

May 2, 2017

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN ROBERT KROGNESS,

Appellant.

No. 48780-2-II

UNPUBLISHED OPINION

JOHANSON, P.J. — Benjamin R. Krogness appeals his sentence. Specifically, he challenges his discretionary legal financial obligations (LFOs). Krogness argues that the sentencing court failed to conduct an individualized assessment of his ability to pay. Accepting the State’s concession, we reverse the LFOs and remand for the sentencing court to consider Krogness’s present and future ability to pay discretionary LFOs.

**FACTS**

In 2015, the trial court accepted Krogness’s guilty plea to possession and delivery of heroin. The sentencing court imposed a 45-month drug offender sentencing alternative sentence. In addition, the sentencing court imposed LFOs totaling \$3,500. Before the sentencing court ordered payment of the discretionary LFOs, it stated that Krogness “has the ability to work and earn money and make periodic payments.” Report of Proceedings (July 1, 2015) at 22. The sentencing court did not articulate a basis for its finding that Krogness could pay the LFOs.

Krogness did not object to the imposition of the LFOs. Krogness appeals the sentencing court's imposition of discretionary LFOs.

#### ANALYSIS

Krogness argues that the sentencing court erred when it imposed discretionary LFOs without the required individual inquiry into his ability to pay them.<sup>1</sup> The State concedes that the sentencing court imposed discretionary LFOs without inquiring into Krogness's present or future ability to pay. We accept the State's concession.

An order for payment of discretionary LFOs is proper only if the record reflects that the sentencing court conducted an individualized inquiry into the defendant's present and future ability to pay the obligations. *State v. Marks*, 185 Wn.2d 143, 145-46, 368 P.3d 485 (2016). It is not sufficient for the sentencing court to make boilerplate findings regarding the defendant's ability to pay. *State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). Instead, the sentencing court must consider facts related to the defendant's financial situation. *See Blazina*, 182 Wn.2d at 838-39.

Here, the sentencing court imposed discretionary LFOs without considering facts pertaining to Krogness's financial situation. The sentencing judge made a conclusory finding at sentencing that Krogness had the ability to work and make periodic payments. The felony judgment and sentence also contained boilerplate language stating that Krogness had the ability to pay.

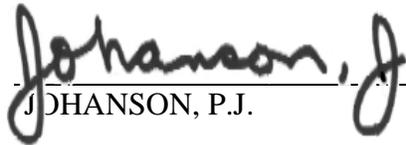
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<sup>1</sup> The parties make various arguments and assertions regarding which LFOs are properly classified as discretionary. However, we do not address the classification of LFOs because the matter was not raised at sentencing and, as a result, the issue is not preserved on appeal. RAP 2.5(a). If the trial court concludes that Krogness has the ability to pay discretionary LFOs, then the parties may argue the LFOs' proper classification on remand.

However, these statements by the sentencing judge do not satisfy the inquiry *Blazina* requires. *See* 182 Wn.2d at 838-39. There is no evidence that the sentencing court considered facts related to Krogness's ability to pay when it ordered the payment of discretionary LFOs. Because the sentencing court failed to consider factors relevant to Krogness's financial situation, it erred when it imposed discretionary LFOs. *Blazina*, 182 Wn.2d at 838-39.

We accept the State's concession, reverse, and remand for the sentencing court to make an individualized inquiry into Krogness's present and future ability to pay discretionary LFOs.

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.

  
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JOHANSON, P.J.

We concur:

  
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MELNICK, J.

  
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SUTTON, J.