

FILED
Court of Appeals
Division II
State of Washington
12/17/2019 2:12 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
12/18/2019
BY SUSAN L. CARLSON
CLERK

SUPREME COURT NO. 97978-2

NO. 51686-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUAN CARLOS RAMOS LOPEZ,

Petitioner.

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

The Honorable Robert A. Lewis, Judge
The Honorable Derek Vanderwood, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Juan Carlos Eduardo Ramos Lopez, appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. THE COURT OF APPEALS DECISION

Ramos Lopez seeks review of the Court of Appeals decision in State v. Ramos Lopez, No. 51686-1-II (Slip Op. filed October 8, 2019). The decision is attached as Appendix A. A copy of the Order Denying Motion for Reconsideration entered November 19, 2019 is attached as Appendix B.

C. THE ISSUE PRESENTED

Following submission of an Anders¹ brief, may a reviewing appellate court that identifies a nonfrivolous issue consider and rule on that issue, or must it instead first grant counsel's motion to withdraw and appoint new counsel to brief the nonfrivolous issue along with any other issues new counsel may independently identify for appeal?

¹ Under Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967), appointed appellate counsel for a criminal defendant is authorized to file a motion to withdraw if there are no nonfrivolous grounds that can be raised on appeal.

D. STATEMENT OF THE CASE

On October 6, 2017, Ramos-Lopez pleaded guilty in Clark County Superior Court to an amended charge of third degree assault with sexual motivation, allegedly committed against R.S.-A. CP 6-7 (amended information); CP 8-28 (Statement of Defendant on Plea of Guilty); RP² 1-8. At the plea hearing Ramos Lopez agreed to his date of birth, that he had discussed the plan to plead guilty with his attorney and had the plea statement read to him in his primary language, and that he had no remaining questions about pleading guilty to the amended charge. RP 1-2. Ramos-Lopez further agreed that he understood the rights he was giving up by pleading guilty, understood that he faced a standard range sentence of one to three months for the underlying assault, plus an additional 12 months of mandatory confinement for committing the crime with sexual motivation, followed by 36 months of community custody, and that the maximum confinement term was five years and maximum fine was \$10,000. RP 2-6. Ramos Lopez also acknowledged he would be required to pay “[v]arious legal financial obligations.” RP 5-6.

Ramos Lopez also acknowledge understanding the prosecution would be requesting the sentencing court to impose a high-end standard

² There is a single volume of verbatim report of proceedings for the dates of October 6, 2017 and November 20, 2017, cited as “RP.”

range sentence of three months for the underlying assault plus an additional 12 months for the sexual motivation enhancement for a total sentence of 15 months, and that he would not be allowed to request a Special Sex Offender Sentencing Alternative (SOSSA). RP 3-4. Ramos Lopez also acknowledged that the sentencing court did not have to follow the prosecutor's sentence recommendation. RP 4.

Ramos-Lopez also acknowledged that by pleading guilty he would be required to register as a sex offender, could be deported if he was not a United States citizen, and would be required to provide a biological sample for DNA identification and also be tested for the HIV virus. RP 4-6. Ramos-Lopez agreed that by pleading guilty he would lose his rights to vote and possess firearms, and that no one had made threats or promises to him to induce him to enter the guilty plea. RP 4-7.

Ramos-Lopez also adopted as his own, the statement in his written guilty plea statement that he had both assaulted R.S.-A., between the dates of January 1, 2012 and March 1, 2016, and that he did so for purposes of his own sexual gratification. Ramos Lopez then confirmed that he wished to plead guilty by stating "Guilty," when asked as to how he pled to the charge. RP 6.

Thereafter, in accepting the plea the court concluded that Ramos Lopez's guilty plea was "knowingly, intelligently and voluntarily made." RP 7-8.

Sentencing was held November 20, 2017. At that hearing the prosecutor requested the court impose the sentence set forth in the plea agreement, which is attached as "Ex. 2" to Ramos Lopez's signed guilty plea statement. RP 10; CP 22-26. Next the Court heard from the complaining witness' father, who stated he did not want Ramos Lopez anywhere near R.S.-A. RP 11.

Ramos Lopez's counsel urged the court to impose the sentence contemplated by the parties in the plea agreement. RP 12. Ramos Lopez declined to exercise his right to allocution. RP 13.

The sentencing court accepted the sentence recommendation of the parties and imposed a 15-month sentence. CP 41-42; RP 44. The court also ordered Ramos Lopez to pay the \$500 Victim Penalty Assessment, \$200 criminal filing fee and a \$100 DNA collection fee, but waived all "non-mandatory financial obligations." CP 43-44; RP 13. Ramos Lopez appealed. CP 57.

On August 18, 2018, undersigned counsel filed an Anders brief. On September 14, 2018, the Clark County Prosecutor filed a response urging the Court of Appeals to grant counsel's motion to withdraw. On

October 9, 2019, the Court of Appeals-Division Two, issued a decision denying counsel's motion to withdraw on the basis that the appeal was not frivolous, then affirmed Ramos Lopez's conviction and remanded to the trial court to "reconsider the imposition of LFOs in light of Ramirez and the 2018 legislative changes." Appendix A at 4.

On October 24, 2019, undersigned counsel file a motion asking the Court of Appeals to reconsider its decision in light of this Court's prior decision holding that in the context of a motion to withdraw under Anders, if the appellate court "concludes that there are nonfrivolous issues to be raised, it must appoint counsel to pursue the appeal and direct that counsel prepare an advocate's brief before deciding the merits." State v. Nichols, 136 Wn.2d 859, 861, 968 P.2d 411 (1998) (quoting McCoy v. Court of Appeals of Wisconsin, Dist. 1, 486 U.S. 429, 444, 108 S.Ct. 1895, 100 L.Ed. 2d 440 (1988)). On November 19, 2019, the Court of Appeals denied the motion to reconsider. Appendix B.

E. REASON TO ACCEPT REVIEW AND ARGUMENT

REVIEW IS WARRANTED BECAUSE THE COURT OF APPEALS DECISION CONFLICTS WITH PRIOR DECISIONS OF THIS COURT.

In the context of a motion to withdraw under Anders, if the appellate court "concludes that there are nonfrivolous issues to be raised,

it must appoint counsel to pursue the appeal and direct that counsel prepare an advocate's brief before deciding the merits.” Id.

“It is not sufficient that the court granted relief on the one issue it found to be meritorious. To the contrary, the court “committed an even more serious error when it failed to appoint new counsel after finding that the record supported ... modification of his sentence. As a result, petitioner was left without constitutionally adequate representation on appeal.”

Nichols, 136 Wn.2d at 862 (quoting Penson v. Ohio, 488 U.S. 75, 81, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988)).

Here, the Court of Appeals concluded there is a nonfrivolous issue arising from the record in Ramos Lopez’s appeal regarding the imposition of LFOs at sentencing. Appendix A. Instead of appointing new counsel to pursue that issue on Ramos Lopez’s behalf, it instead granted relief on the LFO issue by remanding to the trial court to reconsider what LFOs to impose. Under Nichols, however, the Court of Appeals should have appointed new appellate counsel for Ramos Lopez and direct that counsel to file a brief on Ramos Lopez’s behalf raising the LFO issue identified by this Court and any other issues that counsel concludes are nonfrivolous. By failing to do so and instead remanding the case to the trial court to reconsider the imposition of LFOs, the Court of Appeals decision directly conflict with this Court’ holding in Nichols and therefore review is warranted under RAP 13.4(b)(1).

F. CONCLUSION

For the reason stated, this Court should accept review.

DATED this 17TH day of December, 2019

Respectfully submitted,
NIELSEN KOCH, PLLC



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Office ID No. 91051

Attorneys for Petitioner

APPENDIX A

October 8, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JUAN CARLOS EDUARDO RAMOS
LOPEZ,

Appellant.

No. 51686-1-II

UNPUBLISHED OPINION

MELNICK, J. — Juan Carlos Eduardo Ramos Lopez appeals from his guilty plea conviction of assault in the third degree with sexual motivation. His appellate attorney filed a motion to withdraw pursuant to *Anders v. California*.¹ We deny Ramos Lopez’s attorney’s motion to withdraw because the appeal is not wholly frivolous. We affirm Ramos Lopez’s convictions and remand to the sentencing court to strike certain legal financial obligations (LFOs).

FACTS

The State originally charged Ramos Lopez with two counts of child molestation in the first degree for incidents involving an 11-year-old. Ramos Lopez agreed to plead guilty to assault in the third degree with sexual motivation. All parties agreed to recommend a 15-month sentence.

Ramos Lopez signed a statement on plea of guilty, acknowledging that he understood the rights he was giving up and that he was making his plea “freely and voluntarily.” Clerk’s Papers (CP) at 17. Furthermore, an interpreter read Ramos Lopez “the entire statement” and declared

¹ 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

“that the defendant understood it in full.” CP at 18. Attached to Ramos Lopez’s statement was the pretrial agreement, which included the direct consequences of pleading guilty. Ramos Lopez also signed this document. The court found Ramos Lopez’s plea was “knowingly, intelligently and voluntarily made” and accepted the plea. Report of Proceedings (RP) at 7-8.

Based on an offender score of 0, the sentencing court imposed a 15-month standard range sentence. As part of Ramos Lopez’s sentence, the court ordered that he pay as LFOs a \$100 deoxyribonucleic acid (DNA) database fee and a \$200 criminal filing fee. The trial court found Ramos Lopez indigent.

Ramos Lopez appealed. His appellate lawyer filed a motion to withdraw pursuant to *Anders*. While this appeal was pending, the Supreme Court decided, *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018), holding that the recently legislature-enacted laws categorically prohibiting the imposition of discretionary costs on indigent defendants applied to cases pending when the laws went into effect on June 7, 2018. *See* RCW 10.01.160

ANALYSIS

I. *ANDERS* BRIEF

Ramos Lopez’s appointed appellate lawyer submitted a motion to withdraw pursuant to *Anders*. The requirements for withdrawal of counsel under *Anders* is that counsel must “support his client’s appeal to the best of his ability,” but if counsel finds the case “to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw.” *State v. Theobald*, 78 Wn.2d 184, 185, 470 P.2d 188 (1970) (quoting *Anders*, 386 U.S. at 744). This court “then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Theobald*, 78 Wn.2d at 185 (quoting *Anders*, 386 U.S. at 744).

Appellate counsel raises one possible issue for review, suggesting that the trial court might have erred when it accepted Ramos Lopez's guilty plea. We conclude the court did not err in this regard.

Due process requires that a defendant enter a guilty plea knowingly, voluntarily, and intelligently. *State v. Robinson*, 172 Wn.2d 783, 790, 263 P.3d 1233 (2011). CrR 4.2(d) provides that a court shall "not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea."

Here, Ramos Lopez pleaded guilty as part of a plea agreement where he received a reduction from two counts of child molestation in the first degree to one count of assault in the third degree with sexual motivation. Ramos Lopez acknowledged his plea was freely and voluntarily made and an interpreter declared that Ramos Lopez understood the plea agreement in full. Also attached to Ramos Lopez's statement was the pretrial settlement agreement, which included the direct consequences of pleading guilty. Ramos Lopez also signed this document. The trial court reviewed all these documents and found that the plea was "knowingly, intelligently and voluntarily made." RP at 7-8.

Ramos Lopez's plea was knowingly, intelligently, and voluntarily made. The trial court did not err when it accepted Ramon Lopez's guilty plea.

II. LFOs

A review of the record shows that as part of Ramos Lopez's sentence, the court ordered him to pay as LFOs a \$100 DNA database fee and a \$200 criminal filing fee.

Recent legislation prohibits the sentencing court from imposing LFOs, including criminal filing fees on indigent defendants. RCW 36.18.020(h); *Ramirez*, 191 Wn.2d at 746. A DNA

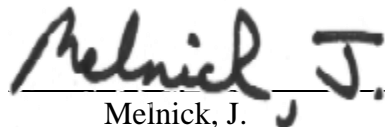
collection fee is mandatory “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” RCW 43.43.7541.

Here, the sentencing court found Ramos Lopez to be indigent. The imposition of a criminal filing fee on indigent defendants is prohibited. The defendant must be found indigent as defined in RCW 10.101.010(3)(a)-(c). Regarding the DNA collection fee, the record is silent as to whether Ramos Lopez’s DNA has previously been collected. We remand to the sentencing court to reconsider the imposition of LFOs in light of *Ramirez* and the 2018 legislative changes.


CONCLUSION

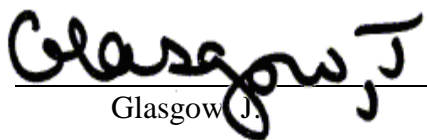
We deny Ramos Lopez’s attorney’s motion to withdraw. We affirm Ramos Lopez’s conviction but remand to the sentencing court to reconsider the imposition of LFOs.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Melnick, J.

We concur:


Maxa, C.J.


Glasgow, J.

APPENDIX B

November 19, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JUAN CARLOS EDUARDO RAMOS
LOPEZ,

Appellant.

No. 51686-1-II

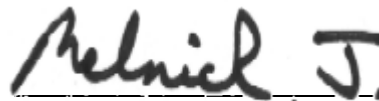
ORDER DENYING MOTION
FOR RECONSIDERATION

Appellant, Juan Carlos Eduardo Ramos Lopez, moves for reconsideration of the court's October 8, 2019 opinion. After consideration, we deny the motion.

IT IS SO ORDERED.

Panel: Jj. Maxa, Melnick, Glasgow

FOR THE COURT:



Melnick, J.

NIELSEN, BROMAN & KOCH P.L.L.C.

December 17, 2019 - 2:12 PM

Transmittal Information

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Appellate Court Case Number: 51686-1
Appellate Court Case Title: State of Washington, Respondent v. Juan Ramos Lopez, Appellant
Superior Court Case Number: 16-1-02357-6

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