

SUPREME COURT  
OF THE STATE OF WASHINGTON

DISEAN E. KILLIAN,  
an individual,

Petitioner,

v.

RICHARD C. FITTERER, District  
Court Judge for the County of  
Grant,

Respondent.

**PETITION AGAINST A STATE  
OFFICER; PETITION FOR A  
WRIT OF MANDAMUS**

Petitioner alleges:

**I. NATURE OF ACTION**

1. Petitioner, Disean E. Killian, seeks a writ of mandamus to compel Respondent Grant County District Court Judge Richard C. Fitterer to perform an individualized inquiry into ability to pay before imposing legal financial obligations (LFOs) as Respondent is required to do by RCW 10.01.160(3) and *State v. Blazina*, 182 Wn.2d 827, 844 P.3d 680 (2015).

2. Judge Fitterer, like all sentencing judges in Washington, has a statutory duty to perform an individualized inquiry into defendants' ability to pay discretionary LFOs before they are assessed as part of a sentence. RCW 10.01.160(3). Despite this clear duty, on March 2, 2017, Judge Fitterer assessed LFOs against Petitioner without making *any* inquiry into Mr. Killian's ability to pay. As is evident through his representation by a

court-appointed attorney, Mr. Killian was indigent at the time of sentencing, and he remains indigent.

3. This Court has previously held that one component of a constitutional system of LFO imposition and collection is the performance of an ability-to-pay assessment at the time of sentencing. *State v. Duncan*, 185 Wn.2d 430, 436, 374 P.3d 83 (2016).

4. In *Blazina*, decided more than two years ago, this Court explicitly recognized the myriad struggles faced by indigent individuals assessed with LFOs that they can never hope to pay. *Blazina*, 182 Wn.2d at 835-37. Without individualized assessments of their ability to pay, “indigent offenders owe higher LFO sums than their wealthier counterparts because they cannot afford to pay,” and the “court’s long-term involvement in defendants’ lives inhibits reentry.” *Id.* at 837.

5. At the heart of *Blazina* is a recognition of the systemic harms associated with saddling indigent individuals with debt that keeps them tethered to the courts. *Blazina* addresses the very root of the problem, the point at which LFOs are imposed, by finding that an individualized assessment of ability to pay is a necessary procedural safeguard that allows individuals to disentangle themselves from the criminal justice system sooner rather than later. This procedural safeguard is, however, meaningless if not implemented by courts across the State.

6. In the wake of *Blazina*, this Court received several petitions for review from individuals who were ordered to pay LFOs by superior courts without an individualized assessment of ability to pay.<sup>1</sup> The number of petitions for review revealed the magnitude of the LFO problem and demonstrated that courts across the State were routinely imposing LFOs without an individualized assessment of ability to pay. The number of petitions also highlighted the geographical scope of the problem, such that this Court was receiving and ruling on petitions arising from all three divisions of the Court of Appeals. But the imposition of LFOs at the district court level in individual counties has not received the same level of appellate scrutiny, with only eight criminal appeals to superior court from Grant County District Court in 2016. Washington Courts, *Courts of Limited Jurisdiction 2016 Annual Report, Annual Caseload Report* 218, <https://www.courts.wa.gov/caseload/content/archive/clj/Annual/2016.pdf>.

---

<sup>1</sup> See, e.g., *State v. Fowler*, No. 92244-6, 2016 WL 1312542 (Wash. Mar. 31, 2016); *State v. Graves*, No. 92473-2, 2016 WL 1262577 (Wash. Mar. 30, 2016); *State v. Healy*, No. 92533-0, 2016 WL 1262597 (Wash. Mar. 30, 2016); *State v. Morrissey*, 185 Wn.2d 1001, 369 P.3d 148 (2016); *State v. Christopher*, 185 Wn.2d 1001, 369 P.3d 149 (2016); *State v. Youell*, 184 Wn.2d 1018, 361 P.3d 744 (2015); *State v. Thomas*, 184 Wn.2d 1018, 361 P.3d 745 (2015); *State v. Licon*, 184 Wn.2d 1010, 359 P.3d 791 (2015); *State v. Rivas*, 183 Wn.2d 1018, 355 P.3d 1117 (2015); *State v. Vansycle*, 183 Wn.2d 1013, 353 P.3d 634 (2015); *State v. Cole*, 183 Wn.2d 1013, 353 P.3d 634 (2015); *State v. Joyner*, 183 Wn.2d 1013, 353 P.3d 635 (2015); *State v. Mickle*, 183 Wn.2d 1014, 353 P.3d 635 (2015); *State v. Turner*, 183 Wn.2d 1014, 353 P.3d 636 (2015); *State v. Norris*, 183 Wn.2d 1014, 353 P.3d 636 (2015); *State v. Thomas*, 183 Wn.2d 1015, 353 P.3d 641 (2015); *State v. Chenault*, 183 Wn.2d 1014, 353 P.3d 637 (2015); *State v. Bolton*, 183 Wn.2d 1014, 353 P.3d 638 (2015); *State v. Bradley*, 183 Wn.2d 1014, 353 P.3d 639 (2015); *State v. Stoll*, 183 Wn.2d 1013, 353 P.3d 639; *State v. Calvin*, 183 Wn.2d 1013, 353 P.3d 640 (2015).

This number is decidedly disproportionate to the number of non-traffic and traffic misdemeanor cases actually reaching disposition in Grant County District Court: 2,455. *Id.* at 111,127,143.

7. The vast majority of cases in which LFOs are inappropriately imposed by district courts are simply not appealed. This is suggestive of the possibility that, two years post-*Blazina*, the landscape in district courts has not shifted. Indigent defendants like Mr. Killian suffer great harm as a result. The LFOs Judge Fitterer sentenced Mr. Killian to pay, in the amount of \$300, are a significant obstacle to Mr. Killian's ability to leave his criminal history behind. Furthermore, because Judge Fitterer did not consider Mr. Killian's resources or the likelihood his indigency will not end, the sentence to pay LFOs is deeply problematic as violative of *Blazina*, and of its progeny. *Duncan*, 185 Wn.2d at 436.

8. Unfortunately, Mr. Killian is not the only defendant that Judge Fitterer or other Washington sentencing courts have illegally burdened with LFOs without a *Blazina* inquiry. A number of sentencing courts across the State fail to conduct an individualized inquiry into defendants' ability to pay, leaving numerous indigent individuals owing LFOs without any remedy or relief in sight.<sup>2</sup> Mr. Killian is merely one of these

---

<sup>2</sup> Extrapolating from felony conviction data in the fiscal note for SHB 1783, An Act Relating to Legal Financial Obligations: "Based on data provided by the Office of Public

individuals, but issuing a writ of mandamus in his case and holding that there are no circumstances in which defendants may be assessed LFOs without an individualized inquiry into ability to pay would create the possibility of relief for many others like him and ensure the promise of *Blazina* is made a reality.

## **II. PARTIES**

9. Petitioner is Disean Killian, an individual who resides in Grant County. Mr. Killian pled guilty in case no. 6Z0591386 and was sentenced to pay LFOs by Respondent.

10. Respondent is the Honorable Richard C. Fitterer, a judge for the District Court of Grant County.

## **III. JURISDICTION AND VENUE**

11. The Washington Supreme Court has original jurisdiction over this petition against a state officer under Article 4, Section 4 of the Constitution of the State of Washington, and Chapter 7.16 RCW. *See* RAP 16.2.

---

Defense, 80% of offenders convicted of felonies are found to be indigent.” S.H.B. 1783 (2017) Judicial Impact Fiscal Note at 10, *available at* <https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=48018> .

#### **IV. FACTS AND PROCEDURAL BACKGROUND**

12. On June 1, 2016, Mr. Killian was charged with Driving With a License Suspended in the Second Degree (DWLS II) and Reckless Driving. Declaration of Disean Killian in Support of Petition Against a State Officer (“Killian Decl.”) ¶2. He was required to appear in court on June 2, 2016, and when he appeared, Mr. Killian’s financial circumstances were such that he was found to be indigent under RCW 10.010.020(3) and RCW 10.010.010(3) and the court appointed a public defender to represent him on his case. *See id*; App’x 3.

13. On March 2, 2017, Mr. Killian took a plea to DWLS II and was sentenced on the same day to probation for a two year period of time. Killian Decl. ¶¶4-5; App’x 4-13. As a condition of probation, Mr. Killian was required to complete 16 hours of community service in lieu of two days jail time, and in addition to those conditions, the court imposed a \$200 warrant fee under RCW 10.01.160(1) and \$100 public defender recoupment, for a total of \$300 in LFOs to be paid as a condition of the sentence. Killian Decl. ¶5; App’x 11-12.

14. The court did not conduct an inquiry regarding Mr. Killian’s current or future ability to pay, nor did Mr. Killian’s counsel assert Mr. Killian’s inability to pay at the time that the LFOs were imposed, with

the exception of a pro forma statement. The relevant portion of the District Court record is as follows:

THE COURT: So count two is dismissed on the State's motion. As to count one, 364 days, 362 suspended. Two days to be served can be done by doing 16 hours of community service. On that we'll set a further review date. May 18th. It won't be necessary for you to be here as long as you file proof of the 16 hours of community service. \$5,000 fine, all suspended. *You did incur \$200 in warrant costs. I'll assess the \$100 public defender reimbursement, and I find you'll be able to pay it over a period of time. So total payable of \$300. . . .*

*MS. BRUCE: And just to preserve the record, the defense would object to the additional fines.*

THE COURT: So noted.

App'x 18-19 (emphasis added). Overall, the record is completely devoid of any individualized assessment as to Mr. Killian's ability to pay, or any fact-based discussion regarding his ability to pay.

15. In fact, Mr. Killian's financial circumstances at the time of sentencing remain the same as at the time that he qualified for court-appointed counsel, and his circumstances continue to render him indigent under the State's guidelines for indigency. Killian Decl. ¶¶7-13. At the time of sentencing, Mr. Killian had no assets and was unemployed, with no income. *Id.* ¶7-8. It had been several months since he last worked as a gas station attendant. *Id.* ¶9. He was receiving assistance from a church to pay his rent and was reliant on foodstamps to pay for food. *Id.* ¶¶7-8. His

partner, with whom he lives, was also not working. *Id.* The church has since stopped contributing to his rent. *Id.* ¶ 7.

16. Despite the appointment of counsel to represent Mr. Killian's best interests in an adversarial criminal proceeding, Mr. Killian was not advised that in the state of Washington, discretionary LFOs may not be imposed without an individualized assessment of his current and future ability to pay. *Id.* ¶12. Although the plea agreement signed by Mr. Killian states that, "[t]he judge may require me to pay costs, fees and assessments authorized by law," it does not contain any caveats to this language advising Mr. Killian that his ability to pay is a consideration in the imposition of the LFOs imposed in his case. App'x 5; *see also* Killian Decl. ¶12. Further, the assessment of discretionary LFOs against Mr. Killian has not been appealed by his court-appointed counsel.

17. The imposition of LFOs as part of Mr. Killian's sentence creates a court debt for which Mr. Killian will be responsible for the remainder of his probationary period. Further, because LFOs are a condition of his sentence, Mr. Killian risks the possibility of jail if his probation is revoked for nonpayment of LFOs. And once the probationary period is complete, he will be responsible for the debt as it is subject to civil enforcement. RCW 10.01.160(2); RCW 6.17.020. This debt, therefore, is likely to constitute a continuing burden for Mr. Killian, and if left unpaid, it could



be transferred to a collection agency where it will begin to accrue an interest rate of 12%, making it virtually impossible to pay. RCW 3.62.020(5).

18. The Grant County District Court, shortly after *Blazina* was decided, began using a form that was indicative of the court's practices regarding the ability-to-pay assessment. This form, entitled "Addendum to Statement of Defendant on Plea of Guilty" is located on the Grant County District Court's website. *See* Declaration of Prachi V. Dave in Support of Petition Against a State Officer ("Dave Decl.") Ex. A ("Addendum to Statement of Defendant on Plea of Guilty" listed under "Forms"), Ex. B (Addendum as it appears online). According to that website, the form was created on May 1, 2015. Dave Decl. Ex. A. In signing this form, defendants affirm that they have the current and ongoing ability to pay their LFOs without any reference to the actual amount that will be assessed against them. Dave Decl. Ex. B.

19. Specifically, defendants agree that "[i]n accepting this agreement, I agree that I have discussed and considered my current ability to pay these and all my other living costs and debt, and have determined I have the ability to pay." *Id.* Further, the Addendum requires individual defendants to speculate as to their future ability to pay and attest to the following statement: "I have also considered my future ability to pay, and, to the best

of my current knowledge, I will have the ability to pay the fine and costs for the foreseeable future.” *Id.* In essence, the district court substituted the boilerplate finding condemned by *Blazina* for another and foisted its obligation to assess ability to pay onto defendants.

20. After the Addendum was created by the district court, the ACLU of Washington sent a letter to the district court bench describing the problematic aspects of the Addendum in light of this Court’s recent ruling in *Blazina*. Dave Decl. Ex. C.

21. Mr. Killian cannot obtain relief from his LFOs from the district court and has no other available avenue of relief. As a result, Mr. Killian requests the issuance of a mandate directing Respondent to comply with the requirements of *Blazina*.

## **V. LAW AND ARGUMENT**

### **A. This Writ of Mandamus Is Appropriately Before this Court**

22. The writ of mandamus is authorized by statute and by the Constitution. To issue, a writ of mandamus must satisfy three prerequisites: “(1) the party subject to the writ is under a clear duty to act, RCW 7.16.160; (2) the applicant has no plain, speedy and adequate remedy in the ordinary course of the law, RCW 7.16.160; and (3) the applicant is beneficially interested.” *Eugster v. City of Spokane*, 118 Wn. App. 383, 402-03, 76 P.3d 741 (2003) (internal quotation marks

omitted). This Court has discretion to determine whether this case satisfies the standards to issue the writ. *State ex. rel. Hodde v. Thurston Cnty. Super. Ct.*, 40 Wn.2d 502, 517, 244 P.2d 668 (1952) (discussing the identical standard for a writ of prohibition).

23. The purpose of the writ of mandamus is to compel the respondent to act in a manner required by their particular position. RCW 7.16.160 (stating that a writ of mandamus “may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty, resulting from an office, trust, or station . . .”).

24. Because Article 2, Section 4 of the Washington State Constitution states that the Supreme Court has “original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers,” this petition is appropriately directed to this Court.

25. Petitioner urges this Court to consider that Respondent has a clear duty to act, that Mr. Killian has no other adequate remedy besides the writ of mandamus, and that Mr. Killian is demonstrably beneficially interested in the outcome of this writ.

26. The writ of mandamus is an extraordinary, but versatile writ that has been applied to provide relief in various contexts. Writs have been utilized to instruct lower courts on the rights of individuals appearing

before them, and on the procedures that must be followed in order to ensure that those rights are protected. In *City of Seattle v. Williams*, for example, this Court decided that a municipal court rule regarding the waiver of the right to jury trial violated the constitutional rights of individuals appearing in municipal court, deemed the rule invalid, and laid out a procedural path for courts to follow to protect the rights of individuals appearing in municipal court. *City of Seattle v. Williams*, 101 Wn.2d 445, 452, 680 P.2d 1051 (1984).<sup>3</sup> The writ has also been utilized to compel cities to act in accordance with legislative mandates. *Eugster*, 118 Wn. App. 383. In this context, the writ of mandamus should issue to direct Respondent to act in accordance with his clearly delineated duty in the law.

---

<sup>3</sup> The *Williams* court stated that:

We find nothing that bars courts of limited jurisdiction from asking defendants at arraignment whether or not they choose a jury trial. However, to adequately protect the defendant's rights, the following procedures must be followed:

1. The defendant must be informed of his constitutional right to a jury trial. This may be done individually or in a group advice-of-rights session before the court and on the record.
2. If the defendant indicates he wants to waive his right to a jury trial, he must be informed that he has a certain number of days (a minimum of 10) to change his mind and request a jury trial. The conditional waiver made at arraignment must be in writing.

*Williams*, 101 Wn.2d at 452.

**B. Judge Fitterer Had a Clear Duty to Conduct an Individualized Inquiry into Ability to Pay**

27. Judge Fitterer, like all sentencing judges, has a duty to conduct an individualized inquiry into ability to pay prior to imposing discretionary LFOs. *See* RCW 10.01.160(3); *Blazina*, 182 Wn.2d 827. In *Blazina*, this Court engaged in a detailed analysis of RCW 10.01.160(3), which states “[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them,” and concluded that courts must conduct an individualized assessment of ability to pay prior to imposing discretionary LFOs. Further, the Court stated that “[a]s a general rule, we treat the word ‘shall’ as presumptively imperative—we presume it creates a duty rather than confers discretion.” *Blazina*, 182 Wn.2d at 838 (citing *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985)). RCW 10.01.160(3) creates a duty to act, and *Blazina* gave that duty concrete effect.

28. *Blazina* further gave that duty shape and form:

Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay. Within this inquiry, the court must also consider important factors . . . such as incarceration and a defendant’s other debts, including restitution, when determining a

defendant's ability to pay.

*Blazina*, 182 Wn.2d at 838. Additionally, to provide courts with additional guidance in conducting an ability to pay assessment, this Court pointed to the comment in court rule GR 34, which contains a checklist of factors that judges may consider in determining ability to pay. *See generally* General Rule 34.<sup>4</sup>

29. This judicial duty has been underscored by a long line of post-*Blazina* cases requiring such an individualized inquiry. *See, e.g., Duncan*, 185 Wn.2d at 436-38 (holding that imposing costs of incarceration of \$100 per day without making an adequate inquiry into ability to pay was error); *State v. Leonard*, 184 Wn.2d 505, 358 P.3d 1167 (2015) (holding that an individualized inquiry into ability to pay must be conducted prior to assessing discretionary costs such as costs of incarceration and medical care); *State v. Tedder*, 194 Wn. App 753, 378 P.3d 246 (2016) (published in part) (stating that the superior court erred when it did not consider the

---

<sup>4</sup> Under the comment to court rule GR 34, courts may consider whether the evidence before them demonstrates that the defendant (1) is currently receiving assistance under a needs-based, means-tested assistance program, such as (i) Temporary Assistance for Needy Families (TANF), (ii) state-provided general assistance for unemployable individuals (GA-U or GA-X), (iii) Supplemental Security Income (SSI), (iv) poverty-related veteran's benefits; or (v) a Food Stamp Program (FSP), or (2) has a household income at or below 125 percent of the federal poverty guideline, or (3) has a household income of above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses that render him or her without the financial ability to pay, or (4) other compelling circumstances exist that demonstrate an inability to pay.

mental health condition of the defendant under RCW 9.94A.777(1) before imposing discretionary LFOs).

30. This duty to act, explicitly and specifically recognized in *Blazina*, has also been identified as an integral aspect of any constitutional system of LFO imposition and collection. *Duncan*, 185 Wn.2d at 436 (“The imposition and collection of LFOs have constitutional implications and are subject to constitutional limitations.” (citing *State v. Barklind*, 87 Wn.2d 814, 817, 557 P.2d 314 (1976))). As such:

A constitutionally permissible system that requires defendants to pay court ordered LFOs must meet seven requirements:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. *Repayment may only be ordered if the defendant is or will be able to pay;*
4. *The financial resources of the defendant must be taken into account;*
5. *A repayment obligation may not be imposed if it appears there is no likelihood the defendant’s indigency will end;*
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion
7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the

court order or a failure to make a good faith effort to make repayment.

*Id.* at 436 (emphasis added) (quoting in part *State v. Curry*, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992)) (internal quotation marks omitted).

31. The LFO cases decided by this Court demonstrate that courts have a duty to engage in an individualized assessment of ability to pay. And, as in the circumstance here, issuing a writ of mandamus is appropriate when this duty is contravened: “[m]andamus can direct an officer to exercise a mandatory discretionary duty, but not the manner of exercising that discretion.” *Peterson v Dep’t of Ecology*, 92 Wn.2d 306, 314, 596 P.2d 285 (1976); *see also Whitney v. Buckner*, 107 Wn.2d 861, 865, 734 P.2d 485 (1987) (holding that “[a]lthough mandamus will not lie to control exercise of discretion, it will lie to require that discretion be exercised”). The Court here, therefore, need not *conduct* the ability to pay assessment, rather it need only direct Respondent to conduct such an inquiry prior to imposition of discretionary LFOs.

32. Judge Fitterer breached a duty well and thoroughly articulated in the law when he failed to inquire about Mr. Killian’s ability to pay before imposing \$300 in LFOs. Both the warrant fee and the public defender recoupment fee are discretionary LFOs which, if imposed, must be preceded by an ability to pay assessment.



33. For the warrant fee, this authority lies in RCW 10.01.160, the exact statute under discussion in *Blazina*. With respect to the public defender recoupment imposed, the authority lies in RCW 10.101.020, which requires a determination of indigency as defined by RCW 10.101.010(3) prior to the appointment of counsel.

34. Additionally, the question of whether Mr. Killian was able to pay had already been answered for the court by the process that individuals undergo in being appointed counsel. RCW 10.101.020, which governs the process and determination of indigency for appointment of counsel, distinguishes between those who are indigent and cannot contribute to the cost of counsel, and those who are indigent and can contribute. RCW 10.101.020. The minute order in Mr. Killian's case recording the events at the time at which counsel was appointed, states only "Appointment of Attorney for Indigent Defendant," without any caveat that Mr. Killian was in fact indigent, but able to contribute. App'x 3.

35. Judge Fitterer's failure, therefore, to perform a *Blazina* inquiry was particularly egregious because Mr. Killian had already qualified as indigent and certainly satisfied several of the indigency factors under the comment to court rule GR 34. *See* fn. 4, *supra*. Judge Fitterer's pro forma statement, "I find you'll be able to pay [the LFOs] over a period of time," had no factual basis in the record. App'x 18. In fact, the pro forma

statement is an evasion of the *Blazina* duty articulated above in much the same way as was the Addendum in use shortly after *Blazina* was decided. Together, they evidence a practice of noncompliance with the duty to act originating in RCW 10.01.160(3).

36. This Court has previously held that “where the sentencing judge has no discretion but to enter the special finding of fact required by statute, mandamus is the proper remedy to require the court to perform a mandatory act, as distinguished from a discretionary act.” *State v. Pringle*, 83 Wn.2d 188, 195, 517 P.2d 192 (1973). Because RCW 10.01.160 provides that Judge Fitterer had no discretion but to perform an individualized inquiry into and make a finding of fact about Mr. Killian’s ability to pay, mandamus is the appropriate remedy.

**C. Mr. Killian Has No Other Plain, Speedy, and Adequate Remedy**

37. The writ of mandamus issues where no other plain, speedy, and adequate remedy is available to the party seeking the writ. In the absence of issuing a writ of mandamus, Mr. Killian has no other adequate remedy available to him that will address the harm and burden of the LFOs that he bears, which were imposed without an individualized assessment into his ability to pay. Ordinary remedies or appellate procedures are either not

available to Mr. Killian, or will not remedy the harm suffered and enforce Judge Fitterer's duty to act imposed by statute and *Blazina*.

**1. The appellate process arising from courts of limited jurisdiction is not available to Mr. Killian and would not provide Mr. Killian with a sufficient remedy.**

38. Although potentially available under court rules, the appellate process for courts of limited jurisdiction is not an adequate remedy for Mr. Killian. Mr. Killian was never advised by his attorney that he could address his inability to pay on the record prior to the imposition of LFOs, *see* Killian Decl. ¶12; did not make any argument against the imposition of the \$300 in LFOs at the time of the sentencing or introduce any evidence of Mr. Killian's inability to pay, *see generally* App'x 17-20; and a Notice of Appeal was not filed in this case, in accordance with the Rules of Appeal governing courts of limited jurisdiction. RALJ 2.4.

39. Mr. Killian's situation is, of course, far from unique. Hardly any appeals are filed from district courts because defendants like Petitioner are simply never advised that they have the right to appeal. And even if they were, sporadic individual appeals will not address the systemic problem that lies beneath Mr. Killian's case: the failure of district court judges to perform their statutorily and constitutionally required duty to assess ability to pay.

**2. A motion to remit LFOs under RCW 10.01.160(4) does not provide an adequate remedy and does not enforce the clear duty to act required by *Blazina* and RCW 10.01.160(3).**

40. Neither does a motion to remit LFOs under RCW 10.01.160(4) constitute an adequate remedy: (1) the remission procedure cannot remedy the harm with which this Court concerned itself in *Blazina*, namely the harm caused by the *imposition* of LFOs; (2) the standard under RCW 10.01.160(4) is not the same as under RCW 10.01.160(3) and does not contain the same mandatory duty to act as does RCW 10.01.160(3); and (3) procedurally, these motions are typically heard by the same court that did not perform its duty to act at the time of imposition.

41. The harm to individuals occurs at the time that LFOs are *imposed* and RCW 10.01.160(3), which created the duty to act and consider ability to pay prior to LFO imposition, recognized that harm. It is the imposition of LFOs that results in the wave of reentry barriers described in *Blazina* and in the revolving door of the court system whereby individuals are brought into court for probation violations because months later they are not paying the LFOs that everybody knew they were unable to pay in the first place. RCW 10.01.160(4) serves a different purpose by allowing those whose circumstances have changed to petition the court for a

reduction or waiver of their LFOs based on demonstrated manifest hardship. RCW 10.01.160(4).

42. Further, individuals are not, in the ordinary course of court proceedings, advised that the remission procedure is an available avenue of relief, and neither are they provided court-appointed counsel to assist with the filing of such motions. Certainly, there was no such advisement in Mr. Killian's case. App'x 17-19. Indigent individuals, like Mr. Killian, are provided court-appointed counsel at the time that LFOs are imposed, and yet continue to find themselves without adequate relief with respect to their LFOs. These same individuals are certainly no better situated in a post-sentencing proceeding in which they have no entitlement to counsel.

**D. Mr. Killian Is Beneficially Interested as Established by the Accompanying Affidavit**

43. The writ of mandamus must be issued "upon affidavit on the application of the party beneficially interested." RCW 7.16.170. The question of whether the writ is requested by one beneficially interested is, in essence, the question as to whether the individual Petitioner has standing to request this court to issue a writ of mandamus.

44. Mr. Killian will directly benefit if this petition is granted. Mr. Killian's current sentence to pay LFOs will be vacated, and he will receive an individualized inquiry regarding his ability to pay. In light of his

continued indigency, following this Court's guidance would indicate that Mr. Killian's LFOs should be eliminated.

45. Further, the declarations and Appendix accompanying this petition establish that there are no additional factual questions that must be resolved for this Court to issue a writ of mandamus in this case. The record clearly establishes that Judge Fitterer sentenced Mr. Killian to pay LFOs without an individualized inquiry regarding Mr. Killian's ability to pay. Those are the only facts needed for this Court to determine Judge Fitterer breached his duty and should be compelled to perform the required inquiry by a writ of mandamus.

## **VI. RELIEF REQUESTED**

1. Petitioner requests that this Court exercise its jurisdiction to retain this case in lieu of transferring this case to a lower court;
2. Petitioner requests further that the Clerk of Court set a case schedule, including a briefing schedule, and a deadline for Judge Fitterer to file an answer to this petition;
3. Petitioner requests that this Court issue a writ of mandamus requiring that the trial court performs its duty under RCW 10.01.160(3) and engage in an individualized inquiry into ability to pay in this case, as directed by *Blazina* and its progeny. Courts, in laying out the parameters of the remedy under a writ of mandamus, have stated that "the remedy of

mandamus contemplates the necessity of indicating the precise thing to be done.” *Eugster*, 118 Wn. App. 404 (quoting *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994)). Here, the precise thing to be done is for the sentencing court to conduct a meaningful, individualized assessment of Mr. Killian’s ability to pay, as was the Respondent’s clear duty to do at the time of LFO imposition.

4. Further, Petitioner requests that this Court adequately protect the rights of all individuals appearing in sentencing courts. Statutory writs have been employed where there is a continuing violation of a duty to require that certain procedures be followed. *See* fn.2, *supra*; *Williams*, 101 Wn.2d at 452; *Walker*, 124 Wn.2d at 408 (“[T]his does not mean that a writ cannot issue in regards to a continuing violation of a duty. . . where there is a specific existing duty which a state officer has violated and continues to violate, mandamus is an appropriate remedy to compel performance.”). Where district courts do not abide by the duty imposed by statute and confirmed by *Blazina*, the systemic problem well documented in that opinion arises and where, as here, a duty to act is well established and is being ignored, the court is entitled to “compel performance.” *Id.* In doing so, the Court should reiterate (1) the importance of the individualized ability to pay assessment in all cases and (2) the application of GR 34 standards in considering inability to pay.

## VII. CONCLUSION

For the foregoing reasons, Petitioner requests that the Court retain jurisdiction of this matter, issue the writ of mandamus, and grant the relief requested.

DATED this 3rd day of April, 2017.

AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON FONDATION

By: \_\_\_\_\_



Prachi V. Dave, WSBA No. 50498  
901 5th Avenue, Suite 630  
Seattle, Washington 98164  
T: (206) 624-2184  
F: (206) 624-2190  
pdave@aclu-wa.org

HILLIS CLARK MARTIN & PETERSON P.S.  
Andrew Murphy, WSBA No. 46664  
999 3rd Avenue, Suite 4600  
Seattle, Washington 98104  
T: (206) 623-1745  
F: (206) 623-7789  
Andy.murphy@hcmp.com

*Cooperating Attorney for ACLU of  
Washington*

***Counsel for Petitioner Disean E. Killian***



SUPREME COURT  
OF THE STATE OF WASHINGTON

DISEAN E. KILLEAN,  
an individual,

Petitioner,

v.

RICHARD C. FITTERER, District  
Court Judge for the County of  
Grant,

Respondent.

**APPENDIX TO PETITION  
AGAINST A STATE OFFICER**

**TABLE OF CONTENTS**

<b>PAGE</b>	<b>DOCUMENT</b>
1	June 1, 2016 Criminal Citation
3	Minute Entry of Proceedings Held June 2, 2016
4	March 2, 2017 Statement of Defendant on Plea of Guilty
11	March 2, 2017 Judgment and Sentence
14	Verbatim Report of Proceedings held March 2, 2017

\*\*\*\*\*

Officer's Report for Citation/Notice of Infraction # 6Z0591385, 6Z0591386.

The information contained in and attached to this citation/notice of infraction is incorporated by reference into this report.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
WASHINGTON THAT ALL STATEMENTS MADE HEREIN ARE TRUE AND  
ACCURATE AND THAT I AM ENTERING MY AUTHORIZED USER ID AND  
PASSWORD TO AUTHENTICATE IT.

Signature: JOSHUA WOOD #: 1173

Date and Place: 6/1/2016 County of GRANT

\*\*\*\*\*

TRAFFIC		WEATHER		STREET		LIGHT	
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP
WITNESS NAME (LAST, FIRST, M.I.)		PHONE		WITNESS NAME (LAST, FIRST, M.I.)		PHONE	
ADDRESS	CITY	STATE	ZIP	ADDRESS	CITY	STATE	ZIP



CRIMINAL

☒ TRAFFIC ☐ NON-TRAFFIC LEA OR# WA0SP0604

COURT ORI #: WA013013J

CITATION #: 620591386

REPORT #: 16-016368

IN THE ☒ DISTRICT ☐ MUNICIPAL COURT OF  
☒ STATE OF WASHINGTON ☐ COUNTY OF

GRANT COUNTY DISTRICT COURT

☐ CITY/TOWN OF

PLAINTIFF VS. NAMED DEFENDANT

DRIVER'S LICENSE NO. STATE: WA EXPIRES 05-22-17 PHOTO I.D. MATCHED ☒ YES ☐ NO NAME: LAST KILLIAN FIRST DISEAN MIDDLE ELIAHWON SFX  
 ADDRESS 1615 E CATALPA ST ☐ IF NEW ADDRESS CITY OTHELLO

EMPLOYER  
 DATE OF BIRTH 05-22-96 RACE W SEX M HEIGHT 5'08" WEIGHT 145 EYES BRO HAIR  
 VIOLATION DATE 06/01/2016 20:51 INTERPRETER NEEDED AT LOCATION SR 17 REF. TRAFFICWAY  
 ON OR ABOUT 06/01/2016 20:51 LANG. DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEH LIC NO AWW9820 STATE WA EXPIRES 06-26-16 VEH YR 2000 MAKE MITSUBISHI MODEL ECLCP TR #1 LIC NO TR #2 LIC NO STATE WA EXPIRES HATCHBACK 2 DOOR COLOR

OWNER/COMPANY IF OTHER THAN DRIVER  
 CRISTIAN JESUS ROJAS

ADDRESS 2049 W BENCH RD TRLR 36

ACCIDENT NO BAC COMMERCIAL VEHICLE ☒ YES ☐ NO 16+ PASS ☒ YES ☐ NO CITY OTHELLO HAZMAT ☒ YES ☐ NO EXEMPT VEHICLE ☐ FIRE LEA STATE WA ZIP CODE 99344

1. VIOLATIONS/STATUTE CODE 46.20.342.1B DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES  
☐ DV DWLS 2ND DEGREE

2. VIOLATIONS/STATUTE CODE 46.61.500 ☐ DV RECKLESS DRIVING

3. VIOLATIONS/STATUTE CODE ☐ DV

4. VIOLATIONS/STATUTE CODE ☐ DV

5. VIOLATIONS/STATUTE CODE ☐ DV

MANDATORY COURT APPEARANCE APPEARANCE DATE 15 DAYS TIME RELATED # 2 OF 2 DATE ISSUED 06-01-16

☒ TICKET SERVED ON VIOLATOR ☐ TICKET REFERRED TO PROSECUTOR  
☐ TICKET SENT TO COURT FOR MAILING ☒ BOOKED

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S), AND I AM ENTERING MY AUTHORIZED USER ID AND PASSWORD TO AUTHENTICATE IT.  
 OFFICER JOSHUA WOOD # 1173

CHG #	RESPONSE	CHG DISPOSITION	FINES	SUSPENDED	SUB-TOTAL	FINDING/JUDGMENT DATE	TO SERVE DAYS SUSP
1	G	NG D	\$	\$	\$	3/12/17	W 312364 DAYS SUSP
2	G	NG D	\$	\$	\$		CREDIT/TIME SVD. Y/N
3	G	NG D	\$	\$	\$		LIC. SURR. DT
4	G	NG D	\$	\$	\$		REC. NON-EXTENSION OF
5	G	NG D	\$	\$	\$		SUSP Y/N
COMPLAINT/ CITATION ABSTRACT OF JUDGMENT			TOTAL COSTS		300		

cc

2 = 16 MRS

03/09/17 13:37:29

DD1001MI Case Docket Inquiry (CDK)

GRANT COUNTY DIST CT PUB

Case: 6Z0591386 WSP CT

StID: -

Name:

NmCd: -

Name/Title: KILLIAN, DISEAN ELIJAHWON

DWLS 2ND DEGREE

RECKLESS DRIVING

Case: 6Z0591386 WSP CT Criminal Traffic

S	06 02 2016	ARR JAIL: Held	BAS
S		MTN PUBDF: Held	BAS
		PER MINUTE SHEET	BAS
		DEFENDANT PRESENT	BAS
		DEFENSE ATTORNEY: PRESENT	BAS
		DEFENDANT ADVISED OF RIGHTS.	BAS
		ACKNOWLEDGEMENT OF ADVICE OF RIGHTS.	BAS
		APPOINTMENT OF ATTORNEY FOR INDIGENT DEFENDANT.	BAS
		COURT APPOINTS ATTORNEY	BAS
		PC FOUND	BAS
		DEFENDANT WAIVES FORMAL ARRAIGNMENT	BAS
		DEFENDANT RELEASED ON PERSONAL RECOGNIZANCE.	BAS
		SET PTR NN FOR 7/14 @ 10:30AM RM 2	BAS
S		Defendant Arraigned on Charge 1	BAS

District Court in the County Of Grant  
State of Washington

I certify this to be a complete, exact and true  
copy of the original document. Certified this  
9 day of March, 2017.

District Court Clerk

FILED  
Grant County District Court

MAR 02 2017

Deputy Clerk

Court of Washington	
for	
State	
	Plaintiff,
v.	
Killian, Disean	
	Defendant.

670591386  
No. ~~670591386~~  
~~5704~~

Statement of Defendant on Plea of  
Guilty

1. My true name is Disean Eljabwon Killian.
2. My age is 20.
3. The last level of education I completed was: 12th.
4. **I Have Been Informed and Fully Understand that:**
  - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
  - (b) I am charged with:

Count	Crime	RCW or Ordinance (with subsection)
1.	DWLS 2nd	46.20.342 (1) (b)
2.	Reckless Driving	46.61.500 (1)
3.		
4.		

[ ] In count(s) \_\_\_\_\_, the defendant committed the offense against another family or household member as defined in RCW 10.99.020.

The elements are:

[X] as set out in the charging document.

[ ] as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



5. ***I Understand That I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:***

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. ***In Considering the Consequences of My Guilty Plea, I Understand That:***

- (a) My right to appeal is limited.
- (b) The crime with which I am charged carries a maximum sentence of 364 days in jail and a \$ 5000 fine.

(c) The prosecuting authority will make the following recommendation to the judge:  
Count I: 364 / 362 - 7 16 CSH 5000 / 5000  
Count II: Reckless Driving dismissed

- (d) The judge does not have to follow anyone's recommendation as to sentence. The judge can give me any sentence up to the maximum authorized by law no matter what the prosecuting authority or anyone else recommends.
- (e) The judge may place me on probation for up to five (5) years if I am sentenced for a domestic violence offense or under RCW 46.61.5055, or up to two (2) years for all other offenses and impose conditions of probation. If the court orders me to appear at a hearing regarding my compliance with probation and I fail to attend the hearing, the term of probation will be tolled until I appear before the court on the record.
- (f) The judge may require me to pay costs, fees and assessments authorized by law. The judge may also order me to make restitution to any victims who lost money or property as a result of crimes I committed. The maximum amount of restitution is double the amount of the loss of all victims or double the amount of my gain.
- (g) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law may be grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

***Notification Relating to Specific Crimes: If any of the Following Paragraphs Apply, the Box Should Be Checked and the Paragraph Initialed by the Defendant.***

- ☐ (h) The crime of \_\_\_\_\_ has a mandatory minimum sentence of \_\_\_\_\_ days in jail and \$ \_\_\_\_\_ fine plus costs and assessments. The law does not allow any reduction of this sentence.
- ☐ (i) The crime of prostitution, indecent exposure, permitting prostitution and patronizing a prostitute has a mandatory assessment of \$ \_\_\_\_\_. The court may reduce up to two-thirds of this assessment if the court finds that I am not able to pay the assessment. RCW 9A.88.120.
- ☐ (j) If this crime involves patronizing a prostitute, a condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor. The court will impose crime-related geographical restrictions on me, unless the court finds they are not feasible. If this is my first offense, the court will order me to attend a program designed to educate me about the negative costs of prostitution.
- ☐ (k) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.
- ☒ (l) This plea of guilty will result in suspension or revocation of my driving license or privilege by the Department of Licensing for a minimum period of 1 year. DOL may impose a longer period of suspension or revocation based upon my record of conviction. This period may not include suspension or revocation based on other matters. RCW 46.61.5055(9).
- ☐ (m) I understand that RCW 46.20.265 requires that my driver's license be revoked if (a) the current offense is a violation under RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and I was under the age of 21 at the time of the offense **OR** (b) the current offense is a violation under RCW 9A.10.040 (unlawful possession of firearm), and I was under the age of 18 at the time of the offense **OR** (c) the current offense is a violation under RCW chapter 66.44 [alcohol], and I was under the age of 18 at the time of the offense, **AND** if (a), (b), or (c) applies, the court finds that I previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.
- ☐ (n) If I am convicted under RCW 26.50.110, for a violation of a domestic violence protection order issued under chapter 26.50 RCW, the court shall impose a mandatory fine of \$15. RCW 26.50.110.
- ☐ (o) I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court of record that ordered the prohibition on possession of a firearm or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.
- ☐ (p) If this crime involves a violation of Title 77 RCW, the Department of Fish and Wildlife may, and in some cases shall, suspend or revoke my privileges under Fish and Wildlife licensing.



☐ (q) If this crime involves a drug offense, my eligibility for state and federal education benefits will be affected. 20 U.S.C. § 1091(r).

☐ (r) This plea of guilty is considered a conviction under RCW 46.25.010 and I will be disqualified from driving a commercial motor vehicle. RCW 46.25.090. I am required to notify the Department of Licensing and my employer of this guilty plea within 30 days after the judge signs this document. RCW 46.25.030.

☐ (s) If this case involves driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs, I have been informed and understand that I will be subject to:

☐ the penalties described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."

OR

☐ these penalties: Mandatory minimum sentence:

- \_\_\_\_\_ days in jail.
- \_\_\_\_\_ days of electronic home monitoring.
- \$ \_\_\_\_\_ monetary penalty.
- If 24/7 sobriety program is available, if I have 2 or 3 prior offenses, a 6-month period of 24/7 sobriety program monitoring; or 6 months of ignition interlock device requirement; or both.
- Comply with the rules and requirements of the Department of Licensing regarding the installation and use of a functioning ignition interlock device on all motor vehicles that I operate.
- The Department of Licensing will suspend or revoke my driving privilege for the period of time stated in paragraph 6(k).

If I have prior offense(s):

- the judge may order me to submit to an expanded alcohol assessment and comply with treatment deemed appropriate by that assessment.
- instead of mandatory electronic home monitoring, the judge may order me to serve additional jail time. If 24/7 sobriety program is available, if I have one prior offense, instead of additional jail time, the judge may order a 6-month period of 24/7 sobriety program monitoring; or 6 months ignition interlock requirement; or both.

If I have no prior offenses, instead of the minimum jail term, the judge may order me to serve \_\_\_\_\_ days in electronic home monitoring or \_\_\_\_\_ days on 24/7 sobriety program monitoring.

If the judge orders me to refrain from consuming any alcohol, the judge may order me to submit to alcohol monitoring. I shall be required to pay for the monitoring unless the judge specifies that the cost will be paid with funds from another source.

✓ The judge may waive electronic home monitoring or order me to obtain an alcohol monitoring device with wireless reporting technology, if that device is reasonably available, if I do not have a dwelling, telephone service, or any other necessity to operate electronic home monitoring. The judge may waive electronic home monitoring if I live out of state, or if the judge determines I would violate the terms



of electronic home monitoring. If the judge waives electronic home monitoring, he or she will impose an alternative sentence which may include use of an ignition interlock device, additional jail time, work crew, work camp, or 24/7 sobriety program.

I understand that the 24/7 sobriety program is a program which requires tests of my blood, breath, urine or other bodily substances to find out if I have alcohol, marijuana, or any controlled substance in my body. Testing must take place at designated location/s. I may be required to pay the fees and costs for the program.

The judge will order as conditions of probation that I: (i) shall not drive a motor vehicle without a valid license; (ii) shall not drive a motor vehicle without proof of liability insurance or other financial responsibility; (iii) shall not drive or be in physical control of a motor vehicle with an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; (iv) shall submit to a breath or blood alcohol test upon the reasonable request of a law enforcement officer; (v) shall not drive a motor vehicle without a functioning ignition interlock device as required by the Department of Licensing. If I violate any one of these conditions, the court shall order me confined for no less than 30 days and my driving privilege will be suspended for 30 days.

- ☐ (t) If this case involves reckless driving and the original charge was driving while under the influence of alcohol and/or being in actual physical control of a vehicle while under the influence of alcohol and/or drugs and I have one or more prior offenses, as defined in RCW 46.61.5055(14), within 7 years; or if the original charge was vehicular homicide (RCW 46.61.520) or vehicular assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug, I have been informed and understand that I will be subject to the penalties for Reckless Driving described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."
- ☐ (u) If this case involves negligent driving in the first degree, and I have one or more prior offenses, as defined in RCW 46.61.5055(14), within 7 years, I have been informed and understand that I will be subject to the penalties for Negligent Driving – 1<sup>st</sup> Degree described in the "DUI" Attachment or the "Washington State Misdemeanor DUI Sentencing Attachment."
- ☐ (v) If this case involves a conviction for operating a vehicle without an ignition interlock device under RCW 46.20.740, then my sentence will run consecutive to any sentences imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055. RCW 46.20.740(3).
- ☐ (w) If this case involves a conviction for tampering with or circumventing an ignition interlock device under RCW 46.20.750, then my sentence will run consecutive to any sentences imposed under RCW 46.20.740(3), 46.61.502, 46.61.504, 46.61.5055, 46.61.520(1) or 46.61.522(1)(b).
- ☒ (x) If this crime involves sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation, or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, as



defined in RCW 9A.44.128, I will be required to register with the county sheriff as described in the "Offender Registration" Attachment.

☐ (y) Pursuant to RCW 43.43.754, if this crime is an offense which requires sex or kidnapping offender registration, or is one of the following offenses: assault in the fourth degree with sexual motivation, communication with a minor for immoral purposes, custodial sexual misconduct in the second degree, failure to register, harassment, patronizing a prostitute, sexual misconduct with a minor in the second degree, stalking, or violation of a sexual assault protection order granted under chapter 7.90 RCW, I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense.

☐ (z) **Travel Restrictions:** I will be required to contact my probation officer, the probation director or designee, or the court if there is no probation department, to request permission to travel or transfer to another state if I am placed on probation for one year or more and this crime involves: (i) an offense in which a person has incurred direct or threatened physical or psychological harm; (ii) an offense that involves the use or possession of a firearm; (iii) a second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol; (iv) a sexual offense that requires the offender to register as a sex offender in the sending state. I understand that I will be required to pay an application fee with my travel or transfer request.

7. I plead guilty to the crime(s) of OWLS 2nd as charged in the complaint(s) or citation(s) and notice. I have received a copy of that complaint or citation and notice.

☐ The complaint or citation and notice was orally amended and I waive filing of a written amended complaint or citation and notice.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. **Statement of Facts:** The judge has asked me to state in my own words what I did that makes me guilty of the crime(s). This is my statement (state the specific facts that support each element of the crime(s)):

On 6/01/2016, I drove a motor vehicle  
while my driver's license was revoked/suspended  
2nd and this was in Grant Co., WA

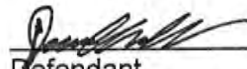
☐ I committed this crime against a family or household member as defined in RCW 10.99.020.

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.


12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Date:

3/02/2017

  
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

  
Prosecuting Authority

PETER HIBRAKID 51338  
Type or Print Name WSBA No.

Defendant's Lawyer

Clairissa Bruce 40433  
Type or Print Name WSBA No.

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check the appropriate box):

- [ ] (a) The defendant had previously read; or  
[ ] (b) The defendant's lawyer had previously read to him or her; or  
[ ] (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

**Interpreter Declaration:** I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands. I have translated this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

Interpreter

Print Name

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated:

3/2/17

  
Judge



District Court in the County Of Grant  
State of Washington

I certify this to be a complete, exact and true  
copy of the original document. Certified this  
9 day of March, 2017.

District Court Clerk

FILED  
Grant County District Court

MAR 02 2017

Deputy Clerk

District Court of Washington  
For Grant County

STATE OF WASHINGTON

Plaintiff,  
vs.

DISEAN ELIAHWON KILLEAN

Defendant.

No. 670591386

Judgment and Sentence  
(JS)

The defendant pled guilty, or pled not guilty and the verdict of the jury was guilty, or the finding of the court was guilty of:

Count	Crime	RCW or Ordinance (with subsection)
1.	DWLS 2	46.20.342(1)(4)
2.	RECKLESS DRIVING	46.61.500(1)
3.		

☐ For the crime(s) charged in count(s) \_\_\_\_\_, domestic violence was pled and proved.  
RCW 10.99.020.

Therefore, the defendant is adjudged guilty and sentenced as follows:

Sentence is suspended (susp.)/deferred (def.) for \_\_\_\_\_ months/years on the following conditions:

Count 1) 364 days of jail, susp./def. 364 days; and a fine of \$ new with \$ new susp./def.

Count 2) \_\_\_\_\_ days of jail, susp./def. \_\_\_\_\_ days; and a fine of \$ \_\_\_\_\_ with \$ \_\_\_\_\_ susp./def.

Count 3) \_\_\_\_\_ days of jail, susp./def. \_\_\_\_\_ days; and a fine of \$ \_\_\_\_\_ with \$ \_\_\_\_\_ susp./def.

Serve a total of 2 days in jail to begin within \_\_\_\_\_ days with credit for \_\_\_\_\_ days  
served, and serve a total of \_\_\_\_\_ days of ☐ electronic home monitoring ☐ home  
detention/electronic monitoring to begin within \_\_\_\_\_ days with credit for \_\_\_\_\_ days served.

☒ Other alternative means of confinement 16 hrs CJS

Jail sentences are concurrent/consecutive with all other commitments \_\_\_\_\_.

☐ This crime is an offense which requires sex or kidnapping offender registration, or is one of the following offenses, assault in the fourth degree with sexual motivation, communication with a minor for immoral purposes, custodial sexual misconduct in the second degree, failure to register, harassment, patronizing a prostitute, sexual misconduct with a minor in the second degree, stalking, or violation of a sexual assault protection order granted under chapter 7.90 RCW. Therefore, the defendant shall have a biological sample collected for purposes of DNA identification analysis. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from defendant for a qualifying offense. RCW 43.43.754.

Defendant shall pay to the clerk of this court:

<input type="checkbox"/> fine	\$ _____	<input type="checkbox"/> BAC fee	\$ _____
<input type="checkbox"/> assessments	\$ _____	<input type="checkbox"/> criminal traffic fee	\$ _____
<input type="checkbox"/> costs	\$ _____	<input type="checkbox"/> probation/monitoring fee	\$ _____
<input type="checkbox"/> bench warrant fee	\$ <u>200</u>	<input type="checkbox"/> booking fee	\$ _____
<input type="checkbox"/> jail recoupment fee	\$ _____	<input type="checkbox"/> public defender recoupment	\$ <u>100</u>
<input type="checkbox"/> DNA fee (RCW 43.43.7541)	\$ _____	<input type="checkbox"/> domestic violence assessment	\$ _____
<input type="checkbox"/> PPIA (RCW 9A.88.120)	\$ _____	<input type="checkbox"/> criminal conviction fee	\$ _____
<input type="checkbox"/> other	\$ _____	<input type="checkbox"/> violation of RCW 26.50 DVPO	\$ _____
<input type="checkbox"/> restitution to:	_____		\$ _____
			<b>Total:</b> \$ <u>300</u>

☐ \$ \_\_\_\_\_ of this total is converted to \_\_\_\_\_ hours of community restitution (service) which must be completed by \_\_\_\_\_. **Proof of completion shall be provided to the court/probation department.**

☐ The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_ for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

**Additional Conditions of Sentence:**

☒ No criminal violations of law or alcohol related infractions.

☒ Not drive a motor vehicle without a valid license and proof of insurance.

☒ Probation for 24 months. Supervised probation for 0 months, with probation department and abide by all rules and regulations of probation department. Pay a \$ \_\_\_\_\_ pre-sentence fee and a \$ \_\_\_\_\_ monthly probation fee unless the fee is reduced by the probation department.

☐ Supervised probation to end upon completion of ☐ Certified domestic violence treatment and/or \_\_\_\_\_

☐ Begin the following within \_\_\_\_\_ days and complete within \_\_\_\_\_ days and file proof of timely enrollment. ☐ Certified Domestic Violence Program ☐ Anger Management ☐ Consumer Awareness (theft) ☐ Other \_\_\_\_\_

☐ Obtain an ☐ alcohol/drug evaluation from a Washington State-approved agency ☐ a psycho-sexual evaluation from a state certified provider ☐ a mental health evaluation from a state licensed mental health provider, and file a copy of the evaluation within \_\_\_\_\_ days. Begin any recommended treatment or education within \_\_\_\_\_ days and file proof of timely enrollment and completion.

☐ Begin the following within \_\_\_\_\_ days and complete within \_\_\_\_\_ months, and file proof of timely enrollment and completion: ☐ DUI Victim's Panel ☐ Alcohol/Drug Information School ☐ One Year Alcohol/Drug Treatment ☐ Two Year Alcohol/Drug Treatment ☐ Alcohol/Drug Treatment for the period of \_\_\_\_\_ ☐ Driver Improvement School.

☐ Use no alcoholic beverages or non-prescribed controlled drugs.

☐ Attend ☐ Alcoholics Anonymous ☐ Narcotics Anonymous ☐ Other self-help program (\_\_\_\_\_) meetings \_\_\_\_\_ times a week for \_\_\_\_\_ months or as recommended by treatment provider.

☐ Do not go upon the property of and have no contact with \_\_\_\_\_.

☐ Other: \_\_\_\_\_.

☐ This crime involves a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.130. The defendant is required to register with the county sheriff as described in the "Offender Registration" Attachment.

☐ **Department of Licensing Notice – Defendant under age 21 only.**

Count \_\_\_\_\_ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 (unlawful possession of firearm), and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

**Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265.

☐ Return for a review hearing: 5/18/17 9<sup>00</sup> ☐ Bail or Bond is ☐ Exonerated ☐ Forfeited.

**I have read the rights, conditions and warnings.**

Dated: 3/2/17

[Signature] 5/22/16  
Defendant's Signature Date of Birth

830 E Ash St. Othello WA  
99344  
Defendant's Street Address

Defendant's Mailing Address  
(☒ same as Street Address)  
Othello WA 99344  
City State Zip

[Signature]  
Judge/Court Commissioner/Pro Tem

[Signature] 51328  
Prosecuting Attorney WSBA No.

Defense Attorney WSBA No.  
☐ Written Waiver of Counsel is filed.



# **e**FFICIENT<sup>®</sup>

Scroll down to view your full-sized transcript.

*View list of attached documents in the paperclip file (left).*



In the Matter of:

WA

vs

Killean

VERBATIM REPORT OF PROCEEDINGS

03/02/2017



Full-sized and condensed transcripts in pdf format



Easy to view on your mobile devices



Copy and paste and retain transcript formatting



Adobe Reader is the only software necessary



Search across all transcripts and exhibit files with a single query



Easy access, hyperlinked exhibits and word index

206 622 6875 | 800 831 6973  
production@yomreporting.com  
www.yomreporting.com

## **YOM:**

FULL SERVICE COURT REPORTING

App'x014

DISTRICT COURT OF WASHINGTON

FOR GRANT COUNTY

STATE OF WASHINGTON, )

Plaintiff, )

vs. ) 6Z0591386

DISEAN ELIJAHWON KILLEAN, )

Defendant. )

VERBATIM REPORT OF PROCEEDINGS

BEFORE THE HONORABLE

RICHARD C. FITTERER

MARCH 2, 2017



TRANSCRIBED FROM RECORDING BY:

CHERYL J. HAMMER, RPR, CCR 2512





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

FOR THE PLAINTIFF:

PETER M. HIBBARD  
Law Office of Peter M. Hibbard  
806 North 67th Avenue  
Yakima, Washington 98908  
509.759.8095  
phibbard16@law.du.edu

FOR THE DEFENDANT:

CLAIRISSA T. BRUCE  
Grant County Dep. of Public Defense  
PO Box 37  
Ephrata, Washington  
509.754.6027  
cbruce@grantcountywa.gov



--oOo--

(BEGINNING OF TRANSCRIPTION)

(Proceedings begin at 11:49 a.m.)

MS. BRUCE: I call Mr. Killean. He's from the 9:00 docket.

THE COURT: Disean Killean is 5Z0598696, warrant outstanding, and 6Z0591386.

MS. BRUCE: And Your Honor, if we can address the pre-trial first. Mr. Killean is going to be entering a plea of guilty to count one, driving in the suspended second, and due to that plea count, the reckless driving can be dismissed. The agreement is 364 days, 362, suspending those two days, converted to community service, and all fines suspended. May I approach?

THE COURT: You may. And on the community service matter we get the 24 hours done?

MS. BRUCE: He has eight to 10 done. He's doing them at the Moses Lake. The Grant County Humane Society is in Moses lake, the animal shelter that's out Stratford, kind of over between Stratford and the college. He's just asking for a little additional time.

THE COURT: March 30th. Get it done



1 or do the three days. That's the alternative.

2 FEMALE VOICE: Are we (inaudible) on  
3 these?

4 THE COURT: Yeah, Washington.

5 I this your statement on plea of  
6 guilty?

7 MR. KILLEAN: (Inaudible.)

8 THE COURT: And you understand that by  
9 pleading guilty you give up your right to a trial and  
10 your right to appeal?

11 MR. KILLEAN: Yes.

12 THE COURT: And that there will be an  
13 additional license suspension?

14 MR. KILLEAN: Yes.

15 THE COURT: So count two is dismissed  
16 on the State's motion. As to count one, 364 days, 362  
17 suspended. Two days to be served can be done by doing  
18 16 hours of community service. On that we'll set a  
19 further review date. May 18th. It won't be necessary  
20 for you to be here as long as you file proof of the 16  
21 hours of community service.

22 \$5,000 fine, all suspended. You did  
23 incur \$200 in warrant costs. I'll assess the \$100  
24 public defender reimbursement, and I find you'll be  
25 able to pay it over a period of time. So total



1 payable of \$300. No criminal violations for the next  
2 two years.

3 MS. BRUCE: And just to preserve the  
4 record, the defense would object to the additional  
5 fines.

6 THE COURT: So noted.

7 (End of recording at 11:54 a.m.)

8 (END OF TRANSCRIPTION)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned  
Certified Court Reporter in and for the state of  
Washington, do hereby certify:

That the foregoing transcript was  
transcribed under my direction; that the transcript is  
true and accurate to the best of my knowledge and  
ability to hear the audio; that I am not a relative or  
employee of any attorney or counsel employed by the  
parties hereto; nor am I financially interested in the  
event of the cause.

WITNESS MY HAND this 27th day of March  
2017.



CHERYL J. HAMMER  
Certified Court Reporter  
CCR No. 2512  
chammer@yomreporting.com



<b>\$</b>	<b>5</b>	<b>BRUCE</b> 3:5,9,19 5:3	<b>docket</b> 3:6	<b>Humane</b> 3:21
<b>\$100</b> 4:23	<b>5Z0598696</b> 3:8	<b>C</b>	<b>driving</b> 3:11,13	<b>I</b>
<b>\$200</b> 4:23	<b>6</b>	<b>call</b> 3:5	<b>due</b> 3:12	<b>inaudible</b> 4:2,7
<b>\$300</b> 5:1	<b>6Z0591386</b> 3:8	<b>college</b> 3:23	<b>E</b>	<b>incur</b> 4:23
<b>\$5,000</b> 4:22	<b>9</b>	<b>community</b> 3:15,18 4:18, 21	<b>end</b> 5:7,8	<b>K</b>
<b>-</b>	<b>9:00</b> 3:6	<b>converted</b> 3:14	<b>entering</b> 3:11	<b>Killean</b> 3:5,7,10 4:7, 11,14
<b>--ooo--</b> 3:1	<b>A</b>	<b>costs</b> 4:23	<b>F</b>	<b>kind</b> 3:22
<b>1</b>	<b>a.m.</b> 3:4 5:7	<b>count</b> 3:11,12 4:15, 16	<b>FEMALE</b> 4:2	<b>L</b>
<b>10</b> 3:19	<b>additional</b> 3:24 4:13 5:4	<b>County</b> 3:20	<b>file</b> 4:20	<b>lake</b> 3:20,21
<b>11:49</b> 3:4	<b>address</b> 3:10	<b>COURT</b> 3:7,17,25 4:4, 8,12,15 5:6	<b>find</b> 4:24	<b>license</b> 4:13
<b>11:54</b> 5:7	<b>agreement</b> 3:13	<b>criminal</b> 5:1	<b>fine</b> 4:22	<b>long</b> 4:20
<b>16</b> 4:18,20	<b>alternative</b> 4:1	<b>D</b>	<b>finer</b> 3:15 5:5	<b>M</b>
<b>18th</b> 4:19	<b>animal</b> 3:21	<b>date</b> 4:19	<b>G</b>	<b>March</b> 3:25
<b>2</b>	<b>appeal</b> 4:10	<b>days</b> 3:14 4:1,16,17	<b>give</b> 4:9	<b>matter</b> 3:18
<b>24</b> 3:18	<b>approach</b> 3:16	<b>defender</b> 4:24	<b>Grant</b> 3:20	<b>Moses</b> 3:20,21
<b>3</b>	<b>assess</b> 4:23	<b>defense</b> 5:4	<b>guilty</b> 3:11 4:6,9	<b>motion</b> 4:16
<b>30th</b> 3:25	<b>B</b>	<b>Disean</b> 3:7	<b>H</b>	<b>N</b>
<b>362</b> 3:14 4:16	<b>begin</b> 3:4	<b>dismissed</b> 3:13 4:15	<b>Honor</b> 3:9	<b>noted</b> 5:6
<b>364</b> 3:14 4:16	<b>BEGINNING</b> 3:3		<b>hours</b> 3:18 4:18,21	



<b>O</b>	<b>review</b> 4:19	<b>U</b>	
<b>object</b> 5:4	<b>S</b>	<b>understand</b> 4:8	
<b>outstanding</b> 3:8	<b>served</b> 4:17	<b>V</b>	
<b>P</b>	<b>service</b> 3:15,18 4:18, 21	<b>violations</b> 5:1	
<b>pay</b> 4:25	<b>set</b> 4:18	<b>VOICE</b> 4:2	
<b>payable</b> 5:1	<b>shelter</b> 3:21	<b>W</b>	
<b>period</b> 4:25	<b>Society</b> 3:21	<b>warrant</b> 3:8 4:23	
<b>plea</b> 3:11,12 4:5	<b>State's</b> 4:16	<b>Washington</b> 4:4	
<b>pleading</b> 4:9	<b>statement</b> 4:5	<b>Y</b>	
<b>pre-trial</b> 3:10	<b>Stratford</b> 3:22	<b>years</b> 5:2	
<b>preserve</b> 5:3	<b>suspended</b> 3:12,15 4:17, 22		
<b>proceedings</b> 3:4	<b>suspending</b> 3:14		
<b>proof</b> 4:20	<b>suspension</b> 4:13		
<b>public</b> 4:24	<b>T</b>		
<b>R</b>	<b>time</b> 3:24 4:25		
<b>reckless</b> 3:13	<b>total</b> 4:25		
<b>record</b> 5:4	<b>TRANSCRIPTI</b> <b>ON</b> 3:3 5:8		
<b>recording</b> 5:7	<b>trial</b> 4:9		
<b>reimbursement</b> 4:24			

