

SUPREME COURT OF THE STATE OF WASHINGTON

State v. Marks

No. 91148-7 · No. No. 91148-7 · Decided February 25, 2016

SUMMARY

The Washington Supreme Court held that exercising peremptory challenges at sidebar did not violate the constitutional right to a public trial because the courtroom was not closed and the challenged jurors were identified in the public record. The court affirmed Marks's convictions. It remanded for reconsideration of discretionary legal financial obligations because the sentencing court did not conduct the individualized ability-to-pay inquiry required by *State v. Blazina*.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Washington
DECIDED	February 25, 2016
DOCKET	No. 91148-7
DISPOSITION	remanded
PROCEDURAL POSTURE	Marks petitioned the Washington Supreme Court for review after the Court of Appeals affirmed his convictions and the imposition of discretionary legal financial obligations.
STANDARD OF REVIEW	The court reviewed whether exercising peremptory challenges at sidebar violated the constitutional public-trial right and whether the sentencing record satisfied RCW 10.01.160(3). The court also exercised discretion to reach the legal-financial-obligation issue despite the failure to object at sentencing.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Dustin Wade Marks v. State of Washington

TOPICS

[constitutional law](#)[criminal procedure](#)[appellate procedure](#)[appellate jurisdiction](#)[sentencing](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether exercising peremptory challenges at a sidebar conference during jury selection violated Marks's right to a public trial under article I, section 22 of the Washington Constitution.
2. Whether the superior court properly imposed discretionary legal financial obligations without conducting an individualized inquiry into Marks's present and future ability to pay.
3. Whether the Supreme Court should reach the legal-financial-obligation issue despite Marks's failure to object at sentencing.

HOLDINGS

1. No courtroom closure violating the public-trial right occurred because the courtroom remained open, the selected jurors were announced in open court, and the list of challenged jurors was made part of the public record.
2. The superior court must reconsider the discretionary legal financial obligations because the record contained no individualized inquiry into Marks's present and future ability to pay and the boilerplate ability-to-pay findings were inadequate.
3. The Supreme Court exercised its discretion to address the challenge and provide relief because Blazina had not yet been decided when the Court of Appeals decided Marks's case.

KEY QUOTATIONS

“Thus, there was no closure of the courtroom in violation of the right to a public trial, and in result we affirm the Court of Appeals decision affirming Marks's convictions.” (at 2)

“The record in this case reflects no such inquiry at the sentencing hearing, and the judgment and sentence form contains only boilerplate findings of ability to pay, which we held in Blazina to be inadequate.” (at 3)

“The petition for review is granted, the Court of Appeals decision affirming Marks's convictions is affirmed, and this case is remanded to the superior court to reconsider discretionary legal financial obligations consistent the with the requirements of Blazina.” (at 3)

FACTUAL BACKGROUND

During jury selection, the parties exercised peremptory challenges in a sidebar conference, but the courtroom was not closed to the public. Immediately afterward, the superior court announced the selected jurors in open court and made the list of challenged jurors part of the public trial record. At sentencing, the superior court imposed discretionary legal financial obligations for appointed counsel without conducting an individualized inquiry into Marks's present and future ability to pay, instead relying on boilerplate findings.

PROCEDURAL HISTORY

Marks was convicted in Pierce County Superior Court of first degree assault, first degree unlawful possession of a firearm, second degree vehicle prowling, and reckless endangerment. The Court of Appeals affirmed, rejecting

his public-trial and legal-financial-obligation arguments. The Supreme Court granted review, affirmed the convictions, and remanded for reconsideration of the discretionary legal financial obligations.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case is remanded to the Pierce County Superior Court to reconsider the discretionary legal financial obligations consistently with State v. Blazina and the requirement for an individualized inquiry into present and future ability to pay. The convictions are affirmed.

CASES CITED

- State v. Marks, 184 Wash. App. 782, 789, 339 P.3d 196 (2014)
- State v. Love, 183 Wash. 2d 598, 605-07, 354 P.3d 841 (2015)
- State v. Blazina, 182 Wash. 2d 827, 832-39, 344 P.3d 680 (2015)

OPINION

State v. Marks

PER CURIAM.

IN CLERICS OFFICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent, v. NO. 9 11 4 8-7

DUSTIN WADE MARKS, ENBANC

Petitioner. Filed: ----- PER CURIAM-Dustin Marks was convicted in Pierce County Superior Court of first degree assault, first degree unlawful possession of a firearm, second degree vehicle prowling, and reckless endangerment. The superior court imposed a judgment and sentence that included discretionary legal financial obligations. On appeal to Division Two of the Court of Appeals, Marks argued that the superior court violated his constitutional right to a public trial when it allowed the parties to exercise peremptory challenges to prospective jurors in a sidebar conference during jury selection. Further, Marks challenged the superior court's imposition of discretionary legal financial obligations on the basis that the court did not consider his present and No. 91148-7 PAGE2 future ability to pay. The Court of Appeals affirmed. State v. Marks, 184 Wash. App. 782, 339 P.3d 196 (2014). Marks filed a petition for review in this court, consideration of which the court initially stayed pending its decision in State v. Love, 183 Wash. 2d 598, 354 P.3d 841 (2015). Love is now final, and for reasons discussed below, we grant the petition for review, affirm the convictions, and remand to the trial court for reconsideration of discretionary legal financial obligations. As to whether the superior court violated Marks's right to a public trial

under article I, section 22 of the Washington Constitution, the Court of Appeals held that the public trial right does not extend to sidebar conferences where peremptory challenges are exercised. Marks, 184 Wash. App. at 789. The court was correct in result but not in reasoning in holding that there was no public trial violation. In Love, we held that peremptory challenges are part of the jury selection process to which the right to a public trial extends, but we determined that when the challenges are exercised in open court and a public record is made of the challenged jurors, no courtroom closure in violation of the public trial right occurs. Love, 183 Wash. 2d 605-07. Here, the record reflects no closure of the courtroom to the public during the peremptory challenges and immediately following the challenges, the superior court announced the selected members of the jury panel in open court. The list of challenged jurors was then made part of the public record of the trial. Thus, there was no closure of the courtroom in violation of the right to a public trial, and in result we affirm the Court of Appeals decision affirming Marks's convictions. With respect to discretionary legal financial obligations, the superior court imposed discretionary obligations in the form of costs of appointed counsel pursuant to RCW 10.01.160. This court held in State v. Blazina, 182 Wash. 2d 827, 837-39, 344 P .3d 680 (20 15), that the record must reflect that the superior court conducted an individualized inquiry into the defendant's present and future ability to pay such No. 91148-7 PAGE3 obligations, as required by RCW 10.01.160(3). The record in this case reflects no such inquiry at the sentencing hearing, and the judgment and sentence form contains only boilerplate findings of ability to pay, which we held in Blazina to be inadequate. Id. at 838. As we did there, we remand this case to the superior court to reconsider discretionary legal financial obligations in light of Blazina. 1 The petition for review is granted, the Court of Appeals decision affirming Marks's convictions is affirmed, and this case is remanded to the superior court to reconsider discretionary legal financial obligations consistent the with the requirements of Blazina. 1 The Court of Appeals declined to consider Marks's challenge to legal financial obligations because he did not object to them at sentencing. The court acted within its discretion. Blazina, 182 Wash. 2d at 832-34. Nonetheless, because we had not issued our decision in Blazina when the Court of Appeals decided this case, we exercise our discretion to address this issue and provide relief.