

No. 47075-6-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

TRAVIS THOMPSON, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Amber L. Finlay, Judge

No. 14-1-00383-8

BRIEF OF RESPONDENT

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A. STATE'S COUNTER-STATEMENTS OF ISSUES
PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Thompson raises a challenge to legal financial obligations for the first time on appeal. Because Thompson did not preserve this issue with an objection in the trial court, this Court should decline to review this issue.
2. Thompson avers that before imposing LFOs against him the trial court did not engage in an individualized inquiry into his ability to pay as required by RCW 10.01.160(3) and *State v. Blazina*, 182 Wn. 2d 827, 344 P.3d 680 (2015). As argued above, the State contends that this Court should decline review of this issue because Thompson did not preserve the issue with an objection in the trial court. If this Court elects to review this issue, however, then the State concedes the error and asks that this case be remanded for the trial court to engage in the required colloquy regarding Thompson's ability to pay.

B. FACTS AND STATEMENT OF THE CASE

For the purposes of the issues raised in this appeal, the State accepts Thompson's statement of facts. RAP 10.3(b).

C. ARGUMENT

1. Thompson raises a challenge to legal financial obligations for the first time on appeal. Because Thompson did not preserve this issue with an objection in the trial court, this Court should decline to review this issue.

The trial court entered Thompson's judgment and sentence on December 30, 2014. CP 4. Thompson did not object to the trial court's

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imposition of discretionary legal financial obligations. RP 195-97. Nor did Thompson object to the trial court's boilerplate language in the judgment and sentence, which stated that the court had considered Thompson's present and future ability to pay. CP 7 (para. 2.5).

The Court of Appeals issued its opinion in *State v. Blazina*, 174 Wn. App. 906, 301 P.3d 492 (2013), on May 21, 2013. The judgment and sentence in the instant case was entered more than one year after the Court of Appeals decision in *Blazina*, but occurred before the Supreme Court's reversal of that decision in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) (affirming Court of Appeals' exercise of discretion to refuse to address issue raised for the first time on appeal, but exercising its own discretion to reach the issue and remand to trial court for further proceedings).

In *State v. Lyle*, ____ P.3d ____, 2015 WL 4156773 (No. 46161-3-II, July 10, 2015), this Court held that parties who fail to challenge LFOs in sentencings after this Court's decision in *Blazina* have waived those challenges. *See also*, RAP 2.5(a); *State v. Blazina*, 182 Wn. 2d 827, 832, 344 P.3d 680 (2015) (a defendant who makes no trial court objection to the imposition of LFOs is not automatically entitled to review on appeal,

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and an appellate court may refuse to review error not raised in the trial court).

2. Thompson avers that before imposing LFOs against him the trial court did not engage in an individualized inquiry into his ability to pay as required by RCW 10.01.160(3) and *State v. Blazina*, 182 Wn. 2d 827, 344 P.3d 680 (2015). As argued above, the State contends that this Court should decline review of this issue because Thompson did not preserve the issue with an objection in the trial court. If this Court elects to review this issue, however, then the State concedes the error and asks that this case be remanded for the trial court to engage in the required colloquy regarding Thompson's ability to pay.

It appears from the record that at sentencing the trial court imposed discretionary legal financial obligations against Thompson without first conducting an on-the-record, individualized inquiry into his ability to pay. RP 195-97. Such an inquiry, however, is statutorily required by RCW 10.01.160(3), and mere reference to boilerplate language in the judgment and sentence is inadequate to substitute for the required individualized inquiry. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

Accordingly, the trial court erred by failing to conduct the required inquiry. *Id.* If this Court accepts review on this issue, the State contends that because the trial court did not engage in an on-the-record, individualized inquiry into Thompson's ability to pay LFOs, the proper

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remedy is to remand to the trial court for resentencing, where the trial court may then undergo the required inquiry. *Id.* at 685.

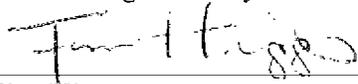
D. CONCLUSION

Thompson did not object in the trial court to the trial court's imposition of legal financial obligations; instead, he now for the first time on appeal challenges the trial court's failure to conduct an on-the-record, individualized inquiry into his ability to pay. Because Thompson waived this issue by failing to preserve it with an objection in the trial court, however, the State contends that this Court should decline to review this issue.

If, however, this Court elects to review this issue even though it is raised for the first time on appeal, then the State respectfully concedes the error and asks that the case be remanded so that the trial court may conduct the required colloquy before ordering legal financial obligations.

DATED: August 24, 2015.

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