

FILED

NOV 04, 2013
Court of Appeals
Division III
State of Washington

NO. 315568-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

IGNACIO JUNIOR SALAZAR, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 11-1-01293-3

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

- 1. IS THE ISSUE OF LEGAL FINANCIAL OBLIGATIONS AND THE DEFENDANT'S ABILITY TO PAY TIMELY?**
- 2. WAS THE TRIAL COURT IN ERROR WHEN IT IMPOSED AN INDETERMINATE AMOUNT OF COMMUNITY CUSTODY, TIED TO EARNED EARLY RELEASE?**

II. STATEMENT OF THE CASE

Ignacio Salazar entered a plea of guilty to one count of Unlawful Delivery of a Controlled Substance. (CP 61-69; RP VOLUME III, 424). The defendant was sentenced on March 13, 2013, to 36 months confinement and to a term of community custody for the longer of (1) the period of early release, or (2) the period imposed by the court, which was 12 months. (CP 75).

As part of his sentence, certain court costs, fees, and fines were assessed against him. (CP 73, 83). These costs, fees and fines totaled \$7,042.28. The trial court waived the attorney's fees and jury fee. (CP 83).

III. ARGUMENT

1. NO ATTEMPTS HAVE BEEN MADE TO COLLECT LEGAL FINANCIAL OBLIGATIONS FROM THE DEFENDANT, AND HIS REQUEST FOR REVIEW IS NOT TIMELY.

State v. Ziegenfuss, 118 Wn. App. 110, 113, 74 P.3d 1205 (2003) is illustrative. In *State v. Ziegenfuss*, an inmate protested the Department of Corrections procedure for imposing sanctions upon those who fail to pay their legal financial obligations. *Id.* at 112. The Court stated, in answer to her claims: “Ziegenfuss has not failed to pay the VPA [Victim’s Penalty Assessment], nor has she been incarcerated or otherwise sanctioned for violating the terms of her community custody. As yet, therefore, she has suffered no harm, and her challenge to the constitutionality of the process in DOC community custody violation hearings is premature.” *Id.* at 113..

Similarly, Mr. Salazar has suffered no harm as a result of the imposition of costs. When the State attempts to collect such from him, he will be given a chance to be heard, and make arguments about his ability to pay. The Court has made it clear: “There is no reason at this time to deny the State’s cost request based upon speculation about future circumstances.” *State v. Blank*, 131 Wn.2d 230, 253, 930 P.2d 1213 (1997). When the State attempts to collect, then let him claim indigence.

The court will be able to make a determination based upon the best possible evidence.

Mr. Salazar noted the court ordered him to pay up to \$50.00 a month. (App. Brief at 2). However, the defendant is only required to pay if he has funds earned from the Department of Corrections. The language reads: “The defendant shall pay up to \$50.00 per month to be taken from any income the defendant earns while in the custody of the Department of Corrections. This money is to be applied towards legal financial obligations.” (CP 74).

RCW 72.09.015(15) provides an express definition of indigency in this circumstance, “[I]ndigency’ mean[s] an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.” The deductions in prison are statutorily barred from reducing the inmate below the level of indigency, under the scheme constructed for such in RCW 72.09.111. No monies would be collected from the defendant unless he earns it while under Department of Correction custody, and it would not be an amount that would cause indigency.

Another illustrative case is *State v. Crook*. 146 Wn. App. 24, 189 P.3d 811 (2008). There, Mr. Crook appealed an order denying his motion

to alleviate him of his financial obligations. *Id.* at 26. The Court’s response was: “Inquiry into the defendant's ability to pay is appropriate only when the State enforces collection under the judgment or imposes sanctions for nonpayment; a defendant's indigent status at the time of sentencing does not bar an award of costs.” *Id.* at 27. The State has not attempted to collect legal financial obligations that aren’t tied to his ability to pay while under the Department of Corrections custody.

A. Mr. Salazar is not an ‘aggrieved party’ as per RAP 3.1.

Mr. Salazar is not an aggrieved party. “We have defined “aggrieved party” as one whose personal right or pecuniary interests have been affected.” *State v. Taylor*, 150 Wn.2d 599, 604, 80 P.3d 605 (2003). The Courts of this State have stated an individual against whom costs have been assessed, but on which no actions have been taken is not aggrieved for the purposes of RAP 3.1. *State v. Smits*, 152 Wn. App. 514, 525, 216 P.3d 1097 (2009). The reasons for this are apparent. No pecuniary interests have been impacted by the simple fact that the State has assessed costs against Mr. Salazar. If and when the State attempts to collect upon Mr. Salazar’s legal financial obligations when he completes his sentence, he will then be an aggrieved party, able to petition the court for protection from collection orders.

2. COMMUNITY CUSTODY SHOULD BE DETERMINATE, AND THE SUBSECTION IN THE JUDGMENT AND SENTENCE THAT ALLOWS FOR AN INDETERMINATE AMOUNT SHOULD BE STRICKEN.

The court imposed a term of custody for the longer of (1) the period of early release, or (2) the period imposed by the court, which was 12 months. (CP 75). The State concedes that this was in error and that the first line under heading (1) should be stricken from the Judgment and Sentence. The defendant would therefore be properly sentenced to 12 months community custody.

IV. CONCLUSION

Mr. Salazar's appeal of his legal financial obligations is untimely. The time for him to request the alleviation of his legal financial obligations is when he has been incarcerated or otherwise sanctioned for violating the terms of his community custody.

The State concedes that Mr. Salazar should be sentenced to 12 months community custody and proposes any language to the contrary be stricken from the Judgment and Sentence.

RESPECTFULLY SUBMITTED this 4th day of November
2013.

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Bar No. 37988

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

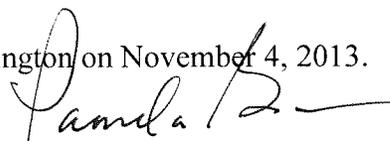
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Prepaid

Signed at Kennewick, Washington on November 4, 2013.



Pamela Bradshaw
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