

FILED  
April 13, 2016  
Court of Appeals  
Division I  
State of Washington

NO. 75040-2-1

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

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STATE OF WASHINGTON,

Respondent,

v.

STATE V. HALLER

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable James Lawler, Judge

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SUPPLEMENTAL BRIEF OF APPELLANT

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### STATUTES, RULES AND OTHERS

RAP 14.2

RCW 10.73.160(1)

B. ASSIGNMENT OF ERROR

The trial court determined Mr. Haller did not have the present or future ability to pay discretionary legal financial obligations. This Court should exercise its discretion to disallow appellate costs even if the State is the substantially prevailing party.

Issue Presented on Appeal

Should this Court exercise its discretion not to allow costs, in the event the State substantially prevails, where the trial court ruled Mr. Haller lacks the ability to pay discretionary legal financial obligations?

B. STATEMENT OF THE CASE

1. THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING LEGAL FINANCIAL OBLIGATIONS (LFO) WITHOUT FIRST DETERMINING THE APPELLANT'S ABILITY TO PAY.

This Court has discretion not to allow an award of appellate costs if the State substantially prevails on appeal. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); *State v. Sinclair*, Wn. App. \_\_\_, No. 72102-0-1 (Jan. 27, 2016).

The defendant's inability to pay appellate costs is an important consideration to take into account in deciding whether to

disallow costs. *Sinclair*, slip op. at 9. Here, the trial court found Mr. Haller indigent for trial and appeal but did not engage in an inquiry of his ability to pay, but imposed legal financial obligations. CP 85-88. This Court should exercise its discretion and disallow trial and appellate costs should the State substantially prevail.

The Rules of Appellate Procedure allow the State to request appellate costs if it substantially prevails. RAP 14.2. A “commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, *unless the appellate court directs otherwise in its decision terminating review.*” RAP 14.2 (emphasis added). In interpreting this rule, our Supreme Court held that it allows for the appellate court itself to decide whether costs should be allowed:

Once it is determined that the State is the substantially prevailing party, *RAP 14.2 affords the appellate court latitude in determining if costs should be allowed*; use of the word “will” in the first sentence appears to remove any discretion from the operation of RAP 14.2 with respect to the commissioner or clerk, but *that rule allows for the appellate court to direct otherwise in its decision.*

*Nolan*, 141 Wn.2d at 626 (emphases added).

Likewise, the controlling statute provides that the appellate court has discretion to disallow an award of appellate costs. RCW 10.73.160(1) states, “The court of appeals, supreme court, and superior courts *may* require an adult offender convicted of an offense to pay appellate costs.” (emphasis added). In *Sinclair*, this Court recently affirmed that the statute provides the appellate court with discretion to deny appellate costs, which the Court should exercise in appropriate cases. *Sinclair*, slip opinion at 8. A defendant should not be forced to seek a remission hearing in the trial court, as the availability of such a hearing “cannot displace the court’s obligation to exercise discretion when properly requested to do so.” *Id.*

Moreover, the issue of costs should be decided at the appellate court level rather than remanding to the trial court to make an individualized finding regarding the defendant’s ability to pay, as remand to the trial court not only “delegate[s] the issue of appellate costs away from the court that is assigned to exercise discretion, it would also potentially be expensive and time-consuming for courts and parties.” *Sinclair*, slip opinion at 8-9.

Thus, “it is appropriate for this Court to consider the issue of

appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellate brief.” *Sinclair*, slip opinion at 9-10. Under RAP 14.2, the Court may exercise its discretion in a decision terminating review. *Sinclair*, slip opinion at 8.

The Court should deny an award of appellate costs to the State in a criminal case if the defendant is indigent and lacks the ability to pay. *Sinclair*, slip opinion at 8-11. The imposition of costs against indigent defendants raises problems that are well documented, such as increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration. Slip op. at 11 (citing *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015)). “It is entirely appropriate for an appellate court to be mindful of these concerns.” *Sinclair*, slip opinion at 11.

In *Sinclair*, the trial court entered an order authorizing Sinclair to appeal in forma pauperis and to have appointment of counsel and preparation of the record at State expense, finding Sinclair was “unable by reason of poverty to pay for any of the expenses of appellate review,” and “the defendant cannot

contribute anything toward the costs of appellate review.” *Sinclair*, slip opinion 13. Given Sinclair’s poverty, combined with his advanced age and lengthy prison sentence, there was no realistic possibility he would be able to pay appellate costs. *Sinclair*, slip opinion at 14.

Thus, the Court ordered that appellate costs not be awarded. *Id.* Similarly here, Mr. Haller is indigent and lacks an ability to pay, even though the court ordered LFO’s without inquiring into Haller’s ability to pay. CP 89-100. The court also entered an order authorizing Mr. Haller to appeal in forma pauperis. CP 103-04. This finding is supported by the record.

Mr. Haller is 39 years old and the court imposed a 192 month sentence. CP 89-100. This sentence plus Mr. Haller’s lengthy criminal history, which includes 17 prior felonies, makes it unlikely that Mr. Haller will be able to obtain gainful employment. CP 89-100. Given these factors, it is unrealistic to think Mr. Haller will be able to pay appellate costs.

This Court should exercise its discretion to reach a just and equitable result and direct that no appellate costs be allowed should the State substantially prevail.

D. CONCLUSION

Mr. Haller respectfully requests this Court remand for resentencing to vacate the order imposing costs.

DATED this 13<sup>st</sup> day of April 2016

Respectfully submitted,



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I, Lise Ellner, a person over the age of 18 years of age, served the Lewis County Prosecutors [appeals@lewiscountywa.gov](mailto:appeals@lewiscountywa.gov) and Sebastian Haller DOC# 766834 Stafford Creek Corrections 191 Constantine Way, GB-12 Aberdeen, WA 98520 a true copy of the document to which this certificate is affixed, on April 16, 2016. Service was made electronically.



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Signature