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THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 99427-7
(COA No. 36757-6-III)


STATE OF WASHINGTON,
Respondent,

vs.

JUAN OMAR GONZALEZ
Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR ADAMS COUNTY
CAUSE NO. 18-1-00138-01

BRIEF OF RESPONDENT


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I. ANSWER TO PETITION

1. The decision of the Court of Appeals in this matter is not in conflict with the decision in *State v. Clark*.
2. The decision of the Court of Appeals in this matter is not of substantial public interest.

II. ISSUES PRESENTED

1. Whether the decision of the Court of Appeals in this matter conforms with the holding in the published decision of *State v. Clark*.
3. Whether the discretionary imposition of a fine by the trial court is a matter of substantial public interest.

III. STATEMENT OF THE CASE

Procedural History¹

On September 11, 2018, the Petitioner, Juan Omar Gonzalez, was charged with one count of Unlawful Possession of a Controlled Substance, Methamphetamine.²

On April 22, 2019, the charges were amended for a third time to one count of Possession with Intent to Deliver a Controlled Substance, Methamphetamine.³

¹ The Petitioner raises only procedural post-trial issues in this petition, as such, the Respondent has only set forth the applicable procedural history.

² CP 8.

³ CP 143.

On April 22, 2019, the Petitioner waived his right to a jury and proceeded to a stipulated facts bench trial.⁴ The Trial Court found the Petitioner guilty of Possession of a Controlled Substance with Intent to Deliver, Methamphetamine.⁵ The Trial Court sentenced the Petitioner to twelve months and a day in prison, mandatory Legal Financial Obligations, one year of community custody and a one thousand dollar fine.⁶

The Petitioner appealed the imposition of the one thousand dollar fine. In an unpublished decision, Division III of the Court of Appeals, upheld the imposition of the fine on two grounds.⁷ The Court of Appeals first held that the issue was not preserved by the Petitioner's failure to object at sentencing.⁸ Second, the Court of Appeals held that the holdings in *Blazina*⁹ and *Ramirez*¹⁰ and RCW 10.01.160(3) do not apply to fines set forth under RCW 9A.20.021(b).

The Petitioner sought reconsideration, which was denied.

The Petitioner now seeks review from the Supreme Court.

⁴ RP at 193-95.

⁵ RP at 195.

⁶ RP at 200.

⁷ *State v. Gonzalez*, 15 Wn. App. 1041, 1, 2020 WL 7041369 (Div. III, 2020) (GR 14.1 unpublished decision. This decision has no binding authority on this court and is cited only for the procedural history of the issue before the court.)

⁸ *Id.*

⁹ *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

¹⁰ *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).

IV. ARGUMENT

1. **THE DECISION OF THE COURT OF APPEALS IN THIS MATTER IS NOT IN CONFLICT WITH THE DECISION IN STATE v. CLARK¹¹.**

The Petitioner seeks review to this Court pursuant to RAP 13.4(b)(2) arguing that the Court of Appeals decision is in conflict with a published decision of that Court.¹² The Court of Appeals decision in this matter is not in conflict with any of the cases cited by the Petitioner.

The Court of Appeals held in Clark that:

[t]he decision to impose a fine pursuant to RCW 9A.20.021 appears to be discretionary with the trial court. However, the fact that imposing a fine under this general statute is a discretionary act does not make the fine a discretionary “cost” within the meaning of RCW 10.01.160(3). The definition of “cost” in RCW 10.01.160(2) does not include “fines.” Accordingly, we hold that a fine is not a court cost subject to the strictures of RCW 10.01.160(3) and the trial court is not required to conduct an inquiry into the defendant’s ability to pay. Therefore, a previously unchallenged fine is not subject to review initially on appeal.¹³

The Clark Court clearly distinguished that the requirement of the trial court to determine a defendant’s ability to pay applies only to costs

¹¹ 191 Wn. App. 369, 362 P.3d 309 (Div. III, 2015).

¹² Brief of Petitioner, at 4-7.

¹³ Clark, 191 Wn. App. 375-76 (*internal citation omitted*).

and that fines do not meet the definition of costs.¹⁴ “Washington long has recognized fines and costs as representing different obligations.”¹⁵ The Clark Court clearly held that fines are not subject to the requirements of RCW 10.01.160(3).

The Court of Appeals in rendering its decision in the matter before this court correctly applied the *Clark* holding. “Although we encourage trial courts to consider the offender’s financial status when imposing a fine, **the trial court holds no obligation to do so.**”¹⁶ The Petitioner argues that *Clark*’s dicta to trial courts “strongly urg[ing]” them to consider a defendant’s ability to pay prior to imposing fines, is the holding of that Court.¹⁷ However, in the same sentence reference by the Petitioner the *Clark* Court states “the legislature has not dictated that judges conduct the same inquiry required for discretionary costs.”¹⁸ The Court of Appeals decision in

¹⁴ *Id.* at 374.

¹⁵ *Id.* (citing *Bergman v. State*, 187 Wn. 622, 625, 60 P.2d 699 (1936) (“A fine is a sum of money exacted, as a pecuniary punishment, from a person guilty of an offense, while costs are but statutory allowances to a party for his expenses incurred in an action. The former is, in its nature at least, a penalty, while the latter approaches more nearly a civil debt.”))

¹⁶ *Gonzalez*, 15 Wn. App. at 1 (*emphasis added*) (GR 14.1. This case is unpublished and is offered not for any authority, but for any persuasive value this Court deems to give the lower court’s decision.)

¹⁷ Brief of Petitioner, at 4-5.

¹⁸ *Clark*, 191 Wn. App. at 376.

this matter is in line with the holding in *Clark*, review under RAP 13.4(b)(2) is not applicable.

In addition to the Court of Appeals decision in this matter not being in conflict with *Clark*, it is not in conflict with any case law cited by the Petitioner. The fine in this case was imposed pursuant to the authority granted by the legislature in RCW 9A.20.021(1)(b) and RCW 9.94A.550. The Petitioner cites to *Mayer*¹⁹, *Malone*²⁰, and *Gallegos*²¹ for the proposition that the trial court must exercise discretion before imposing a fine.²² However, these three cases dealt with fines specifically imposed pursuant to RCW 69.50.430.²³ None of the cases dealt with fines imposed pursuant to RCW 9A.20.021 and RCW 9.94A.550, so these cases are unhelpful to the Petition for Review. RCW 69.50.430 is distinct from RCW 9A.20.021 and RCW 9.94A.550, as it sets forth a requirement that the court determine whether a defendant is indigent before imposing the mandatory fine under RCW 69.50.430. The three courts held that the trial courts needed to consider the defendants' ability to pay

¹⁹ *State v. Mayer*, 120 Wn. App. 720, 86 P.3d 217 (Div. III, 2004).

²⁰ *State v. Malone*, 193 Wn. App. 762, 376 P.3d 443 (Div. III, 2016).

²¹ *State v. Gallegos*, 13 Wn. App. 1113, 2020 WL 3430075 (Div. III, 2020) (GR 14.1, this case is unpublished and not cited as authority, but for any persuasive value the court deems appropriate and used in agreement to counter its citation in Petitioner's brief.).

²² Brief of Petitioner, at 5.

²³ *Mayer*, 120 Wn. App. at 726; *Malone*, 193 Wn. App. at 768 n.2.

before deciding whether to impose that specific mandatory fine or waive it.²⁴ RCW 9A.20.021 and RCW 9.94A.550 contain no such requirement.

Review under RAP 13.4(b)(2) is not necessary in this case. There is no conflict between the decision of the Court of Appeals in this matter and any of the decisions cited by the Petitioner.

2. The Imposition of a Fine in this matter does not involve an issue of substantial public interest.

The Court should deny review of this matter, as it does not involve an issue of substantial public interest. The *Blazina* Court exercised its discretion under RAP 13.4(b)(4) due to its concern that court costs were being imposed on indigent defendants in violation of legislature's directive in RCW 10.01.160(3).²⁵ This Court reminded the trial courts of the legislatures requirements for an individualized inquiry.²⁶ "We hold that RCW 10.01.160(3) requires the record to reflect that the sentencing judge make an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs."²⁷

²⁴ *Mayer*, 120 Wn. App. at 726; *Malone*, 193 Wn. App. at 768 n.2; *Gallegos*, 13 Wn. App. at 9 (GR 14.1, unpublished decision not offered as any binding authority on this court.).

²⁵ *State v. Blazina*, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015).

²⁶ *Id.* at 839.

²⁷ *Id.*

However, since *Blazina* this Court has clarified the scope of its decision to grant review under RAP 13.4(b)(4).

Blazina is firmly rooted in the plain statutory language of RCW 10.01.160(3). We found neither ambiguity in the language of the statute nor divergence in the manner with which appellate courts had been applying the law. Rather, we took the opportunity in *Blazina* “to emphasize the trial court’s obligation to consider the defendant’s ability to pay” before imposing discretionary LFOs. 182 Wn.2d at 839, 344 P.3d 680. *Blazina* was simply a directive to the courts, clarifying how to fully comply with RCW 10.01.160(3); it did not change anything about the meaning of that statute or any other material provision of law.²⁸

The *Blazina* court was concerned with the social costs to defendants resulting from trial courts violating RCW 10.01.160.²⁹

There is no such concern in this matter. As set forth above, the Court of Appeals correctly determined that the fine imposed on Petitioner was in compliance with RCW 9A.20.021(b) and RCW 9.94A.550. There is no substantial public interest in a trial court imposing a fine that is within the statutory authority of RCW 9A.20.021 and RCW 9.94A.550. The concerns of indigent defendants being imposed excessive court costs in violation of a statute, as was the concern of the *Blazina* Court, is not present.

²⁸ *Matter of Flippo*, 187 Wn.2d 106, 111-12, 385 P.3d 128 (2016).

²⁹ *Blazina*, 182 Wn.2d 832.

Further, both statutes were last amended after this court issued its decision in *Blazina*.³⁰ The legislature could have amended these statutes to impose the same analysis set forth in RCW 10.01.160(3), but chose not to. This Court should not grant a petition seeking to add language to RCW 9A.20.021 and RCW 9.94A.550. “[A] court may not add words or clauses to an unambiguous statute when the legislature has not included the language.”³¹

The Petitioner argues that the *Clark* Court language of “strongly encourage[ing] trial courts to consider a defendant’s ability to pay prior to imposing fines is the same reason that this court granted review in *Blazina*.”³² However, as set forth above, the *Blazina* Court accepted review to address the concern of trial courts imposing court costs in violation of RCW 10.01.160(3). The *Blazina* Court was concerned with the possibility that trial courts were imposing fines outside of their statutory authority and that this was resulting in unlawful court costs being a burden on defendants.³³ That is not the issue raised by the Petitioner in this case.

³⁰ 2015 c 265 § 15-16, filed May 14, 2015, effective July 24, 2015. *Balzina*, 182 Wn.2d 827, filed March 12, 2015.

³¹ *State v. Elmore*, 154 Wn. App. 885, 906, 228 P.3d 760 (Div. II, 2010) (citing *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003); see also *Graffell v. Honeysuckle*, 30 Wn.2d 390, 400, 191 P.2d 858 (1948).

³² Brief of Petitioner, at 7-8.

³³ *Blazina*, 182 Wn.2d at 835-37.

The Petitioner does not argue that the trial court violated RCW 9A.20.021(b) or RCW 9.94A.550, but argues that RCW 10.01.160(3) applies to this matter.³⁴ However, as set forth above, the *Clark* Court held that fine imposed under RCW 9A.20.021(b) and RCW 9.94A.550 are outside of RCW 10.01.160(3).³⁵ The Petitioner argues repeatedly that *Clark* was correctly decided.³⁶ Absent a concern that the trial court was imposing fines outside of its statutory authority, the concerns present in this Court's decision to review *Blazina* are not present. There is no concern that the trial court in this matter imposed an unlawful fine or did not follow statutory requirements in its determination. There is no substantial public interest warranting review under RAP 13.4(b)(4).

V. CONCLUSION

The State respectfully requests this Court deny the Petition for Review. The Court of Appeal's decision in this case is not in conflict with any published decision cited by the Petitioner. Review under RAP 13.4(b)(2) is not required. The concerns addressed in *Blazina*, dealing with trial courts imposing court costs in violation of RCW 10.01.160(3) are not present in this case. Further, there is no

³⁴ Brief of Petitioner, at 3.

³⁵ *Clark*, 191 Wn. App. at 375-76.

³⁶ Brief of Petitioner, at 4-9.

concern or even argument that the trial court in this case violated the statutory authority given to it in RCW 9A.20.021 and RCW 9.94A.550. Further, the intent of the legislature is clear. The legislature chose not to amend RCW 9A.20.021 nor 9.94A.550 in 2015 to require individualized inquiry before a trial court can impose fines. This Court should respect the legislature's decision and deny the petition.

The State respectfully requests this Court deny the Petition for Review.

DATED this 24 day of May, 2021.

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