

No. 47030-6-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

CHARLES S. LONGSHORE, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Amber L. Finlay, Judge

No. 12-1-00219-3

SUPPLEMENTAL BRIEF OF RESPONDENT

MICHAEL DORCY
Mason County Prosecuting Attorney

By
TIM HIGGS
Deputy Prosecuting Attorney
WSBA #25919

521 N. Fourth Street
PO Box 639
Shelton, WA 98584
PH: (360) 427-9670 ext. 417

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Mason County Prosecutor
PO Box 639
Shelton, WA 98584
360-427-9670 ext. 417

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A. STATE'S RESTATEMENT OF LONGSHORE'S
SUPPLEMENTAL ISSUE ON APPEAL

Longshore cites the recent case of *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612 (2016) and challenges whether this Court should award appellate costs against him if the State is the substantially prevailing party on this appeal.

B. FACTS AND STATEMENT OF THE CASE

The underlying facts of this case are provided in the parties' original briefs. This supplemental brief, in answer to Longshore's supplemental brief, addresses only the issue described above.

Facts specifically pertinent to the issue above, however, include the following: On December 18, 2014, the trial court sentenced Longshore to two terms of life imprisonment without the possibility of parole. CP 25 (Felony Judgment and Sentence, p. 4). In boilerplate language in the judgment and sentence, the trial court found that "[t]he defendant has the ability or likely future ability to pay the legal financial obligations *imposed herein.*" CP 24 (emphasis added). However, the trial court waived all costs other than the \$500.00 RCW 7.68.035 victim's

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assessment fee and the mandatory \$100.00 RCW 43.43.7541 DNA collection fee. CP 26.

C. ARGUMENT

RCW 10.73.160(1) vests the appellate court with discretion to award appellate costs. Under RAP 14.2, that discretion may be exercised in a decision terminating review. This court presumes that a party remains indigent “throughout the review” unless the trial court finds otherwise. RAP 15.2(f). Here, because Longshore is currently indigent and is also serving two terms of life imprisonment, he presumably lacks the present and future abilities to pay. Therefore, the State will concede in this case that this court should not require Longshore to pay appeal costs even in the event that the State is the substantially prevailing party on appeal.

D. CONCLUSION

The State concedes that because Longshore is currently indigent he currently lacks to ability to pay appeal costs, and because he is serving two life sentences without the possibility of early release or parole, he also is unlikely to have the future ability to pay appeal costs. Therefore, the State

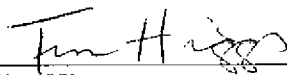
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agrees that this court should not order Longshore to pay appeal costs even in the event that the State is the substantially prevailing party on appeal.

DATED: June 16, 2016.

MICHAEL DORCY
Mason County
Prosecuting Attorney



Tim Higgs
Deputy Prosecuting Attorney
WSBA #25919

MASON COUNTY PROSECUTOR

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Transmittal Letter

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