

NO. 48139-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MARIAH L. KNIGHT,

Appellant.

SUPPLEMENTAL BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

This court should not impose appellate costs on appeal.

Issues Pertaining to Assignment of Error

Should an appellate court impose costs on appeal if an indigent client has no present or future ability to pay those costs?

STATEMENT OF THE CASE

On September 15, 2015, the Thurston County Superior Court sentenced the defendant on theft and possession of methamphetamine convictions to 9 months in jail, \$1,000.00 non-discretionary legal-financial obligations, 12 months community custody, and a requirement that she successfully complete substance abuse treatment. CP 20-27. Her conviction followed her termination from drug court. *Id.* In the Judgment and Sentence the court also found that the defendant “has a chemical dependency that has contributed” to her offense and that she had three other concurrent drug felony drug convictions. CP 47. The trial court had previously found the defendant indigent and appointed an attorney for her. CP 3, 4.

At sentencing the state asked the court to impose discretionary legal fees in the amount of \$1,100.00. RP 9/15/15 13. The court refused upon the following finding:

So the Court will adopt the recommendation of the State in its entirety except for the State’s request with respect to imposition of legal financial obligations. The Court will impose \$500.00 crime victim assessment, \$200 court costs, \$100.00 DNA fee in both causes of action as is required by Law. The court will not order Ms. Knight to pay any other legal financial obligations, taking into consideration her current financial situation, and the court finds that any limited resources, financial resources available to Ms. Knight, either not or in the near future, are best spent in treatment and paying the costs associated with community custody.

CP 9/15/15 16.

ARGUMENT

THIS COURT SHOULD NOT IMPOSE APPELLATE COSTS ON APPEAL.

The appellate courts of this state have discretion to refrain from awarding appellate costs even if the State substantially prevails on appeal. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); *State v. Sinclair*, 192 Wn. App. 380, 382, 367 P.3d 612, 613 (2016). A defendant's inability to pay appellate costs is an important consideration to take into account when deciding whether or not to impose costs on appeal. *State v. Sinclair, supra*. In the case at bar the trial court found the defendant indigent and entitled to the appointment of counsel at both the trial and appellate level. In the same matter this Court should exercise its discretion and disallow trial and appellate costs should the State substantially prevail.

Under RAP 14.2 the State may request that the court order the defendant to pay appellate costs if the state substantially prevails. This rule states that a "commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review." RAP 14.2. In *State v. Nolan, supra*, the Washington Supreme Court held that while this rule does not grant court clerks or commissioners the discretion to decline the imposition of appellate costs, it does grant this discretion to the appellate

court itself. The Supreme Court noted:

Once it is determined the State is the substantially prevailing party, RAP 14.2 affords the appellate court latitude in determining if costs should be allowed; use of the word “will” in the first sentence appears to remove any discretion from the operation of RAP 14.2 with respect to the commissioner or clerk, but that rule allows for the appellate court to direct otherwise in its decision.

State v. Nolan, 141 Wn. 2d at 626.

Likewise, in RCW 10.73.160 the Washington Legislature has also granted the appellate courts discretion to refrain from granting an award of appellate costs. Subsection one of this statute states: “[t]he court of appeals, supreme court, and superior courts *may* require an adult offender convicted of an offense to pay appellate costs.” (emphasis added). In *State v. Sinclair*, *supra*, this Court recently affirmed that the statute provides the appellate court the authority to deny appellate costs in appropriate cases. *State v. Sinclair*, 192 Wn. App. at 388. A defendant should not be forced to seek a remission hearing in the trial court, as the availability of such a hearing “cannot displace the court’s obligation to exercise discretion when properly requested to do so.” *Supra*.

Moreover, the issue of costs should be decided at the appellate court level rather than remanding to the trial court to make an individualized finding regarding the defendant’s ability to pay, as remand to the trial court not only “delegate[s] the issue of appellate costs away from the court that is

assigned to exercise discretion, it would also potentially be expensive and time-consuming for courts and parties.” *State v. Sinclair*, 192 Wn. App. at 388. Thus, “it is appropriate for [an appellate court] to consider the issue of appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellate brief.” *State v. Sinclair*, 192 Wn. App. at 390. In addition, under RAP 14.2, the Court may exercise its discretion in a decision terminating review. *Id.*

An appellate court should deny an award of costs to the state in a criminal case if the defendant is indigent and lacks the ability to pay. *Sinclair, supra*. The imposition of costs against indigent defendants raises problems that are well documented, such as increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration. *State v. Sinclair*, 192 Wn.App. at 391 (citing *State v. Blazina, supra*). As the court notes in *Sinclair*, “[i]t is entirely appropriate for an appellate court to be mindful of these concerns.” *State v. Sinclair*, 192 Wn.App. at 391.

In *Sinclair*, the trial court entered an order authorizing the defendant to appeal *in forma pauperis*, to have appointment of counsel, and to have the preparation of the necessary record, all at State expense upon its findings that the defendant was “unable by reason of poverty to pay for any of the expenses

of appellate review” and that the defendant “cannot contribute anything toward the costs of appellate review.” *State v. Sinclair*, 192 Wn. App. at 392. Given the defendant’s indigency, combined with his advanced age and lengthy prison sentence, there was no realistic possibility he would be able to pay appellate costs. Accordingly, the Court ordered that appellate costs not be awarded.

Similarly in the case at bar, the defendant is indigent and lacks an ability to pay. At sentencing the state had asked the court to impose discretionary legal fees but the court refused upon the following finding:

So the Court will adopt the recommendation of the State in its entirety except for the State’s request with respect to imposition of legal financial obligations. The Court will impose \$500.00 crime victim assessment, \$200 court costs, \$100.00 DNA fee in both causes of action as is required by Law. The court will not order Ms. Knight to pay any other legal financial obligations, taking into consideration her current financial situation, and the court finds that any limited resources, financial resources available to Ms. Knight, either not or in the near future, are best spent in treatment and paying the costs associated with community custody.

CP 9/15/15 16.

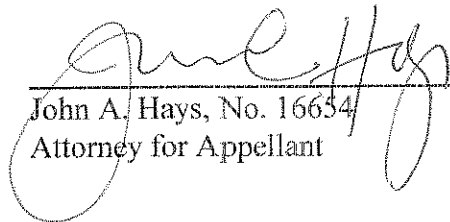
Given the courts findings, it is unrealistic to think the defendant will be able to pay appellate costs. Thus, this court should exercise its discretion to reach a just and equitable result and direct that no appellate costs be allowed should the State substantially prevail on appeal.

CONCLUSION

If the state prevails, this court should not impose costs on appeal.

DATED this 1st day of June, 2016.

Respectfully submitted,



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