

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOE ANTHONY MATA,

Appellant.

No. 43055-0-II

UNPUBLISHED OPINION

Penoyar, J. — Joe Mata appeals from his judgment and sentence, arguing that the trial court erred by finding that he had the current or likely future ability to pay legal financial obligations. We affirm.¹

facts

In 2010, a jury found Mata guilty of unlawful possession of a stolen vehicle, attempting to elude a pursuing police vehicle, first degree malicious mischief, obstructing a law enforcement officer, and second degree assault. At sentencing, the trial court imposed the following legal financial obligations the State requested: \$500 victim assessment; \$200 criminal filing fee; \$100 DNA collection fee; and \$500 Department of Assigned Counsel (DAC) recoupment fee.

Mata appealed. We vacated his conviction for first degree malicious mischief but affirmed the remainder of his judgment and sentence. We awarded the State \$5,072.60 in appellate costs as the prevailing party on appeal.

At Mata's resentencing in 2012, the State requested the same legal financial obligations that it had in 2010, plus the appellate costs it had been awarded against Mata. Mata asked that

¹ A commissioner of this court initially considered Mata's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

the appellate costs be waived but did not otherwise address the legal financial obligations. The court imposed the legal financial obligations the State requested, including the appellate costs. In Mata's 2012 judgment and sentence, the court made the following finding:

The court has considered the total amount owing, the [defendant's] past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein.

Clerk's Papers 47-48.

analysis

Mata argues that the trial court erred by finding that he had the current or likely future ability to pay the legal financial obligations imposed by the court because nothing in the record supported that finding. *State v. Bertrand*, 165 Wn. App. 393, 404, 267 P.3d 511 (2011), *review denied*, 175 Wn.2d 1014 (2012). Before making such a finding, the trial court must "[take] into account the financial resources of the defendant and the nature of the burden" imposed by the legal financial obligations. *Bertrand*, 165 Wn. App at 404 (quoting *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991)).

But *Bertrand* did not address which, if any, of the legal financial obligations that the trial court imposed were mandatory. A \$500 victim assessment is required by RCW 7.68.035(1)(a), irrespective of the defendant's ability to pay. *State v. Curry*, 62 Wn. App. 676, 680, 814 P.2d 1252 (1991). A \$100 DNA collection fee is required by RCW 43.43.7541, irrespective of the defendant's ability to pay. *State v. Thompson*, 153 Wn. App. 325, 336, 223 P.3d 1165 (2009). A \$200 criminal filing fee is required by RCW 36.18.020(2)(h). And the trial court is required to add an award of appellate costs to the judgment and sentence by RCW 10.73.160(3). Because these

legal financial obligations were mandatory, the trial court's finding of Mata's current or likely future ability to pay them is surplusage.

The only discretionary legal financial obligation imposed was the \$500 DAC recoupment fee. Other than to ask the court to waive the appellate costs at resentencing, Mata did not object at either his sentencing or his resentencing to the finding of his current or likely future ability to pay his legal financial obligations. While we elected to reach the issue of the finding of current or future ability to pay in *Bertrand* for the first time on appeal under RAP 2.5(a), that rule does not compel us to do so in every case. *Bertrand* noted that the defendant had disabilities that might reduce her likely future ability to pay. 165 Wn. App. at 405. There is no similar indication in Mata's case. Because he did not object in the trial court to the finding that he had the current or likely future ability to pay his legal financial obligations, we decline to allow him to raise the issue for the first time on appeal.

We affirm Mata's judgment and sentence.

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.

Penoyar, J.

We concur:

Hunt, J.

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Johanson, A.C.J.