

FILED  
8-31-16

Court of Appeals  
Division I  
State of Washington

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

|                   |   |                      |
|-------------------|---|----------------------|
| IN RE PERSONAL    | ) |                      |
| RESTRAINT OF      | ) |                      |
|                   | ) | No. 73994-8-1        |
|                   | ) |                      |
|                   | ) | STATE'S SUPPLEMENTAL |
|                   | ) | RESPONSE TO          |
|                   | ) | PERSONAL RESTRAINT   |
| MARTIN SHAW PANG, | ) | PETITION             |
|                   | ) |                      |
| Petitioner.       | ) |                      |
| _____             |   |                      |

A. ISSUES

1. Should this Court dismiss Pang's personal restraint petition claiming that the trial court failed to adequately consider his future ability to pay legal financial obligations where Pang has supplied no evidence that the trial judge failed to consider his ability to pay?

2. Should this Court reject Pang's argument that the judgment and sentence is rendered invalid on its face for purposes of RCW 10.73.090 simply because the judgment contains language saying that the court concludes that the defendant has the present or future ability to pay, where no case has held that use of such language renders a judgment invalid?

3. Should this Court reject Pang's argument that State v. Blazina is a significant change in the law?

4. Should this Court dismiss the petition instead of "construing" it as a different type of motion that Pang has never filed?

B. FACTS

In addition to the facts outlined in the State's initial response, the following facts are included here for the Court's convenience.

The judgment and sentence in this case provided as follows:

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below. ... 4.2 OTHER FINANCIAL OBLIGATIONS: **Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed.** ... Defendant shall pay the following to the Clerk of this Court: (a) \$257.10 Court costs ... (g) Other cost for extradition.

Appendix A at 2 (emphasis added). A separate hearing was held on July 28, 1998 where the trial court considered whether to impose restitution and extradition costs. Appendix A.

Pang asserts in his pleadings that the record does not establish whether the sentencing court actually considered his ability to pay. He does not assert by declaration of his lawyers or by himself that the sentencing judge, in fact, did not consider his ability to pay costs. Pang also says that he "began" making payments in prison but that he has only been "able" to pay \$3,660 to date. Pang was sentenced in 1998; he has been in prison for 18 years. He began making payments only 5 years ago, in 2011. He has

provided no documentation or declarations showing that he was unable to pay *anything* before 2011. it appears that in 2001 he offered to pay the amount owed in full or by installment payments. Appendix B.

C. ARGUMENT

Pang presents three arguments in support of his claim: 1) there is no evidence the court considered ability to pay beyond language in the judgment suggesting the court considered ability to pay, so remand for a factual hearing is required; 2) a judgment that says on its face that ability to pay was considered, without further elaboration, is invalid on its face and, thus, subject to collateral attack at any time; 3) this court should restyle Pang's motion as a motion to remit costs. For the reasons set forth below, those arguments should be rejected.

1. IT IS PANG'S BURDEN TO PROVE THERE WAS NO INQUIRY INTO ABILITY TO PAY AND HE HAS FAILED TO MEET THAT BURDEN.

Pang first argues that he should prevail because the State did not produce facts to show that there was an inquiry as to costs upon sentencing. This argument inverts the burden of proof. An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of

constitutional error from which he has suffered actual prejudice or non-constitutional error that constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). The petitioner bears the burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). A petitioner who asserts a constitutional error as grounds for relief must establish by a preponderance of the evidence that he was actually and substantially prejudiced by the claimed error. In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 823 P.2d 492 (1992).

Pang must establish in this petition that there was no inquiry into his ability to pay beyond the language in the judgment which suggests there was such an inquiry. Even on direct appeal, an appellate court should presume any state of facts that support affirmance; the appellate court may not presume that the trial court neglected its duties. State v. Jasper, 174 Wn.2d 96, 123-24, 271 P.3d 876 (2012) (“[o]n a partial or incomplete record, the appellate court will presume any conceivable state of facts within the scope of the pleadings and not inconsistent with the record which will sustain and support the ruling or decision complained of; but it will not, for the purpose of finding reversible error, presume the

existence of facts as to which the record is silent.”, quoting Barker v. Weeks, 182 Wash. 384, 391, 47 P.2d 1 (1935)).

Pang has failed to meet his burden to show that the sentencing judge did not consider his ability to pay before ordering legal financial obligations.

2. A JUDGMENT IS NOT INVALID ON ITS FACE SIMPLY BECAUSE IT DOES NOT CONTAIN EVIDENCE OF INQUIRIES THE COURT MAY HAVE MADE ON THE RECORD.

Pang argues that his claim is not time-barred because all judgments must contain some additional (but unspecified) assertion that an inquiry was made into his ability to pay discretionary legal financial obligations, and the lack of such assertion renders the judgment “invalid on its face.” There is no authority for such a claim. The Washington Supreme Court has held that a trial court need not enter findings of fact and conclusions of law when it imposes costs. State v. Curry, 118 Wn.2d 911, 916, 829 P.2d 166 (1992). The court has also held in a direct appeal that trial court judgment imposing discretionary costs is insufficient if it simply includes boilerplate language for a cost award. State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). But the court has never held that a judgment is subject to collateral attack beyond the statutory

time limit of one year from finality, nor has the court indicated that boilerplate language renders the judgment “invalid on its face” for purposes of the time bar for collateral attacks. Blazina did not silently overrule Curry.

Nor is Blazina a significant change in the law. The court in Blazina simply interpreted longstanding statutory language. There has been no change. In re Personal Rest. of Flippo, 191 Wn. App. 405, 362 P.3d 1011 (2015).

3. THIS COURT CANNOT CHANGE PANG’S FILING INTO SOMETHING IT IS NOT; HE MAY FILE A PETITION TO REMIT COSTS IN THE TRIAL COURT.

Pang asks this court to “construe” his original motion as a motion to remit costs under RCW 10.01.1660(4). This request should be denied. RAP 16.11(b) provides that the appellate court considering a personal restraint petition has the authority to dismiss it, decide it on its merits, or transfer the petition to the superior court for a decision on the merits, or for a reference hearing. The rules of appellate procedure do not give appellate courts the authority to “construe” a motion as something it plainly was not.

Pang can pursue a motion to remit costs on his own. But, he must meet the demands of RCW 10.01.160(4), which provides:

(4) A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs...

Pang has provided no financial records whatsoever to support his claims that he is not in default or that he cannot pay. Without proof of his financial situation, supported by declarations signed under penalty of perjury, he cannot establish that his failure to pay *anything* towards his legal financial obligations for 13 years was not contumacious default. Moreover, without proof that he does not have sources of income, he cannot show that payment of the amount due will impose manifest hardship on him or his family.

DATED this 31<sup>st</sup> day of August, 2016.

Respectfully Submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:



James M. Whisman, WSBA # 19109  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

# **APPENDIX A**

✓ FNRHRG

Department No. 35  
Date: JUL 28 1998  
Page 1 of 1

JUDGE: Larry Jordan  
BAILIFF: Marsha Kishida  
COURT CLERK: Gary Povick  
REPORTER: Kimberly Brazil

King County Cause No. 95-1-00473-0 SEA

Case Caption

State of Washington v. Martin Pang

Litigants and Attorneys

State appearing by DPA Marilyn Brennehan  
Def. not appearing in person but by counsel John Henry Browne &  
Timothy Dole

Minute Entry

Post-sentencing matters  
Restitution is set at \$956,020.51.  
Extradition costs are set at \$28,192.91.  
Def. is to receive credit for time served in Brazil  
from 3-16-95 to 2-28-96.  
No contact order is modified re certain exceptions.  
Orders are signed.

# **APPENDIX B**

**FILED**

99 SEP -8 AM 10:36

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

Martin-Shaw: Pang [254392]  
c/o McNeil Island Corrections Center  
P.O. Box 881000  
Steilacoom, Washington [98388-1000]

August 16, AD1999

M. Janice Michaels, King County Clerk  
E-609 Courthouse  
516 3rd Avenue  
Seattle, Washington 98104-2386

RE: King County Cause No. 95-1-00473-0SEA  
[Tracking No. 0200]

Certified Mail # \_\_\_\_\_

**NOTICE AND OFFER OF PERFORMANCE TO PAY ALLEGED LIABILITY  
IN FULL OR AGREED INSTALLMENT PAYMENTS**

It has come to my attention that IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA, may have imposed an involuntary tax or assessment against me.

I do not believe there to be any lawful and constitutional way for me to pay said involuntary tax or assessment.

It is certainly possible that IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA, has made a mistake and assessed this liability erroneously and without lawful constitutional authority. However, I do not want to go to the extra time, trouble, and expense of hiring an Attorney or other professionals to dispute this matter with IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING. It is my intent to resolve this question with as little hassle as possible.

If King County is not the proper party to which this Notice and Offer can be presented for acceptance, then please forward this document to the appropriate party.

Therefore, this constitutes my good faith effort to pay the alleged obligation, in full or in agreed installments if King County can show the Law Constitutional Authority for its claim.

214  
7

*Outgoing to DPA*

OFFER TO PAY THE ALLEGED LIABILITY

This is an offer of performance to pay the alleged liability and extinguish the obligation and King County may either accept this offer, reject this offer, or object to the mode of this offer.

CONDITION PRECEDENT

This offer to pay a certain sum which IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA, asserts as a liability in full, or in agreed installments, including interest and penalties, is made dependent upon performance of condition precedent to which I am entitled by the fundamental principles of American Jurisprudence and Law, namely presentation of documentary evidence showing the Lawful and Constitutional Authority of the alleged liability, to wit:

1. Documentation of facts necessary to establish that I, the undersigned, am specifically and unequivocally made liable by law to pay the involuntary tax or assessment imposed by IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA, when:

- (a.) the Attorney General for the State of Washington has determined that Article I, Section 10, of the Constitution for The united States of America, AD1791, remains binding upon the State of Washington and all political subdivisions hereof; and,
- (b.) Article I, Section 10, of the Constitution for The united States of America, AD1791, expressly mandates: "No State shall ... make any Thing but gold and silver Coin a Tender in Payment of Debts; and,
- (c.) Congress has no constitutional authority to authorize or require the State of Washington to do something that the Constitution for The united States of America, AD1791, expressly forbids it from doing; and,
- (d.) in the Coinage Act of AD1792, Congress declared and defined "lawful money" as consisting of gold and silver, and Congress has not since declared otherwise; and,

- (e.) a misbehaving Congress has removed gold and silver coin, lawful money dollars, from free circulation within the State of Washington contrary to constitutional design; and,
- (f.) of the many judicial rulings of conflicting opinion upon the subject of "tender" "Acts of Congress making notes of the United States legal tender do not apply to involuntary contributions in the nature of taxes or assessments exacted under State Laws," Hagar v. Land Reclamation District 108, 111 U.S. 701 (S.Ct. AD1884), is controlling; and,
- (g.) Article XII, Section 11, of the Constitution of the State of Washington, being pari materia to all other State Constitutions, expressly prohibits the circulation of private bank paper (i.e. federal reserve notes) as money; and,
- (h.) I do not have any lawful money dollars and am estopped from obtaining any at par value; and,
- (i.) it is a long and well established maxim of Law that the Law cannot require the impossible; and,
- (j.) Government, at every level, is constitutionally restrained from taking private property without "making" just compensation (i.e. lawful money dollars); and,
- (k.) all elected, appointed and hired agents of the State of Washington including the officer(s) of IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING have given promissory oath under Seal of the State of Washington to observe and obey the constitutional and lawful restraints and mandates enumerated above; and,
- (l.) it is the lawful responsibility of the government of the State of Washington to insure that Congress mint and freely circulate lawful money dollars within said State in order that the State and its Citizens and Inhabitants are able to extinguish debts in accordance with Article I, Section 10, of the Constitution for The united States of America, AD1791; and,
- (m.) neither the State of Washington, nor its political subdivisions, nor the officers or agents thereof possess

or Inhabitant for, or as a result of, said negligence, 15, supra; and,

(n.) Article I, Section 8, provides "Congress shall coin Money, regulate the value thereof", it does not say "Congress shall rent the Nation's money supply at interest from a private foreign-owned corporation".

2. Documentation of facts necessary to establish what the substance is of a lawful money dollar.

3. Documentation of facts necessary to establish that King County will accept a non-redeemable note drawn on a Private Bank in payment of the debt.

4. Documentation of facts necessary to establish how I can use federal reserve notes to pay this debt and not merely discharge the debt with limited liability.

Take note, that if the above four (4) elements cannot be met, then there is no liability to pay, which I believe to be the case.

If in fact, the liability alleged by IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA, is a liability for which I, the undersigned am made liable by law, and I am subject to the jurisdiction, regulation, and control of the legislative entity which enacted the statutes, or I have a liability by way of an alleged statute staple, then I certainly am entitled to presentation of evidence sufficient to demonstrate the validity of these claims.

PRESUMPTIONS OF GOOD FAITH AND FAIR DEALING

The law presumes men act fairly and honestly, that their dealings are in good faith and with intention not to cheat, hinder, delay, or defraud another, and if any transaction called in question is equally capable of two constructions, one that is fair and honest and the other dishonest, then, in that case, the law presumes the transaction to be fair and honest. Therefore, I am not going to jump to the conclusion that IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA is manifestly

attempting to "put one over" on me by asserting a liability where none exists and attempting to collect a liability which I do not owe by fraudulent or deceitful means. Therefore, I make this good faith offer of performance with intent to extinguish the obligation.

#### OBJECTIONS MUST BE IMMEDIATELY STATED

Although the principle is well established that if King County has any objection to my offer, its terms, or its mode, it has a duty in good faith to express such objections to me immediately and not harbor hidden objections with which to surprise me at some later date.

If, then King County has any objection to this offer of performance, it has the opportunity to state that objection and also the obligation imposed by the principles of good faith to do so. If no objection is made, King County waives its right to any objections at a later date.

#### INTENT TO EXTINGUISH THE OBLIGATION

Furthermore, it should be noted that I am making this offer of performance with the intent of extinguishing the obligation, be it a simple contract or a statute staple, and it is well established in American Jurisprudence that an obligation is extinguished by an offer of performance.

#### OFFER STOPS THE RUNNING OF INTEREST

It should be noted that this offer of performance has the effect of stopping the running of interest and all other incidents of the obligation. It furthermore cancels any underlying conditions to a simple contract or a statute staple including but not limited to, any condition of confessions of judgment or recognizance.

It should be possible for King County, to immediately produce for my consideration the grounds upon which it asserts its claim, if such exists. If I receive no answer from King County, such lack of an answer is a rejection of this offer. Of course, the only plausible explanation of such lack of an answer and rejection of this offer is that King County has made an error and invalid assessment for which there is no factual or reasonable basis.

In the absence of acceptance (or objection to) this offer by King County, any further attempt by King County or the Washington Department of Corrections to collect the alleged liability will obviously be nothing but **malicious harassment with the intent to defraud.**

(If there are any questions regarding this tender, put them in writing for my consideration and I will be pleased to answer all correspondence, addressing any unresolved issue. As always, my serious intent is to conclude this matter according to truth and the law.)

State courts have consistently affirmed and upheld the nature, meaning and effect of an offer such as this, according to the common law and has been codified by State legislatures: "A tender is an offer of performance with the intent to extinguish the obligation. When properly made it has the effect of putting the other party in default if he refuses to accept it." (Wesisenberg v. Hirschorn, 97 Cal. App. 532, 275 P. 997; Lovetro v. Steers, 234 Cal. App. 461, 44 Cal. Rptr. 604; Holland v. Paddock, 142 Cal. App.2d 534, 298 P.2d 587.)

"Any tender of performance, including the exercise of an option is ineffective if it imposes conditions upon its acceptance which the offeror is not intitled to demand. (Schiffner v. Papps, 223 Cal. App.2d 526, 35 Cal. Rptr. 817.) However, the imposition of such conditions is waived by the offeree if he does not specifically point out the alleged defects in the tender. (Hohener v. Gauss, (1963) 221 Cal. App.2d 797, 34 Cal. Rptr. 656.) The rationale of the requirement of specific objection is that the offeror should be permitted to remedy any defects in his tender; the offeree is therefore not allowed to remain silent at the time of the tender and later suprise the offeror with hidden objections. (Thomassen v. Carr, (1967) 250 Cal. App.2d 341, 350, 58 Cal. Rptr. 297.)" (Riverside Fence Co. v. Novak, (1969) 78 Cal. Rptr. 536.)

"A tender need not be kept good when it appears that it will not be accepted." (Hosson v. City of Long Beach, (1948) 189 P.2d 787, 83 C.A.2d 745.)

"By failure to object to a tender as to the mode of the offer, the party to whom the tender is made waives the grounds of the objections which he had an opportunity to state at the time and which could then have been obviated.

by the tenderer." (Smith v. Central & Pacific Imp. Corp.,  
(1919) 187 P. 456, 45 C.A. 384.)

I expect an answer to this offer within a reasonable period of time, which under the circumstances should be within ten (10) days of receipt thereof. If additional time is needed by King County to consider this offer, such additional time should be requested in writing before the expiration thereof, and the reasons as to why an extension of time is required should be given in writing.

**NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPAL  
NOTICE TO THE PRINCIPAL IS NOTICE TO THE AGENT**

This offer is made in good faith by:

  
**Martin-Shaw: Pang**

**PROMISSORY NOTE**

Please accept this promissory note as my good faith effort and firm offer to pay the alleged liability claimed by King County in, IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, under King County Cause No. 95-1-00473-0SEA. This note can be endorsed pursuant to answers to the Conditions Precedent listed previously in this instrument.

**CERTIFIED PROMISSORY MONEY NOTE**No. 0200**UPON PRESENTMENT**Date: August 16, AD1999**THE UNDERSIGNED****WILL PAY TO****THE ORDER OF: King County Superior Court****\$1,003,416.62****The sum of: One Million Three Thousand Four Hundred Sixteen and 62/100—Dollars**

**THIS NOTE IS A U.C.C. NEGOTIABLE INSTRUMENT AND IS REDEEMABLE AT FULL FACE VALUE WHEN PRESENTED TO THE MAKER AT HIS ADDRESS. SEE INDORSEMENT ON ON REVERSE SIDE.**

*Martin Shaw Pang*  
Martin-Shaw Pang  
c/o McNeil Island Corrections Center  
P.O. Box 881000  
Steilacoom, Washington [98388-1000]

**PROOF OF SERVICE**

The undersigned certifies that an original of the foregoing instrument was served upon the party of record to the above cause by mailing the same to them at their respective business address with postage fully prepaid thereon on the 20 day of August, AD1999.

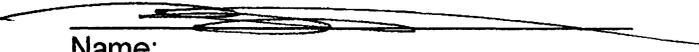
*Martin Shaw Pang*  
Martin-Shaw Pang

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Lila Silverstein, the attorney for the petitioner, at Lila@washapp.org, containing a copy of the STATE'S SUPPLEMENTAL RESPONSE TO PERSONAL RESTRAINT PETITION, in Re Personal Restraint of Martin Shaw Pang, Cause No. 73994-8, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 31<sup>ST</sup> day of August, 2016.

  
Name:  
Done in Seattle, Washington