory legal financial obligations and the restitution costs. (CP 598). Mr. Fuller was found indigent for purposes of his appeal and the court authorized review wholly at public expense. (CP 616-18). There is no record that his indigency was challenged at the trial court nor has the trial court found his financial condition has improved to the extent that he is no longer indigent.

RAP 14.2 authorizes the State to request the Court to order an appellant to pay appellate costs if the State substantially prevails on appeal. Rather than remanding to the trial court to determine ability to pay, the reviewing court is permitted to exercise its discretion to award or deny such appellate costs, during the course of review when the issue is raised in an appellate brief. RCW 10.73.160(1)¹; *State v. Nolan*, 141 Wn.2d 620, 626, 8P.3d 300 (2000); *Sinclair*, 192 Wn.App. at 382, 390.

¹ “[t]he court of appeals, supreme court, and superior courts *may* require an adult offender convicted of an offense to pay appellate costs.” (emphasis added).

Appellate costs, which by statute are discretionary, are added to the legal financial obligations (LFOs) imposed by a trial court. The imposition of LFOs from a trial creates problematic ongoing consequences for a criminal defendant. The financial obligations grow at a compounded interest rate of 12%, lengthen court jurisdiction, interfere with employment opportunities, and create barriers to re-integration in the community. Additionally, the “doubtful recoupment of money by the government, and inequities in administration” are entirely appropriate for consideration by the appellate court. *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015); *Sinclair*, 192 Wn.App. at 391; RCW 10.82.090(1).

As the Sinclair court reasoned, exercising discretion means making an individualized inquiry to decide. *Sinclair*, 192 Wn. App. at 392. Here, there are several reasons this Court should exercise its discretion not to award appellate costs. Mr. Fuller has been sentenced to 304 months of confinement. The court declined to impose stand-by attorney recoupment fees because it deemed payment of the restitution to be more important.

Given his lack of assets, the 304-month prison sentence, and the over \$8,000.00 that was imposed at sentencing for restitution and mandatory fees, it is unrealistic to believe Mr. Fuller

would be able to pay appellate costs after an over twenty year sentence without being financially crippled for many years after that. Mr. Fuller respectfully asks this court to exercise its discretion to reach a just and equitable result and direct that no appellate costs should be awarded should the State substantially prevail on appeal.

IV. Conclusion

Based on the foregoing facts and authorities, Mr. Fuller respectfully asks this Court to exercise its discretion and not impose costs on appeal should the State substantially prevail.

Dated this 12th day of August 2016.

Respectfully submitted,
s/ Marie Trombley, No. 41410
PO Box 829
Graham, WA 98338
253-445-7920
marietrombley@comcast.net

CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Jaycee Fuller do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, of appellant's supplemental brief was sent by first class mail, postage prepaid on August 12, 2016 to:

Jaycee Fuller 341205
Stafford Creek Corrections
191 Constantine Way
Aberdeen, WA 98520

and email, per prior agreement between the parties to:

EMAIL: PCPatcecf@co.pierce.wa.us
Pierce County Prosecuting Attorney Office
930 Tacoma Ave S.
Tacoma, WA 98402

s/Marie Trombley
WSBA 41410
PO Box 829
Graham, WA 98338
253-445-7920
marietrombley@comcast.net

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