

FILED
DECEMBER 30, 2014
Court of Appeals
Division III
State of Washington

No. 32034-1-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

QUOVADIA C. LLOYD,

Defendant/Appellant

Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. The Record supports the trial court's finding that Ms. Lloyd had the current and the future ability to pay the legal financial obligations that it chose to impose.
- b. The court did not err by imposing discretionary costs based on Ms. Lloyd's current and future ability to pay.

B. ISSUES PRESENTED

- a. May a defendant raise this issue for the first time on appeal?
- b. Must the court consider current and future ability to pay when imposing certain statutorily imposed legal financial obligations?
- c. Does the record support that Ms. Lloyd had the current and future ability to pay the financial legal obligations when she told the court she was currently employed and the court waived several discretionary fees and indicated it was taking into consideration several factors regarding her ability to pay when it imposed the remaining legal financial obligations?

C. STATEMENT OF THE CASE

Ms. Lloyd was convicted by a jury of two counts of bribing a witness on October 9, 2013. CP 26-27. The Superior Court sentenced Ms. Lloyd in accordance with the jury's verdict on

October 25, 2013 and as part of the sentence ordered Ms. Lloyd to pay at least \$100.00 per month towards her legal financial obligations. 10/25/13 RP 16. At the time of sentencing Ms. Lloyd's attorney indicated to the court that she was employed by the Red Cross four days a week. 10/25/13 RP 11. The court imposed a nine month sentence, but authorized partial confinement. 10/25/13 RP 14. The sentence began with three months of electronic home monitoring beginning November 8, 2013. 10/25/13 RP 15. The court waived imposition of discretionary sentencing fees including \$200.00 for court costs and \$1500 for the court appointed attorney. 10/25/13 RP 16. The court imposed mandatory costs pursuant to RCW 7.68.035 of \$500.00. ~~Id.~~ The court also imposed mandatory costs pursuant to RCW 43.43.7541 of \$100.00. J&S 5. The court imposed discretionary fees of \$50.00 for booking. ~~Id.~~ The total of the legal financial obligations ordered was \$650.00. ~~Id.~~ The judge indicated he was taking into consideration her financial circumstances and family circumstances including that she had three children to support. 10/25/13 RP 16.

D. ARGUMENT

- a. Defendant did not make this argument below and is precluded from making this argument for the first time on appeal.

A defendant's ability to pay may not be raised for the first time on appeal. State v. Duncan, 180 Wn. App. 245, 327 P.3d 699 (App. III 2014).

In Duncan, this court reasoned that the defendant's interest in raising issues of indigency at the time of sentencing is pivotal and not one likely to be overlooked by criminal defendants. 180 Wn. at 253. Looking to the facts of this case, we see that to be true as the defendant presented information to the court at the time of sentencing regarding her familial obligations and her current job situation. She indicated should she be incarcerated, she would lose the employment she had. The court thus imposed the first three months of her jail sentence on EHM, giving her time to save money and pay off the legal and financial obligations before she began her incarceration.

- b. The court ordered the defendant to pay mandatory costs pursuant to RCW 7.68.035 to the Victim assessment which does not require any inquiry into ability to pay. This order must be affirmed.

This court has ruled on this very issue: the defendant's argument that the record did not support an implicit finding by the trial court that he had the ability to

pay legal financial obligations had no application in relation to the victim penalty assessment because the assessment was statutorily mandated. Because the assessment was not discretionary, the ability to pay requirement of RCW 10.01.160 did not apply. State v. Kuster, 175 Wn. App. 420, 306 P.3d 1022 (App. III 2013). Imposition of victim penalty assessment pursuant to this section is mandatory and requires no consideration of defendant's ability to pay. State v. Williams, 65 Wn. App. 456, 828 P.2d 1158, (App. I 1992). A trial court did not err in imposing a victim's penalty assessment without consideration of defendant's ability to pay. State v. Allyn, 63 Wn. App. 592, 821 P.2d 528, (App. I 1991), review denied, 118 Wn.2d 1029, 828 P.2d 563 (1992), overruled, In re Personal Restraint of Sietz, 124 Wn.2d 645, 880 P.2d 34 (1994). The ability to pay is irrelevant to the imposition of a victim's penalty assessment. State v. Curry, 62 Wn. App. 676, 814 P.2d 1252, (App. I 1991), aff'd, 118 Wn.2d 911, 829 P.2d 166, (1992).

There is no change in law regarding the statutory and mandatory imposition of the Victim Compensation fund since this court heard Kuster. A judge does not have

discretion in ordering a defendant pay and a defendant's ability to pay is irrelevant.

- c. The court ordered the defendant to pay mandatory costs pursuant to RCW 43.43.7541 for the DNA collection fee which does not require any inquiry into ability to pay.

This order must be affirmed.

Similar to the Victim Compensation statute, this court has also ruled on the DNA collection statute: a defendant's argument that the record did not support an implicit finding by the trial court that he had the ability to pay legal financial obligations had no application in relation to the DNA collection fee because the fee was statutorily mandated. Because the fee was not discretionary, the ability to pay requirement of RCW 10.01.160 did not apply. *State v. Kuster*, 175 Wn. App. 420, 306 P.3d 1022 (App. III 2013).

There is no change in law regarding the statutory and mandatory imposition of the DNA collection fee since this court heard Kuster. A judge does not have discretion in ordering a defendant pay and a defendant's ability to pay is irrelevant.

- d. The court considered the defendant's current and future to pay legal financial costs according to the record when it

directed the defendant to pay a \$50.00 discretionary booking fee.

Pursuant to RCW 10.01.160(1), a court may impose costs and require a defendant to pay them. There is no requirement that a court make formal, specific findings of ability to pay when imposing costs. State v. Curry, 118 Wn.2d 911, 915-16; 829 P.2d 166 (1992).

Here the record is clear that the court took into consideration the defendant current and future ability to pay. First, he began her jail sentence with three months of electronic home monitoring based on her assertion she would lose her job if she were incarcerated.¹ Additionally, the court on its own accord struck several discretionary costs from the imposed legal financial obligations: the court appointed attorney fee and the court costs. Additionally the court noted that the defendant had obligations to her children.

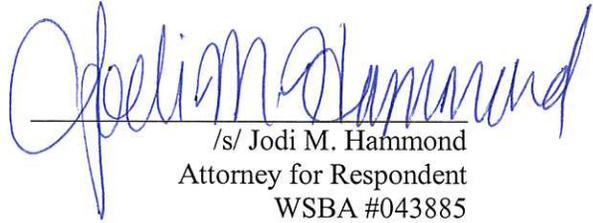
There is adequate support in the record of the trial court's decision to impose the discretionary fee of \$50.00 for booking.

E. CONCLUSION

¹ The record is void of any indication whether Ms. Lloyd did in fact lose her job when she began her jail sentence.

For the reasons stated, the sentence should be affirmed, including the relevant portions of the Judgment and Sentence pertaining to Legal and Financial Obligations.

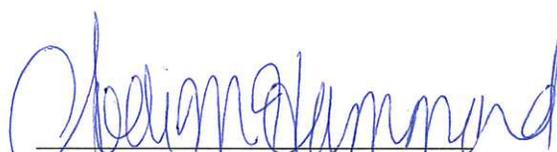
Respectfully submitted December 29, 2014,


/s/ Jodi M. Hammond
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PROOF OF SERVICE

I, Jodi M. Hammond, do hereby certify under penalty of perjury that on December 23, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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APPELLATE COURT OF THE STATE OF WASHINGTON

DIVISION III

State of Washington ,)	
)	No. 32034-1-III
Respondent.)	
)	AFFIDAVIT OF SERVICE
QUOVADIA C. LLOYD,)	
Appellant.)	
_____)	

STATE OF WASHINGTON)
) ss.
 County of Kittitas)

The undersigned being first duly sworn on oath, deposes and states:

That on the 30th day of December, 2014, affiant an electronic copy directed to:

Renee Townsley	David N. Gasch
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500 N. Cedar Street	
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containing copies of the following documents:

- (1) Affidavit of Service
- (2) Respondent's Brief

Theresa Larsen

SIGNED AND SWORN to (or affirmed) before me on this 30th day of December, 2014.



Lorraine A. Hill
 NOTARY PUBLIC in and for the
 State of Washington.
 My Appointment Expires: 09-10-17