

FILED

2015 OCT 15 AM 11:34

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



CL17480732

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

State v.

Jesse White vs.

Plaintiff/Petitioner

Defendant/Respondent

No. 10-1-00690-1

COVER SHEET

ATTACHED HERETO IS:

Order Transferring Motion  
for Relief from Judgment

FILED  
October 19, 2015  
Court of Appeals  
Division I  
State of Washington

SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,  Plaintiff,  v.  JESSE M. WHITE,  Defendant.
---

No. 10-1-00690-1

ORDER TRANSFERRING MOTION  
FOR RELIEF FROM JUDGMENT

**(CLERK'S ACTION REQUIRED)**

This matter came before the court pursuant to CrR 7.8(c)(2), for initial consideration of the defendant's Motion To Terminate Legal Financial Obligations. The court has considered the documents listed below. Being fully advised, the court hereby concludes and orders as follows:

**I. CONCLUSIONS OF LAW**

1. The defendant's motion is time barred by RCW 10.73.090.
2. The defendant has not made a substantial showing that the defendant is entitled to relief.
3. Resolution of the defendant's motion will not require a factual hearing.

## II. ORDER

1. Pursuant to CrR 7.8(c)(2), the defendant's Motion to Terminate Legal Financial Obligations is a Motion for Relief from Judgment and is transferred to the Court of Appeals for consideration as a personal restraint petition.

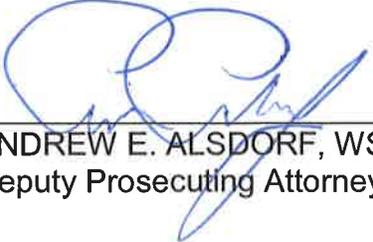
2. The clerk of this court shall transmit copies of the following to the Court of Appeals:

- a. This order;
- b. The Defendant's Motion to Terminate Legal Financial Obligations (sub No.139).
- c. The Defendant's Affidavit in Support of Motion to Terminate Legal Financial Obligations (sub. No. 140)
- d. The State's Response to Motion to Terminate Legal Financial Obligations and State's Motion to Transfer Motion For Relief From Judgment (sub No. 143).

*e. The Defendant's Reply to Motion to Terminate LFOs.*  
Entered this 13 day of September, 2015.  
*October*

  
\_\_\_\_\_  
JUDGE MARYBETH DINGLEDDY

Presented by:

  
\_\_\_\_\_  
ANDREW E. ALSDORF, WSBA #35574  
Deputy Prosecuting Attorney



FILED

2015 OCT 15 AM 11:34

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

State v. Jesse White	vs.	Plaintiff/Petitioner	No. 10-1-00690-1
		Defendant/Respondent	COVER SHEET

ATTACHED HERETO IS:

Reply to Response to Motion to Terminate  
 Legal Financial Obligations & State's  
 Motion to Transfer Motion for Relief  
 from Judgment. → Judgment.

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148

SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

JESSE WHITE,

Defendant.

Case No.: 10-1-00690-1

REPLY TO RESPONSE TO MOTION  
TO TERMINATE LEGAL FINANCIAL  
OBLIGATIONS AND STATE'S MOTION  
TO TRANSFER MOTION FOR RELIEF  
FROM JUDGEMENT

I. ISSUE

Does the Superior Court have the authority to terminate, or modify, Legal Financial Obligations?

II. ARGUMENT

The State's response, and Motion to transfer motion for relief from judgement did not have any merit. By their own admission in the first sentence of their argument on page 3 of the motion: "Motions to modify judgement can be resolved by this court on the merits..." Further, RCW 10.01.160(4) states:

"A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at anytime petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170(1)."

Therefore the defendant's Motion to Terminate Legal Financial Obligations is the appropriate approach to this issue and he is not time barred. In addition to

this, RCW 10.73.100(1) and (6) are sufficient to entitle the defendant exception the one year time bar for collateral attack, as State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015) is (1) Newly discovered evidence..." and (6) a"significant change in law... or procedure, which is material to the conviction, sentence, or order in a criminal proceeding...that sufficient reason exists to require retroactive application of the changed legal standard."

The prosecutor also argued that the defendant has not made a substantial showing of entitlement to relief. I disagree. The Eighth Amendment of the United States Constitution, which is mirrored by Washington State's Constitution, article I § 14 state that "Excessive bail shall not be required, nor excessive fines imposed..." The fines imposed by the Court are clearly excessive. Proof of this is that in 2013, \$12,949.38 was added to the defendant's LFOs using boilerplate language, while no regard was given to the requirements set out in State v. Blazina, RCW 10.01.160; RCW 9.94A.142(1), the Eighth Amendment, and the defendant's indigent status as defined in General Rule 34. Since the imposition of that fine, the defendant's debt as risen to \$16,348.28. In the last two years the interest alone on this fine is \$3637.01.

Over the last five years and five months, the defendant has been able to pay a total of \$238.30 towards these LFOs. That averages out to \$43.29 a year. The interest on the defendant's fine this year will be approximately \$2,000.00. That amount is over 47 times the amount that the defendant has proven able to pay each year; and that is just the interest. The principle is over 380 times the amount that the defendant has proven that he is able to pay each year. At this rate of growth, the defendant will owe between \$26,000 and \$29,000 upon his

release from prison, depending on the date (Earned good-time makes date flexible). Which means, that upon release from prison, the defendant will have a debt that is approximately 600 times the amount that he has proven able to pay each year. This is exactly why the Supreme Court ruled in Blazina:

"...Washington's LFO system carries problematic consequences. To begin with, LFOs accrue interest at a rate of 12% and may accumulate collection fees when they are not paid on time; RCW 10.82.090(1). Many defendants cannot afford these high sums and either do not pay at all or contribute a small amount every month. But on average, a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed. Consequently, indigent offenders owe higher LFO sums than their wealthier counterparts because they cannot afford to pay, which allows interest to accumulate and to increase the total amount they owe. The inability to pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs. RCW 9.94A.760(4) 'For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender...until the obligation is completely satisfied, regardless of the statutory maximum of the crime.' The court's long-term involvement in defendant's lives inhibits reentry: legal background checks will show an active record in superior court for individuals who have not fully paid their LFOs. This active record can have serious negative consequences on employment, on housing and on finances. LFO debt also impacts credit ratings, making it more difficult to find secure housing. All of these reentry difficulties increase the chance of recidivism.

Moreover, the State cannot collect money from defendants who cannot pay, which obviates one of the reasons courts impose LFOs; RCW 9.94A.030"

This leads to why RCW 10.01.160(3) is so important. The trial court must decide to impose LFOs and must consider the defendant's current or future ability to pay LFOs based on the particular facts of the defendant's case. The Legislature did not intend LFO orders to be uniform among cases of similar crimes. Rather, it intended each judge to conduct a case-by-case analysis and arrive at an LFO order appropriate to the individual defendant's circumstances. It requires that the record reflect that the sentencing judge made an individualized inquiry

into the defendant's present/future ability to pay before the court imposes LFOs. "This inquiry also requires the court to consider important factors, such as incarceration and defendant's other debts, including restitution, when considering defendant's ability to pay." Blazina.

Had the court made this inquiry they would have found that the fines imposed exponentially exceed any amount that the defendant will be able to earn while incarcerated. Also, they would be forced to consider the defendant's indigent status falls far below the lowest state and federal poverty level.

The prosecutor's response made several other meritless arguments. He states that the defendant provided a partial record of the transcripts pertaining to the imposition of the LFOs. However, the defendant provided the court with copies of all records pertaining to this matter that he could find in the transcripts. The reason that there is no record of the defense counsel's argument pertaining to this matter is because the defendant's counsel, at sentencing, failed to argue this portion of the sentence. Blazina held that this is not harmless error.

The prosecutor also argues that this is an application in statute, not a constitutional error. I disagree; it is both. The clearly excessive fines imposed is a violation of the Eighth Amendment. It could also be argued that there is a Due Process violation in that the trial court failed to follow the required procedures for imposition of LFOs provided in RCW 10.01.160 and RCW 9.94A.142. In Blazina the Supreme Court of Washington State held that this is not harmless error, and has several adverse consequences. It is clear that the State's response to the defendant's Motion to Terminate LFOs is an attempt to mislead the Court; further, to waste the Appellate court's time by transferring

this matter to their review. The State should be aware of this court's authority to address this matter under RCW 10.01.160(4). Also, this Court does have the authority to address appellate costs under RCW 10.73.160(4) which states:

(4) "A defendant offender who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant for remission of the payment of the costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount will impose manifest hardship on the defendant, or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170."

As stated in the Affidavit submitted by the defendant, these LFOs are imposing manifest hardship on the defendant, ~~and~~ his family, and for all the aforementioned reasons quoted from Blazina, the defendant is entitled to relief.

### III. CONCLUSION

Based upon RCW 10.73.160(4); RCW 10.01.160(3) and (4); RCW 9.94A.142 (1) and State v. Blazina. 183 Wn.2d 827, 344 P.3d 680 (2015) controlling the above argument, the defendant respectfully requests that this court hear this Motion to Terminate Legal Financial Obligations, and grant the relief requested in the Conclusion of the Motion to Terminate Legal Financial Obligations submitted to this court for review.

Respectfully submitted on this 17th day in September, 2015.

Jesse White

Jesse White  
Pro se

I declare under penalty of perjury under the laws of Washington State that I mailed a copy of this Reply to Snohomish County Prosecutors at 3000 Rockefeller Ave., Everett, WA. 98201; mailed from Clallam Bay Corrections Center in Clallam Bay, WA.



1 imposed only \$700 in legal financial obligations ("LFO's"). Of that amount, only the  
2 \$100 fee for services to collect unpaid LFOs was discretionary, while the remainder  
3 were mandatory costs attributable to the crime victim penalty assessment and the  
4 biological sample fee. Compare RCW 36.18.190 ("may") with RCW 7.68.035 ("shall")  
5 and RCW 43.43.7541 ("must").

6 The defendant filed a direct appeal. The Court of Appeals affirmed the  
7 convictions and issued a mandate on May 3, 2013. The mandate order also assessed  
8 appellate costs against the defendant in a total amount of \$12,249.38, including  
9 \$12,153.26 payable to the Washington Office of Public Defense Indigent Defense and  
10 \$96.12 payable to the Snohomish County Prosecutor's Office. While in custody the  
11 defendant has made payments on his LFO's totaling \$238.26, pursuant to the  
12 Department of Corrections garnishing a portion of the wages he earns in prison. The  
13 defendant's earliest anticipated release date is May 30, 2018.

14 The defendant also filed a personal restraint petition in the Court of Appeals. On  
15 March 19, 2015, the Court of Appeals issued an Order Conditionally Dismissing  
16 Personal Restraint Petition. The order stated that the personal restraint petition would  
17 be dismissed after the Superior Court entered an order nunc pro tunc correcting a  
18 clerical error in the judgment and sentence. A hearing is currently scheduled for  
19 September 10, 2015, before Judge Marybeth Dingley in order to accomplish that  
20 task.<sup>1</sup>

21 The defendant has now filed a pro se Motion to Terminate Legal Financial  
22 Obligations. Based on the arguments and attachments contained in that motion it is  
23

24  
25  
26 <sup>1</sup> The delay between March and September is attributable to the State's invitation to defendant's trial  
counsel to explain the situation to the defendant and to help obtain the defendant's signature on the nunc  
pro tunc order. This process ultimately resulted in setting a hearing for September 10, 2015.

1 clear that the defendant is seeking modification of appellate costs as well as the  
2 original costs imposed by this court. Regarding the costs imposed by this court, he  
3 alleges that the court never made an individual inquiry into his present or future ability  
4 to pay discretionary costs pursuant to the recently issued opinion in State v Blazina,  
5 183 Wn.2d 827, 344 P.3d 680 (2015).

### 6 **III. ISSUE**

7 Should this case be transferred to the Court of Appeals for consideration as a  
8 personal restraint petition?  
9

### 10 **IV. ARGUMENT**

11 Motions to modify judgment can be either resolved by this court on the merits or  
12 transferred to the Court of Appeals. The standards governing this choice are set out in  
13 CrR 7.8(c)(2):

14 The court shall transfer a motion filed by a defendant to the Court of Appeals for  
15 consideration as a personal restraint petition unless the court determines that  
16 the motion is not barred by RCW 10.73.090 and either (i) the defendant has  
17 made a substantial showing that he or she is entitled to relief or (ii) resolution of  
18 the motion will require a factual hearing.

19 The provisions of this rule are mandatory. If the requirements for transfer are  
20 satisfied, the court may not decide the motion – even if the motion is clearly unfounded.  
21 State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008).

22 Under this rule, this court should resolve three issues: (1) Is the motion barred  
23 by RCW 10.73.090? (2) Has the defendant made a substantial showing that he is  
24 entitled to relief? (3) Will resolution of the motion require a factual hearing?

#### 25 **A. THE DEFENDANT'S MOTION IS TIME BARRED.**

26 RCW 10.73.090(1) sets a time limit on motions to vacate judgments and other  
forms of "collateral attack." Such a motion must be filed within one year after the

1 judgment becomes final. Since the judgment in the present case was appealed, it  
2 became final on May 3, 2013, the day that the appellate mandate was issued. RCW  
3 10.73.090(3)(b). The present motion was filed on September 1, 2015. It was filed  
4 outside of the one year time limit.

5 **B. THE DEFENDANT HAS NOT MADE A SUBSTANTIAL SHOWING OF**  
6 **ENTITLEMENT TO RELIEF.**

7 **1. The Defendant's Motion Is a Motion for Relief from Judgment which**  
8 **Should be Considered Under CrR 7.8. If Imposition Of Financial Obligations Was**  
9 **An Error Of Law, Such Errors Do Not Provide A Basis for Relief From Judgment.**

10 The defendant's Motion to Terminate Legal Financial Obligations" is a motion for  
11 relief from judgment. CrR 7.8 governs motions for relief from judgment. The grounds  
12 for vacating a judgment are set out in CrR 7.8(b). The defendant has not identified any  
13 of these grounds as a basis for his motion. Instead he has cited RCW 10.01.160(3),  
14 and State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). These authorities do not  
15 address the circumstances in which a judgment may be vacated.  
16

17 The defendant claims "failure to make any findings is grounds for vacation of  
18 fine." This is incorrect. "Mistakes of law may not be corrected by a motion for relief  
19 from judgment under CrR 7.8(b) but must be challenged on direct appeal." State v.  
20 Dorenbos, 113 Wn App. 494, 499, 53 P.3d 52 (2002).  
21

22 In Blazina the issue was raised on direct appeal. The court held this is not an  
23 issue that can be raised automatically for the first time on appeal. Blazina, 182 Wn.2d  
24 at 833. Instead the court chose to consider the issue as a matter of discretion. Id. at  
25 835. The court specifically said "this error will not taint sentencing for similar crimes in  
26 the future." Id. at 834. It is thus clear that an error under Blazina does not provide

1 grounds for vacating a sentence on collateral attack.

2 **2. With The Exception Of The Collection Cost, The Financial Obligations In**  
3 **The Present Case Do Not Require Any Prior Assessment Of the Defendant's**  
4 **Ability To Pay. If The Court Erred In Imposing The Collection Cost It Was**  
5 **Harmless.**

6 Even if the issue were properly before the court the defendant would not be  
7 entitled to relief. The defendant relies on Blazina to argue all of the legal financial  
8 obligations in his case were illegally imposed. There are many different kinds of legal  
9 financial obligations. Whether any specific legal financial obligation was validly  
10 imposed must be determined by reference to the statute that authorized that particular  
11 obligation.

12 **a. Court Costs**

13  
14 Blazina only dealt with one kind of legal financial obligation, costs imposed  
15 pursuant to RCW 10.01.160. Costs under that statute are those expenses incurred by  
16 the state in prosecuting the defendant. RCW 10.01.160(2). Collection costs are  
17 appropriately considered a court cost under that statute. Under that statute "the court  
18 shall not order a defendant to pay costs unless the defendant is or will be able to pay  
19 them." RCW 10.01.160(3). Blazina holds that the word "shall" is mandatory. To  
20 comply with the statutory requirement, the court must make "an individualized inquiry  
21 into the defendant's current and future ability to pay." Blazina, 182 Wn.2d at 838.

22  
23  
24 Blazina requires the court to make a record when it considers the defendant's  
25 present and future ability to pay costs. Id. Because the defendant challenges the  
26 court's action he bears the burden to provide an adequate record to establish error.

1 State v. Barry, 183 Wn. 2d 297, 317, 352 P.3d 161 (2015). The defendant has  
2 provided his own factual declaration and a partial transcript of the sentencing hearing,  
3 which together appear to confirm that the court did not orally pronounce its imposition  
4 of the \$100 collection cost. But the partial record presented by the defendant does not  
5 include his own attorney's presentation of the defendant's financial circumstances,  
6 which is a fairly routine part of most presentations by defense counsel at a criminal  
7 case sentencing hearing. The incomplete record presented by the defendant is  
8 insufficient to confirm his assertion that the court did not consider his financial  
9 circumstances when imposing LFOs. On the other hand, the face of the judgment and  
10 sentence reflects in boilerplate language that the court did consider the defendant's  
11 ability to pay. See sub 91, Judgment and Sentence, ¶ 2.5. Other than the collection  
12 cost the court imposed no other discretionary legal financial obligations. Id. at ¶ 4.3.  
13  
14

15 However, even if the court did not make a finding that the defendant had the  
16 present or future ability to pay the \$100 cost then it would have been an error in  
17 application of a statute, not a constitutional error. Errors that are not of constitutional  
18 magnitude will only be reversed if the defendant demonstrates that the claimed error  
19 "constitutes a fundamental defect which inherently results in a complete miscarriage of  
20 justice." In re Rice, 118 Wn. 2d 876, 884, 828 P.2d 1086 (1992). Here the defendant  
21 demonstrated that he does have the ability to pay the discretionary \$100 collection cost  
22 because he has already paid more than twice that amount while serving his sentence.  
23 Any error in failing to make a record of the defendant's ability to pay was therefore  
24 harmless.  
25  
26

1 **b. Crime Victim's Assessment**

2 This assessment is required by RCW 7.68.035. This assessment is mandatory  
3 and requires no consideration of a defendant's ability to pay. State v. Williams, 65 Wn.  
4 App. 456, 460-61, 828 P.2d 1158 (1992).

5  
6 **c. Biological Sample Fee**

7  
8 This fee is required by RCW 43.43.7541. Like the crime victim's assessment,  
9 the biological sample fee requires no consideration of the defendant's ability to pay.  
10 State v. Lundy, 176 Wn App. 96, 102-03, 308 P.3d 755 (2013).

11  
12 **d. Appellate Costs**

13 These costs were awarded by the Court of Appeals under RCW 10.73.160.  
14 This court has no authority to declare an action of the Court of Appeals illegal. In any  
15 event, assessment of these costs does not require any determination of ability to pay.  
16 State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997). Instead, this court may  
17 remit the costs on a showing that payment would impose a manifest hardship. RCW  
18 10.73.160(4). Defendant has not made this request.

19  
20  
21 In short, the reasoning of Blazina does not apply to any of the legal financial  
22 obligations imposed in this case. Consequently, the defendant has made no showing  
23 that he is entitled to relief.

24  
25 **C. THE DEFENDANT IS NOT ENTITLED TO A FACTUAL HEARING.**

26 The only material factual dispute relates to whether the trial court considered the

1 defendant's present or future ability to pay the \$100 collection cost and made a record  
2 of that consideration. But even if he is correct that the court failed in this regard, he  
3 has demonstrated with his payments that indeed he does have the ability to pay that  
4 cost. He has therefore failed to establish a prima facie showing that he is entitled to  
5 relief. In re Rice, 118 Wn.2d at 885-86. As to all other obligations, there do not appear  
6 to be any material factual disputes. The defendant is not entitled to relief as a matter of  
7 law. There is no need for a factual hearing.  
8

9  
10 **V. CONCLUSION**

11 This motion is time barred. The defendant has not made a substantial showing  
12 of entitlement to relief. There is also no need for a factual hearing. Under CrR  
13 7.8(c)(2), the motion should be transferred to the Court of Appeals for consideration as  
14 a personal restraint petition.

15 Respectfully submitted on September 4, 2015.  
16

17  
18 MARK K. ROE  
Snohomish County Prosecuting Attorney

19  
20  
21 By: 

22 ANDREW E. ALSDORF, WSBA # 35574  
Deputy Prosecuting Attorney  
23  
24  
25  
26



IN THE SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF SNOHOMISH

State of Washington,  
Plaintiff,

v.

Jesse White,  
Defendant.

CASE NO.: 10-1-00690-1 and  
71886-0-I

AFFIDAVIT IN SUPPORT OF MOTION  
TO TERMINATE LEGAL FINANCIAL  
Obligations

I, Jesse White, THE DEFENDANT AND ACCUSED involved in this action, on oath state the following:

During my sentencing, and after my appeal, the Judge did not ask me any questions pertaining to my ability to pay the legal financial obligations imposed. Since the time I have been confined, Department of Corrections has been taking money that the Court has imposed upon me to pay, while the Judicial Administration has been collecting interest on the amount imposed. I do not have the ability to pay the LFOs now or in the future, I can not even pay the interest that is accruing at an unattainable rate. The money that has, and is, being taken from me has been an undue burden on me and my family.

In accord with State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), I now respectfully ask this Court to terminate the legal financial obligations imposed and to reimburse me all the money taken, to date, including interest fees.

Affidavit pursuant to 28 U.S.C. § 1746 and Dickerson v. Wainwright, 626 F.2d 1184 (1980), sworn as true and correct under penalty of perjury has full force of and does not have to be verified by Notary Public.

Dated this 24th day in August, 2015.

Respectfully yours,

Jesse White  
Jesse White

FILED  
2015 SEP -1 PM 4: 20  
SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

140

3:29:35 Friday, June 19, 2015

06/19/15 09:28:30

DG1310MI Case Financial History (CFHS) SNOHOMISH SUPERIOR S31  
Case: 101006901 S1 Csh: Pty: DEF 1 StID: C 25176297  
Name: WHITE, JESSE MARION NmCd: IN 095 45936

----- A C C O U N T I N G S U M M A R Y -----

TOTAL TRUST	TOTAL AR
Current Bail:	AR ORDERED: Fine/Fee: 12,949.38
Bail Payable:	Restitution:
Undisbursed Ends:	TOTAL AR ORDERED: 12,949.38
Other Trust:	ADJUSTMENTS: Fine/Fee:
Trust Balance:	Restitution:
Other Rev Rec:	AR ADJUSTMENTS:
Current Bond:	INTEREST: Int Accrued: 3,382.05
Bond Payable:	Int Received:
Disbur to Payees:	INTEREST BALANCE: 3,382.05
Bail Forfeit Rec:	RECEIVED: Fine/Fee: 235.43
Disp Code:	Restitution:
Last Receipt Date: 06/18/2015	TOTAL AR RECEIVED: 235.43
Cln Sts: Time Pay: N	BAIL/OTHER APPLIED:
Joint and Several Case: N	BALANCE: Fine/Fee: 16,096.00
Case Fund Investments: N	Restitution:
Obligor AR Rec:	TOTAL AR BALANCE: 16,096.00

PF Keys: AR=2 Adj=3 Rec T=4 Rec Dt=5 Disb=6 EndBail T=9 Bnd Dt=10 Bail Dt=11

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

In the matter of the Personal  
Restraint of:

JESSE M. WHITE,

Petitioner.

71886-0-1

COST BILL

State of Washington, Respondent, asks that the following costs be awarded:

(1)	Statutory Attorney's Fees	\$ 200.00
(2)	Costs of producing Response To Personal Restraint Petition (126) pages at \$2.00 per page	\$ 252.00
(3)	Reproduction Costs charged by The Court of Appeals for the State's Response to Personal Restraint Petition	\$ -0-
(4)	Cost of Preparing Record	<u>\$ 0.00</u>
	TOTAL	\$ 452.00

The above items are expenses reasonably necessary for review of this matter that were actually incurred by the State in prosecuting the defendant that are allowed as costs by RAP 14.3.

COST BILL - 1

Appellant, JESSE M. WHITE, should be ordered to pay \$452.00 to the Snohomish County Prosecutor's Office.

DATED this 20<sup>th</sup> day of March, 2015.

  
JOHN J. JUHL, #18951  
Deputy Prosecuting Attorney  
Attorney for Respondent

I certify that I mailed a copy of the foregoing Cost Bill to:

Jesse M. White, DOC# 347132, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326, this 24<sup>th</sup> day of March, 2015. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20<sup>th</sup> day of March, 2015, at the Snohomish County Prosecutor's Office.

  
Diane K. Kremenich  
Legal Assistant/Appeals Unit  
Snohomish County Prosecutor's Office

RECEIVED

AUG 29 2012

Nielsen, Broman & Koch, P.L.L.C.

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

JESSE M. WHITE,

Appellant.

No. 66632-1-I

COST BILL

State of Washington, Respondent, asks that the following costs be awarded:

(1)	Costs of producing Brief of Respondent (43) pages at \$2.00 per page	\$ 86.00
(2)	Reproduction costs charged by the Court for copying the Brief of Respondent	\$ 10.12
(3)	Cost of preparing the Clerk's Papers	\$ 64.50
(4)	Cost of preparing the transcript	\$ 2,359.48
(5)	Reproduction costs charged by the Court for copying the Brief of Appellant	\$ 29.28
(6)	Cost of Court appointed appellate counsel	<u>\$ 9,700.00</u>
	TOTAL	\$12,249.38

The above items are expenses reasonably necessary for review of this matter that were actually incurred by the State in prosecuting the defendant that are allowed as costs by Rule 14.3 and RCW 10.73.160.

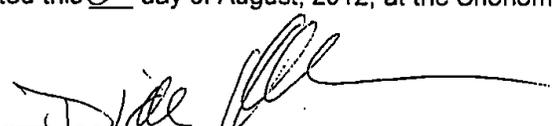
Appellant, JESSE M. WHITE, should be ordered to pay \$96.12 (items 1 and 2) to the Snohomish County Prosecuting Attorney's Office and \$12,153.26 (items 3 through 6) to the Appellate Indigent Defense Fund.

DATED this 28 day of August, 2012.

  
\_\_\_\_\_  
JOHN J. JUHL, #18951  
Deputy Prosecuting Attorney  
Attorney for Respondent

I certify that I mailed a copy of the foregoing Cost Bill to: Nielsen, Broman & Koch, 1908 East Madison Street, Seattle, WA 98122, on the 28<sup>th</sup> day of August, 2012. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28<sup>th</sup> day of August, 2012, at the Snohomish County Office.

  
\_\_\_\_\_  
Diane K. Kremenich  
Legal Assistant/Appeals Unit  
Snohomish County Prosecutor's Office

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months.

As to counts 3 and 4, I'll sentence the defendant to the high end of 12 months each.

As to Count 5, I will sentence the defendant to the 365 days.

Counts 1, 2, 3, 4 will run concurrent, with the exception of course of the deadly weapon enhancement, which will run consecutive to each other, and to the enumerated counts.

As to Count 5, it will run consecutive to Counts 1, 2, 3 and 4.

Obviously, and for purposes of the exceptional sentence, the court had found that the requisite aggravating circumstance is present, to wit: that it was committed in the presence of the minor child.

I will sentence the -- order the defendant to pay the mandatory \$500 victim penalty assessment, the \$100 DNA fee. If there is restitution it will be in an amount to be determined.

The requirement for payments will go into effect immediately so that if he obtained funds while they are -- while he is in prison, obviously those funds can be confiscated. He will pay in an amount of no less than \$25 a month starting 60 days after his release. I will place him on the community custody for the terms that have been

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08/19/2015 16:18

Department of Corrections

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EVMCKEE

CLALLAM BAY CORRECTIONS CENTER

OTRTASTA

TRUST ACCOUNT STATEMENT

10.2.1.3

DOC#: 0000347132 Name: WHITE, JESSE MARION DOB: 12/07/1977
LOCATION: B01-020-BF08L

ACCOUNT BALANCES Total: 311.98 CURRENT: 281.98 HOLD: 30.00

Table with columns: SUB ACCOUNT, START BALANCE (02/01/2015), END BALANCE (08/19/2015). Rows include SPENDABLE BAL, SAVINGS BALANCE, WORK RELEASE SAVINGS, EDUCATION ACCOUNT, MEDICAL ACCOUNT, POSTAGE ACCOUNT, and COMM SERV REV FUND ACCOUNT.

DEBTS AND OBLIGATIONS

Table with columns: TYPE, PAYABLE, INFO NUMBER, AMOUNT OWING, AMOUNT PAID, WRITE OFF AMT. Rows list various debts such as CRIME VICTIM COMPENSATION, COST OF INCARCERATION, TV CABLE FEE DEBT, LEGAL FINANCIAL OBLIGATIONS, DENTAL COPAY DEBT, etc.

TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

Table with columns: DATE, TYPE, TRANSACTION DESCRIPTION, TRANSACTION AMT, BALANCE. Rows show transactions from 02/02/2015 to 02/13/2015, including CRS SAL ORD, COPIES DEBT, OTHER DEPOSITS, and DEDUCTIONS.



FILED

2015 SEP -1 PM 4:19

SONYA KRASKI  
COUNTY CLERK  
SNOWHOMISH CO. WASH

IN THE SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF SNOHOMISH

State of Washington,  
Plaintiff,

v.

Jesse White,  
Defendant.

CASE NO.: 10-1-00690-1 and  
71886-0-I

MOTION TO TERMINATE  
LEGAL FINANCIAL OBLIGATIONS

(CLERK'S ACTION REQUIRED)

I. IDENTITY OF MOVING PARTY

1.1 COMES NOW THE DEFENDANT, Jesse White, Pro se, and submits this Motion and attached Affidavit requesting this Court to:

- (A) Terminate Legal Financial Obligations (RCW 10.01.160 (3));
- (B) Remand to Superior Court to make the required individualized inquiry into the defendant's ability to pay. (RCW 10.01.160 (3)); State v. Blezina, 183 Wn.2d 827, 344 P.3d 680 (2015), as an alternative end;
- (C) Reimburse the defendant for the money taken for the cost of Legal Financial Obligations and Interest Fees (RCW 10.01.160 (3)).

II. RELIEF REQUESTED

2.1 The defendant asks this Court to take action as required in section 1.1 concerning the following Court ordered Legal Financial Obligations imposed under cause number(s):

Case number: 10-1-00690-1 and Case Number: 71886-0-I (SEE APPENDIX)

MOTION TO TERMINATE LFOs

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### III. GROUNDS FOR RELIEF

- 3.1 At the time that the Legal Fines were imposed, the Court did not make an individualized inquiry into the defendant's current and future ability to pay.
- 3.2 The boilerplate determination by the Court that the defendant has, or likely will have the future ability to pay the Legal Financial Obligations imposed is not supported by factual findings on the record.
- 3.3 The Court did not consider the defendant's indigent status as defined under General Rule 34.
- 3.4 The Eighth amendment of the United States Constitution, mirrored by Washington State's Constitution, article I § 14, states that: "Excessive bail shall not be required, nor excessive fines imposed..."

### IV. ARGUMENT

RCW 10.01.160 (3) states: "The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of costs, the court shall take account of the financial resources of the defendant and the nature of the burden the payment of costs will impose." Further, RCW 9.94A.142 (1) states: "The court should take into consideration the total amount of restitution owed, the offender's present, past and future ability to pay, as well as any assets the offender may have." It should be noted that the defendant meets the requirements of indigency under General Rule 34.

In this case, the Court did not adhere to the above statutes, RCW 9.94A.142 (1) and RCW 10.01.160 (3). Even though the defendant's Judgment and Sentence state that the Court did make a finding, the

MOTION TO TERMINATE LFOs

transcripts do not support the boilerplate finding. The Court did not consider the defendant's indigent status, GR 34, nor did they consider the defendant's Constitutional protections under the Eighth amendment, which mirrors Washington State's Constitution against imposing excessive fines.

Because the Court held in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), that RCW 10.01.160 (3) requires that the Court must do more than sign a judgement and sentence with boilerplate language stating that it engaged in the required inquiry, this Court is now obligated to either terminate the defendant's LFOs, or remand to make an individualized inquiry into the defendant's current and future ability to pay.

[I]f the current record ie. transcripts does not reflect that the sentencing judge made the individualized findings, then the Court had no duty to impose Legal Financial Obligations and the Department of Corrections has no authority to extract the "mandatory 20%" for LFOs pursuant to the judgement and sentence, which is now manifest error. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015); SEE *Fuller v. Oregon*, 40 L.Ed.2d 642, 645 (1974). It is well settled; *United States v. Davis*, 117 F.3d 459 (11th Cir. 1997), Such obligations may only be forced upon those who actually become able to pay them, Id. *United States v. Granados*, 962 F.2d 767, 771 (8th Cir. 1992), It is incorrect to impose a fine that the defendant has little chance of paying. *United States v. Walker*, 39 F.3d 489, 493 (4th Cir. 1992); *United States v. Fransisco*, 35 F.3d 116 (4th Cir. 1994), The Court is required to make specific finding regarding factors for imposition of fine because those findings are essential to effective appellate review of fines imposed. Failure to make any findings is grounds for vacation of fine.

MOTION TO TERMINATE LFOs

V. CONCLUSION

Action requested:

Based upon State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), controlling the above argument, the defendant respectfully requests this Court grant the following relief:

- I). Approve the requested action in section 1.1 concerning Legal Financial Obligations; or
- II). Remand for resentencing to assist the Court in developing a factual record to properly assess the defendant's likely present/future ability to pay LFOs; or
- III). Modify the judgement and enter an Order to Suspend all Legal Financial Obligations in the above stated case number(s) and, if applicable, pursuant to State v. Blazina (2015), supra; reimburse defendant with all money, including interest fees taken without authority to pay toward LFOs by Department of Corrections and the Judicial Administration. (SEE APPENDIX)

Respectfully submitted,

Jesse White

Jesse White  
Pro se

Signed on this 24th day in August, 2015.

MOTION TO TERMINATE LFOs