

FILED
15 SEP 28 AM 9:45

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 95-1-00473-0 SEA

FILED
Sep 29, 2015
Court of Appeals
Division I
State of Washington

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	73994-8
)	
	)	No. 95-1-00473-0 SEA
)	
vs.	)	ORDER TRANSFERRING MOTION
	)	TO THE COURT OF APPEALS
)	
MARTIN PANG,	)	[CLERK'S ACTION REQUIRED]
)	
)	
)	
)	

This matter came before the Court on the motion of Defendant Martin Pang, acting *pro se*, seeking relief from the criminal judgment and sentence. Mr. Pang requests the Court to conduct an individualized inquiry into his current and future ability to pay discretionary LFO's. A copy of this motion is attached. On September 11, 2015, the State filed a motion to transfer Defendant Pang's motion to the Court of Appeals for consideration as a personal restraint petition. September 25, 2015 the Court received Defendant's "Answer to State's Motion to Transfer." Both these submissions are also attached.

CrR 7.8(c)(2) provides that this Court "shall transfer" a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the Court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a

ORDER TRANSFERRING DEFENDANT'S MOTION
TO THE COURT OF APPEALS

1 substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require
2 a factual hearing.

3 This Court concludes that under CrR 7.8(c)(2), this matter must be transferred to the
4 Court of Appeals, Division I, for consideration as a personal restraint petition.

5 Based on the foregoing, it is hereby ORDERED that Mr. Pang's motion is hereby
6 transferred to the Court of Appeals, Division I.

7 DONE IN CHAMBERS this 28th Day of September, 2015.

8 *Electronic signature attached*

9 HONORABLE JUDGE BETH M. ANDRUS

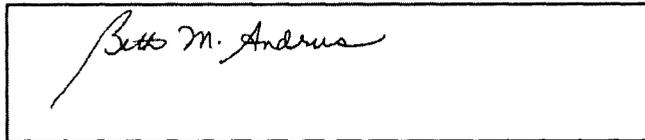
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ORDER TRANSFERRING DEFENDANT'S MOTION
TO THE COURT OF APPEALS

King County Superior Court
Judicial Electronic Signature Page

Case Number: 95-1-00473-0
Case Title: STATE VS PANG

Document Title: ORDER TRANSFERRING MOTION TO COA

Signed by: Beth Andrus
Date: 9/28/2015 9:45:11 AM



Judge/Commissioner: Beth Andrus

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: D92F76D12132FF531AF16720A721F097AC7A50B6

Certificate effective date: 7/29/2013 12:26:48 PM

Certificate expiry date: 7/29/2018 12:26:48 PM

Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Beth
Andrus:dE53Hnr44hGmww04YYhwmw=="

August 26, 2015

The Honorable Judge Beth Andrus
King Co. Superior Court
516-3d Ave
Seattle, WA 98104

RECEIVED
SEP 04 2015
JUDGE BETH M. ANDRUS
DEPARTMENT 35

RE: State v. Pang, No. 95-1-00473-0 SEA
Motion For Individualized Inquiry Into Defendant's Current
And Future Ability To Pay LFO's

Judge Andrus:

Enclosed, find the Judges copy of the Motion for Individualized
Inquiry into Defendant's Current and Future Ability to Pay LFO's,
and Order.

Copies have been forwarded to the Court Clerk and the Prosecutors
Office.

Please schedule the Motion and Order for consideration, when
available.

Thank you.

Sincerely,

Martin Pang #254392
WA ST PENT.
Victor-B212
1313 N. 13th
Walla Walla, WA
99362

cc: file

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
Plaintiff,)
)
v.)
)
MARTIN PANG,)
)
_____)

No. 95-1-00473-0 SEA
MOTION FOR INDIVIDUALIZED INQUIRY
INTO DEFENDANT'S CURRENT AND
FUTURE ABILITY TO PAY LFO'S

I. RELIEF REQUESTED

COMES NOW, the Defendant, MARTIN PANG, and moves this Court to do an individualized inquiry into Defendant's current and future ability to pay discretionary LFO's, and waive them.

II. STATEMENT OF FACTS

Defendant was ordered to pay mandatory and discretionary LFO's on the above cause number. The current total of those LFO's is now \$2,897,535.34. (Exhibit 'A')

II. STATEMENT OF THE CASE

The following issue is presented for resolution by the Court. Defendant pled guilty to four counts of manslaughter on February 19, 1998. As part of the Judgment and Sentence, signed on March 23, 1998, defendant was ordered to pay LFO's. The hearing to determine, and Order the LFO's was held on July 28, 1998. (Exhibit 'B')

The only issue to be resolved is: did the Court, i.e., Superior Court Judge Larry Jordan, make the statutorily mandated, individualized inquiry into the defendant's current and future ability to pay discretionary LFO's, before rendering his Order to pay mandatory and discretionary LFO's, and is the inquiry, if any, reflected in the record.

IV. EVIDENCE RELIED UPON

The evidence relied upon is the case record, itself. Nowhere in the record is the statutorily mandated individualized inquiry found.

V. LEGAL AUTHORITY

Over the years, the lower Courts have used their own discretion on whether or not to conduct the statutorily mandated, individualized inquiry into whether the defendant had the current and future ability to pay those LFO's, and when they did, usually only the boilerplate language of RCW 9.94A.753 was used, without any supporting documentary evidence presented to support the Order to pay.

It is well settled case law that 'the court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.' State v. Calvin, 302 P.3d 509, 521, 176 Wn.App. 1 (2013); RCW 10.01.160(3).

'Once a defendant has shown his indigence, 'the discretion in sentencing courts to waive a fine should generally be executed

in favor of such a waiver.' United States v. Aregbeyen, 251 F.3d 337, 339 (2nd Cir. 2001).

'A court may impose a fine on a defendant who is presently indigent "only if there is evidence in the record that he will have the earning capacity to pay the fine after release from prison."' Aregbeyen, 251 F.3d at 339.

'Speculation that an indigent defendant might win the lottery will not suffice. A sentencing court may not base the imposition of a fine upon its mere suspicion that the defendant has funds.' United States v. Corace, 146 F.3d 51, 56 (2d Cir. 1998), citing U.S. v. Wong, 40 F.3d at 1383 (2d Cir. 1994).

Most importantly, in the recent Washington State Supreme Court, En Banc ruling of the consolidated cases of State v. Blazina, & Paige-Colter, No. 89028-5, filed March 12, 2015, the Court stated that 'to determine the amount and method for paying the costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment costs will impose. ...we treat the word "shall" as presumptively imperative - we presume it creates a duty rather than confers discretion.' Ibid (underline mine)

'We hold the legislature intended the two words (may, shall) to have different meanings, with "shall" being imperative.' Ibid (underline mine)

'The record must reflect that the trial court mad an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and

a defendant's other debts, including restitution, when determining a defendant's ability to pay.' Ibid (underlines mine)

'Courts should also look to the comment in Rule 34 for guidance.

... Courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline.

... If someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFO's.'

Ibid (underline mine)

'Moreover, the State cannot collect money from defendant's who cannot pay, which obviates one of the reasons courts impose LFO's.

See RCW 9.94A.303.' Ibid

'By statute, the 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).'

Ibid
Additionally, the Court stated, the 'trial court used

'boilerplate' language of 9.94A.753.' Ibid This was legally insufficient to support the LFO's ordered.

Finally, the Court stated: 'We hold that RCW 10.01.160(3) requires

the record to reflect that the sentencing judge made an

individualized inquiry into the defendant's current and future

ability to pay before the Court imposes LFO's. This inquiry

requires the Court to consider important factors, such as

incarceration and a defendant's other debts, including

restitution, when determining a defendant's ability to pay.'

Ibid (underlines mine)

VI. CONCLUSION

In the present matter, there was no statutorily mandated,

individualized inquiry into defendant's current or future ability to pay the discretionary LFO's. No factual findings regarding defendant's income, financial resources, or earning capacity were made and entered into the record, prior to the Court imposing the discretionary LFO's.

No consideration of the amount of restitution - originally \$956,020.51, was taken into consideration, nor Rule 34, as the State Supreme Court stated must be done, in its ruling in Blazina/Paige-Colter, No. 89028-5.

The job(s) defendant is likely to obtain based on his age, education, and status as an ex-felon are not likely to generate income much above minimum wage. The amount of the discretionary LFO's, combined with the mandated LFO's, is out of proportion to the defendant's likely future income potential.

Therefore, the defendant asks this Court to conduct the statutorily mandated, individualized inquiry, which Judge Jordan did not conduct, into his current and future ability to pay the discretionary LFO's, along with documentary evidence to support any conclusions. And, if the Court finds that the defendant does not possess the current or future ability to pay, based on the individualized inquiry, to waive any and all discretionary LFO's ordered on July 28, 1998 (Exhibit 'B'), and enter a new, revised Order.

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

DATED this 26 day of August, 2015.

Presented by:

MARTIN PANG

MARTIN PANG, pro se #254392

WA ST PENT -VB-212 1313 N.13 Walla Walla, WA

Exhibit 'A'

Offender LFO History Report

LFO History Summary

DOC #: 254392 Offender Name: Pang, Martin S

Distribution Date Range: 01/01/2000 thru 03/19/2015

<u>Total LFO Withdrawals</u>		<u>Total County Payments</u>		<u>Total Refunds</u>	
		King County Clerk	\$3,632.13		
Total	\$3,661.73	Total	\$3,632.13	Total	\$0.00

Offender Causes

<u>County</u>	<u>Cause</u>	<u>LFO Balance</u>
King County Clerk	951004730	\$2,897,535.34
		<u>\$2,897,535.34</u>

Withdrawal History Detail

DOC #: 254392 Offender Name: Pang, Martin S

Distribution Date Range: 01/01/2000 thru 03/19/2015

<u>Extract Date</u>	<u>Control Facility</u>	<u>Sub Facility</u>	<u>Entry Type</u>	<u>Item #</u>	<u>GL/Batch Date</u>	<u>Withdrawal Amt</u>	<u>Status</u>
01/01/2015	AE1	E01	LFO	021923262	12/24/2014	\$50.00	Processed 01/14/2015
11/16/2014	AE1	E01	LFO	021767979	11/13/2014	\$50.00	Processed 11/20/2014
08/01/2014	AB1	B04	LFO	021360609	07/29/2014	\$50.00	Processed 08/13/2014
01/16/2014	AS1	S04	LFO	020617572	01/03/2014	\$40.00	Processed 01/23/2014
07/16/2013	AD1	D04	LFO	019999300	07/12/2013	\$40.00	Processed 08/05/2013
05/16/2013	AD1	D02	LFO	019777753	05/10/2013	\$30.00	Processed 05/22/2013
04/16/2013	AD1	D02	LFO	019643315	04/03/2013	\$20.00	Processed 04/22/2013
03/01/2013	AD1	D02	LFO	019502937	02/20/2013	\$20.00	Processed 03/15/2013
01/16/2013	AD1	D02	LFO	019352809	01/08/2013	\$40.00	Processed 01/24/2013
08/01/2012	AD1	D02	LFO	018777306	07/17/2012	\$20.00	Processed 08/10/2012
04/16/2012	AD1	D02	LFO	018449056	04/13/2012	\$22.56	Processed 05/03/2012
03/16/2012	AD1	D02	LFO	018364489	03/15/2012	\$29.33	Processed 04/16/2012
02/16/2012	AD1	D02	LFO	018261632	02/15/2012	\$28.79	Processed 03/02/2012
01/16/2012	AD1	D02	LFO	018137194	01/13/2012	\$27.29	Processed 02/03/2012
12/16/2011	AD1	D02	LFO	018052982	12/15/2011	\$28.53	Processed 12/30/2011
11/16/2011	AD1	D02	LFO	017946797	11/15/2011	\$32.61	Processed 11/30/2011
10/16/2011	AD1	D02	LFO	017832582	10/14/2011	\$26.10	Processed 10/27/2011

Exhibit 'B'

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

FILED

STATE OF WASHINGTON,

98 JUL 30 PM 2:30

Plaintiff,)
SUPERIOR COURT CLERK)
SEATTLE, WA.)

vs.

MARTIN SHAW PANG,

) ORDER SETTING RESTITUTION
) AND EXTRADITION COSTS

Defendant,)

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following persons are entitled to restitution in the following amounts;
IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

I. VICTIMS AND SURVIVORS

Karen Shoemaker
22506 272nd Avenue S.E.
Maple Valley, WA 98038 AMOUNT: \$3,664.19

Mary Anne Kilgore
6920 - 117 Drive N.E.
Kirkland, WA 98033 AMOUNT: \$3,374.54

Christy Brown
13604 - 68th Avenue Court E.
Puyallup, WA 98373 AMOUNT: \$3,966.36

Clare Striegel
964 Retsil Road S.E.
Port Orchard, WA 98366 AMOUNT: \$3,209.49

Raymond and Colleen Terlicker
3503 SW 107th
Seattle, WA 98146 AMOUNT: \$4,347.22

JUDGMENT NUMBER 98-1-04466-2

CIPROC 18
CUST 19
CASH 20
JUDGE 21
DIS 22
CRIM 23
ACOT 24
ESH 25

ORDER SETTING RESTITUTION - 1

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955



Handwritten signature or initials.

1 La Panzanella, Inc.
Ciro and Kimberly Pasciuto
2 1314 East Union St.
Seattle, WA 98122 AMOUNT: \$71,071.90

3 Jeff Carrell
4 3535 27th Pl. W.
Seattle, WA 98199 AMOUNT: \$5,492.75

5 Matthew Fox
6 1409 NE 56th
Seattle, WA 98105 AMOUNT: \$5,121.75

7 Charles Miller
8 3801 SE 64th
Portland, OR 97206 AMOUNT: \$10,666.75

9 Ray Schwartz
10 P.O. Box 914
Eastsound, WA 98245 AMOUNT: \$23,023.75

11
12 Restitution shall be apportioned between all included in I above until paid in full.

13 II. INSURERS AND GOVERNMENT AGENCIES

14 After the individuals and entities above are paid in full restitution shall be apportioned
15 between those named below.

16 Crime Victims Compensation
17 Dept. of Labor and Industries
P.O. Box 44520
Olympia, WA 98504-4520
18 RE: VC74476 Randall Terlicker AMOUNT: \$1,127.00

19 City of Seattle
710 Third Avenue
Seattle, WA 98104
20 RE: payments for funeral services for
Seattle firefighters James T. Brown
21 and Randall Terlicker AMOUNT: \$4,000.00

22

1 Farmers Insurance Exchange
2 c/o Thomas Lether,
3 Attorney at Law
4 1001 Fourth Avenue Plaza, Suit 3810
5 Seattle, WA 98154

AMOUNT: \$772,225.87

6 Mutual of Enumclaw
7 (address to be inserted)
8 RE: policy #PK57749
9 Date of loss: 1/05/95

AMOUNT: \$44,728.94

TOTAL RESTITUTION: \$956,020.51

10 Extradition costs were ordered by the court at the time of sentencing. Extradition costs have
11 been submitted by King County in the amount of \$13,788.12 and on behalf of the City of Seattle in
12 the amount of \$14,404.79. Costs shall be reimbursed after all obligations in I & II above are
13 fulfilled.

14 *If Mr. Pang has any remuneration in the future based on the facts of this crime those monies shall be paid to the victims listed in this order.*
15 **IT IS ORDERED** that defendant make payments through the registry of the clerk of court as
16 follows:

17 King County Sheriff's Office
18 W-116 King County Courthouse
19 516 Third Avenue
20 Seattle, WA 98104

AMOUNT: \$13,788.12

21 City of Seattle
22 Department of Finance

AMOUNT: \$14,404.79

TOTAL EXTRADITION COSTS: \$28,192.91

DONE IN OPEN COURT this 20 day of July, 1998.

Larry A. Jordan
JUDGE LARRY A. JORDAN

Presented by:

Marilyn Brenneman
Marilyn Brenneman #10760
Senior Deputy Prosecuting Attorney
CCN# 446145 REF# 95030399

Copy received; Notice
Presentation waived:

John Henry Browne
John Henry Browne
Attorney for Defendant 4677

ORDER

This Court, after being duly advised, finds that the Defendant, pro se, brings this action in good faith.

Now, Therefore, IT IS ORDERED:

This Court will conduct the statutorily mandated, individualized inquiry into the defendant's current and future ability to pay the discretionary LFO's. This inquiry will include factors such as incarceration and the defendant's other debts, including restitution, and will look to the comment in Rule 34 for guidance.

This individualized inquiry will be entered in the record.

If the Court finds that the defendant does not possess the current or future ability to pay the discretionary LFO's that were Ordered by Judge Larry Jordan, on July 28, 1998, those LFO's will be waived and a new, revised Order entered.

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

DATED this ____ date of _____, 2015.

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

DATED this ____ of _____, 2015

Judge

Presented by:

MARTIN PANG, pro se #254392
WA ST PENT VB-212
1313 N. 13th
Walla Walla, WA 99362

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
	)	No. 95-1-00473-0 SEA
vs.)	
	)	STATE'S MOTION TO TRANSFER
MARTIN PANG,)	
)	
	)	Defendant.
)	
)	
)	

1. INTRODUCTION

Pursuant to CrR 7.8(c)(2), the State requests this Court to transfer the defendant's CrR 7.8 motion to the Court of Appeals for consideration as a personal restraint petition.

2. FACTS RELEVANT TO THE MOTION

On September 4, 2015, defendant Martin Pang filed a "Motion For Individualized Inquiry Into Defendant's Current and Future Ability to Pay LFO's [sic] and Order" in the above cause number. He claims that the sentencing court erred in failing to conduct an inquiry into his ability to pay costs, and he requests "this Court to do an individualized inquiry into Defendant's current and future ability to pay discretionary LFO's [sic], and waive them." Motion, at 1-5.

Daniel T. Satterberg, Prosecuting Attorney
APPELLATE UNIT
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-9497, FAX (206) 296-9009

1 Pang pled guilty to four counts of Manslaughter on February 14, 1998. Judgment and
2 Sentence were imposed on March 23, 1998 by the Honorable Larry A. Jordan. Restitution and
3 costs were ordered at sentencing but the restitution and extradition amounts were detailed in an
4 order dated July 28, 1998. Pang never appealed either the judgment and sentence or the order
5 dated July 28, 1998. On April 19, 2013, this court rejected Pang's request to terminate collection
6 of legal financial obligations. On April 13, 2015 the Court of Appeals affirmed this Court's
7 order. State v. Pang, No. 70442-7-I, 2015 WL 1815862.

8
9 3. ARGUMENT

10 The State requests that this Court transfer Pang's motion to the Court of Appeals for
11 consideration as a personal restraint petition.

12 Although Pang does not identify a rule that authorizes this motion, the only conceivably
13 applicable rule is CrR 7.8, Relief from Judgment or Order. However, motions made pursuant to
14 CrR 7.8(b) are subject to the collateral attack provisions of RCW 10.73.090, .100, .130, and .140.
15 CrR 7.8(b). A collateral attack is any request for "postconviction relief other than a direct
16 appeal." RCW 10.73.090(2). The Superior Court shall transfer a CrR 7.8 motion to the Court of
17 Appeals for consideration as a personal restraint petition unless the court makes a determination
18 that the motion is (1) timely, and (2) that the defendant has made a substantial showing that he is
19 entitled to relief or that resolution of the motion will require a factual hearing. CrR 7.8(c)(2).

20 Pang's motion is untimely. "No petition or motion for collateral attack on a judgment
21 and sentence in a criminal case may be filed more than one year after the judgment becomes
22 final if the judgment and sentence is valid on its face and was rendered by a court of competent
23 jurisdiction." RCW 10.73.090(1). Because Pang never filed an appeal, his case became final in

1 1998 when his judgment was filed and restitution and other costs were determined. RCW
2 10.73.090(3)(a). Thus, his motion filed in August of 2015 is untimely.

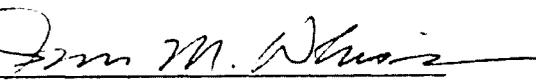
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4 4. CONCLUSION

5 Because Pang's motion is untimely, CrR 7.8(c)(2) requires this Court to transfer the
6 motion to the Court of Appeals for consideration as a personal restraint petition.

7 Dated this 11th day of September, 2015.

8
9 Respectfully submitted,

10 DAN SATTERBERG
11 King County Prosecuting Attorney

12 By: 
13 JAMES M. WHISMAN, WSBA #19109
14 Senior Deputy Prosecuting Attorney
15 King County Prosecuting Attorney's Office
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
	)	No. 95-1-00473-0 SEA
)	
vs.	)	[Proposed]
)	
MARTIN PANG,	)	ORDER TRANSFERRING
	)	DEFENDANT'S MOTION TO THE
	)	COURT OF APPEALS
)	
	)	[CLERK'S ACTION REQUIRED]

Defendant has filed a post-conviction motion. Pursuant to CrR 7.8(c)(2), the defendant's motion is untimely, so it is transferred to the Court of Appeals for consideration as a personal restraint petition.

DONE IN CHAMBERS this __ day of September, 2015.

HONORABLE BETH M. ANDRUS

ORDER TRANSFERRING DEFENDANT'S MOTION TO THE COURT OF APPEALS

September 17, 2015

Jessica M. Marshall
Law Clerk/Bailiff to Judge Beth Andrus
King Co. Superior Court
516-3d Ave, C-203
Seattle, WA 98104

RECEIVED
SEP 24 2015
JUDGE BETH M. ANDRUS
DEPARTMENT 35

RE: State v. Pang No. 95-1-00473-0

Dear Ms. Marshall:

Enclosed, please find your copy of the Defendant's Answer To States's Motion to Transfer.

Thank you.

Sincerely,

Martin Pang #254392
WA ST PENT.
Victor-B212
1313 N. 13th
Walla Walla, WA 99382

cc: file

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 95-1-00473-0 SEA
)	
vs.)	
)	
MARTIN PANG,	)	DEFENDANT'S ANSWER TO STATE'S
	)	MOTION TO TRANSFER
Defendant.)	
_____)	

I. INTRODUCTION

Defendant answers why the State's Motion To Transfer should not be granted.

II. FACTS

On September 4, 2015, Defendant filed a "Motion For Individualized Inquiry Into Defendant's Current And Future Ability To Pay LFO's." On September 11, 2015, Prosecuting Attorney James Whisman submitted the State's Motion To Transfer.

III. ARGUMENT

Defendant's previous finding and Order of LFO's, done on July 28, 1998, does not meet the requirements of RCW 10.01.160(3), which was recently clarified in State v. Blazina, & Paige-Colter, No. 89028-5, filed March 12, 2015.

In considering this authority, in Blazina & Paige-Colter, the State Supreme Court clarified and added greater procedural specificity to what a sentencing Court shall do in order to lawfully impose LFO's. This is now binding as new procedural law, and applies retroactively. See State v. Blakely (cite omitted).

Therefore, Judge Larry Jordan, in Ordering LFO's, without reflecting that he made an individualized inquiry into the defendant's current and future ability to pay, violated procedural due process, rendering the LFO portion of defendant's Judgment and Sentence invalid on its face, and not time barred by RCW 10.73.090.

III. CONCLUSION AND RELIEF REQUESTED

This Court should not transfer this Motion to the Court of Appeals. Defendant requests that this Court see the Motion as filed, or under CrR 7.8(c)(2). 1

Dated this 17th day of September, 2015.

Respectfully submitted,

MARTIN PANG

MARTIN PANG, pro se #254392
WA ST PENT - V-B212
1313 N.13th
Walla Walla, WA 99362

1

The September 1, 2009 revision to CrR 7.8 reflects the legislature's intent that meritorious collateral matters such as this be adjudicated at the trial court level. The "Initial Consideration" section was repealed. CrR 7.8(c)(2) was enacted, requiring the courts to employ the two pronged test, thereby limiting the court's authority to transfer motions brought under CrR 7.8.

KING COUNTY SUPERIOR COURT

September 29, 2015 - 11:09 AM

Transmittal Letter

FILED
Sep 29, 2015
Court of Appeals
Division I
State of Washington

Document Uploaded: PRP-09-29-2015_2.pdf

Case Name: STATE OF WASHINGTON VS MARTIN PANG

County Cause Number: 95-1-00473-0

Court of Appeals Case Number:

Personal Restraint Petition (PRP) Transfer Order

Notice of Appeal/Notice of Discretionary Review

(Check All Included Documents)

Judgment & Sentence/Order/Judgment
Signing Judge: _____

Motion To Seek Review at Public Expense

Order of Indigency

Filing Fee Paid

Affidavit of Service

Clerk's Papers/Exhibits - No. of Volumes: _____ Total Number of Pages: _____

Verification of Verbatim Report of Proceedings Filed - Date _____

No. of Volumes:

Hearing Date(s):

Reporter/Transcriptionist:

Other: _____

Comments:

Sender Name: Colleen Stillabower

Superior Court of the State of Washington
for the County of King

BETH M. ANDRUS
Judge

Seattle, Washington
98104-2381

September 28, 2015

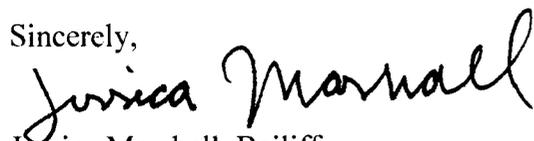
Richard Johnson, Court Clerk
Washington State Court of Appeals
Division One
One Union Square
600 University Street
Seattle, Washington 98101-1176

Re: State v. Martin Pang
King County Cause Number: 95-1-00473-0 SEA

Mr. Johnson:

Enclosed please find a copy of the motion of Defendant Martin Pang, acting *pro se*, seeking a "Motion for Individualized Inquiry into Defendant's Current and Future Ability to Pay LFO's." Judge Andrus signed an order transferring this case to the Court of Appeals under CrR 7.8(c)(2) on September 28, 2015, a copy of which is enclosed.

Sincerely,



Jessica Marshall, Bailiff
To the Honorable Beth M. Andrus
Judge of the King County Superior Court

Cc: Court File
King County Prosecuting Attorney's Office, Appellate Unit
Defendant Martin Pang

2015 OCT - 1 AM 11:29
COUNTY OF APPEALS DIV 1
STATE OF WASHINGTON

1 substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require
2 a factual hearing.

3 This Court concludes that under CrR 7.8(c)(2), this matter must be transferred to the
4 Court of Appeals, Division I, for consideration as a personal restraint petition.

5 Based on the foregoing, it is hereby ORDERED that Mr. Pang's motion is hereby
6 transferred to the Court of Appeals, Division I.

7 DONE IN CHAMBERS this 28th Day of September, 2015.

8 *Electronic signature attached*

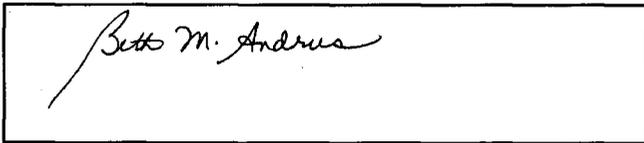
9 HONORABLE JUDGE BETH M. ANDRUS

King County Superior Court
Judicial Electronic Signature Page

Case Number: 95-1-00473-0
Case Title: STATE VS PANG

Document Title: ORDER TRANSFERRING MOTION TO COA

Signed by: Beth Andrus
Date: 9/28/2015 9:45:11 AM



Judge/Commissioner: Beth Andrus

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: D92F76D12132FF531AF16720A721F097AC7A50B6

Certificate effective date: 7/29/2013 12:26:48 PM

Certificate expiry date: 7/29/2018 12:26:48 PM

Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Beth
Andrus.dE53Hnr44hGmww04YYhwmw=="

August 26, 2015

The Honorable Judge Beth Andrus
King Co. Superior Court
516-3d Ave
Seattle, WA 98104

RECEIVED

SEP 04 2015

JUDGE BETH M. ANDRUS
DEPARTMENT 35

RE: State v. Pang, No. 95-1-00473-0 SEA
Motion For Individualized Inquiry Into Defendant's Current
And Future Ability To Pay LFO's

Judge Andrus:

Enclosed, find the Judges copy of the Motion for Individualized
Inquiry into Defendant's Current and Future Ability to Pay LFO's,
and Order.

Copies have been forwarded to the Court Clerk and the Prosecutors
Office.

Please schedule the Motion and Order for consideration, when
available.

Thank you.

Sincerely,

Martin Pang #254392
WA ST PENT.
Victor-8212
1313 N. 13th
Walla Walla, WA
99362

cc: file

2015 OCT -1 AM 11:29

COURT OF APPEALS DIV 1
STATE OF WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 MARTIN PANG,)
)
 _____)

No. 95-1-00473-0 SEA
MOTION FOR INDIVIDUALIZED INQUIRY
INTO DEFENDANT'S CURRENT AND
FUTURE ABILITY TO PAY LFO'S

I. RELIEF REQUESTED

COMES NOW, the Defendant, MARTIN PANG, and moves this Court to do an individualized inquiry into Defendant's current and future ability to pay discretionary LFO's, and waive them.

II. STATEMENT OF FACTS

Defendant was ordered to pay mandatory and discretionary LFO's on the above cause number. The current total of those LFO's is now \$2,897,535.34. (Exhibit 'A')

II. STATEMENT OF THE CASE

The following issue is presented for resolution by the Court. Defendant pled guilty to four counts of manslaughter on February 19, 1998. As part of the Judgment and Sentence, signed on March 23, 1998, defendant was ordered to pay LFO's. The hearing to determine, and Order the LFO's was held on July 28, 1998. (Exhibit 'B')

The only issue to be resolved is: did the Court, i.e., Superior Court Judge Larry Jordan, make the statutorily mandated, individualized inquiry into the defendant's current and future ability to pay discretionary LFO's, before rendering his Order to pay mandatory and discretionary LFO's, and is the inquiry, if any, reflected in the record.

IV. EVIDENCE RELIED UPON

The evidence relied upon is the case record, itself. Nowhere in the record is the statutorily mandated individualized inquiry found.

V. LEGAL AUTHORITY

Over the years, the lower Courts have used their own discretion on whether or not to conduct the statutorily mandated, individualized inquiry into whether the defendant had the current and future ability to pay those LFO's, and when they did, usually only the boilerplate language of RCW 9.94A.753 was used, without any supporting documentary evidence presented to support the Order to pay.

It is well settled case law that 'the court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.' State v. Calvin, 302 P.3d 509, 521, 176 Wn.App. 1 (2013); RCW 10.01.160(3).

'Once a defendant has shown his indigence, 'the discretion in sentencing courts to waive a fine should generally be executed

in favor of such a waiver.' United States v. Aregbeyen, 251 F.3d 337, 339 (2nd Cir. 2001).

'A court may impose a fine on a defendant who is presently indigent "only if there is evidence in the record that he will have the earning capacity to pay the fine after release from prison."' Aregbeyen, 251 F.3d at 339.

'Speculation that an indigent defendant might win the lottery will not suffice. A sentencing court may not base the imposition of a fine upon its mere suspicion that the defendant has funds.' United States v. Corace, 146 F.3d 51, 56 (2d Cir. 1998), citing U.S. v. Wong, 40 F.3d at 1383 (2d Cir. 1994).

Most importantly, in the recent Washington State Supreme Court, En Banc ruling of the consolidated cases of State v. Blazina, & Paige-Colter, No. 89028-5, filed March 12, 2015, the Court stated that 'to determine the amount and method for paying the costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment costs will impose. ...we treat the word "shall" as presumptively imperative - we presume it creates a duty rather than confers discretion.' Ibid (underline mine)

'We hold the legislature intended the two words (may, shall) to have different meanings, with "shall" being imperative.' Ibid (underline mine)

'The record must reflect that the trial court mad an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors, as amici suggest, such as incarceration and

a defendant's other debts, including restitution, when determining a defendant's ability to pay.' Ibid (underlines mine)

'Courts should also look to the comment in Rule 34 for guidance.

... Courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline.

... If someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFO's.'

Ibid (underline mine)

'Moreover, the State cannot collect money from defendant's who cannot pay, which obviates one of the reasons courts impose LFO's.

See RCW 9.94A.303.' Ibid

'By statute, the 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).'

Ibid Additionally, the Court stated, the 'trial court used

'boilerplate' language of 9.94A.753.' Ibid This was legally insufficient to support the LFO's ordered.

Finally, the Court stated: 'We hold that RCW 10.01.160(3) requires

the record to reflect that the sentencing judge made an

individualized inquiry into the defendant's current and future

ability to pay before the Court imposes LFO's. This inquiry

requires the Court to consider important factors, such as

incarceration and a defendant's other debts, including

restitution, when determining a defendant's ability to pay.'

Ibid (underlines mine)

VI. CONCLUSION

In the present matter, there was no statutorily mandated,

individualized inquiry into defendant's current or future ability to pay the discretionary LFO's. No factual findings regarding defendant's income, financial resources, or earning capacity were made and entered into the record, prior to the Court imposing the discretionary LFO's.

No consideration of the amount of restitution - originally \$956,020.51, was taken into consideration, nor Rule 34, as the State Supreme Court stated must be done, in its ruling in Blazina/Paige-Colter, No. 89028-5.

The job(s) defendant is likely to obtain based on his age, education, and status as an ex-felon are not likely to generate income much above minimum wage. The amount of the discretionary LFO's, combined with the mandated LFO's, is out of proportion to the defendant's likely future income potential.

Therefore, the defendant asks this Court to conduct the statutorily mandated, individualized inquiry, which Judge Jordan did not conduct, into his current and future ability to pay the discretionary LFO's, along with documentary evidence to support any conclusions. And, if the Court finds that the defendant does not possess the current or future ability to pay, based on the individualized inquiry, to waive any and all discretionary LFO's ordered on July 28, 1998 (Exhibit 'B'), and enter a new, revised Order.

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

DATED this 26 day of August, 2015.

Presented by:

MARTIN PANG

MARTIN PANG, pro se #254392

WA ST PENT -VB-212 1313 N.13 Walla Walla, WA

Exhibit 'A'

Offender LFO History Report

LFO History Summary

DOC #: 254392 Offender Name: Pang, Martin S

Distribution Date Range: 01/01/2000 thru 03/19/2015

Total LFO Withdrawals		Total County Payments		Total Refunds	
		King County Clerk	\$3,632.13		
Total	\$3,661.73	Total	\$3,632.13	Total	\$0.00

Offender Causes

County	Cause	LFO Balance
King County Clerk	951004730	\$2,897,535.34
		\$2,897,535.34

Withdrawal History Detail

DOC #: 254392 Offender Name: Pang, Martin S

Distribution Date Range: 01/01/2000 thru 03/19/2015

Extract Date	Control Facility	Sub Facility	Entry Type	Item #	GL/Batch Date	Withdrawal Amt	Status
01/01/2015	AE1	E01	LFO	021923262	12/24/2014	\$50.00	Processed 01/14/2015
11/16/2014	AE1	E01	LFO	021767979	11/13/2014	\$50.00	Processed 11/20/2014
08/01/2014	AB1	B04	LFO	021360609	07/29/2014	\$50.00	Processed 08/13/2014
01/16/2014	AS1	S04	LFO	020617572	01/03/2014	\$40.00	Processed 01/23/2014
07/16/2013	AD1	D04	LFO	019999300	07/12/2013	\$40.00	Processed 08/05/2013
05/16/2013	AD1	D02	LFO	019777753	05/10/2013	\$30.00	Processed 05/22/2013
04/16/2013	AD1	D02	LFO	019643315	04/03/2013	\$20.00	Processed 04/22/2013
03/01/2013	AD1	D02	LFO	019502937	02/20/2013	\$20.00	Processed 03/15/2013
01/16/2013	AD1	D02	LFO	019352809	01/08/2013	\$40.00	Processed 01/24/2013
08/01/2012	AD1	D02	LFO	018777306	07/17/2012	\$20.00	Processed 08/10/2012
04/16/2012	AD1	D02	LFO	018449056	04/13/2012	\$22.56	Processed 05/03/2012
03/16/2012	AD1	D02	LFO	018364489	03/15/2012	\$29.33	Processed 04/16/2012
02/16/2012	AD1	D02	LFO	018261632	02/15/2012	\$28.79	Processed 03/02/2012
01/16/2012	AD1	D02	LFO	018137194	01/13/2012	\$27.29	Processed 02/03/2012
12/16/2011	AD1	D02	LFO	018052982	12/15/2011	\$28.53	Processed 12/30/2011
11/16/2011	AD1	D02	LFO	017946797	11/15/2011	\$32.61	Processed 11/30/2011
10/16/2011	AD1	D02	LFO	017832582	10/14/2011	\$26.10	Processed 10/27/2011

Exhibit 'B'

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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STATE OF WASHINGTON,

98 JUL 30 PM 2:30

FILED
Plaintiff, SUPERIOR COURT No. 95-1-00473-0 SEA
CLERK
SEATTLE, WA.

vs.

MARTIN SHAW PANG,

ORDER SETTING RESTITUTION
AND EXTRADITION COSTS

Defendant,

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following persons are entitled to restitution in the following amounts;

IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

I. VICTIMS AND SURVIVORS

Karen Shoemaker
22506 272nd Avenue S.E.
Maple Valley, WA 98038 AMOUNT: \$3,664.19

Mary Anne Kilgore
6920 - 117 Drive N.E.
Kirkland, WA 98033 AMOUNT: \$3,374.54

Christy Brown
13604 - 68th Avenue Court E.
Puyallup, WA 98373 AMOUNT: \$3,966.36

Clare Striegel
964 Retsil Road S.E.
Port Orchard, WA 98366 AMOUNT: \$3,209.49

Raymond and Colleen Terlicker
3503 SW 107th
Seattle, WA 98146 AMOUNT: \$4,347.22

98-9-0446-2
JUDGMENT NUMBER

C/PROC
CUST
CASH
JUDGE
DISB
CRIM
ADCT
EXH

ORDER SETTING RESTITUTION - 1

Norm Maleng, Prosecuting Attorney
W554 King County Courthouse
316 Third Avenue
Seattle, Washington 98104
(206) 296-9000
FAX (206) 296-0955

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20

1 La Panzanella, Inc.
Ciro and Kimberly Pasciuto
2 1314 East Union St.
Seattle, WA 98122 AMOUNT: \$71,071.90

3
4 Jeff Carrell
3535 27th Pl. W.
Seattle, WA 98199 AMOUNT: \$5,492.75

5
6 Matthew Fox
1409 NE 56th
Seattle, WA 98105 AMOUNT: \$5,121.75

7
8 Charles Miller
3801 SE 64th
Portland, OR 97206 AMOUNT: \$10,666.75

9
10 Ray Schwartz
P.O. Box 914
Eastsound, WA 98245 AMOUNT: \$23,023.75

11
12 Restitution shall be apportioned between all included in I above until paid in full.

13 II. INSURERS AND GOVERNMENT AGENCIES

14 After the individuals and entities above are paid in full restitution shall be apportioned
15 between those named below.

16 Crime Victims Compensation
Dept. of Labor and Industries
P.O. Box 44520
17 Olympia, WA 98504-4520
RE: VC74476 Randall Terlicker AMOUNT: \$1,127.00

18 City of Seattle
19 710 Third Avenue
Seattle, WA 98104
20 RE: payments for funeral services for
Seattle firefighters James T. Brown
21 and Randall Terlicker AMOUNT: \$4,000.00

22

1 Farmers Insurance Exchange
2 c/o Thomas Lether,
3 Attorney at Law
4 1001 Fourth Avenue Plaza, Suit 3810
5 Seattle, WA 98154

AMOUNT: \$772,225.87

4 Mutual of Enumclaw
5 (address t/b inserted)
6 RE: policy #PK57749
7 Date of loss: 1/05/95

AMOUNT: \$44,728.94

TOTAL RESTITUTION: \$956,020.51

8 Extradition costs were ordered by the court at the time of sentencing. Extradition costs have
9 been submitted by King County in the amount of \$13,788.12 and on behalf of the City of Seattle in
10 the amount of \$14,404.79. Costs shall be reimbursed after all obligations in I & II above are
11 fulfilled.

If Mr. Pang has any renumeration in the future based on the facts of this crime those monies shall be paid to the victims listed in this order.
12 IT IS ORDERED that defendant make payments through the registry of the clerk of court as
13 follows:

11 King County Sheriff's Office
12 W-116 King County Courthouse
13 516 Third Avenue
14 Seattle, WA 98104

AMOUNT: \$13,788.12

14 City of Seattle
15 Department of Finance

AMOUNT: \$14,404.79

TOTAL EXTRADITION COSTS: \$28,192.91

16 DONE IN OPEN COURT this 20 day of July, 1998.

17 *Larry A. Jordan*
18 JUDGE LARRY A. JORDAN

19 Presented by:

20 *Marilyn Brenneman*
21 Marilyn Brenneman #10760
22 Senior Deputy Prosecuting Attorney
CCN# 446145 REF# 95030399

Copy received; Notice
Presentation waived:

20 *John Henry Browne*
21 John Henry Browne 4677
22 Attorney for Defendant

ORDER

This Court, after being duly advised, finds that the Defendant, pro se, brings this action in good faith.

Now, Therefore, IT IS ORDERED:

This Court will conduct the statutorily mandated, individualized inquiry into the defendant's current and future ability to pay the discretionary LFO's. This inquiry will include factors such as incarceration and the defendant's other debts, including restitution, and will look to the comment in Rule 34 for guidance.

This individualized inquiry will be entered in the record.

If the Court finds that the defendant does not possess the current or future ability to pay the discretionary LFO's that were Ordered by Judge Larry Jordan, on July 28, 1998, those LFO's will be waived and a new, revised Order entered.

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

DATED this _____ date of _____, 2015.

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

DATED this _____ of _____, 2015

Judge

Presented by:

MARTIN PANG, pro se #254392
WA ST PENT VB-212
1313 N. 13th
Walla Walla, WA 99362

COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 OCT -1 AM 11:29

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	)	Plaintiff,
	)	No. 95-1-00473-0 SEA
vs.)	
	)	STATE'S MOTION TO TRANSFER
MARTIN PANG,)	
)	
	)	Defendant.
)	
)	
)	

1. INTRODUCTION

Pursuant to CrR 7.8(c)(2), the State requests this Court to transfer the defendant's CrR 7.8 motion to the Court of Appeals for consideration as a personal restraint petition.

2. FACTS RELEVANT TO THE MOTION

On September 4, 2015, defendant Martin Pang filed a "Motion For Individualized Inquiry Into Defendant's Current and Future Ability to Pay LFO's [sic] and Order" in the above cause number. He claims that the sentencing court erred in failing to conduct an inquiry into his ability to pay costs, and he requests "this Court to do an individualized inquiry into Defendant's current and future ability to pay discretionary LFO's [sic], and waive them." Motion, at 1-5.

Daniel T. Satterberg, Prosecuting Attorney
APPELLATE UNIT
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-9497, FAX (206) 296-9009

1 Pang pled guilty to four counts of Manslaughter on February 14, 1998. Judgment and
2 Sentence were imposed on March 23, 1998 by the Honorable Larry A. Jordan. Restitution and
3 costs were ordered at sentencing but the restitution and extradition amounts were detailed in an
4 order dated July 28, 1998. Pang never appealed either the judgment and sentence or the order
5 dated July 28, 1998. On April 19, 2013, this court rejected Pang's request to terminate collection
6 of legal financial obligations. On April 13, 2015 the Court of Appeals affirmed this Court's
7 order. State v. Pang, No. 70442-7-1, 2015 WL 1815862.

8
9 **3. ARGUMENT**

10 The State requests that this Court transfer Pang's motion to the Court of Appeals for
11 consideration as a personal restraint petition.

12 Although Pang does not identify a rule that authorizes this motion, the only conceivably
13 applicable rule is CrR 7.8, Relief from Judgment or Order. However, motions made pursuant to
14 CrR 7.8(b) are subject to the collateral attack provisions of RCW 10.73.090, .100, .130, and .140.
15 CrR 7.8(b). A collateral attack is any request for "postconviction relief other than a direct
16 appeal." RCW 10.73.090(2). The Superior Court shall transfer a CrR 7.8 motion to the Court of
17 Appeals for consideration as a personal restraint petition unless the court makes a determination
18 that the motion is (1) timely, and (2) that the defendant has made a substantial showing that he is
19 entitled to relief or that resolution of the motion will require a factual hearing. CrR 7.8(c)(2).

20 Pang's motion is untimely. "No petition or motion for collateral attack on a judgment
21 and sentence in a criminal case may be filed more than one year after the judgment becomes
22 final if the judgment and sentence is valid on its face and was rendered by a court of competent
23 jurisdiction." RCW 10.73.090(1). Because Pang never filed an appeal, his case became final in

1 1998 when his judgment was filed and restitution and other costs were determined. RCW
2 10.73.090(3)(a). Thus, his motion filed in August of 2015 is untimely.

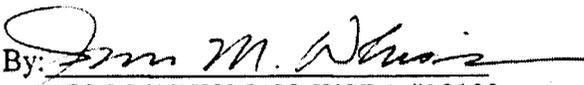
3
4 4. CONCLUSION

5 Because Pang's motion is untimely, CrR 7.8(c)(2) requires this Court to transfer the
6 motion to the Court of Appeals for consideration as a personal restraint petition.

7 Dated this 11th day of September, 2015.

8
9 Respectfully submitted,

10 DAN SATTERBERG
11 King County Prosecuting Attorney

12 By: 
13 JAMES M. WHISMAN, WSBA #19109
14 Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
	)	No. 95-1-00473-0 SEA
vs.	)	[Proposed]
)	
MARTIN PANG,	)	ORDER TRANSFERRING
	)	DEFENDANT'S MOTION TO THE
	)	COURT OF APPEALS
)	
	)	[CLERK'S ACTION REQUIRED]

Defendant has filed a post-conviction motion. Pursuant to CrR 7.8(c)(2), the defendant's motion is untimely, so it is transferred to the Court of Appeals for consideration as a personal restraint petition.

DONE IN CHAMBERS this __ day of September, 2015.

HONORABLE BETH M. ANDRUS

ORDER TRANSFERRING DEFENDANT'S MOTION TO THE COURT OF APPEALS

September 17, 2015

Jessica M. Marshall
Law Clerk/Bailiff to Judge Beth Andrus
King Co. Superior Court
516-3d Ave, C-203
Seattle, WA 98104

RECEIVED
SEP 24 2015
JUDGE BETH M. ANDRUS
DEPARTMENT 35

RE: State v. Pang No. 95-1-00473-0

Dear Ms. Marshall:

Enclosed, please find your copy of the Defendant's Answer To States's Motion to Transfer.

Thank you.

Sincerely,

Martin Pang #254392
WA ST PENT.
Victor-B212
1313 N. 13th
Walla Walla, WA 99382

cc: file

2015 OCT - 1 AM 11: 29
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 95-1-00473-0 SEA
)	
vs.)	
)	
MARTIN PANG,	)	DEFENDANT'S ANSWER TO STATE'S
	)	MOTION TO TRANSFER
Defendant.)	
)	

I. INTRODUCTION

Defendant answers why the State's Motion To Transfer should not be granted.

II. FACTS

On September 4, 2015, Defendant filed a "Motion For Individualized Inquiry Into Defendant's Current And Future Ability To Pay LFO's." On September 11, 2015, Prosecuting Attorney James Whisman submitted the State's Motion To Transfer.

III. ARGUMENT

Defendant's previous finding and Order of LFO's, done on July 28, 1998, does not meet the requirements of RCW 10.01.160(3), which was recently clarified in State v. Blazina, & Paige-Colter, No. 89028-5, filed March 12, 2015.

In considering this authority, in Blazina & Paige-Colter, the State Supreme Court clarified and added greater procedural specificity to what a sentencing Court shall do in order to lawfully impose LFO's. This is now binding as new procedural law, and applies retroactively. See State v. Blakely (cite omitted).

Therefore, Judge Larry Jordan, in Ordering LFO's, without reflecting that he made an individualized inquiry into the defendant's current and future ability to pay, violated procedural due process, rendering the LFO portion of defendant's Judgment and Sentence invalid on its face, and not time barred by RCW 10.73.090.

III. CONCLUSION AND RELIEF REQUESTED

This Court should not transfer this Motion to the Court of Appeals. Defendant requests that this Court see the Motion as filed, or under CrR 7.8(c)(2).¹

Dated this 17th day of September, 2015.

Respectfully submitted,

MARTIN PANG

MARTIN PANG, pro se #254392
WA ST PENT - V-B212
1313 N.13th
Walla Walla, WA 99362

¹
The September 1, 2009 revision to CrR 7.8 reflects the legislature's intent that meritorious collateral matters such as this be adjudicated at the trial court level. The "Initial Consideration" section was repealed. CrR 7.8(c)(2) was enacted, requiring the courts to employ the two pronged test, thereby limiting the court's authority to transfer motions brought under CrR 7.8.