

February 6, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CANDACE L. RALSTON,

Appellant.

No. 49504-0-II

UNPUBLISHED OPINION

WORSWICK, P.J. — Following a remand order from our Supreme Court to reconsider the imposition of discretionary legal financial obligations (LFOs) as part of Candace Ralston’s sentence for her convictions of first degree theft and forgery, the sentencing court ordered that the \$39,012.35 in previously imposed discretionary LFOs would remain in place. Ralston appeals from the sentencing court’s order on remand, asserting that (1) the sentencing court failed to make an adequate individualized inquiry of her ability to pay the discretionary LFOs as required under RCW 10.01.160(3), and (2) her counsel was ineffective for failing to present an adequate argument for waiving discretionary LFOs at the remand hearing. We affirm.

FACTS

Ralston pleaded guilty to first degree theft and forgery. As part of her guilty pleas, Ralston stipulated that her crimes constituted major economic offenses. The sentencing court imposed an exceptional sentence of 96 months of incarceration based on the major economic

offense aggravators. The sentencing court also imposed discretionary LFOs that included a \$4,878.50 sheriff service fee, \$7,709.23 for a court appointed expert and other defense costs, and \$26,424.62 for court appointed attorney fees. Additionally, Ralston was ordered to pay \$800 in mandatory LFOs and \$294,115.73 in restitution. Ralston appealed her sentence, and we affirmed in an unpublished opinion. *State v. Ralston*, No. 45883-7-II, slip op. at *1 (Wash. Ct. App. Dec. 15, 2015) (unpublished). Our Supreme Court accepted review and remanded to the sentencing court, stating in its order:

[T]he superior court in imposing discretionary legal financial obligations on [Ralston] in connection with her criminal conviction did not adequately address her present and future ability to pay based on consideration of her financial resources and the nature of the burden that the payment of discretionary costs would impose, as required by RCW 10.01.160(3) and this court's decision in *State of Washington v. Nicholas Peter Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). Pursuant to that decision, the superior court must conduct on the record an individualized inquiry into [Ralston's] current and future ability to pay in light of such nonexclusive factors as the circumstances of her incarceration and her other debts, including nondiscretionary legal financial obligations, and the factors for determining indigency status under GR 34. Accordingly,

IT IS ORDERED:

That the Petition for Review is granted only on the issue of imposition of discretionary legal financial obligations and the case is remanded to the Superior Court to reconsider the imposition of the discretionary legal financial obligations consistent with the requirements of [*Blazina*].

Clerk's Papers (CP) at 22-23. Our Supreme Court thereafter imposed on Ralston \$4,244.52 in appellate fees, noting in its clerk's ruling on costs that appellate fees are not subject to its decision in *Blazina*.

At the remand hearing, the State asserted that it was "not aware of any physical or skills-related impediments that this defendant has to being gainfully employed." Report of

Proceedings (RP) at 3-4. The State argued that the only limitation on Ralston finding employment after serving her incarceration term was “her criminal behavior, not from her physical abilities, and as such, I would ask that her own behavior not work to her benefit in limiting her obligations.” RP at 4.

Defense counsel argued that Ralston would likely not be able to find employment in her former field of handling finances due to her criminal conviction. Defense counsel also stated that the sentencing court had previously found Ralston to be indigent and requested the sentencing court to “take a very close look at any future ability to pay” under the guidance of GR 34, as noted in *Blazina*. RP at 5. In reply, the State argued:

Where there’s a will there’s a way, and there is such a thing as retraining yourself or tapping into a different resource and ability. And just because you can’t keep your money off somebody else’s—your hands off somebody else’s money in the profession that you chose doesn’t mean that you can’t be gainfully employed somewhere else.

RP at 5. The sentencing court thereafter found that Ralston did not have a current ability to pay discretionary LFOs based on her incarceration. Regarding Ralston’s likely future ability to pay discretionary LFOs, the sentencing court stated:

With the information that’s been provided today, the Court is making a[n] individualized determination Once she is released, the Court finds that she is employable. It may not be in a similar type of employment, in that an employer would be advised that Ms. Ralston has had a conviction for—of this nature, which would limit her employment in her current or past line of work. But, the Court has not been made aware of any physical limitation or any limitation on her general skills and intelligence and ability to work.

So, the Court does find that, even though she may not be able to work in her chosen profession, which was in some way to handle other people’s money, she does have the ability to obtain employment and work, therefore pay towards the legal financial obligations.

RP at 7. The sentencing court then inquired about Ralston's current financial resources.

Defense counsel stated that Ralston's home had been foreclosed upon, she was in the process of

dissolving her marriage, and she had no other financial resources upon which to rely when

released from incarceration. The sentencing court then reviewed the LFOs that had been

previously imposed on Ralston. After reviewing the previously imposed LFOs, the sentencing

court found that Ralston's previously imposed minimum payment of \$25 per month would

remain in place, but modified its previous order to allow her 60 days from release of confinement

to begin making payments. The sentencing court's written order regarding Ralston's

discretionary LFOs stated in relevant part:

[T]he court finds that, while the defendant is presently confined, she has no ability to pay towards her LFOs with the exception of the DOC imposed payments based upon a percentage of funds in her account at DOC [T]he court further finds that upon release the defendant will be employable, albeit likely in a different line of work, and the court has been presented with no information that she is not otherwise able to find and engage in gainful employment, therefore all previously ordered LFOs remain imposed, provided further, that payments previously ordered shall commence 60 days after release.

CP at 19. Ralston appeals.

ANALYSIS

I. RCW 10.01.160(3)

Ralston first contends that the sentencing court failed to comply with the statutory requirements of RCW 10.01.160(3) and *Blazina* in assessing her likely future ability to pay discretionary LFOs as directed by our Supreme Court in its remand order. We disagree.

We generally review a sentencing court's compliance with a statute de novo. *State v. Stone*, 165 Wn. App. 796, 806, 268 P.3d 226 (2012); *State v. Johnson*, 96 Wn. App. 813, 816, 981 P.2d 25 (1999). We review a sentencing court's decision to impose discretionary LFOs for an abuse of discretion. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015). RCW 10.01.160(3) provides:

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 and method 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.

In *Blazina*, our Supreme Court emphasized the importance of an on-the-record individualized inquiry into a defendant's ability to pay discretionary LFOs. 182 Wn.2d at 838. The *Blazina* court stated that "[t]he record must reflect that the trial court made an individualized inquiry" and that the trial court "must . . . consider important factors . . . such as incarceration and a defendant's other debts, including restitution" when making this determination. 182 Wn.2d at 838. The *Blazina* court further noted that where, as here, a defendant meets the indigency standard of GR 34, the sentencing court should look to the GR 34 comments for guidance, and "should seriously question" that person's ability to pay LFOs. 182 Wn.2d at 839.

Ralston argues that the sentencing court failed to conduct the required inquiry under RCW 10.01.160(3) because it did not "consider the amount of LFOs it was being asked to impose, or the nature of the burden payment of those LFOs would impose against [her]." Br. of Appellant at 8. Ralston's argument relies on the sentencing court's oral pronouncement that it would find Ralston had a likely future ability to pay discretionary LFOs, which pronouncement was made before it had reviewed her financial resources, restitution order, and the amounts of

her previously ordered LFOs. Although the trial court made this pronouncement prior to reviewing Ralston's financial resources and obligations, as a preliminary oral ruling the pronouncement was "no more than an expression of its informal opinion at the time it [was] rendered. It has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment." *State v. Collins*, 112 Wn.2d 303, 306, 771 P.2d 350 (1989) (quoting *State v. Mallory*, 69 Wn.2d 532, 533-34, 419 P.2d 324 (1966)). And, prior to concluding the remand hearing and entering its final LFO order, the sentencing court inquired about Ralston's financial resources and considered the amount of requested discretionary LFOs and previously imposed mandatory LFOs, including the order of restitution.

Because the sentencing court's on-the-record inquiry reveals that it "[took] account of the financial resources of the defendant and the nature of the burden that payment of costs [would] impose" in determining Ralston's likely future ability to pay discretionary LFOs, her claim that the sentencing court failed to comply with RCW 10.01.160(3) lacks merit.¹

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, Ralston contends that her counsel was ineffective for failing to make adequate arguments at the LFO remand hearing. Again, we disagree.

To establish ineffective assistance of counsel, Ralston must show both that (1) defense counsel performed deficiently and (2) the deficient performance resulted in prejudice. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). To demonstrate prejudice, Ralston must

¹ Ralston does not argue that the trial court abused its discretion in setting the *amount* of the LFOs; she argues only that it failed to comply with RCW 10.01.160.

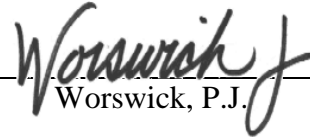
show that, but for counsel's purportedly deficient performance, the outcome of the proceedings would have differed. *Reichenbach*, 153 Wn.2d at 130. If Ralston fails to establish either prong of the ineffective assistance of counsel test, we need not inquire further. *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726 (2007). Ineffective assistance of counsel claims present mixed questions of law and fact, which we review de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

Ralston claims that her counsel was deficient for failing to apprise the sentencing court of the amount of her previously imposed LFOs, failing to direct the sentencing court to the requirements under RCW 10.01.160(3), and erroneously suggesting that the amount of the attorney fees award against Ralston had been reduced. Assuming without deciding that Ralston's counsel performed deficiently in this manner, she cannot demonstrate any resulting prejudice.

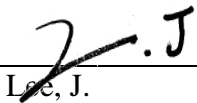
Before entering its final discretionary LFO order, the trial court considered all of Ralston's financial obligations, including the correct amount of imposed attorney fees. And, as addressed above, in doing so the sentencing court complied with the requirements of RCW 10.01.160(3). Because the sentencing court properly considered all relevant information regarding Ralston's financial resources and obligations before entering its final discretionary LFO order, she cannot show that its decision would have differed had her counsel not performed deficiently. Accordingly, Ralston's ineffective assistance of counsel claim cannot succeed, and we affirm the sentencing court's LFO order.

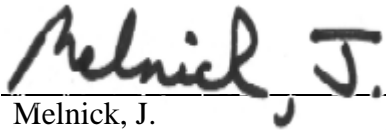
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A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, P.J.

We concur:


Lee, J.


Melnick, J.