

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON March 2, 2021

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CYNTHIA MARIE GUZMAN,

Appellant.

No. 53736-2-II

UNPUBLISHED OPINION

LEE, C.J. — Cynthia M. Guzman appeals the \$100 per month payment plan on the mandatory legal financial obligation (LFO) imposed during her resentencing. Guzman argues that the trial court abused its discretion by imposing the payment plan because the trial court had no factual basis for determining that Guzman would be able to make the \$100 payments. The State concedes that the trial court abused its discretion. We accept the State’s concession and remand for the trial court to reconsider the payment plan.

FACTS

A jury found Guzman guilty of 18 charges and she was sentenced to 1,016 months total confinement. On appeal, we reversed four of Guzman’s convictions and remanded for resentencing.<sup>1</sup>

At resentencing, the trial court resentenced Guzman to 504 months total confinement. The trial court imposed a mandatory LFO—a \$500 crime victim assessment. The trial court also imposed a payment plan for the LFO, which the court ordered to commence immediately and

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<sup>1</sup> *State v. Guzman*, No. 50374-3-II, slip op. at 1-2 (Wash. Ct. App. Mar. 12, 2019) (unpublished), <http://www.courts.wa.gov/opinions/pdf/D2%2050374-3-II%20Unpublished%20Opinion.pdf>

required monthly payments of \$100. The trial court did not address any payment plan during the resentencing hearing nor did it make any findings regarding the payment plan. The trial court found that Guzman was indigent for purposes of appeal.

Guzman appeals the trial court's payment plan imposed at resentencing.

#### ANALYSIS

Guzman argues that the trial court abused its discretion by imposing the \$100 per month payment plan because the trial court had no factual basis for believing Guzman would be able to make the payments. The State concedes that the trial court had no factual basis for imposing the payment plan. We accept the State's concession and remand for the trial court to reconsider the payment plan.

RCW 10.01.170(1) provides,


When a defendant is sentenced to pay fines, penalties, assessments, fees, restitution, or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If the court finds that the defendant is indigent as defined in RCW 10.101.010(3)(a) through (c), the court shall grant permission for payment to be made within a specified period of time or in specified installments.

Thus, RCW 10.01.170(1) requires the trial court to grant a payment schedule for indigent defendants.

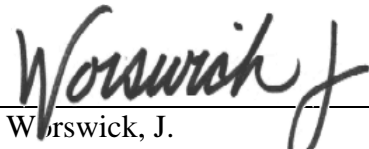
But RCW 10.01.170(1) does not provide for the time period or size of installment payments. Therefore, RCW 10.01.170(1) leaves the time period and amount of installment payments to the trial court's discretion. However, when imposing installment payments, the trial court must consider the punitive effect of imposing LFO payments on indigent individuals with no likelihood to be able to pay them. *See City of Richland v. Wakefield*, 186 Wn.2d 596, 606-07, 380 P.3d 459 (2016). A trial court abuses its discretion if it bases its decision on untenable grounds or untenable reasons. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015).

Here, the only LFO the trial court imposed was the mandatory crime victim assessment. And the trial court found Guzman indigent for the purposes of appeal. Furthermore, Guzman was sentenced to 42 years of total confinement. There is no indication that the trial court considered Guzman's likely ability to make payments when it imposed the \$100 per month payment plan. And the trial court did not articulate, nor is there anything in the record that would support, a factual basis for the trial court's determination that Guzman would be able to make payments consistent with the imposed payment plan. Therefore, there is no tenable ground or tenable reason for the trial court's imposition of a \$100 per month payment plan commencing immediately. Thus, the trial court abused its discretion by imposing the \$100 per month plan. Accordingly, we accept the State's concession and remand for the trial court to reconsider the \$100 per month payment plan.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

 , C.J.  
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Le, C.J.

We concur:

  
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Worswick, J.

  
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Veljacic, J.