

NO. 47487-5-II

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

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STATE OF WASHINGTON,

Respondent,

v.

CHARLENE JEANETTE ALLEN,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
CLALLAM COUNTY, STATE OF WASHINGTON  
Superior Court No. 15-1-00056-9

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BRIEF OF RESPONDENT

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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether there is any authority prohibiting the allocation of drug fund contributions to a local drug task force and drug court?
2. Whether the amount of the drug fund contribution imposed was commensurate with the cost of investigating the drug crime?
3. Whether the court properly exercised its discretion by making an individualized inquiry into Ms. Allen's future ability to pay before imposing legal financial obligations.

## **II. STATEMENT OF THE CASE**

On April 21, 2015, Ms. Allen entered a plea of guilty to the crime of Possession of a Controlled Substance and Theft in the Third Degree. CP 16. The court sentenced Ms. Allen to a First Time Offender option. CP 16.

Prior to imposing Legal Financial Obligations (LFO's), the sentencing court inquired of Ms. Allen whether she had been employed, whether she was educated at all and what was her age. RP 22 (4/21/15). Further, the court asked Ms. Allen whether there was anything prohibiting Ms. Allen from having full time employment, or disabilities or anything. RP 22-23 (4/21/15). Ms. Allen responded that she had been employed as a waitress, caregiver, and random stuff, that she completed her GED, and that she did not have any disabilities or anything, except her charges, stopping her from being employed. RP 22-23 (4/21/15).

The Court found the defendant did have the capacity to have some earnings in the future and imposed legal financial obligations as recommended by the State. RP 23 (4/21/15). The defendant agreed “Yes.” RP 23 (4/21/15).

The court found the defendant indigent and waived the \$1000 drug fine, and instead, imposed \$1000 to be split between Olympic Narcotics Enforcement Team (OPNET) and Drug Court. RP 20, 26 (4/21/15); CP 21.

The court set a monthly payment at \$40 per month due to Ms. Allen’s financial resources and perceived future ability to pay. RP 30.

### III. ARGUMENT

“Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence.” RCW 9.94A.760 (1).

“Legal financial obligation” means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include . . . county or interlocal drug funds, . . . and any other financial obligation that is assessed to the offender as a result of a felony conviction.

RCW 9.94A.030 (30).

[W]e find that the legislature authorized the trial court to impose a drug fund contribution; . . . . Second, although the statute does not expressly limit the imposition of a drug fund contribution to drug-related crimes, we find this a reasonable and rather obvious interpretation. Finally, although the drug fund contribution is not a fine, we find it analogous and hold that the trial court is limited by the \$20,000 maximum fine set for any felony for which a maximum fine

is not statutorily fixed. *See* RCW 9.92.010. We further interpret the statute as requiring the amount of the contribution to be based on the costs of the investigation. A defendant may challenge the amount of the contribution, and if the defendant does so, the prosecutor must substantiate the amount.

*State v. Hunter*, 102 Wn. App. 630, 639, 9 P.3d 872 (2000).

The Court reviews the trial court's imposition of discretionary drug court contributions for abuse of discretion. *Id.* 640.

**A. MS. ALLEN'S CLAIM REGARDING THE ALLOCATION OF THE DRUG FUND CONTRIBUTION IS NOT SUPPORTED BY ANY AUTHORITY AND THE AMOUNT IMPOSED WAS REASONABLE CONSIDERING THE OVERALL COST OF THE INVESTIGATION.**

Here, the defendant challenges the court's imposition of a drug fund contribution allocated evenly between Olympic Peninsula Narcotics Enforcement Team (OPNET) and drug court. *See* Appellant's Br. at 9, 10; CP 21. The court's discretionary power to impose contributions to an interlocal and county drug funds is established by well settled law. *See Hunter*, 102 Wn. App. at 639.

The *Hunter* Court opined that the relevant statutes<sup>1</sup> allow the court to impose contributions to interlocal or county drug funds but that the

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<sup>1</sup> *See* former RCW 9.94A.145(1) and RCW 9.94A.030 (1); RCW 9.94A.760 and RCW 9.94A.030 (30).

amount should be based on the costs of investigation of the drug related crime. *Hunter*, 102 Wn. App. at 639.

Ms. Allen has provided no authority which regulates the *allocation* of contributions to a county or interlocal drug fund or the exact manner in which the fund will be used.

Considering that imposed contribution to interlocal or county drug funds needs to be based on the costs of investigation of a drug related crime, it would be absurd to read *Hunter* and the statutes authorizing the imposition of such costs as prohibiting the allocation of such funds to the law enforcement agency whose primary focus is investigating illegal drug activity locally.

OPNET is a local drug task force that investigates illegal drug activity in Clallam County. Further, Drug Courts are authorized by statute and are tasked with seeking the reduction of recidivism and drug abuse. RCW 2.28.170. There is no reason that an interlocal or county drug fund should not be allowed to allocate funds to these programs as those are the very programs that will help reduce the costs or recover a small part of the costs to the community in combating drug related crime and substance abuse.

Contentions that are not supported by argument and citations to authority need not be considered unless, without further research, the contention raised is well-taken on its face, readily apparent, or otherwise has

obvious merit. *See Grant Cnty. v. Bohne*, 89 Wn.2d 953, 958, 577 P.2d 138 (1978) (citing *In re Cassel*, 63 Wn.2d 751, 388 P.2d 952 (1964)); *McKee v. Am. Home Products. Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989) (citing *Transamerica Ins. Group v. United Pac. Ins. Co.*, 92 Wn.2d 21, 28–29, 593 P.2d 156 (1979)); *Whatcom Cnty. v. Kane*, 31 Wn. App. 250, 252, 640 P.2d 1075 (1981) (citing *Griffin v. Department of Social & Health Servs.*, 91 Wn.2d 616, 590 P.2d 816 (1979)); *Brauner v. Peterson*, 16 Wn. App. 531, 534, 557 P.2d 359 (1976); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549, 553 (1992).

The only issue left is whether the amount imposed by the court was sufficiently related to the cost of investigation of a drug crime.

Any drug crime requires the officers' time to question the suspect, search for evidence, field test suspected substances, arrest the suspect and transport the suspect. There is also the cost of field testing equipment and training to use it. Further, more time is required to process and package the evidence and send it to the Washington State Patrol Crime Laboratory for forensic testing by qualified scientists who have received the proper training. *See* RP 59. Documentation is required every step of the way. This does not even include the prosecution costs to get a conviction.

The State concedes that although there are obvious investigation requirements set forth in the probable cause statement and testing at the

Washington State Patrol (CP 58–59), there is not much else in the record establishing the exact overall costs related to the investigation of the drug crime in this case.

However, it should also be noted that the *Hunter* Court found that “although the drug fund contribution is not a fine, we find it analogous and hold that the trial court is limited by the \$20,000 maximum fine set for any felony for which a maximum fine is not statutorily fixed.” *Hunter*, 102 Wn. App. at 639. Here, the minimum mandatory fine for the offense was \$1000.00.

1) Every person convicted of a felony violation of RCW 69.50.401 through 69.50.4013, 69.50.4015, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

RCW 69.50.430 (1), (2).

The court found the defendant indigent and waived the \$1000 drug fine. *See* RP 20, 26 (4/21/15). \$1000 is not out of the realm of the total cost and total use of resources required to complete the investigation in this case.

Ms. Allen's claim that there was no authority to allocate any court imposed drug fund contribution to OPNET and drug court lacks merit. Further, the imposition of the discretionary costs to the drug court and OPNET should be affirmed because, although not exact, the record does contain information showing that \$1000 is not an unreasonable amount to impose considering the costs of investigation and the waiver of the \$1000 drug fine.

**B. THE COURT MADE AN INDIVIDUAL INQUIRY INTO MS. ALLEN'S FUTURE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.**

Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.

*State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015).

Here, the court's decision was not arbitrary because it did inquire to Ms. Allen's future ability to pay. The sentencing court inquired of Ms. Allen whether she had been employed, whether she was educated at all and her age. The court also asked Ms. Allen whether there was anything prohibiting Ms. Allen from having full time employment, or disabilities or anything. Ms. Allen responded that she had been employed as a waitress, caregiver, and

random stuff, that she completed her GED, and that she did not have any disabilities or anything, except her charges, stopping her from being employed.

The Court found the defendant did have the capacity to have some earnings in the future and the defendant agreed "Yes." The court also found Ms. Allen is capable of working at least minimum wage full time. RP 23 (4/21/15). The court imposed legal financial obligations as recommended by the State. The court set payments at \$40 per month. CP 22.

The requirement to make an individualized inquiry into the offender's future ability to pay does not require the court to only listen to the defendant's argument and agree. The court is required to actually inquire into a defendant's ability to pay before imposing legal financial obligations.

Therefore, this Court should affirm the imposition of legal financial obligations.

#### IV. CONCLUSION

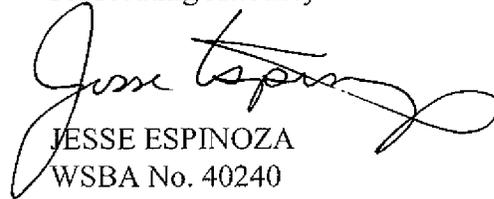
Ms. Allen has not provided any authority which prohibits how contributions to interlocal or county drug funds are allocated. The amount of the allocation was exactly the same as the amount of the drug fine which was waived and the facts in the probable cause statement indicate that there is much more involved in even a basic drug investigation than discovering evidence through a search incident to arrest. The amount imposed was

reasonable considering the overall costs involved. Finally, the court did make an individualized inquiry into Ms. Allen's future ability to pay. The court was convinced that that Ms. Allen was employable and the \$40 monthly payment was reasonable. For the foregoing reasons, Ms. Allen's sentence should be affirmed.

Respectfully submitted this 19th day of October, 2015.

Respectfully submitted,

MARK B. NICHOLS  
Prosecuting Attorney

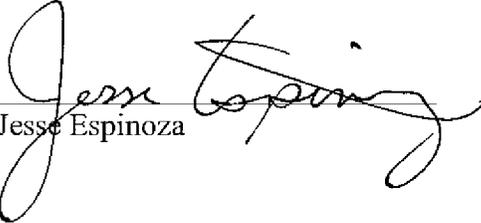
A handwritten signature in black ink, appearing to read "Jesse Espinoza", written in a cursive style. The signature is positioned above the printed name and title of the signatory.

JESSE ESPINOZA  
WSBA No. 40240  
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to John A. Hays on October 19, 2015.

MARK B. NICHOLS, Prosecutor

  
Jesse Espinoza

DOCUMENT1

# CLALLAM COUNTY PROSECUTOR

**October 19, 2015 - 5:12 PM**

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