No. 47368-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Fauzi Zain,

Appellant.

Cowlitz County Superior Court Cause No. 14-1-00596-0

The Honorable Judge Marilyn Haan

Appellant's Supplemental Brief

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ISSUES AND ASSIGNMENT OF ERROR

1. The court erred by ordering Fauzi Zain to pay $1,775 in legal financial obligations absent any inquiry into whether he had the means to do so.
2. The court erred by entering finding of fact 2.5. CP 10.

ISSUE 1: A court may not order a person to pay legal financial obligations (LFOs) without conducting an individualized inquiry into his/her means to do so. Did the court err by ordering Fauzi Zain to pay $1,775 in LFOs while also finding him indigent and without analyzing whether he had the money to pay?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

At sentencing, the court did not conduct any inquiry into Fauzi Zain's financial situation. RP 71-75. At trial, Mr. Zain testified that his housing was paid by a voucher supplied to him by the Department of Corrections. RP 51-52.

Still, the court ordered him to pay $1,775 in legal financial obligations. CP 11. The court also found Fauzi Zain indigent for purposes of appeal. CP 22-23.

Fauzi Zain timely appealed. CP 21.

ARGUMENT

THE TRIAL COURT ERRED BY ORDERING FAUZI ZAIN TO PAY $1,775 IN LEGAL FINANCIAL OBLIGATIONS WITHOUT INQUIRING INTO HIS ABILITY TO PAY.

Fauzi Zain was found indigent at the end of trial. CP 22-23. Still, the court ordered him to pay $1,775 in legal financial obligations (LFOs). CP 11.

The court appeared to rely on boilerplate language in the Judgment and Sentence stating, essentially, that every offender has the ability to pay LFOs. CP 10. But the court did not conduct any particularized inquiry into Fauzi Zain's financial situation at sentencing or at any other time. RP

1-75. The court erred by ordering Fauzi Zain to pay LFOs absent any indication that he had the means to do so.

The legislature has mandated that "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3); *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015) (emphasis added by court).

This imperative language prohibits a trial court form ordering LFOs absent an individualized inquiry into the person's ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.*

The court must consider personal factors such as incarceration, the person's other debts (including restitution), and the receipt of means-tested benefits. *Id.*

Here, the court failed to conduct any meaningful inquiry into Fauzi Zain's ability to pay LFOs. RP 71-75. The court did not consider his financial status in any way. Indeed, the court also found Fauzi Zain indigent after sentencing. CP 11, 22-23; RP 1-75

Had the court considered the factors mandated by the Supreme Court in *Blazina*, Fauzi Zain's need for a voucher from the Department of

Corrections for housing, as well as his sentence of 50 months, would have weighed heavily against a finding that he had the ability to pay LFOs.

In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* at 839 ("[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs"). Fauzi Zain was determined to be indigent at both the beginning and the end of the proceedings in trial court. CP 22-23; Order to Appear (filed 5/19/14), Supp. CP.

RAP 2.5(a) permits an appellate court to review errors even when they are not raised in the trial court. RAP 2.5(a); *Blazina*, 182 Wn.2d at 835. The *Blazina* court recently chose to review the LFO-related issue raised in this case, finding that "National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case." *Id.*

The Supreme Court noted the significant disparities both nationally and in Washington in the administration of LFOs and the significant barriers they place to reentry of society. *Id.* at 835-36. This court should follow the Supreme Court's lead and consider the merits of Fauzi Zain's LFO claim even though it was not raised below.

The court erred by ordering Fauzi Zain to pay $1,775 in LFOs absent any showing that he had the means to do so. *Blazina*, 182 Wn.2d at

841. The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

CONCLUSION

The court erred by ordering Fauzi Zain to pay $1,775 in legal financial obligations without any inquiry into his means to do so. Fauzi Zain's case must be remanded for resentencing.

Respectfully submitted on July 14, 2015,

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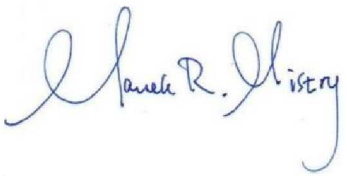

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

Fauzi Zain, DOC#857246
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

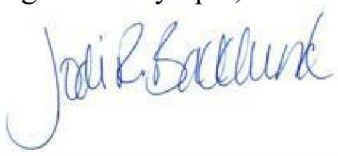
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Cowlitz County Prosecuting Attorney
appeals@co.cowlitz.wa.us

I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 14, 2015.



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