Supreme Court No. 97226-5

Court of Appeals No. 35352-4-III

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DANIEL HERBERT DUNBAR,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington State Supreme Court Cases

Washington Court of Appeals Decisions

Washington Constitutional Provisions

Statutes

Federal Constitutional Provisions

Rules

A. IDENTITY OF PETITIONER

Daniel Dunbar, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision no. 35352-4-III, issued on April 18, 2019, pursuant to RAP 13.3 and RAP 13.4(b)(1) and (3). The opinion is attached.

B. ISSUES PRESENTED FOR REVIEW

1. Mr. Dunbar's jury trial right is inviolate; any waiver must be made knowingly, intelligently and voluntarily. U.S. Const. amend. VI, Const. art. 1 §§ 21 and 22. Mr. Dunbar seeks review under RAP 13.4(b)(3) to determine whether the trial court must obtain a personal oral or written waiver of his jury trial right *prior* to proceeding to bench trial, or whether the filing of a post-trial written waiver adequately ensures the accused validly waives this fundamental right.

2. The State must prove beyond a reasonable doubt every fact necessary to constitute the crime charged. U.S. Const. amend. XIV, § 1; Const. art. I, § 3. Here, the findings of fact entered by the court did not provide the factual basis for the court's conclusion that Mr. Dunbar knowingly possessed the stolen vehicle. Does due process require the absence of the necessary findings be construed in favor of the accused when determining whether the omitted findings were harmless error? RAP 13.4(b)(1) and (3).

C. STATEMENT OF THE CASE

Click It RV reported stolen a Chevy Suburban that disappeared from its used car lot in broad daylight, while surrounded by Click It RV's employees. RP 3/21/17; 36-37, 58-60. Over a month later, Mr. Dunbar was stopped by police in this same vehicle, which at that time had license plate holders and a license plate belonging to another used car dealership, Cliff's Auto, from whom Mr. Dunbar told police he purchased the vehicle. RP 2/21/17; 19; RP 3/21/17; 195-196.

The prosecutor charged Mr. Dunbar with possession of a stolen motor vehicle that Mr. Dunbar did not know was stolen. CP 6; 3/21/17; 82-82.

Mr. Dunbar's case proceeded to bench trial based on his counsel's statement of an intent to file a written waiver, but the trial court did not obtain a personal waiver from Mr. Dunbar of his jury trial right, either orally or in writing, before trial. RP 3/17/17; 5-7. A written jury trial waiver was filed after conviction. CP 20. The trial court convicted Mr. Dunbar without providing a factual basis expressly supporting the conclusion that Mr. Dunbar knew he possessed a stolen vehicle. CP 26-31.

The prosecution tried to refute Mr. Dunbar's lack of knowledge the vehicle was stolen through a Cliff's Auto employee, who searched Cliff's Auto's inventory for the Suburban based on a VIN number provided to

him by the prosecutor. But this VIN number was incorrect, and so the VIN number associated with the Suburban was never checked. RP 3/21/17; 81, 108, 128-29.

On appeal, Mr. Dunbar argued the trial court should have obtained a person expression of a jury trial waiver prior to trial, and that a post-trial waiver was inadequate. The Court of Appeals rejected this claim, finding Mr. Dunbar was precluded from raising the issue because of the invited error doctrine, based on his counsel's representation she would file the written waiver. Slip op. at 6-7. This leaves the question of whether the trial court has an obligation to obtain a personal waiver from the defendant in advance of trial undecided. Opinion at 6-7.

Mr. Dunbar also argued, and the Court of Appeals agreed, that the court's findings of fact were inadequate to support the conclusion that Mr. Dunbar knowingly possessed a stolen motor vehicle. Slip op. at 7. But the Court of Appeals found this was harmless error, determining that the court considered knowledge despite the court making no credibility findings on this contested issue. Slip op. at 8.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. This Court should require trial courts to obtain an oral or written waiver of a jury trial right prior to trial. RAP 13.4(b)(3).

The accused's jury trial right is inviolate in Washington. Const. art. I, § 21. The right to a jury trial under Washington's constitution is broader

than the federal constitutional jury trial right. *State v. Pierce,* 134 Wn. App. 763, 770, 142 P.3d 610 (2006). U.S. Const. amend.VI.

The record must adequately establish that the accused waived his jury trial right knowingly, intelligently, and voluntarily. *State v. Benitez,* 175 Wn. App. 116, 128, 302 P.3d 877 (2013) (citing *Pierce,* 134 Wn. App. at 771). This requires a personal expression of waiver. *Pierce,* 134 Wn. App. at 771(citing *State v. Stegall,* 124 Wn.2d 719,725, 881 P.2d 979 (1994)).

A constitutionally sufficient waiver may be established where the "the record includes either a written waiver signed by the defendant, a personal expression by the defendant of an intent to waive, or an informed acquiescence." *State v. Trebilcock,* 184 Wn App. 619, 632, 341 P.3d 1004 (2014) (citing *State v. Cham,* 165 Wn. App. 438, 448, 267 P.3d 528 (2011)); *Pierce,* 134 Wn. App. at 771(citing *State v. Woo Won Choi,* 55 Wn. App. 895, 904, 781 P.2d 505 (1989)).

The sufficiency of the record that fails to satisfy the constitutional requirements for waiver of this fundamental right may be raised for the first time on appeal. *Cham,* 165 Wn. App. at 447 (citing *State v. Wicke,* 91 Wn.2d 638, 644, 591 P.2d 452 (1979)). This Court reviews a jury trial waiver de novo. *Benitez,* 175 Wn. App. at 128. The State bears the burden of establishing a valid waiver, and absent a record to the contrary, courts

"indulge every reasonable presumption against waiver." *Trebilcock*, 184 Wn. App. at 632 (citing *Cham,* 165 Wn. App. at 447); *Wicke*, 91 Wn.2d at 645.

In *Wicke*, counsel waived his client's jury trial right by oral stipulation as Mr. Wicke stood beside him in open court. *Wicke,* 91 Wn.2d at 641. The trial judge did not question Mr. Wicke to determine whether he discussed the matter sufficiently and agreed with his counsel. *Id.* Nor did Mr. Wicke file a written waiver of his jury trial right. *Id.* The *Wicke* court held this silent record failed to meet the constitutional requirements of a valid jury trial waiver. *Id.* at 645.

Mr. Dunbar's record is similarly silent and thus insufficient to establish a valid waiver of his jury trial right. On retrial, the issue of waiving a jury trial came up the Friday before the trial scheduled on Monday. RP 3/17/17; 4-5. Defense counsel informed the court Mr. Dunbar was unable to proceed to trial on Monday because they still needed to interview one of the prosecutor's additional witnesses. RP 3/17/17; 5. Mr. Dunbar's counsel stated, "I don't know how to address that necessarily at this time," before proposing jury trial waiver to the court. RP 3/17/17; 5. In addition to requesting a continuance in order to speak with this witness, Mr. Dunbar's attorney informed the court that she had talked to Mr. Dunbar about waiving his jury trial right:

> The other piece, Your Honor, is I think Mr. Dunbar and I have discussed his options, and we'd be ready to proceed to a bench trial on Monday. I think we'd waive jury this time and hopefully that is substantive notice for the court. I believe there's a form I fill out, and I can do that as soon as I get back to the office, but Mr. Dunbar and I just spoke about it for the first time yesterday, and I just wanted to double check with him this morning before I made any commitments to the court.

RP 3/17/17; 5.

In response to the motion to continue trial, the prosecutor offered to proceed without the witness Mr. Dunbar's attorney sought to interview. 3/17/17 RP 6. In regard to waiving jury trial, the prosecutor responded:

> So if we are waiving a jury, again, there's a whole bunch of ifs. If we -- if Mr. Dunbar does in fact waive the jury and we set it up to where we proceed to trial on even Tuesday, still believe we can get the trial done, but I don't want to place the court or Ms. Foley in the position where we're up against a time line that we can't actually set right now, because we don't know about Mr. Grout's schedule. So the state is prepared to go without Mr. Grout if necessary.
>
> THE COURT: All right. And with regard to the jury, would you have any objection to the waiver of the jury if Mr. Dunbar decides to waive a jury?
>
> MR. LINDSEY: No, Your Honor.
>
> THE COURT: All right. And, Ms. Foley, are you prepared at this point to commit to waiving the jury?
>
> MS. FOLEY: Yes, Your Honor.
>
> THE COURT: All right. Then that addresses the issue… [s]o I'm going to leave us set for Monday, and we'll proceed without the need of a jury.

RP 3/17/17; 7.

Like in *Wicke,* Mr. Dunbar's counsel indicated he would waive a bench trial. RP 3/17/17; 7. And like in *Wicke,* the court did not personally inquire whether Mr. Dunbar understood the right he was waiving and fully agreed with counsel. And though Mr. Dunbar's counsel discussed obtaining a written waiver from him, no waiver was signed or filed with the court until March 31, 10 days after his two day bench trial began. CP 20; RP 3/17/17; 5. This is not evidence of knowing, intelligent, and voluntary waiver because the court failed to establish voluntariness of the waiver prior to trial. Either a colloquy with Mr. Dunbar or a written waiver prior to proceeding to bench trial was necessary to ensure Mr. Dunbar was not proceeding to bench trial for purposes of scheduling or expediency, or foregoing his constitutional right to a jury trial in favor of his constitutional right to prepare a defense.

Because this waiver was not obtained before Mr. Dunbar gave up his jury trial right and had his case heard by the court, the presumption must be against waiver. *See Trebilcock*, 184 Wn. App. at 632.

The Court of Appeals did not decide this issue, determining it to be invited error, but this avoids the constitutional question of whether the accused can proceed to a bench trial without the court obtaining a personal waiver from the defendant. RAP 13.4(b)(3). Slip op. at 6-7.

2. This Court should grant review under RAP 13.4(b)(1) and(3) to determine whether it violates due process for the reviewing court to construe a trial court's deficient findings of fact against the accused when examining whether the court's omission was harmless error.

The Court of Appeals determined that the trial court's failure to enter findings of fact in support of its legal conclusion was harmless error. Slip op. at 7-8. In finding the error harmless, the Court of Appeals construed the absent findings against Mr. Dunbar in violation of the due process, which requires that the findings reflect that the prosecutor met its burden of proof. *See State v. Rose*, 175 Wn.2d 10, 21, 282 P.3d 1087 (2012).

In criminal cases tried without a jury, the court must enter written findings of fact that address each element of the crime separately. CrR 6.1(d); *State v. Heffner*, 126 Wn. App. 803, 810–11, 110 P.3d 219 (2005) (citing *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003)). Each conclusion of law must be supported by a factual basis and must expressly indicate that each element has been met. *Id.* at 811.

In *Heffner*, the trial court's failure to support the elements of the crime with a factual basis and the failure to state the elements were met was error. *Heffner*, 126 Wn. App. at 811. Likewise, in *Banks*, the trial court did not specifically address knowledge in its findings of fact and conclusions of law, which was error. *Banks*, 149 Wn.2d 38 at 43.

Here the State had the burden of proving beyond a reasonable doubt every element of possession of a stolen motor vehicle, including the element of knowledge. RCW 9A.56.068; CP 6; *State v. Porter*, 186 Wn.2d 85, 93, 375 P.3d 664 (2016) (citing *State v. Moavenzadeh*, 135 Wn.2d 359, 363-364, 956 P.2d 1097 (1998)) (knowledge is an essential element of possession of stolen property).

In Mr. Dunbar's case, the trial court entered numerous findings of fact, but did not specify which facts supported the court's conclusion of law regarding the essential element of knowledge. Rather, the facts simply restate the evidence presented at trial, with no finding as to what element they support, including no credibility determinations that would even allow this Court to infer which facts were relied on to support the court's ultimate finding Mr. Dunbar "possessed the Suburban with knowledge that it had been stolen." CP 31, Conclusion of Law B; CP 26-31, Findings of Fact 1-51.

The court's findings of fact should establish that the prosecutor met its burden of proof. *Rose*, 175 Wn.2d at 21. In the absence of a finding on a factual issue, courts must "indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue." *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997). And the reviewing court does not infer that a conflicting tailored finding supports a

boilerplate legal conclusion. *In re Welfare of A.B.*, 168 Wn.2d 908, 922, 232 P.3d 1104 (2010) ("Where individually tailored findings make it impossible to discern that the trial court actually found that Salas was currently unfit to parent his daughter, and, as a result, we may not now imply such a finding.").

Here, there was evidence that Mr. Dunbar did not knowingly possess the stolen Suburban. The court's findings do not state the factual basis for this material element. The absence of a finding on this material, disputed element of knowledge must be presumed to show that the State failed to meet its burden as to this element. Yet the Court of Appeals determined the court's omission was harmless error because Mr. Dunbar contested the element of knowledge at trial. Slip op. at 8 (citing *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003)).

This analysis relieves the prosecution of its burden of proof. The court's finding of fact that Mr. Dunbar "told Bart he had purchased the vehicle from Cliff's" and the ownership paperwork was in the back of the vehicle was an individually tailored finding of fact that this Court should not infer supports the court's legal conclusion that the prosecutor proved "Dunbar possessed the Suburban with knowledge that it had been stolen." CP 29, FF #27; CP 31, Conclusion of Law # B. Likewise, the court's finding that Mr. Dunbar told police the chrome wheels were stolen when

he in fact sold them was not cited as a factual basis for the element of knowledge. The court found simply that, "despite selling the wheels, Dunbar told Bart the wheels had been stolen." CP 31, Finding of Fact 51.

Because the trial court did not specifically find facts in support of the legal conclusion that Mr. Dunbar knowingly possessed the stolen Suburban, it cannot be presumed to be evidence establishing that the State met its burden of proof. *See Armenta,* 134 Wn.2d at 14 (Where the trial court made no such factual finding the reviewing court "must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue."). But the Court of Appeals did just this, construing the neutral evidence in the court's findings against Mr. Dunbar, which improperly relieves the State of its burden of proof in violation of due process and this Court's case law that requires missing factual findings to be construed in favor of the accused. Mr. Dunbar seeks review under RAP 13.4(b)(1) and (3).

E. CONCLUSION

Based on the foregoing, Mr. Dunbar respectfully seeks review of this decision under RAP 13.4(b)(1),(3), and (4).

Respectfully submitted this the 20th day of May 2019.

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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. DANIEL HERBERT DUNBAR, Appellant. LORIEN L. ALDRICH and GREGORY JAMES WILLIAMS, Defendants.	)	No. 35352-4-III UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — Daniel Dunbar appeals after his conviction for possession of a stolen motor vehicle. He argues he is entitled to a new trial because he did not validly waive his right to a jury trial and because the trial court's factual findings do not support its conclusion that he knowingly possessed a stolen motor vehicle. We conclude Dunbar validly waived his right to a jury trial and the trial court's failure to enter adequate findings is harmless beyond a reasonable doubt. We affirm Dunbar's conviction, but remand with instructions to strike the criminal filing fee and the

deoxyribonucleic (DNA) collection fee.

FACTS[1]

In August 2016, Click It RV & Auto (Click It RV) received a 2006 Chevy Suburban on trade at the dealership's Sprague Avenue location in Spokane Valley. The Suburban had distinctive chrome wheels and a customized front grille.

On September 5, 2016, Steven Myers, general manager of Click It RV's Sprague lot, noticed the Suburban was missing and attempted to locate it. Myers searched for the Suburban in accordance with the dealership's protocol and could not locate it. On September 6, 2016, while returning from a lot affiliated with Click It RV, Myers saw the missing Suburban being driven in downtown Spokane. He lost the Suburban in traffic and called the Spokane Police Department and reported the Suburban as stolen.

On October 15, 2016, Washington State Patrol Trooper Jason Bart saw a Suburban weaving across its lane of travel and initiated a traffic stop. Trooper Bart identified the driver as Dunbar.

[1] In his assignments of error, Dunbar asserts the trial court erred in entering findings of fact 16, 22, 27, 35, 36, and 40 absent sufficient evidence in the record. Dunbar fails to argue these assigned errors in his brief and, in fact, clarifies in his reply that he is not challenging the sufficiency of the evidence. *See* Reply Br. of Appellant at 7 n.1. We deem the above assignments of error abandoned and accept the trial court's findings of fact as verities on appeal.

Trooper Bart ran a search on the license plate, which indicated the plate belonged to a 2001 Chevy Yukon. The plate frame indicated Cliff's Quality Auto Sales (Cliff's). Trooper Bart then checked the Suburban's vehicle identification number and learned that it was reported stolen from Click It RV.

Dunbar insisted he had purchased the Suburban from Cliff's and claimed he had supporting papers in the back of the Suburban. However, there were no such papers in the back of the Suburban. Dunbar was placed under arrest for suspicion of possession of a stolen motor vehicle. The contents of the Suburban were placed beside the vehicle, and Dunbar's girlfriend Brittany Snow retrieved the items.

Trooper Bart notified Myers about the Suburban. Myers met the trooper at the Suburban and confirmed the Suburban was the one missing from Click It RV, even though the distinctive chrome wheels and grille had been removed.

It was later determined that the missing wheels had been posted for sale on Craigslist with Brittany Snow's contact information. The wheels were sold to Dunbar's brother for $800. When asked the night of the arrest what happened to the wheels, Dunbar told law enforcement that the wheels had been stolen.

Procedure

The State charged Dunbar with possession of a stolen motor vehicle. His first trial ended in a mistrial. The State chose to retry Dunbar.

At the pretrial conference, defense counsel told the court that Dunbar wished to waive his right to a jury and proceed to a bench trial. In Dunbar's presence, defense counsel stated:

> I think Mr. Dunbar and I have discussed his options, and we'd be ready to proceed to a bench trial on Monday. I think we'd waive jury this time and hopefully that is substantive notice for the court. I believe there's a form I fill out, and I can do that as soon as I get back to the office, but Mr. Dunbar and I just spoke about it for the first time yesterday, and I just wanted to double check with him this morning before I made any commitments to the court.

Report of Proceedings (RP) (Mar. 17, 2017) at 5. The court did not conduct a colloquy with Dunbar about the jury waiver. The court instead asked Dunbar's counsel if she was willing to commit to waiving the jury. She responded, "Yes, Your Honor." RP (Mar. 17, 2017) at 7. She neglected to submit the written waiver prior to trial as promised.

Trial began on March 21, 2017, and was completed the following day. During trial, Dunbar sought to admit evidence that he purchased the Suburban from Cliff's. The evidence could not be authenticated and was rejected by the

court. Dunbar argued there was insufficient evidence that he knew the Suburban was stolen when he possessed it.

On March 31, 2017, defense counsel presented a waiver of jury trial. The waiver was signed by Dunbar and read, in part:

> I understand that under the Constitutions of the United States and the State of Washington . . . I am entitled to a trial by jury of my peers . . . . I do hereby voluntarily and with knowledge of these rights, waive my right to a jury trial and consent to the trial of this case by the court.

Clerk's Papers (CP) at 20.

The trial court entered its written findings of fact and conclusions of law on April 17, 2017. Those findings do not contain an explicit finding that Dunbar ever knew that the Suburban was stolen. The findings imply that Dunbar lied about purchasing the Suburban and about the wheels being stolen. One can infer the trial court found that Dunbar lied because he knew the Suburban was stolen. But the findings do not make this explicit.

The trial court concluded, "Dunbar possessed the Suburban with knowledge that it had been stolen." CP at 31. The trial court found Dunbar guilty of the charged offense and entered a judgment of conviction on May 3, 2017. The judgment included legal financial obligations of $200 for the criminal filing fee and $100 for the DNA collection fee.

Dunbar timely appealed to this court.

ANALYSIS

A. VALID WAIVER OF JURY TRIAL

Dunbar claims his jury waiver was invalid because the trial court failed to obtain his personal expression of waiver prior to trial. Because Dunbar signed a written waiver of jury trial, we disagree.

A constitutionally sufficient waiver may be established where the record includes either a written waiver signed by the defendant or a personal expression by the defendant of an intent to waive, or an informed acquiescence." *State v. Trebilcock*, 184 Wn. App. 619, 632, 341 P.3d 1004 (2014). Here, the record includes a written waiver of jury trial signed by Dunbar. This is all that is required.

To the extent Dunbar's argument is based on the distinction between a pretrial and a posttrial waiver, the State responds that Dunbar is precluded from raising this issue because of the invited error doctrine. We agree.

Under the invited error doctrine, a party who sets up an error at trial cannot claim that very action as an error on appeal and receive a new trial. *State v. Henderson*, 114 Wn.2d 867, 868, 792 P.2d 514 (1990). Here, Dunbar's counsel assured the trial court she would complete the jury waiver when she returned to her office—thus implying she

would file it prior to trial. So to the extent Dunbar complains about the jury waiver being filed late, he is precluded from requesting a new trial.

Dunbar also argues—irrespective of *when* the jury waiver was filed—that a trial court has the obligation to personally question the defendant to ensure the waiver is knowing and intelligent. His argument contradicts the notion that a written and signed jury waiver is in itself sufficient. Dunbar does not cite any authority for his argument. "Where no authorities are cited in support of a proposition, we are not required to search out authorities but may assume that counsel, after diligent search, has found none." *State v. Manajares*, 197 Wn. App. 798, 810, 391 P.3d 530 (2017), *review denied*, 189 Wn.2d 1045, 415 P.3d 99 (2018).

B. FAILURE TO ENTER ADEQUATE FINDINGS HARMLESS BEYOND A REASONABLE DOUBT

Dunbar argues the trial court's factual findings are inadequate to support its conclusion that he knowingly possessed a stolen motor vehicle. We agree, but conclude the error was harmless beyond a reasonable doubt.

In a case tried without a jury, the court must enter findings of fact and conclusions of law. CrR 6.1(d). In the findings of fact and conclusions of law, "[e]ach element must be addressed separately, setting out the factual basis for each conclusion of law." *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003). "In addition, the findings must

specifically state that an element has been met." *Id.* (citing *State v. Alvarez*, 128 Wn.2d 1, 19, 904 P.2d 754 (1995)). Here, the trial court's findings of fact are inadequate because they do not specifically state that Dunbar possessed the Suburban with knowledge it was stolen. But this failure does not require reversal and a new trial.

In *Banks*, the Washington Supreme Court affirmed the defendant's bench trial conviction for unlawful possession of a firearm even though the trial court did not specifically address "knowledge" in its findings and conclusions. 149 Wn.2d at 43, 46. The *Banks* court concluded that the trial court's error was harmless beyond a reasonable doubt because the defendant contested knowledge and the trial court's findings and conclusions indicated it considered knowledge. *Id.* at 46.

Here, Dunbar's central argument at trial was he did not know the Suburban was stolen. *See e.g.*, RP (Mar. 21, 2017) at 21-22. In addition, the trial court specifically addressed the knowledge element when it concluded, "Dunbar possessed the Suburban with knowledge that it had been stolen." CP at 31. Similar to *Banks*, we conclude that the trial court's inadequate findings were harmless beyond a reasonable doubt because Dunbar contested knowledge and because the trial court's findings and conclusions indicated it considered knowledge.

C. CRIMINAL FILING FEE AND DNA COLLECTION FEE

After briefing was complete, Dunbar filed a motion to allow supplemental briefing on whether the trial court erred by imposing on him, an indigent defendant, a $200 criminal filing fee and a $100 DNA collection fee. We grant Dunbar's motion and consider the issue.

House Bill 1783, which became effective June 7, 2018, prohibits trial courts from imposing discretionary legal financial obligations on defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 6(3); *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). This change to the criminal filing fee statute is now codified in RCW 36.18.020(2)(h). As held in *Ramirez*, these changes to the criminal filing fee statute apply prospectively to cases pending direct appeal prior to June 7, 2018. *Ramirez*, 191 Wn.2d at 738. Accordingly, the change in law applies to Dunbar's case. Because Dunbar is indigent, the criminal filing fee must be struck pursuant to *Ramirez*.

The change in law also prohibits imposition of the DNA collection fee when the State has previously collected the offender's DNA as a result of a prior felony conviction. LAWS OF 2018, ch. 269, § 18. The uncontested record establishes that Dunbar has multiple Washington State felonies since 1990. Since that time, Washington law has required defendants with a felony conviction to provide a DNA sample. LAWS OF 1989,

ch. 350, § 4; RCW 43.43.754. Given the uncontested record, we presume that a DNA sample has been collected from Dunbar prior to the current judgment and sentence. We, therefore, direct the trial court to also strike the DNA collection fee.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Korsmo, J.

Pennell, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	COA NO. 35352-4-III
	)	
DANIEL DUNBAR,	)	
	)	
PETITIONER.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20TH DAY OF MAY, 2019, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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