

FILED
Court of Appeals
Division II
State of Washington
10/25/2018 12:34 PM
No. 50398-1-II

IN THE STATE OF WASHINGTON
COURT OF APPEALS DIVISION II

STATE OF WASHINGTON, Respondent

v.

CLIFF JONES, Appellant

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY
THE HONORABLE JUDGE GAROLD JOHNSON

SUPPLEMENTAL BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

A. The DNA Database Fee And Criminal Filing Fee Must Be Stricken.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

A. Must the legal financial obligations be stricken from Mr. Jones' judgment and sentence as they are prohibited by law?

II. STATEMENT OF FACTS

Appellant relies on the facts presented in the opening brief and adds facts in the argument section of this brief.

III. ARGUMENT

A. The DNA Database and Criminal Filing Fees Must Be Stricken.

The trial court found Mr. Jones indigent, and it was unlikely he would have the ability to pay legal financial obligations in the foreseeable future. RP 199. The court imposed a \$100 DNA database fee and a \$200 filing fee, which at the time of imposition were statutorily mandated. RP 199.

Under former RCW 36.18.020(2)(h), upon conviction of a plea of guilty, an adult criminal defendant was liable for a filing fee

of \$200. Under former RCW 43.43.7541, every sentence imposed for a crime specified in RCW 43.43.754 had to include a fee of \$100 for the DNA identification database.

House Bill 1783 modified Washington's system of legal financial obligations. *State v. Ramirez*, 426 P.3d 714, 2018 WL 4499761 (September 20, 2018). It amended former RCW 10.01.160(3) to expressly prohibit a court from imposing discretionary costs on indigent defendants. LAWS OF 2018 ch. 269 § 6 (3). The formerly mandatory criminal filing fee become a discretionary cost. LAWS of 2018 269 § 17 (2)(h).

The LAWS OF 2018 ch. 260 § 18 provides that crimes specified in RCW 43.43.754 must include a DNA collection fee of one hundred *unless the state has previously collected the offender's DNA as a result of a prior conviction.*

The statute's effective date was June 7, 2018. LAWS OF 2018 at ii (see (5)(a) setting out the effective date.). Our Supreme Court held that individuals whose case was not final at the statute's effective date were entitled to the benefit of the amended criminal filing fee statute. *State v. Ramirez*, 426 P.3d 714, 2018 WL 4499761 (September 20, 2018).

The trial court found Mr. Jones indigent. His case is on direct appeal and therefore, not final. He is entitled to the benefit of the amended statute, and the two-hundred-dollar criminal filing fee should be stricken.

Mr. Jones has a history of prior convictions in Washington state. CP 27. Therefore, his DNA is on file. He is entitled to the benefit of the amended statute, and the one-hundred-dollar fee should be stricken.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Jones respectfully asks this Court to vacate the discretionary legal financial obligations and remand with instructions to the trial court they be stricken.

Respectfully submitted this 25th day of October 2018.

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Cliff Jones, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Appellant's Supplemental Brief was sent by first class mail, postage prepaid on October 25, 2018 to the following:

Cliff Jones DOC /DOC#815938
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191 Constantine Way
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And by electronic service by prior agreement between the parties to: PCPatcecf@co.pierce.wa.us Pierce County Prosecutor's Office.

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October 25, 2018 - 12:34 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50398-1
Appellate Court Case Title: State of Washington, Respondent v. Cliff Jones, Appellant
Superior Court Case Number: 15-1-05135-2

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