

FILED
Mar 01, 2016
Court of Appeals
Division III
State of Washington

No. 33050-8-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

NICOLE R. BASHAW, Appellant.

BRIEF OF RESPONDENT

ROBERT A. LEHMAN
Asotin County Deputy
Prosecuting Attorney
WSBA #47783

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I. ISSUES

1. WHETHER THE TRIAL COURT'S IMPOSITION OF A CRIMINAL FINE AND A MANDATORY CRIMINAL COURT FILING FEE REQUIRED AN INDIVIDUALIZED DETERMINATION THE RESPONDENT'S PRESENT AND FUTURE ABILITY TO PAY?

II. ARGUMENT

1. THE COURT WAS NOT REQUIRED TO CONDUCT AN INDIVIDUALIZED DETERMINATION BEFORE IMPOSING A CRIMINAL FINE, WHICH IS NOT A COST, AND BEFORE IMPOSING A MANDATORY CRIMINAL FILING FEE.

III. STATEMENT OF THE CASE

Procedural History

On January 14, 2015, the trial court entered an Order on Adjudication and Disposition finding the Respondent guilty of Vehicular Assault.¹ CP 16. The trial court ordered The Respondent to pay five hundred dollars in fines, one hundred dollars in Victims'

¹Appellant, Nicole R. Bashaw, was tried by the Asotin County Superior Court, Juvenile Division and in accordance with RAP 10.4(e) shall be referred to as Respondent in this brief.

Compensation Fund Statutory Assessment, and two hundred dollars in filing fees. CP 17. On July 6, 2015, the trial court entered an Order on Restitution against the Respondent in the amount of \$169,423.84. The Order on Restitution is not the subject of this appeal.

In issuing the sentence in this matter, including the legal financial obligation, the trial court did not make an individualized determination in Respondent's present and future ability to pay. RP 216-18. These legal financial obligations were not costs and the trial court was not required to make an individualized determination.

On January 15, 2015, the Respondent filed this appeal regarding the five hundred dollars in criminal fines and two hundred dollars in mandatory criminal court filing fees. Notice of Appeal, CP 20. The Respondent has, to date, not filed a *Pro Se* Brief.

IV. DISCUSSION

THIS COURT SHOULD DECLINE TO CONSIDER THE ISSUE OF WHETHER THE TRIAL COURT ADEQUATELY CONSIDERED THE RESPONDENT'S ABILITY TO PAY PURSUANT TO STATE v. BLAZINA, WHERE THE RESPONDENT FAILED TO OBJECT BELOW.

The State recognizes that RCW 10.01.160(3) requires the trial court to make an individualized inquiry into a defendant's current and future ability to pay prior to imposing costs. See State v. Blazina, 182

Wn.2d 827, 838, 344 P.3d 680 (2015). This inquiry includes evaluating a defendant's financial resources, incarceration, and other debts, including restitution. Blazina, 182 Wn.2d at 838-39. However, where, as here, the Respondent failed to object below, this Court should decline to consider this pursuant to RAP 2.5. See State v. Duncan, 180 Wn. App. 245, 253, 327 P.3d 699 (2014), *review granted*, 183 Wn.2d 1013, 353 P.3d 641 (August 5, 2015) (“[W]e view this as precisely the sort of issue we should decline to consider for the first time on appeal.”).

Refusal to entertain issues for the first time on appeal is based upon well-settled issues of jurisprudence: “insistence on issue preservation is to encourage ‘the efficient use of judicial resources.’” See State v. Robinson, 171 Wn.2d 292, 304-05, 253 P.3d 84 (2011)(*quoting State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988)).

Issue preservation serves this purpose by ensuring that the trial court has the opportunity to correct any errors, thereby avoiding unnecessary appeals.

See id. Here, it will not encourage the efficient use of resources to require a hearing which could have been avoided had the Respondent merely objected and prompted the Trial Court to inquire.

It should be further recognized that the directive of RCW 10.01.160(3) to inquire regarding ability to pay, as further

described in Blazina, only applies to imposition of discretionary costs:

For victim restitution, victim assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account.

State v. Lundy, 176 Wn. App. 96, 102-03, 308 P.3d 755, 758 (Div. II, 2013) (Citing State v. Kuster, 175 Wn. App. 420, 306 P.3d 1022 (Div. III, 2013)). Further, the Court's decision to impose a fine pursuant to RCW 9A.20.021 does not require inquiry into the offender's ability to pay. See State v. Clark, 191 Wn.App. 369, 376-77, 362 P.3d 309 (Div. III, November 19, 2015). The only legal financial obligations at issue in this case are the imposition of a criminal fine and mandatory criminal court filing fee. Neither of these legal financial obligations requires an individualized determination of The Respondent's present and future ability to pay.

V. CONCLUSION

The Respondent is not entitled to a remand for re-sentencing of his legal financial obligations. The Respondent failed to object at trial regarding the imposition of filing fees. Blazina does not apply to court imposed criminal fines nor mandatory criminal filing fees. Criminal fines are not discretionary costs and no individualized determination is required prior to being imposed as a punishment. Criminal filing fees are mandatory costs and do not require

individualized determination prior to being imposed. Respondent respectfully requests this Court deny this appeal.

Dated this 1st day of March, 2016.

Respectfully submitted,



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DECLARATION OF SERVICE

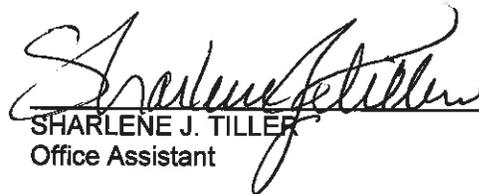
DECLARATION

On March 1, 2016 I electronically mailed a copy of the BRIEF OF RESPONDENT in this matter to:

David N. Gasch
gaschlaw@msn.com

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on March 1, 2016.


SHARLENE J. TILLER
Office Assistant