

NO. 46790-9-II

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

STATE OF WASHINGTON, RESPONDENT

v.

MELVIN L. HARTFIELD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Philip K. Sorensen

No. 14-1-02239-7

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Did the defendant properly preserve his claim or objection to the imposition of legal financial obligations when he failed to object to the issue at the trial court? 1

 2. Did the trial court abuse its discretion or act in a clearly erroneous way when assigning discretionary legal financial obligations, after considering the defendant’s individual circumstances?..... 1

B. STATEMENT OF THE CASE. 1

 1. Procedure 1

 2. Facts..... 2

C. ARGUMENT..... 3

 1. THE DEFENDANT DID NOT PRESERVE THE ISSUE FOR REVIEW WHERE HE FAILED TO OBJECT TO THE ASSIGNMENT OF LEGAL FINANCIAL OBLIGATIONS. 3

 2. THE TRIAL COURT WAS PRESENTED WITH ADEQUATE INFORMATION TO ASSESS THE DEFENDANT’S INDIVIDUAL FINANCIAL RESOURCES AND THEREBY, PROPERLY IMPOSE DISCRETIONARY LFOs IN ACCORDANCE WITH RCW 10.01.160(3). 6

D. CONCLUSION. 9

Table of Authorities

State Cases

State v. Bertrand, 165 Wn. App. 393, 404, 267 P.3d 511 (2011),
review denied, 175 Wn.2d 1914, 287 P.3d 10 (2012)7, 8

State v. Blazina, 174 Wn. App. 906, 911, 301 P.3d 492 (2013).....3

State v. Blazina, 182 Wn.2d 827, 840-41, 311 P.3d 492 (2015).....4, 5, 7

State v. Curry, 118 Wn.2d 911, 916, 829 P.2d 166 (1992).....6

State v. Gordon, 172 Wn.2d 671, 676, 260 P.3d 884 (2011).....4

State v. Guloy, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985).....3

State v. Hettich, 70 Wn. App. 586, 592, 854 P.2d 1112 (1993)3

State v. Lindsey, 177 Wn. App. 233, 247, 311 P.3d 61 (2013).....3

State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755 (2013).....6, 7

State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992).....4

State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).....4

State v. Riley, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993).....4

State v. Sisouvanh, 175 Wn.2d 607, 618, 290 P.3d 942 (2012)4, 7

State v. Thetford, 109 Wn.2d 392, 397, 745 P.2d 496 (1987).....3

State v. Tracy, 128 Wn. App. 388, 294-95, 115 P.3d 381 (2005), *aff'd*,
 158 Wn.2d 683, 147 P.3d 559 (2006).....7

State v. Wade, 138 Wn.2d 460, 464, 979 P.2d 850 (1999)7

Statutes

RCW 10.01.1606

RCW 10.01.160(3)i, 6, 7

RCW 36.18.020	6
RCW 43.43.7541	6
RCW 7.68.035	6
Rules and Regulations	
RAP 2.5(a)	4, 5, 6
RAP 9.2(b)	7

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the defendant properly preserve his claim or objection to the imposition of legal financial obligations when he failed to object to the issue at the trial court?
2. Did the trial court abuse its discretion or act in a clearly erroneous way when assigning discretionary legal financial obligations, after considering the defendant's individual circumstances?

B. STATEMENT OF THE CASE.

1. Procedure

The Melvin Hartfield (“defendant”) was initially charged with first degree robbery for an incident that occurred at the Heritage Bank in Tacoma. CP 3. After trial by jury, the defendant was convicted of the lesser included offense of first degree theft. CP 66. He was sentenced to 14 months confinement and ordered to pay legal financial obligations (“LFOs”) of \$500 for crime victim penalty assessment, \$200 in court costs, a \$100 DNA collection fee, and \$1,000 in recoupment to the Department of Assigned Counsel (DAC). RP 225-226; CP 66, 68, 70. Defendant timely appealed. CP 88.

2. Facts

On June 5, 2014, the defendant entered the Tacoma Heritage Bank on 56th Street and presented a note announcing a robbery to the teller. RP 71, 72-75, 107-11; CP 66. The teller, in compliance with her employee training, followed the instructions on the note and began to turn over money from her till to the defendant. RP 76, 79-80, 82-83, 86. The defendant exited the bank with the money and changed clothes in a nearby alleyway. RP 98, 101-03, 122-23, 126. He then fled the scene on foot. RP 98.

When police officers arrived, they discovered the defendant's abandoned clothes in the alleyway and his Android smartphone. RP 39, 123, 142. After obtaining a search warrant, the investigating detective discovered that the phone was operational and belonged to the defendant. RP 140-43. Further investigation revealed that the defendant worked for a trucking company, was visiting Washington from Kansas, and at times staying with a family friend in Pierce County. RP 114-15, 140-43. Police arrested the defendant at the Pierce County residence, at which time he admitted to detectives that he had conducted "a robbery" at Heritage Bank. RP 38-40, 52-53, 114-17, 142-43.

C. ARGUMENT.

1. THE DEFENDANT DID NOT PRESERVE THE ISSUE FOR REVIEW WHERE HE FAILED TO OBJECT TO THE ASSIGNMENT OF LEGAL FINANCIAL OBLIGATIONS.

A failure to object to an issue in the trial court precludes it from being reviewed on appeal. *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013); *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985). A defendant may only appeal a non-constitutional issue on the same grounds that he objected on below. *State v. Thetford*, 109 Wn.2d 392, 397, 745 P.2d 496 (1987); *State v. Hettich*, 70 Wn. App. 586, 592, 854 P.2d 1112 (1993). Objecting to an issue promotes judicial efficiency by giving the trial court an opportunity to fix any potential errors, thereby avoiding unnecessary appeals. See *State v. Lindsey*, 177 Wn. App. 233, 247, 311 P.3d 61 (2013).

During sentencing, the defense raised no objection to the sentence. RP 223-26. The defendant did not challenge the state's recommendation of \$1,000 in discretionary LFOs, which the court imposed. *Id.* The defendant had an opportunity to object to the court's imposition of discretionary fees, but did not. RP 222-26. Defense counsel did not contest or offer an alternative to the discretionary DAC recoupment recommended

by the State. RP 223-25. Defendant did not preserve the issue for review on appeal.

The appellate court may review issues raised for the first time on appeal only if there is (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, or (3) manifest error affecting a constitutional right. RAP 2.5(a). *See also State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993); *State v. Sisouvanh*, 175 Wn.2d 607, 618, 290 P.3d 942 (2012). The defendant would have to claim there was a manifest error with actual prejudice affecting a constitutional right in order to raise it under the RAP 2.5(a) exceptions. *See State v. Lynn*, 67 Wn. App. 339, 345, 835 P.2d 251 (1992); *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011). Only in the event that a defendant proves an error that is both constitutional and manifest does the burden shift to the State to show harmless error. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Failing to make an individualized inquiry into a defendant's ability to pay LFOs does not involve a constitutional right. *State v. Blazina*, 182 Wn.2d 827, 840-41, 311 P.3d 492 (2015)(Fairhurst, J., concurring). Defendant has failed to provide any evidence of prejudice required for a manifest constitutional error, so this court should decline to exercise its discretionary RAP 2.5(a) review.

The defendant relies on *Blazina*, 182 Wn.2d 827, to argue that this court should overlook his failure to preserve the issue through a proper objection and grant review under RAP 2.5(a). While the Supreme Court used its discretionary authority under RAP 2.5(a) to reach the merits, they acknowledged unique circumstances led them to exercise their discretion and “...the Court of Appeals properly declined discretionary review.” *Id.* at 834-35.

In *Blazina*, the Supreme Court did not create a new standard exempting LFO claims from traditional preservation requirements; it explicitly noted “...[the assigned LFO error] will not taint sentencing for similar crimes in the future. The error is unique to these defendants’ circumstances...” *Id.* at 834. The Court reached the merits of the case because of “[n]ational and local cries for reform of broken LFO systems...”¹, a reason particularly suited to the Supreme Court’s unique ability to address broad policy issues of statewide or national concern.

The Supreme Court did not overrule the Court of Appeals’ denial of review for failure to preserve and explicitly stated that other appellate courts are not obligated to exercise their discretion in the same way. *Id.* at 834-35. This court should decline to exercise such discretion since the

¹ *Blazina*, 182 Wn.2d 827 at 835.

defendant has failed to present an argument for why this case demands the court exercise its power of discretionary review under RAP 2.5(a).

2. THE TRIAL COURT WAS PRESENTED WITH ADEQUATE INFORMATION TO ASSESS THE DEFENDANT'S INDIVIDUAL FINANCIAL RESOURCES AND THEREBY, PROPERLY IMPOSE DISCRETIONARY LFOs IN ACCORDANCE WITH RCW 10.01.160(3).

A court must impose certain mandatory fees on a convicted defendant, including a victim penalty assessment, DNA collection fee, and a clerk's filing fee. RCW 7.68.035; RCW 43.43.7541; RCW 36.18.020. Additionally, the court can use its discretion to order the defendant to pay other fees to recoup court costs based on an individualized assessment of the defendant's ability to pay the discretionary fees. RCW 10.01.160. No such inquiry is required for the mandatory fees, which are uniformly imposed by statute and do not take into account a defendant's financial situation. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013). The recoupment to DAC was the only discretionary LFO assigned to the defendant. RCW 10.01.160.

A court is not required to issue formal findings on its assessment of the defendant's financial situation. *State v. Curry*, 118 Wn.2d 911, 916, 829 P.2d 166 (1992). However, there must be sufficient information in the record of the defendant's present or future ability to pay his LFOs to

conduct an appellate review under the clearly erroneous standard. *State v. Bertrand*, 165 Wn. App. 393, 404, 267 P.3d 511 (2011), *review denied*, 175 Wn.2d 1914, 287 P.3d 10 (2012). The trial court is required to make an individualized inquiry as to each defendant's ability to pay assigned discretionary fees. *Blazina*, 182 Wn.2d at 838; RCW 10.01.160(3).

The question of whether LFOs were properly imposed is controlled by the clearly erroneous standard. *Lundy*, 176 Wn. App. at 105. A decision by the trial court "is presumed to be correct and should be sustained absent an affirmative showing of error." *State v. Wade*, 138 Wn.2d 460, 464, 979 P.2d 850 (1999). The party presenting an issue for review has the burden of proof. RAP 9.2(b); *Sisouvanh*, 175 Wn.2d at 619. If the appellant fails to meet this burden, the trial decision stands. *State v. Tracy*, 128 Wn. App. 388, 294-95, 115 P.3d 381 (2005), *aff'd*, 158 Wn.2d 683, 147 P.3d 559 (2006). Therefore, the defendant has the burden of showing the trial court judge improperly exercised his discretion by showing an affirmative error.

The record on review shows that the court was presented with sufficient information to make a determination about the defendant's ability to pay his discretionary financial obligations. Over the course of the trial, it was discovered that the defendant had recently worked for a trucking company, was the owner of a functioning Android smartphone,

and would travel between Kansas and Washington to visit friends and family. RP 142-43; 115. The defendant showed himself to be able bodied by running from the scene of the crime. RP 98, 101.

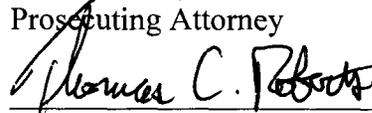
The information in the record on review reveals a defendant with previous employment experience that provided him with the means to pay the initial and monthly costs of a smartphone and travel across the United States to visit family. RP 142-43; 115. In terms of future earnings ability, the defendant was shown to have past employment experience and be physically able to find employment upon release from custody. *Cf. Bertrand*, 165 Wn. App. at 403-04. These factors, when aggregated, provided the court with enough information to make an assessment of the defendant's ability to pay his discretionary LFOs. The defendant has failed to show that the trial court acted in a clearly erroneous fashion or abused its discretion in assigning LFOs.

D. CONCLUSION.

The state respectfully request that the defendant's sentence be affirmed. The defendant failed to preserve the alleged error for review and it is without merit.

DATED: JULY 30, 2015

MARK LINDQUIST
Pierce County
Prosecuting Attorney



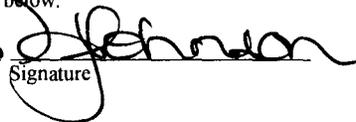
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442



Neil Brown
Appellate Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7/31/15 
Date Signature

PIERCE COUNTY PROSECUTOR

July 31, 2015 - 8:53 AM

Transmittal Letter

Document Uploaded: 1-467909-Respondent's Brief.pdf

Case Name: State v. Melvin Hartfield

Court of Appeals Case Number: 46790-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

KARdroit@aol.com