FILED
Oct 10, 2016
Court of Appeals
Division III
State of Washington

No. 34112-7-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

NICHOLAS S. ROY, Appellant.

BRIEF OF RESPONDENT

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

P. O. Box 220
Asotin, Washington 99402
(509) 243-2061

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. SUMMARY OF ISSUES 1

II. SUMMARY OF ARGUMENT 1

III. STATEMENT OF THE CASE 2

IV. DISCUSSION 8

1. THE ASOTIN COUNTY CLERK HAS STATUTORY AUTHORITY TO IMPOSE A COLLECTION FEE THAT DOES NOT REQUIRE COURT AUTHORIZATION 1

2. THE IMPOSITION OF AN ANNUAL ONE HUNDRED DOLLAR COLLECTION FEE WAS PROPER 1

3. APPELLATE COSTS SHOULD NOT BE FORECLOSED. 1

V. CONCLUSION 26

TABLE OF AUTHORITIES

U. S. Supreme Court Cases

United States v. Kubrick, 444 U.S. 111, 62 L. Ed. 2d 626, 100 S. Ct. 352 (1979) 19

U.S. Circuit Court Cases

Ciccarelli v. Carey Canadian Mines, Ltd., 757 F.2d 548 (3rd Cir. 1985) 19

People v. Carter, 678 F. Supp. 1484 (D. Colo. 1986) . . . 20

State Supreme Court Cases

In re Personal Restraint Petition of: Nicholas Severn Roy, 93124-1 (filed Sept. 28, 2016) 18, 19

State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997) 16, 17

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015) 14, 20

State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997) 11, 12

State v. Rivard, 168 Wn.2d 775, 231 P.3d 186 (2010) . . . 9

State v. Schultz, 146 Wn.2d 540, 48 P.3d 301 (2002) 8

State Court of Appeals Cases

In re Rivard, 183 P.3d 1115 (Div. III, 2008) (Unpublished) 9

In re Rivard, 146 Wn. App. 891, 193 P.3d 195 (Div. III, 2008) 9

Marriage of Giordano, 57 Wn. App. 74, 787 P.2d 51 (1990) 19, 20

State v. Caver, No. 73761–1, slip op. (filed Sept. 6, 2016) 17

State v. Luna, 172 Wn. App. 881, 292 P.3d 795 (2013) 8

State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612 (Div. I, 2016) 17, 20

Statutes

RCW 9.94A.120(9)(a) 8, 9

RCW 9.94A.760 6

RCW 9.94A.780(7) 4, 6, 7, 8, 9, 10, 21

RCW 10.01.160 20

RCW 10.73.160 20

RCW 10.99.050(1) 8

RCW 36.18.016(29) 4, 5, 6, 7, 8, 9, 10, 13, 21

RCW 36.18.190 7

I. ISSUES

1. DOES THE COUNTY CLERK HAVE STATUTORY AUTHORITY TO IMPOSE COLLECTION FEES THAT DO NOT REQUIRE COURT AUTHORIZATION?

2. DID THE COUNTY CLERK PROPERLY IMPOSE AN ANNUAL COLLECTION FEE OF ONE HUNDRED DOLLARS?

3. SHOULD THE COURT PRECLUDE THE STATE FROM SEEKING A COST AWARD SHOULD IT PREVAIL ON APPEAL?

II. ARGUMENT

1. THE COUNTY CLERK HAS STATUTORY AUTHORITY TO IMPOSE COLLECTION FEES OUTSIDE OF THE COURT'S AUTHORITY.

2. THE COUNTY CLERK'S IMPOSITION OF THE ONE HUNDRED DOLLAR COLLECTION FEE LIMIT IS EVIDENCE THAT THE COUNTY CLERK EXPENDED AT LEAST ONE HUNDRED DOLLARS IN ATTEMPTING TO COLLECT FROM THE APPELLANT.

3. APPELLATE COSTS SHOULD NOT BE FORECLOSED.

III. STATEMENT OF THE CASE

FACTS

The Appellant, Nicholas S. Roy, has extensive criminal history. His adult cases stretch back into the 1980s. See CP 463-64, Section 2.2. The Appellant has filed forty appeals and personal restrain petitions with the Court of Appeals, Division III,

attacking every aspect of his numerous judgment and sentences.[1] The Appellant is currently appealing four Asotin County Superior Court Cases: 96-1-00055-0; 97-1-00075-2; 99-1-00114-3; and 02-1-00067-5. In those four cases the Appellant has filed twenty-three prior appeals.[2] In none of the above appeals has the Court of Appeals ever found that the Judgement and Sentences or the imposition of fees was improper.[3] The Appellant now appeals the Superior Court's denial of his motion to strike collection fees.

In the four cases at issue in this appeal, the Appellant was convicted in 1995 of delivering marijuana and possessing methamphetamine; in 1998 of possession of methamphetamine and less than 40 grams of marijuana; in 2000 of possession of methamphetamine; and in 2002 of possession of methamphetamine with intent to deliver. CP 6-8, 154-57, 317-20, 598. The Appellant was assessed legal financial obligations in each case. *Id*.

---

[1]See COA-III No. 173798, 212572, 236765, 221334, 221342, 223477, 223493, 227227, 227235, 227243, 227251, 227260, 227278, 227294, 227286, 227383, 232221, 236706, 236714, 236731, 236749, 236757, 236765, 245918, 247422, 248402, 249590, 249603, 260828, 319539, 336361, 336395, 336409, 336417, 336379, 336387, 336760, 337618, 344045, and 337685.

[2]See COA-III No. 173798, 212572, 236765, 223477, 27246, 227251, 227260, 27294, 232221, 236731, 236749, 236765, 245918, 247422, 248402, 249590, 260828, 336395, 336409, 336417, 336379, 336387, and 337618.

[3]The COA did find on Judgment and Sentence to be in error and ordered that the Statutory maximum was twenty years instead of the ten years listed on the order.

On July 27, 2015, the Appellant filed a Motion to Exempt/ Defer/ Strike Collection Fees. CP 650-53[4]. In his motion, the Appellant argued that imposition of a collection fee was improper due to his incarceration. *Id*. He also argued that the Court Clerk lacked jurisdiction to impose collection fees. Other than raising accusations that the one hundred dollar fee was not the actual cost of collection, the Appellant provided no exhibits or declarations supporting these assertions.

On August 20, 2015, the Appellant filed a Declaration of Nicholas S. Roy In Support of Motion to Exempt/ Defer/ Strike Collection Fees. CP 660-67. In his declaration the Appellant declared that he had been attending classes while incarcerated, was employed as a custodian and laborer, and had completed chemical dependency treatment. *Id*.

On September 11, 2015, the Appellant filed a Motion to Strike Garnishment Costs, Collection Fees, and Renewal of Judgment Assessment. CP 670-672. In his motion the Appellant argued that because a box was not checked on page four of his judgment and sentence this would precluded collection in his cases. CP 671. The Appellant did not argue that the one hundred

---

[4]While this appeal involves four separate Superior Court cases the Clerk's Papers involving the issues in this appear are essentially identical. For clarity and brevity the State will primarily cite to the Clerk's Papers of Asotin County Superior Court Cause Number 02-1-00067-5 only, unless differences require citing to the other three cases.

dollar collection fee was greater than the expenditure of the County Clerk's office in trying to collect from him. The Appellant also did not provide any exhibits or declarations showing that the cost of collection was less than one hundred dollars annually.

On September 24, 2015, the State filed a Plaintiff's Memorandum in Response to Defendant's Various Motions Re: Legal Financial Collection Assessments. The Appellant's had filed several motions and arguments in Superior Court that the State addressed in its response. CP 673-75. Those additional motions and arguments filed by the Appellant are not the subject of this appeal. The State argued that RCW 36.18.016(29) and 9.94A.780(7) authorized the County Clerk to charge collection fees outside of the authority of the Court. CP 674. The State did concede that a two hundred dollar renewal fee was improper. *Id.*

On October 6, 2015, the Appellant filed a Reply to Plaintiff's Memorandum in Response Re: LFO Collection Assessments. CP 676-77. The Appellant renewed his argument that because the box was not checked on his Judgment and Sentences the collection fee was "unlawful and illegal." CP 676.

On January 28, 2016, the Court entered a Decision & Order on Defendant's Motion to Strike Unauthorized Collection Fees. CP 678-79. The Court struck the two hundred dollar renewal fee in three of the Appellant's cases, but maintained the annual collection

assessments. *Id*. The Court reasoned that RCW 36.18.016(29) "specifically gives the court clerk the authority to impose an annual fee of up to $100.00 for the collection of legal financial obligations." CP 679. The Court went on to hold:

> This is clearly in addition to any authority the court may have to impose collection costs at the time of sentencing. The assessment of these collection costs is therefore valid and lawful and these additional amounts will not be struck.

CP 679.

On February 5, 2016, the Appellant gave notice of his intent to appeal the Court's decision.[5] CP 680.

IV. DISCUSSION

1. The County Clerk has Statutory Authority to Impose Collection Fees Outside Order of the Court.

The County Clerk has authority to impose annual fees on collection efforts of unpaid adult offender's legal financial obligations. This authority is granted by the legislature and is independent of the Court's authority to impose collection fees. RCW 36.18.016(29) provides that "[f]or the collection of an adult offender's unpaid legal financial obligations, *the clerk* may impose

[5]The Appellant also filed a Statement on Additional Grounds. However, the Appellant does not raise any new grounds that his Appellant attorney did not raise. As such, it will not be addressed.

an annual fee of up to one hundred dollars, pursuant to RCW 9.94A.780." (*Emphasis added*). RCW 9.94A.780(7) provides that:

> If the *county clerk* assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of community custody, *the clerk* may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collection. The *county clerk* may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the *county clerk* who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760.

(*Emphasis added*). In neither of these statutes does it say that the County Clerk is required to obtain court approval or that collection fees can only be imposed upon order of the court.

The plain language of both RCW 36.18.016(29) and RCW 9.94A.780(7) give the County Clerk the discretion to impose collection fees. Both statutes repeatedly state that the "clerk may." Neither statute states any involvement by the court in imposition of collection fees. The Legislature clearly gave the discretion to the county clerk on whether to impose collection fees.

The Appellant contends that the unchecked box on his judgment and sentences precludes the imposition of collection

fees. The unchecked box at issue stated in full, "[t]he Defendant *shall* pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190" CP 466. (*Emphasis added*). The Appellant's argument is that because the Judge failed to check this box the Court was not authorizing the imposition of collection fees. This is not the logical interpretation of not checking this language. The language at issue makes the imposition of collection fees mandatory under RCW 36.18.190. "The Defendant shall pay..." *Id*.

As stated above, the language of 36.18.016(29) makes the imposition of collection fees discretionary by the county clerk independent of court authorization. If the Superior Court had checked this box it would have removed the county clerk's discretion and ordered the county clerk to impose the collection fee. By not checking the box the Superior Court did not modify RCW 36.18.016 and the language of that statute controls. In not checking the box the Superior Court kept the decision whether to impose collections fees entirely in the hands of the County Clerk. The Court lacks the authority, either by failing to check a box or even by direct order to divest the County Clerk of the authority granted to the County Clerk by the Legislature. In these cases, the County Clerk did exercise their discretion and imposed collections fees within the limits of both RCW 36.18.16 and 9.94A.780.

The reliance by the Appellant on the cases he cites is misplaced, as these cases support the State's position.[6] In Schultz, cited by Appellant at 11-12, the Court found that the language of RCW 10.99.050(1) required that the Superior Court either enter a new no-contact order or affirmatively indicate on the judgment and sentence that the order was extended. State v. Schultz, 146 Wn.2d 540, 547, 48 P.3d 301 (2002). The Court concluded that because a pre-trial no-contact order expires at sentencing, and that only a court can impose a no-contact order, the Court must enter a new no-contact order at sentencing or order the pre-trial order extended. *Id*. This is the same issue in Luna, cited by Appellant at 12-13. State v. Luna, 172 Wn. App. 881, 882-83, 292 P.3d 795 (2013). This is materially different than RCW 36.18.016(29) and 9.94A.780, which specifically grant authority to the county clerk.

In Broadaway, cited by Appellant at 12, the Court found the judgment and sentence deficient because the Superior Court did not comply with the requirement of RCW 9.94A.120(9)(a). State v. Broadaway, 133 Wn.2d 118, 135, 942 P.2d 363 (1997). The Court found that the version of RCW 9.94A.120(9)(a) that was in effect at

---

[6]The Appellant also references support from CrR 7.2(d). This rule only requires that the court clerk send a copy of the judgment and sentence to the Sentencing Guideline Commission. It does not proscribe, as the Appellant contends, that a box not checked on the form removed statutorily granted authority from the county clerk.

the time stated "*the court shall* in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement.,," Id. (quoting RCW 9.94A.120(9)(a)) (*Emphasis added*). This statute specifically required the Superior Court to order one year of community placement and not rely on the Department of Correction to impose community supervision. Id. The Court also specifically found that "the Department of Corrections lacks authority to impose community placement where the judgement and sentence does not do so." Id. This is materially different than RCW 36.18.016(29) and 9.94A.780, which specifically grant authority to the county clerk.

The Appellant relies on In re Rivard, cited by Appellant at 12, to support his argument about standardized court forms. In re Rivard is an unpublished case prior to March 1, 2013 and CR 14.1(a) states that the Court should give no reliance to the case. In re Rivard, 183 P.3d 1115 (Div. III 2008) (unpublished). The Appellant's reliance on In re Rivard, 146 Wn. App. 891, 193 P.3d 195 (Div III 2008), is also misplaced as it was overturned by the Supreme Court. Rivard v. State, 168 Wn.2d 775, 231 P.3d 186 (2010). State v. Rivard does not address the issue in this case of whether the county clerk has statutory authority to impose collection fees or whether that authority has to be court ordered.

RCW 36.18.016(29) and RCW 9.94A.780(7) grant the County Clerk the authority to decide whether to impose costs associated with the collection efforts against the Appellant. The fact that the Superior Court did not check a box on the judgement and sentences is irrelevant, as the Legislature already grants the County Clerk independent authority to impose the fees. Not checking the box on the Judgment and Sentences does not divest the County Clerk of their statutory authority. All of the authority cited by the Appellant are distinguishable and involves statutes with plain language that requires the Superior Court to act.

2. THE COUNTY CLERK'S IMPOSITION OF THE ONE HUNDRED DOLLAR COLLECTION FEE LIMIT IS EVIDENCE THAT THE COUNTY CLERK EXPENDED AT LEAST ONE HUNDRED DOLLARS IN ATTEMPTING TO COLLECT FROM THE APPELLANT.

The one hundred dollar fee imposed by the County Clerk was proper. The Appellant spends over half of the Appellate Brief attacking the County Clerk by alleging that the collection fee was imposed to make the County Clerk money or to punish the Appellant. This is a ludicrous argument that is not supported by any evidence in the Superior Court or exhibits on appeal.

This case comes before the Court on a motion for post conviction relief. The Appellant was the moving party in the underlying motion in Superior Court and brought this appeal. As

the moving party he bears the burden of proof and burden of persuasion both at the Superior Court and on appeal. It was on the Appellant to prove to the Superior Court that the one hundred dollar fee was not accurate and he has the same burden before this Court. He has not carried the burden in either court.

A. The County Clerk is not subsidizing its day-to-day operations.

The Appellant first accuses the County Clerk of imposing collection fees to "subsidize the day-to-day operations of government." Appellant's Brief, pg 8. There is absolutely no evidence in the record nor attached as exhibits in Appellant Brief that supports this assertion. It is on the Appellant to support his accusations in order to convince this Court. It is not on the State, as the Respondent, to provide evidence to disprove the Appellant's unsubstantiated claim.

Were the Court to accept the Appellant's assertion it would have to, at best is conclude that the County Clerk is violating the law which they took an oath to uphold. At worst, it would have to conclude that the County Clerk is committing fraud against the Appellant. Neither of these conclusions are logical to a rational person. Assuming *arguendo* that the County Clerk did as the Appellant alleges, it would make more sense for the County Clerk to impose the fee on a individual who is actually paying their Legal

Financial Obligations (LFO) rater than one who has incurred over thirty thousand dollars in LFOs. Appellant Brief, pg. 5. The Appellant's assertion also does not make logical sense that the County Clerk is subsidizing its day-to-day operations on twenty seven cents per day per case in collection fees.[7]

The Appellant's assertions that the County Clerk is subsidizing the government are absurd. There is no evidence to support such an outlandish accusation. The County Clerk imposed an annual one hundred dollar collection fee because it incurred at least one hundred dollars in collection expenses.

B. The record supports the conclusion that the County Clerk incurred at least one hundred dollars in expenses.

The Appellant next contends that the County Clerk has not incurred at least one hundred dollars in collection efforts. The Appellant again provides no evidence or exhibits to support this claim. The Appellant merely asserts that the statutes require the County Clerk to only impose the cost incurred up to one hundred dollars. There is zero evidence before this Court that the County Clerk did not do just that.

The Appellant asserts that there is nothing in the record to suggest the County Clerk "has incurred any expenses other than

---

[7]A collection fee of $100 ÷ 365 days = $0.2739 / day

the cost of maintaining and operating the Clerk's Office." *Id*. at 9. Based upon the Appellant's logic, there is also nothing in the record to suggest the County Clerk has Not incurred collection expenses on the Appellant's LFOs. As stated above, the burden is on the Appellant to prove to this Court that the amount imposed is incorrect. The Appellant provides no evidence or exhibits to support his accusation. He is trying to improperly shift the burden onto the State and to force the State to justify the County Clerk's actions. The Appellant was the moving party in the Superior Court and on appeal. The burden was on him in the Superior Court to show the amount was improper. The burden is still on him to show this Court the amount was improper. He has failed to produce any evidence to either Court to support his accusations.

The only evidence in the record and is admitted to by the Appellant in his Brief is that the County Clerk did impose one hundred dollars in collection fees. RCW 36.18.016 allows the County Clerk to recover up to one hundred dollars in the expenses it incurred through collection efforts. The County Clerk took an oath to uphold and enforce the laws of Washington State, including RCW 36.18.016.

Without evidence to the contrary, the logical conclusion to draw from the imposition of the fee is that the County Clerk

incurred at least one hundred dollars in collection efforts expenses per year. This is the only conclusion that is supported by the record. It is the only conclusion that does not require this Court to entertain the fantasy that the County Clerk is flagrantly violating the law. The collection fee was proper.

C. The collection fee was not imposed as a penalty.

There is no evidence to support the Appellant's assertion that the collection fees were imposed as a penalty. This is so even in the Appellant's Brief in which he raises the assertion that it was imposed as a penalty and then does not even discuss that claim in the section. *Id.* at 9-10. The Appellant spends the entire section analyzing Blazina and quoting the State's response brief to the Superior Court. State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015).

The Appellant's citing to Blazina has no basis on this case. The collection fee is permitted by statute and is not a discretionary LFO imposed by the court. The citing to Plaintiff's Memorandum in Response to Defendant's Motions Re: legal Financial Collection Assessments is also irrelevant. The context of that quote cited by the Appellant is in argument to whether the Superior Court should have treated the Appellant's motion as a request for remission and

not that the fees should not be waived as a punishment.[8] In its Response the State specifically stated "the State otherwise takes no position at this time on the issue of whether remission of any of the Defendant's discretionary assessments is appropriate." CP 675.

The Appellant asserts that the imposition of the collection fee is the State trying to punish him for non-payment. The record clearly shows that the State not only is not trying to punish the Appellant through his financial obligations, but in fact took no position on whether he was entitled to having part of his LFOs waived through remission. The State left that decision to the Court.

The record also shows that the State agreed with the Appellant to strike a two hundred dollar judgment renewal fee. If the State was so vindictive against the Appellant to punish him financially as much as possible, why would the State join him in having that fee stricken? The fact is, despite the Appellant's claims, neither the State nor the County Clerk are trying to punish him more than the punishment that was already imposed on him by the Superior Court.

---

[8]It is important to note that in the very next sentence in Plaintiff's Memorandum in Response to Defendant's Motions Re: Legal Financial Collections Assessments the State stated in part: "that no action is currently being taken by the state to impose sanctions for non-payment at this time. CP 674-75.

The fees imposed were not punishment. There is no evidence in the record. There is no evidence presented by the Appellant. There is not even an argument in Appellant's Brief asserting it was punishment. The collection fees were assessed against the Appellant because the County Clerk incurred at least one hundred dollars in collection expenses as allowed by law.

3. APPELLATE COSTS SHOULD NOT BE FORECLOSED.

Finally, the Appellant asks this Court to rule that he should not be required to repay appellate costs on the grounds that he is currently indigent. This claim should be rejected. It is a Appellant's future ability to pay costs, rather than his present ability, that is most relevant in determining whether it would be unconstitutional to require him to pay appellate costs. State v. Blank, 131 Wn.2d 230, 241, 930 P.2d 1213 (1997). Furthermore, the Appellant is a serial litigant. The Court should exercise its discretion and should hold the Appellant accountable for bringing this appeal.

A. The Appellant has the future ability to pay.

It is an appellant's future ability to pay, rather than simply their current ability, that is most relevant in determining whether the imposition of financial obligations is appropriate. *See* State v. Blank, 131 Wn.2d at 241 (*indigence is a constitutional bar to the collection of monetary assessments only if the defendant is unable*

to pay at the time the government seeks to enforce collection of the assessments).

In State v. Sinclair, 192 Wn.App. 380, 393, 367 P.3d 612 (Div. I, 2016) *review denied* 185 Wn.2d 1034 (2016), the Court held that costs should not be awarded because the appellant was 66 years-old and was facing a 24-year sentence, meaning there was "no realistic possibility" that he could pay appellate costs in the future. The Court also recognized, however, that "[t]o decide that appellate costs should never be imposed as a matter of policy no more comports with a responsible exercise of discretion than to decide that they should always be imposed as a matter of policy." Sinclair, 192 Wn. App. at 391.

The record is devoid in this case of any information that would support a finding that there is "no realistic possibility" that the Appellant will be able in the future to pay appellate costs. In such circumstances, appellate costs should be awarded. State v. Caver, No. 73761-9-1, slip op. at 10-14 (filed Sept. 6, 2016).

In fact, the Appellant does have the future ability, based upon the Declaration of Nicholas S. Roy In Support of Motion to Exempt / Defer/ Strike Collection Fees, filed in Superior Court on August 20, 2015. CP 660-67. In Appellant's own Declaration he discusses the education he has received at Spokane Falls

Community College, in Information Technology and electronics technician, and Walla Wall Community College, in bookkeeping. *Id*. He also discusses the work experience he has as a custodian, in food service, and general laborer. *Id*. He further attests to completing chemical dependency treatment. *Id*. The Appellant was also recently released from total confinement on September 17, 2016. Incarceration is no longer a hindrance to the Appellant's ability to pay.

B. The Appellant is a serial litigant.

The Court should reject the Appellant's request to waive the costs of appeal. To date, the Appellant has filed forty appeals with this Court. *See footnote 1*. On the cases on appeal in this matter, the Appellant has filed twenty-three appeals. *See footnote 2*. All of Appellant's appeals have been to attack his judgement and sentence or LFOs. The Appellant has not been successful in any of his appeals.

The most recent decision on the Appellant's efforts at post conviction relief was by the Supreme Count. In re Personal Restraint of: Nicholas Severn Roy, 93124-1, filed September 28, 2016. In that case, the Appellant was challenging, by was of a personal restrain petition, the imposition of a three thousand dollar methamphetamine clean up fee in his judgement and sentence in

his 2002 conviction. Id. The Supreme Court rejected his challenge as time barred. Id. at 3. Chief Justice Madsen noted in her order that:

> In this, his fourth personal restraint petition (PRP), Nicholas Roy challenges an aspect of the sentence imposed for his 2002 conviction for possession of methamphetamine with intent to deliver.

Id. at 1.

The Court should not waive the costs of this appeal because of the Appellant's abuse of the appeal process. Access to the courts may be regulated by statute of limitations, statutes of repose, and the imposition of filing fees if the regulation serves a legitimate end. See United States v. Kubrick, 444 U.S. 111, 117, 62 L. Ed. 2d 626, 100 S. Ct. 352 (1979); Marriage of Giordano, 57 Wn. App. 74, 77, 787 P.2d 51 (1990). Case law, court rule, and statute regulate a defendant's access to the courts with regard to the filing of collateral attacks. These regulations are constitutional and exist, in part, because:

> [t]here is no absolute and unlimited constitutional right of access to courts. All that is required is a reasonable right of access--a reasonable opportunity to be heard.

Ciccarelli v. Carey Canadian Mines, Ltd., 757 F.2d 548, 554 (3d Cir. 1985).

The Appellant's forty appeals, none of which were decided in his favor, clearly shows his abuse of the appellate system. Access to courts may be limited by court order as to those, like Mr. Roy, who do not litigate in good faith. Giordano, 57 Wn. App. 77-78.

> Otherwise, a person could barge into court and demand a hearing at the expense of others who have an equal or greater right of access depending on the merits and nature of their claims.

Id., citing People v. Carter, 678 F. Supp. 1484, 1486 (D. Colo. 1986). The Court should not waive the costs of this appeal because the costs are an appropriate regulation of the appellate process for a serial appellant, like Mr. Roy.

Appellant argues that the Court should waive costs because he is indigent and cites Blazina as authority. The Court in Sinclair rejected Blazina's application to appellate costs. Sinclair, 192 Wn. App. at 389. "The statute considered in Blazina, RCW 10.01.160, does not govern appellate costs." *Id.* The Court went on to state:

> Ability to pay is certainly an important factor to *may* be considered under RCW 10.73.160, *but it is not necessarily the only relevant factor, nor is it necessarily an indispensable factor.*

Id. (*Emphasis added*). It is clear from the holding that the Court should consider factors beyond just the Appellant's ability to pay.

The Court should reject the Appellant's request to waive the costs of this appeal. By the Appellant's own declaration in 2015, he has the future ability to work. He has obtained college level classes, has worked in several different career fields, and has completed chemical dependency treatment. Now that the Appellant is out of custody there is absolutely no inhibition to him working, except if he chooses to commit new crimes. The Appellant is a serial litigant. There shear number of the appeals in his cases are staggering. He has not prevailed in any of these appeals. It is proper for the Court to decline to waive costs on an appellant that continually abuses the legal system. The Court should reject the Appellant's request to waive the costs of appeal.

V. CONCLUSION

The Appellant is challenging a decision by the Superior Court rejecting his motion to strike collection fees imposed by the County Clerk. The Appellant argues that because a box was not checked on his Judgment and Sentences the Superior Court did not order the fee imposed. Since the Superior Court did not order the fee, he argues, the County Clerk cannot impose it. The Appellant is incorrect. The County Clerk has specific independent authority granted by statute that does not required the Superior Court's Approval. RCW 36.18.016 and RCW 9.94A.760 are clear

and grant the authority to the County Clerk to impose a fee on efforts to collect Legal Financial Obligations. The collection fees imposed on the Appellant are lawful and proper.

The Appellant also argues, without even an attempt at proof, that the County Clerk did not incur at least one hundred dollars in collection expenses warranting the collection fee. The Appellant's argument lacks merit because the Appellant, as the moving party, has failed to provide any evidence to the Superior Court or this Court to prove that claim. He has failed to provide the evidence because that evidence does not exist. It is the duty of the County Clerk to uphold and enforce the laws of this state. The fact that the County Clerk imposed a one hundred dollar collection fee is, in fact, evidence that the County Clerk did incur at least that amount in collection expenses. The Appellant's arguments that the County Clerk was trying to line its pockets with the Appellant's money and to punish Appellant for failing to pay are absurd and offensive. The collection fee was properly imposed and at the proper amount. The Appellant's claims fail.

The Court should reject the Appellant's request to waive costs. The Appellant has the future ability to pay the costs of this appeal. The Appellant's abuse of the appellant process by filling serial appeals does not warrant the Court exercising its discretion.

The Court should not waive the costs of this appeal. The Appellant brought this appeal and should be responsible for the costs as a result of losing this appeal. The Superior Court's decision was proper. Since there is no basis for this appeal costs should be permitted.

Dated this 7 day of October, 2016.

Respectfully submitted,

ROBERT A. LEHMAN, WSBA #47783
Attorney for Respondent
Deputy Prosecuting Attorney for Asotin County
P.O. Box 220
Asotin, Washington 99402
(509) 243-2061

COURT OF APPEALS OF THE STATE OF WASHINGTON - DIVISION III

THE STATE OF WASHINGTON, Respondent, v. NICHOLAS S. ROY, Appellant.	Court of Appeals No: 34112-7-III **DECLARATION OF SERVICE**

DECLARATION

On October 10, 2016 I electronically mailed, with prior approval from Ms. Gemberling, a copy of the BRIEF OF RESPONDENT in this matter to:

JANET GEMBERLING
admin@gemberlaw.com & jan@gemberlaw.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 October 10, 2016.

Lisa M Webber

LISA M. WEBBER
Office Manager

Benjamin C. Nichols, Prosecuting Attorney
P. O. Box 220, Asotin, WA 99402
(509) 243-2061