

FILED  
Court of Appeals  
Division II  
State of Washington  
12/3/2018 8:00 AM

**NO. 50352-2-II**

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

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STATE OF WASHINGTON,

Respondent,

v.

**ANTONIO EPPS,**

Appellant.

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

The Honorable Grant Blinn, Judge

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**SUPPLEMENTAL BRIEF OF APPELLANT**

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**A. ASSIGNMENTS OF ERROR**

1. The trial court erred by ordering Mr. Epps to pay a \$200 criminal filing fee.

2. The trial court erred by ordering Mr. Epps to pay a \$100 DNA collection fee.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. The recent amendments to the statutes addressing legal financial obligations (LFOs) apply prospectively to all cases on direct appeal. Those amendments prohibit the imposition of a filing fee upon indigent criminal defendants. Must this court vacate the trial court order requiring Mr. Epps, who is indigent, to pay a \$200 criminal filing fee?

2. The recent amendments to the statutes addressing legal financial obligations (LFOs) apply prospectively to all cases on direct appeal. Those amendments prohibit the imposition of a DNA collection fee upon an offender whose DNA has already been collected pursuant to a previous felony conviction. Must this court vacate the trial court order requiring Mr. Epps to pay a \$100 DNA collection fee when his DNA has already been collected in the past?

**C. STATEMENT OF THE CASE**

Per page 2 of the Judgment and Sentence, Mr. Epps has adult felony criminal history in Washington (i.e., a felony conviction in 2010). (CP 23). Per page 3 of the Judgment and Sentence, the trial court ordered Mr. Epps to pay a DNA Database Fee of \$100 and a Criminal Filing Fee of \$200. (CP 24).

**D. ARGUMENT**

**THE WASHINGTON SUPREME COURT'S RECENT DECISION IN *RAMIREZ* REQUIRES THIS COURT TO VACATE THE ORDERS REQUIRING MR. EPPS TO PAY A CRIMINAL FILING FEE AND A DNA COLLECTION FEE.**

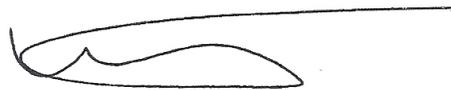
On September 20, 2018, the Washington Supreme Court decided in *State v. Ramirez*, --- Wn.2d ---, 426 P.3d 714 (September 20, 2018), that the amendments to the Legal Financial Obligations (LFO) statutes passed as HB 1783 applies prospectively to all cases pending on direct appeal. *Ramirez*, --- Wn.2d at ---, 426 P.2d at 722. Pursuant to those amendments, a trial court may no longer impose discretionary LFOs upon indigent persons. RCW 10.01.160(3). Likewise, a sentencing court may no longer order an indigent person to pay the \$200 criminal filing fee. Laws of 2018, ch. 269, § 17; *Ramirez*, --- Wn.2d at ---, 426 P.2d at 722. Finally, a sentencing court may not order an indigent person to pay a \$100 DNA

collection fee if s/he has already paid that fee previously because of a prior felony conviction. Laws of 2018, ch. 269, §§ 1, 18, 7; *Id.* Because he is indigent, the sentencing court is prohibited from ordering Mr. Epps to pay the \$200 criminal filing fee under HB 1783. *Id.* Also, because he has already had DNA collected as a result of a previous felony conviction, the sentencing court is prohibited from ordering him to pay the \$100 DNA collection fee. *Id.*

**E. CONCLUSION**

*Ramirez* applies prospectively to Mr. Epps' case, which is currently pending on direct appeal. *Id.* Accordingly, this Court must vacate the orders requiring Mr. Epps to pay a \$200 criminal filing fee and a \$100 DNA collection fee.

Respectfully submitted December 2, 2018.



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LISA E. TABBUT/WSBA 21344  
Attorney for Antonio Epps

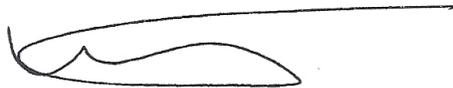
**CERTIFICATE OF SERVICE**

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Brief of Appellant to (1) Pierce County Prosecutor's Office, at [pcpatcecf@co.pierce.wa.us](mailto:pcpatcecf@co.pierce.wa.us); (2) the Court of Appeals, Division II; and (3) I mailed it to Antonio Epps, DOC#341499, Washington Corrections Center, PO Box 900, Shelton, WA 98584.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed December 2, 2018, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344  
Attorney for Antonio Epps, Appellant

**LAW OFFICE OF LISA E TABBUT**

**December 02, 2018 - 11:50 AM**

**Transmittal Information**

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**Appellate Court Case Title:** State of Washington, Respondent v Antonio D. Epps, Appellant  
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