

FILED  
COURT OF APPEALS  
DIVISION II

2015 JUL 15 AM 11:57

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION \_\_\_\_\_

IN RE THE PERSONAL RESTRAINT OF: )

) No. 13-1-04138-5

Arthur Lewis Dove )

) PERSONAL RESTRAINT PETITION

(petitioner's full name) )

) (regarding LFOs post *Blazina*)

A. STATUS OF PETITIONER

I, Arthur Lewis Dove

\_\_\_\_\_ (full name and address), apply  
for relief from restraint. I am  am not \_\_\_\_\_ now in custody serving a sentence upon  
conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody  
because of the following type of court order: \_\_\_\_\_

\_\_\_\_\_ (identify type of court order).

1. The court in which I was sentenced is:

Superior court of Washington Pierce county

2. I was convicted of the crime of: Rape of a child in the second

3. I was sentenced after (check one) Trial \_\_\_\_\_ Plea of Guilty  on

4-7-14 (date of sentence).

4. The Judge who imposed sentence was John R Hickman

5. My lawyer at trial court was Jane Pierson WSBJ# 36673  
\_\_\_\_\_ (name and address if known).

6. I did \_\_\_\_\_ did not  appeal from the decision of the trial court. (If the answer is that I  
did), I appealed to: \_\_\_\_\_

\_\_\_\_\_ (name of court or courts to which appeal took place).

7. My lawyer on appeal was: \_\_\_\_\_

- \_\_\_\_\_ (name and address if known; if none, write 'none').
8. The decision of the appellate court was \_\_\_\_\_ was not ~~not~~ published. (If it is published, and I have this information), the decision is published in \_\_\_\_\_ (volume number, Wa.App. or Wa.2d, and page number).
9. Since my conviction I have \_\_\_\_\_ have not  asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked), the court I asked was \_\_\_\_\_ (name of court or courts in which relief was sought).  
Relief was denied on: \_\_\_\_\_ (date of decision[s]).
10. (If I have answered in question 9 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 9 was: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (name and address if known; if none, write 'none').
11. If the answers to the above questions do not really tell about the proceedings, the courts, judges and attorneys in your case tell about it here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. GROUNDS FOR RELIEF:**

1. I should be released from the imposition of Judgment as it pertains to the Legal Financial Obligation portion(s) only, because:
- The trial court failed to make an individualized inquiry into petitioner's ability to pay any LFOs, which warrants resentencing.
  - The trial court relied on boiler-plate language, which petitioner alleges is prejudicial, to impose Judgment on the defendant.
  - Defendant at all times alleges that he is indigent for the reasons found at number (2), and states that payment of the imposed judgment will impose a manifest hardship on the petitioner and/or his family.
2. The following facts are important when considering my case:
- Petitioner is physically/mentally disabled and does not have the future ability to be gainfully employed.
  - Petitioner's current household income falls below 125% of the federal poverty guideline.
  - Distinctions exist between petitioner's financial circumstances at time of sentence and petitioner's current financial status.

- Petitioner owes \$201.78 in restitution which cannot be waived per statute. However, restitution should be considered as a financial responsibility which weighs on the petitioner's ability to pay other discretionary LFOs.
- Petitioner requests the court to also review the LFO's ordered under these additional cause numbers, as long as review does not invoke a mixed petition rule.

- Petitioner owes LFOs in several Court jurisdictions within this division which also cause a distinguishable financial hardship.
- Petitioner receives assistance from a needs based, means tested assistance program.
- Petitioner's household income is above 125% of the federal poverty guideline and the defendant has recurring basic living expenses, as defined in RCW 10.101.010(4) (d), that render him without financial ability to pay.
- Other compelling circumstances exist that demonstrate the petitioner's inability to pay any LFO.
- No fact was entered into the record which would support the conclusion that the defendant has had, or will ever have, the ability to pay the LFO imposed under this cause number(s).

Petitioner was ordered to pay LFOs as follows:

(Check those that apply and enter amounts)

<input checked="" type="checkbox"/> Victims' Penalty Assessment	\$ <u>500.00</u>
<input checked="" type="checkbox"/> Court Costs	\$ _____
<input checked="" type="checkbox"/> DNA Fee	\$ <u>100.00</u>
<input checked="" type="checkbox"/> Attorney Costs	\$ <u>500.00</u>
<input type="checkbox"/> Bench Warrant Fee	\$ _____
<input type="checkbox"/> Extradition Costs	\$ _____
<input type="checkbox"/> Jury Fee	\$ _____
<input type="checkbox"/> Witness Costs	\$ _____
<input checked="" type="checkbox"/> Restitution	\$ <u>201.78</u>
<input type="checkbox"/> Appellate Costs	\$ _____
<input type="checkbox"/> Drug Offense Costs	\$ _____
<input type="checkbox"/> Investigative fees	\$ _____
<input checked="" type="checkbox"/> Other: <u>criminal filing fee</u>	\$ <u>200.00</u>

- Public, needs-based government benefits are not subject to attachment, garnishment, or execution.
- Petitioner has previously filed a PRP, and may be subject to successive petition rule; petitioner claims that issues have not been previously raised, issues were not previously reviewable per statute, and could not be raised in the first petition accordingly.

3. The following reported court decisions show the error alleged to have occurred in my case:

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (March 12, 2015) (trial courts must consider a defendant's individual financial circumstances, and make an individualized inquiry into the defendant's present and future ability to pay).

Matter of Vandervlugt, 120 Wn.2d 427, 842 P.2d 950 (1992) (the decision found in Blazina should be retroactive due to the fairness factors which themselves compel retroactive application).

Bennet v. Arkansas, 485 U.S. 395, 108 S.Ct. 1204 (1988); Nelson v. Heiss, 271 F.3d 891, 895 (9<sup>th</sup> Cir. 2001) (citing Bennet) (government benefits are not subject to execution, to include court-ordered LFOs; if state procedure conflicts with federal statute then the Supremacy Clause of the United States Constitution requires that the federal statute stands).

State v. Lundy, 176 Wn.App. 96, 308 P.3d 755 (2013) (if the court intends to impose discretionary LFOs as a sentencing condition, it must consider the defendant's present or likely future ability to pay).

State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992) (establishing seven factors regarding permissible costs and fees structure).

4. The following statutes and constitutional provisions should be considered by the Court:

- Petitioner failed to object to the imposition of LFOs, however the Court should consider RAP 1.2, providing broad ability to waive or alter any rule, including RAP 2.5, to serve the ends of justice by reviewing this petition.
- This Court should consider RCW 10.01.160(3) and (4) before applying the one year time-bar in RCW 10.73.090, where LFO judgments are not 'final', and a defendant "may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof." Additionally, this Court should consider RCW 10.73.100(6) as there has been a significant change in the law according to the decision recently made in the Washington Supreme Court in State v. Blazina, supra. This change should overcome application of RCW 10.73.090.
- When determining petitioner's claim of indigence this Court should consider Washington Court Rule GR 34 and RAP Rule 15.2. These two rules, combined with RCW 10.01.160(3), provide guidance to the Court regarding what constitutes indigence, and give rise to the petitioner's claim on review.
- Where petitioner receives need-based government benefits, this Court should consider 42 U.S.C. § 407 and 38 U.S.C. § 5301 (such benefits are exempt from garnishment or other legal process).

5. This petition is the best way I know to receive the relief I am requesting, and no other option will work as well because prejudice has occurred which has caused a manifest hardship to be imposed on the petitioner contrary to State statute.

**C. STATEMENT OF FINANCES**

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do  do not \_\_\_ ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have a spendable balance of \$ 0 in my prison or institution account.
3. I do  do not \_\_\_ ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.
4. I am \_\_\_ am not  employed. My salary or wages amount to \$ \_\_\_\_\_ a month.  
My employer is

\_\_\_\_\_  
Name and address of employer

5. During the past 12 months I did \_\_\_ did not  get any money from a business, profession, or other form of self-employment. If I did, it was \_\_\_\_\_ (type of self-employment) and the total income I received was \$ \_\_\_\_\_.
6. During the past 12 months I:

Did \_\_\_ Did Not  Receive any rent payments. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not  Receive any interest. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not  Receive any dividends. If so, the total I received was \$ \_\_\_\_\_

Did \_\_\_ Did Not  Receive any other money. If so, the total I received was \$ \_\_\_\_\_

Do \_\_\_ Do Not  Have any cash except as said in question 2 of Statement of Finances.

If so the total amount of cash I have is \$ \_\_\_\_\_.

Do \_\_\_ Do Not  Have any savings or checking accounts. If so the total amount in all accounts is \$ \_\_\_\_\_.

Do \_\_\_ Do Not  Own stocks, bonds, or notes. If so their total value is: \$ \_\_\_\_\_.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
<i>NONE</i>	

8. I am \_\_\_ am not  married. If I am married, my wife or husband's name and address are:

\_\_\_\_\_

\_\_\_\_\_

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
<i>NONE</i>		

10. All of the bills I owe are listed here:

Name & Address of Creditor	Amount
<i>NONE</i>	

**D. REQUEST FOR RELIEF**

I respectfully request this Court to:

VACATE my Legal Financial Obligations Judgment and remand for resentencing.

VACATE my Legal Financial Obligations Judgment and dismiss the Judgment with Prejudice without resentencing.

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E. OATH OF PETITIONER

THE STATE OF WASHINGTON )

) :SS:

COUNTY OF Pierce )

After being first duly sworn, on oath, I depose and say:

That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true and correct.



(Signature)

Arthur Dove

(Print name)

PO Box 2049

Airway Hts, wa 99001

(Address)

SUBSCRIBED AND SWORN to me this 8 day of July, 2015.

Mary E Flygare

Notary Public in and for the state of Washington,

Residing at Airway Hts, WA

My commission expires: 12-12-18

