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No. 95249-3

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DAVID RAMIREZ,

Appellant.

Review from Court of Appeals, Division Two, Case No. 48705-5-II

Respondent's Brief

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I. ISSUES

A. What standard of review should this court apply when determining whether the imposition of discretionary legal financial obligations was proper? Did the trial court meet this standard?
B. What effect, if any, should E2SHB 1783 have in this Court's review of the trial court's decision to impose discretionary legal financial obligations at Ramirez's sentencing?

II. STATEMENT OF THE CASE

David Ramirez was charged with Assault in the Third Degree with Sexual Motivation and Possession of Methamphetamine. CP 1-3. A jury found Ramirez guilty of both charges and also found Ramirez displayed an egregious lack of remorse and had a sexual motivation in committing the assault. CP 63-66.

The trial court sentenced Ramirez to 84 months of total confinement. RP 371-73; CP 81. At sentencing, Ramirez informed the trial court he had been working at Weyerhaeuser prior to his arrest and was getting his life on track. RP 359-60. Ramirez had opened his first savings account, was learning how to use a cell phone, and was paying all of the family bills. RP 359-60. Ramirez had an apartment and Direct TV with an NFL package. RP 362-63. Ramirez noted that his minimum wage job was adequate to pay his family's expenses. RP 359; 363.

The trial court found Ramirez had the ability to earn money and make small payments on his legal financial obligations, imposing a $200 filing fee, $500 victim assessment, $100 DNA collection fee, and $2,100 in attorney fees. RP 375-76; CP 83. After the court announced the sentence, Ramirez presented a notice of appeal and motion, declaration, and order of indigency. RP 373. Ramirez filed an appeal raising multiple issues, including the imposition of discretionary legal financial obligations. CP 91; Brief of Appellant. In a 2-1 unpublished decision, Division Two of the Court of Appeals affirmed the trial court. This Court has accepted discretionary review on the sole issue of legal financial obligations.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. A TRIAL COURT'S DECISION TO IMPOSE DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS SHOULD BE REVIEWED FOR ABUSE OF DISCRETION.

Prior to imposing discretionary legal financial obligations, trial courts have a statutory obligation to make an individualized determination of the defendant's ability to pay and the burden that payment of costs will impose. RCW 10.01.160(3); *State v. Blazina*, 182 Wn.2d 827, 837, 344 P.3d 680 (2015). This inquiry includes the

trial court considering important factors "*such as* incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay." *Blazina*, at 838 (emphasis added). The inquiry is required only for *discretionary* legal financial obligations. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). Victim assessments, criminal filing fees, and DNA collection fees are mandatory obligations not subject to RCW 10.01.160(3). *Lundy*, 176 Wn. App. at 102.

When deciding whether to impose attorney recoupment fees, the trial court must balance the defendant's ability to pay against the burden of his obligation. *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991). This is an exercise of discretion and should be reviewed for abuse of discretion. *Id*. Discretion is abused when it is manifestly unreasonable or is exercised based upon untenable grounds or reasons. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

A trial court's determination as to a defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard. *Baldwin*, at 312. "The inquiry is whether the court's determination is supported by the record." *Id*. at 312 n.27.

At sentencing, the trial court imposed a total of $2,900 in legal financial obligations. CP 83. Of this, the $200 filing fee, $500 victim assessment, and $100 DNA collection fee were mandatory obligations not subject to RCW 10.01.160(3). *See Lundy*, 176 Wn. App. at 102. The $2,100 in attorney fees was the only discretionary legal financial obligation imposed by the trial court. CP 83.

Ramirez argues the trial court imposed legal financial obligations without any meaningful consideration of his ability to pay. Brief of Appellant 23-27. However, the information shared by Ramirez at his sentencing hearing was sufficient for the trial court to conclude that Ramirez had the present or future ability to pay the imposed legal financial obligations at the rate of 25 dollars a month. *See* CP 83. The trial court considered that Ramirez had recently been released from custody, was working in a minimum wage job, and was getting his life on track. RP 359-60. Ramirez had opened his first savings account, had an apartment, and was paying all of the family bills. RP 359-63. Ramirez commented that his minimum wage job was sufficient to take care of everything. RP 363.

The trial court's factual determination that Ramirez had the present or future ability to pay his legal financial obligations was not clearly erroneous, and the trial court did not abuse its discretion by

imposing reasonable attorney fees. This Court should affirm the imposition of the discretionary legal financial obligations.

B. E2SHB 1783 SHOULD NOT APPLY RETROACTIVELY TO RAMIREZ'S LEGAL FINANCIAL OBLIGATIONS. HOWEVER, THE AMENDMENT PROVIDES RAMIREZ ADDITIONAL OPPORTUNITIES FOR RELIEF WHEN HE IS RELEASED FROM TOTAL CONFINEMENT AND PREVENTS INTEREST FROM ACCRUING.

The Engrossed Second Substitute House Bill 1783, 65th Legislature (2018) (E2SHB 1783) was approved on March 27, 2018 and filed on March 29, 2018. Laws of 2018, ch. 269 § 6. E2SHB 1783's amendments relate to legal financial obligations and are effective on June 7, 2018. *Id*.

Statutes are generally presumed to apply prospectively. *State v. Humphrey*, 139 Wn.2d 53, 57, 983 P.2d 1118 (1999) (citations omitted). This presumption also applies to statutory amendments. *Id*. at 60. "The presumption is overcome only when the legislature explicitly provides for retroactive application or the amendment is curative or remedial." *In re Personal Restraint of Flint*, 174 Wn.2d 539, 546, 277 P.3d 657 (2012). A curative amendment clarifies or makes a technical correction to an ambiguous statute; a remedial change relates to practices, procedures, or remedies without affecting substantial rights. *Id*.

E2SHB 1783 amends RCW 10.01.160(3) to prevent the imposition of discretionary legal financial obligations on indigent defendants. Laws of 2018, ch. 269 § 6. If the defendant is not indigent, the court is to consider the financial resources and burden to the defendant when deciding the amount and payment of costs. *Id*. The court determines whether the defendant is indigent as defined in RCW 10.101.010(3) (a) through (c) at the time of sentencing. *Id*.

E2SHB 1783 contains no explicit provision for retroactive application. In fact, multiple sections of E2SHB 1783 explicitly clarify the changes are to occur "as of the effective date of this section." Laws of 2018, ch. 269 §§ 1-5.[1]

Nor are the amendments curative or remedial. E2SHB 1783 does not clarify or make a technical correction to an ambiguous statute. As this Court stated in *In re Pers. Restraint of Flippo*, 187 Wn.2d 106, 111-12, 385 P.3d 128 (2016):

> *Blazina* is firmly rooted in in the plain statutory language of RCW 10.01.160(3). We found neither ambiguity in the language of the statute nor divergence in the manner with which appellate courts had been applying the law. Rather, we took the opportunity in *Blazina* "to emphasize the trial court's obligation to consider the defendant's ability to pay" before imposing

[1] Specifying that certain legal financial obligations will cease accruing interest when the amendments go into effect on June 7, 2018.

> discretionary LFOs. *Blazina* was simply a directive to the courts, clarifying how to fully comply with RCW 10.01.160(3); it did not change anything about the meaning of that statute or any other material provision of law.

(citations omitted). The version of RCW 10.01.160(3) prior to E2SHB 1783 was not ambiguous and did not require an amendment for clarification or curative purposes.

E2SHB 1783 is also not merely a remedial change in practices, procedures, or remedies not affecting substantive rights. This Court held in *Flippo* that *Blazina* emphasized the duty of trial courts to adhere to "statutory procedural safeguards" prior to imposing discretionary legal financial obligations and that "this procedural inquiry is distinct from a court's substantive authority to impose discretionary LFOs." *Flippo*, at 113-14. "The procedural safeguard of RCW 10.01.160(3) creates a duty on the court to engage in an individualized inquiry prior to imposing discretionary LFOs, but does not detract from a court's substantive authority to do so." *Id*. at 110-11 (*citing Blazina*, 182 Wn.2d at 838) (internal quotations omitted).

However, E2SHB 1783 does affect the court's substantive authority to impose discretionary legal financial obligations by prohibiting the court from imposing such obligations on indigent

defendants. Laws of 2018, ch. 269 §§ 6, 14, 17. This is a substantive change, not merely a procedural or remedial change, and should not apply retroactively.

Because there is no explicit or implied legislative intent for E2SHB 1783 to apply retroactively, this Court should hold that the statutory amendments apply prospectively. *See Humphrey*, at 53. Therefore, this Court need not remand for the sole purpose of applying the standard set out in E2SHB 1783.

1. E2SHB 1783 Provides Ramirez An Opportunity To Have His Discretionary Legal Financial Obligations Waived After He Is Released From Total Confinement, And Interest Will Cease To Accrue On His Legal Financial Obligations When E2SHB 1783 Goes Into Effect.

E2SHB 1783 amends RCW 10.01.160(4) to allow defendants to petition the court for remission of payment of costs after release from total confinement. Laws of 2018, ch. 269 § 6. If the court finds payment would impose a manifest hardship, it may remit all or part of the amount due. *Id*. The statutory amendment clarifies that manifest hardship exists where the defendant is indigent. *Id*.

After Ramirez is released from prison, he may petition the trial court to remit the $2,100 in attorney fees. If Ramirez meets the definition of indigence at that time, the trial court will find that

payment would impose a manifest hardship and may remit the legal financial obligation.

Additionally, E2HSB 1783 amends RCW 10.82.090 to cease the accrual of interest on nonrestitution legal financial obligations. Laws of 2018, ch. 269 § 1. The amended statute also requires the trial court to waive any nonrestitution interest that accrued prior to the statutory amendment if the defendant so moves after being released from confinement. Id.

This change means that interest will stop accruing on Ramirez's legal financial obligations on June 7, 2018. Further, if Ramirez files a motion with the trial court when he is released from prison, the trial court must waive any interest that accrued before the June 7, 2018 amendment.

E2SHB 1783 provides Ramirez options for reducing his legal financial obligations and any accrued interest in the future. But E2SHB 1783 should not be applied retroactively, and this Court need not remand Ramirez's matter solely to apply the amended statutes at a resentencing on legal financial obligations.

IV. CONCLUSION

This Court should apply an abuse of discretion standard when determining whether the trial court properly imposed discretionary legal financial obligations. Any factual determinations regarding Ramirez's ability to pay should be reviewed for clear error. There was sufficient information provided at the sentencing hearing for the trial court to conclude Ramirez had the present and future ability to pay the imposed legal financial obligations. There was no clear error in this finding, and the trial court did not abuse its discretion when imposing $2,100 in attorney fees. While E2SHB provides Ramirez future options for reducing his financial obligations and interest, the statutory amendments should not be applied retroactively. This Court should affirm the trial court's imposition of discretionary legal financial obligations.

RESPECTFULLY submitted this 20th day of April, 2018.

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