

NO. 49848-1-II

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

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STATE OF WASHINGTON, Respondent

v.

VALENTIN DELGADO, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-00626-6

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BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. The trial court properly entered a sentencing provision that Delgado have no contact with any of the named victims in all 13 counts for 10 years.**
- II. The imposition of the filing fee does not violate equal protection.**
- III. The \$200 filing fee is mandatory.**

## STATEMENT OF THE CASE

Valentin Delgado (hereafter 'Delgado') was a licensed massage therapist in Clark County. CP 2. At various times and at various massage agencies at which Delgado was employed, Delgado had sexual contact with female clients during treatment sessions, by touching them on their vaginal areas, their breasts, perineums, etc. CP 2-3. Delgado was originally charged with three counts of Indecent Liberties pursuant to RCW 9A.44.100(1)(d) in which it was alleged that he was a healthcare provider who caused his client or patient to have sexual contact with him during a treatment session. CP 4-5. The three initial counts were against three separate victims, R.W., S.C., and E.O. CP 4. Two months later, the State amended the information adding 10 additional counts of Indecent Liberties pursuant to RCW 9A.44.100(1)(d) involving 10 additional victims: S.C., D.M., L.D., J.R., M.O., J.I., M.M-S., P.C-H., J.T., and L.W.

CP 8-11. The State also charged bail jumping after Delgado failed to appear for court. *Id.*

Pursuant to a negotiated plea agreement, the State filed a third amended information that charged three counts of Indecent Liberties, one count of Bail Jumping, and ten counts of Assault in the Fourth degree with Sexual Motivation. CP 27-30. Delgado then entered a guilty plea to the 14 counts included in the Third Amended Information on July 14, 2016. CP 31-52. Attached to Delgado's guilty plea statement was the negotiated plea agreement he entered into with the State, which indicated the parties stipulated to a recommended sentence to the trial court, which included no contact with all victims for 10 years. CP 46-48.

Prior to sentencing, Delgado moved to withdraw his guilty plea. CP 70-81. After new counsel was appointed for Valentin, and an evidentiary hearing was held, the trial court denied Valentin's motion to withdraw his guilty plea. CP 125-28. Sentencing went forward on December 30, 2016. Delgado was sentenced to a standard range sentence on his felony counts, as well as a provision prohibiting him from having contact with all of the named victims in the information for ten years. CP 85-101. The trial court found Delgado was presently indigent but was anticipated to be able to pay financial obligations in the future. CP 88. The court ordered as part of legal financial obligations that Delgado pay: \$500

for victim assessment, \$200 for the criminal filing fee, and \$100 for the DNA collection fee. CP 91.

Delgado then filed this appeal. CP 112-13.

#### ARGUMENT

**I. The trial court properly entered a sentencing provision that Delgado have no contact with any of the named victims in all 13 counts for 10 years.**

Delgado claims the trial court erroneously entered a 10 year no contact provision with the victims listed in the gross misdemeanor offenses, when the maximum period of time for which the court may enter a no contact order for a victim of a gross misdemeanor is two years. The trial court properly entered no contact provisions with the listed persons as a crime-related prohibition. Delgado's claim should be denied.

At sentencing, a trial court may impose crime-related prohibitions as part of a defendant's sentence. RCW 9.94A.505(8). Sentencing conditions are reviewed for an abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). Such conditions should be upheld if they are reasonably crime-related. *Id.* at 36-37. A trial court abuses its discretion if its decision is manifestly unreasonable, its discretion was exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775, (1971). A court abuses

its discretion “only where it can be said no reasonable man would take the view adopted by the trial court.” *State v. Blight*, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977) (citing *State v. Derefield*, 5 Wn.App. 798, 491 P.2d 694 (1971) and *State v. Hurst*, 5 Wn.App. 146, 486 P.2d 1136 (1971)).

Delgado argues the trial court could not impose a no-contact provision against non-victims of the felony counts. However, protecting the persons listed in the J&S, the witnesses against Delgado, and the victims of the misdemeanor counts, is reasonably related to the crimes Delgado committed.

In *State v. Warren*, 165 Wn.2d 17, 195 P.3d 940 (2008), the Supreme Court upheld a no-contact provision that prevented the defendant from contacting the mother of the two children he had sexually assaulted as reasonably crime-related. *Warren*, 165 Wn.2d at 34. The Court noted that her status as the victims’ mother, the fact the defendant attempted to try to get her not to cooperate with prosecution, and that she testified against him, as well as noting that the mother did not object to the no-contact order, provided the reasonable basis for the trial court to impose a no-contact order with her. *Id.*

In *State v. Corbett*, 158 Wn.App. 576, 242 P.3d 52 (2010), this Court upheld a trial court’s imposition of a no-contact provision against a non-victim as lawful because it involved the class of persons Corbett

victimized. There, the defendant was convicted of sexually abusing a child whom he had parented. *Corbett*, 158 Wn.App. at 600. The trial court ordered Corbett to have no contact with his own biological children even though they were not victims in the case. *Id.* In upholding the no-contact provision, this Court found that the defendant's crimes showed he abuses parental trust to satisfy his own desires, and therefore the no-contact provision prohibiting him from contacting his biological children was directly crime-related as his children fell within the class of persons he victimized. *Id.* at 601. The same is true in Delgado's case: the women who are victims of the gross misdemeanors (only so reduced as part of the negotiated plea agreement which also indicated Delgado agreed to a 10 year no contact provision with the victims) are in the same class as the named victims of the three felony sex abuse counts. They were all thirteen clients/patients of Delgado's who found themselves violated and abused by Delgado when he treated them. Thus, the trial court's imposition of a 10 year no-contact provision with the gross misdemeanor victims was crime-related following the holding in *Corbett, supra*.

The trial court's imposition of no contact with all the named victims as a condition of his felony sentence was reasonably crime-related. The trial court's decision was sound. Delgado was charged with sex offenses against a number of women, committed when they were at their

most vulnerable – naked and alone, prone on a table, their defenses down, believing they were to be treated by a reputable massage therapist, not expecting to be sexually assaulted. There is nothing in the record to suggest the named women in the no contact provision object to the no-contact provision, and the information in the record shows Delgado specifically agreed that he would recommend a 10 year no contact provision with all these women. CP 46-48. This condition was reasonably crime-related. Delgado’s claim the trial court erred in entering this no-contact provision should be denied.

**II. The Imposition of the filing fee does not violate equal protection.**

Delgado argues that the imposition of the \$200 filing fee in his case violates equal protection because indigent civil litigants can have their costs and fees waived. This Court has previously addressed this identical argument and found that imposition of mandatory costs and fees does not violate equal protection. As such, Delgado’s claim should be denied.

The Fourteenth Amendment to the United States Constitution and article I, section 12 of the Washington State constitution require that similarly situated persons are treated similarly under the law. *Harmon v. McNutt*, 91 Wn.2d 126, 130, 587 P.2d 537 (1978). All persons need not be

treated identically, but any distinctions that are made must have some relevance to the purpose for which the classification was made. *In re Det. Of Thorell*, 149 Wn.2d 724, 745, 72 P.3d 708 (2003) (quoting *Baxstrom v. Herold*, 383 U.S. 107, 111, 86 S.Ct. 760, 15 L.Ed.2d 620 (1966)). Here, in analyzing an equal protection claim, this Court should use the rational basis test, as no fundamental right is at issue and the challenged classification (between criminal defendants and civil litigants) is not a suspect classification. *State v. Mathers*, 193 Wn.App. 913, 925, 376 P.3d 1163 (2016) (citing *State v. Scherner*, 153 Wn.App. 621, 648, 225 P.3d 248 (2009)). Rational basis review looks to whether there is a legitimate governmental objective being served and whether the means of achieving it are rational. *In re Det. Of Turay*, 139 Wn.2d 379, 410, 986 P.2d 790 (1999). There is a strong presumption of constitutionality, and here, as the party challenging the constitutionality of the mandatory criminal filing fee, Delgado must show the classification is purely arbitrary. *In re Det. of Ross*, 114 Wn.App. 113, 118, 56 P.3d 602 (2002).

In *Mathers*, this Court addressed a challenge nearly identical to Delgado's current challenge. There, this Court found that GR 34, which allows some waiver of fees and costs for civil litigants, is akin to RCW 10.01.160, a statute which allows courts to recoup some of the costs associated with criminal prosecution. *Mathers*, 193 Wn.App. at 925-26.

This Court found that GR 34 served a different purpose from fees imposed pursuant to RCW 10.01.160, like DNA fees and victim fees, because those fees are imposed only after a conviction, whereas the civil filing fee is required prior to a civil litigant being able to access the court. *Id.* at 926. The *Mathers* Court found the defendant did not establish that criminal defendants and civil litigants are similarly situated individuals receiving disparate treatment, and thus his equal protection claim failed. *Id.*

The same is true for Delgado. Delgado's claim involves GR 34 and civil litigants, and RCW 36.18.020(2)(h), the criminal filing fee statute, as opposed to DNA and victim program fees, however, the reasoning in *Mathers, supra* is equally applicable. The *Mathers* Court found that GR 34 serves a different purpose than RCW 10.01.160, the statute which may require a defendant to pay costs, mainly focusing its finding on the fact that the civil filing fee is a pre-requisite to obtaining access to court for civil litigants, whereas the criminal costs are imposed only post-conviction, after the criminal defendant has had full access to justice. The same is true for the criminal filing fee pursuant to RCW 36.18.020(2)(h) – it is assessed only after a defendant has been convicted of a crime. Its purpose is different than that of GR 34, and the defendant is not prevented from accessing justice due to its imposition after his case is finished in superior court.

There is a rational basis for treating civil litigants differently than indigent criminal defendants. The waiver of the mandatory civil filing fee is allowed to provide equal access to justice. *Jafar v. Webb*, 177 Wn.2d 520, 523, 303 P.2d 1042 (2013). Without this waiver, some civil litigants would not be able to access the courts. However, criminal defendants do not pay any fees prior to accessing the courts for trials, hearings or sentencing. Thus, there is a rational basis for treating civil litigants differently than criminal defendants and the mandatory criminal filing fee pursuant to RCW 36.18.020(2)(h) does not violate equal protection.

Delgado cannot sustain his burden to show that he is similarly situated with civil litigants. Delgado's claim that the trial court violated equal protection by imposing the \$200 filing fee is without merit.

### **III. The \$200 filing fee is mandatory.**

Delgado argues that the \$200 criminal filing fee is not mandatory and therefore the trial court erred in imposing the fee without first inquiring into Delgado's ability to pay. Our Courts have repeatedly found the \$200 criminal filing fee is not a discretionary fee and therefore the trial court must impose it pursuant to statute. The trial court did not err in imposing the \$200 filing fee in Delgado's case.

The criminal filing fee provision is codified in RCW 36.18.020(2)(h). That statute states in part:

(2) Clerks of super courts shall collect the following fees for their official services:

...  
(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars.

RCW 36.18.020(2)(h). Whether this statute creates a mandatory legal financial obligation is a question of statutory interpretation. *State v. Gonzales*, 198 Wn.App. 151, 153, 392 P.3d 1158 (2017). This Court reviews issues of statutory interpretation de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2008). The first step in a statutory interpretation analysis is to look at the plain language of the statute. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). If the plain language of the statute is unambiguous, the Court need not inquire further. *Armendariz*, 160 Wn.2d at 110.

Delgado makes the identical argument that the defendant in *Gonzales, supra* made to this Court earlier this year. Delgado, like *Gonzales*, argues that the use of the word “liable” is ambiguous because the term can mean a situation from which legal liability might arise. Br. of Appellant, pp. 10-21; *Gonzales*, 198 Wn.App. at 154-55. In *Gonzales*, this Court found that the use of the word “shall” immediately preceding the term “liable” clarifies that “there is not merely a risk of liability because

“[t]he word ‘shall’ in a statute ... imposes a mandatory requirement unless a contrary legislative intent is apparent.”” *Id.* at 155 (quoting *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994) (quoting *Erection Co. v. Dep’t of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993))). The Legislature has not made any contrary intent apparent, nor has the Legislature taken action to change the treatment of criminal filing fees as mandatory obligations in the four years since the opinion in *State v. Lundy*, 176 Wn.App. 96, 308 P.3d 755 (2013), thus this Court presumes the Legislature approves of its interpretation of this statute. *See State v. Mathers*, 193 Wn.App. 913, 918, 376 P.3d 1163, *rev. denied*, 186 Wn.2d 1015, 380 P.3d 482 (2016) (stating “[w]here the legislature has had time to correct a court’s interpretation of a statute and has not done so, we presume the legislature approves of our interpretation.”).

This Court has heard and rejected the same argument Delgado makes in this case. This Court should abide its prior holdings and reject Delgado’s arguments. He has not made any showing of why our Courts’ prior decisions are incorrect and harmful. Delgado’s claim should be rejected.

**CONCLUSION**

Delgado has failed to show any error and the trial court should be affirmed in all respects.

DATED this 25 day of September, 2017.

Respectfully submitted:

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