No. 93385-5

No. 46605-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Zaida Cardenas-Flores,

Appellant.

Clark County Superior Court Cause No. 14-1-00298-0

The Honorable Judge David Gregerson

Appellant's Supplemental Brief

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ISSUES AND ASSIGNMENTS OF ERROR

1. The court erred by ordering Zaida Cardenas-Flores to pay $3109 in legal financial obligations absent any inquiry into whether she had the means to do so.
2. The court erred by entering finding of fact 2.5. CP 30.

ISSUE: A court may not order a person to pay legal financial obligations (LFOs) without conducting an individualized inquiry into his/her means to do so. Did the court err by ordering Zaida Cardenas-Flores to pay $3109 in while also finding her indigent and without analyzing whether she had the money to pay?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

At sentencing, the court did not conduct any inquiry into Zaida Cardenas-Flores's financial situation. RP 441-448.

Ms. Cardenas-Flores had a job for about three weeks when she lost it due to her arrest on the charge at issue here. She also received food stamp benefits. Interview Sheet filed 2/13/14, Supp. CP.

Still, the court ordered her to pay $3109 in legal financial obligations. CP 32-33. The court also found Zaida Cardenas-Flores indigent for purposes of appeal that same day. CP 42-43.

Zaida Cardenas-Flores timely appealed. CP 41.

ARGUMENT

THE TRIAL COURT ERRED BY ORDERING ZAIDA CARDENAS-FLORES TO PAY $3109 IN LEGAL FINANCIAL OBLIGATIONS WITHOUT INQUIRING INTO HER ABILITY TO PAY.

Zaida Cardenas-Flores was found indigent at the end of trial. CP 42-43. Still, the court ordered her to pay $3109 in legal financial obligations (LFOs). CP 32-33.

The court appeared to rely on boilerplate language in the Judgment and Sentence stating, essentially, that every offender has the ability to pay LFOs. CP 30. But the court did not conduct any particularized inquiry into Zaida Cardenas-Flores's financial situation at sentencing or at any

other time. RP 441-447. The court erred by ordering Zaida Cardenas-Flores to pay LFOs absent any indication that she had the means to do so.

The legislature has mandated that "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3); *State v. Blazina*, 182 Wn.2d 827, 841, 344 P.3d 680 (2015) (emphasis added by court).

This imperative language prohibits a trial court form ordering LFOs absent an individualized inquiry into the person's ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.*

The court must consider personal factors such as incarceration, the person's other debts (including restitution), and the receipt of means-tested benefits. *Id.*

Here, the court failed to conduct any meaningful inquiry into Zaida Cardenas-Flores's ability to pay LFOs. RP 441-447. The court did not consider her financial status in any way. Indeed, the court also found Zaida Cardenas-Flores indigent the same day that it imposed $3109 in LFOs. CP 42-43.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, Zaida Cardenas-Flores's lengthy incarceration would

have weighed heavily against a finding that she had the ability to pay LFOs. Indeed, Ms. Cardenas-Flores qualified for food stamps even when she'd been employed. Interview Sheet filed 2/13/14, Supp. CP.

In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* at 839 ("[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs"). Zaida Cardenas-Flores was determined to be indigent at both the beginning and the end of the proceedings in trial court. CP 42-43, 47.

RAP 2.5(a) permits an appellate court to review errors even when they are not raised in the trial court. RAP 2.5(a); *Blazina*, 182 Wn.2d at 835. The *Blazina* court recently chose to review the LFO-related issue raised in this case, finding that "National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case." *Id.*

The Supreme Court noted the significant disparities both nationally and in Washington in the administration of LFOs and the significant barriers they place to reentry of society. *Id.* at 835-36. This court should follow the Supreme Court's lead and consider the merits of Zaida Cardenas-Flores's LFO claim even though it was not raised below.

The court erred by ordering Zaida Cardenas-Flores to pay $3109 in LFOs absent any showing that she had the means to do so. *Blazina*, 182 Wn.2d at 841. The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

CONCLUSION

The court erred by ordering Zaida Cardenas-Flores to pay $3109 in legal financial obligations without any inquiry into her means to do so. Zaida Cardenas-Flores's case must be remanded for resentencing.

Respectfully submitted on June 30, 2015,

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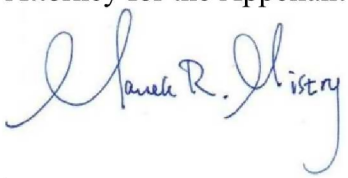

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

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Washington Corrections Center For Women
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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney
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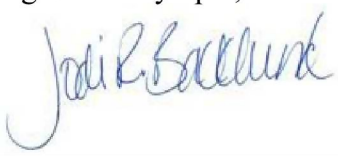
I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on June 30, 2015.



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