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Court of Appeals  
Division II  
State of Washington  
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NO. 50577-1-II

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

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STATE OF WASHINGTON, Respondent

v.

QURAN DAYMAN ALI INGRAM, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-02575-7

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SUPPLEMENTAL BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. **Ingram is entitled to the benefit of the *Ramirez* decision, however the remedy is for remand to the trial court for determination of indigency pursuant to RCW 10.101.010(3)(a)-(c).**

### SUPPLEMENTAL STATEMENT OF THE CASE

The court sentenced Ingram on his convictions for Residential Burglary – Domestic Violence, and a misdemeanor Domestic Violence Court Order Violation. CP 364-88. At the time of sentencing, on May 1, 2017, House Bill 1783 had not yet been passed. The trial court found Ingram was presently indigent, but had a future ability to pay, and ordered \$500 victim assessment pursuant to RCW 7.68.035, \$100 Domestic Violence Assessment pursuant to RCW 10.99.080, a \$15 Violation of a DV protection order fee pursuant to RCW 26.50.110, a \$200 criminal filing fee, and a \$100 DNA collection fee pursuant to RCW 43.43.690. CP 369. The trial court did not enter a finding as to which subsection of RCW 10.101.010(3) applied to its finding of indigency, nor did the trial court enter a finding as to whether Ingram had previously had DNA collected pursuant to a prior conviction in this State.

## SUPPLEMENTAL ARGUMENT

### **I. Ingram is entitled to the benefit of the *Ramirez* holding, and the matter should be remanded for proper factual findings consistent with the requirements of the new LFO statutes.**

Amendments to several LFO statutes went into effect on June 7, 2018, while Ingram's case was still pending on appeal. LAWS OF 2018, ch. 269. Those amendments, collectively made law by House Bill 1783, apply prospectively to any cases that were still pending on appeal when the costs statutes were amended. *State v. Ramirez*, \_\_\_ Wn.2d \_\_\_, 426 P.3d 714, 722 (2018). Accordingly, under *Ramirez*'s findings, the now current version of RCW 10.01.160, and several other LFO statutes, should apply to Ingram. However, Ingram's assertion on the proper remedy is incorrect. While the State agrees with Ingram that he should get the benefit in the amendments brought forth to the LFO statutes by House Bill 1783 as required by *Ramirez, supra*, the State disagrees with Ingram's claim that this Court should strike nearly every cost, fee, and assessment that the trial court imposed in his case; instead, the trial court should consider whether Ingram falls within the statutory definition of "indigent" in order to determine what assessments, costs, and fees the trial court has authority to impose. Accordingly, the matter should be remanded to the trial court for

determination of indigency within the statutory definition applicable to the LFO statutes, and for a finding of whether Ingram has previously had DNA taken as a result of a prior conviction. Once the trial court has made these factual determinations, the trial court should strike or impose assessments, costs, and fees as authorized by statute.

Ingram's argument that the *Ramirez* decision should result in this Court striking nearly every cost, assessment, and fee imposed by the trial court is incorrect. *Ramirez* discussed House Bill 1783, the bill that amended several LFO statutes. *Ramirez*, 426 P.3d at 721-23. This bill does not affect all of the LFOs that may be imposed by a superior court, and the bill does not affect all of the LFOs imposed by the trial court in this case. House Bill 1783 worked to amend multiple statutes which now prohibit imposition of discretionary costs on an indigent defendant, prohibit imposition of the criminal filing fee on an indigent defendant, and provide that the DNA fee is no longer mandatory if the offender's DNA has been collected pursuant to a prior conviction. LAWS OF 2018, ch. 269, §§ 6(3), 17, 18. The main effect of House Bill 1783 was the amendment to RCW 10.01.160(3), which changed the standard of imposing costs on a criminal defendant from only imposing them if a defendant had an ability to pay now or in the future, to prohibiting imposition of costs if the defendant

meets the definition of “indigent” set forth in RCW 10.101.010(3)(a)-(c).<sup>1</sup> The only costs that RCW 10.01.160 applies to are those specially incurred by the state in prosecuting the defendant or in administering a deferred prosecution or for pretrial supervision. RCW 10.01.160(2). This statute also specifically includes costs imposed under RCW 10.46.190 within its application, but does not include fees for DNA, the criminal filing fee, the crime laboratory fee, the domestic violence fee, the domestic violence contact order violation fee, or the victim assessment fee. The holding in *Ramirez* does not support Ingram’s argument that nearly every cost and fee assessed in his case should be stricken, without remand, due to indigency.

At the sentencing hearing, neither party discussed, nor did the trial court discuss how or why Ingram was indigent. RP 334-61. Therefore we cannot know whether the trial court found Ingram indigent as defined in RCW 10.101.010(3)(a), (b), (c), or (d). Not every definition of indigency

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<sup>1</sup> “Indigent” is defined in RCW 10.101.010(3)(a)-(c) as:

(3) “Indigent” means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans’ benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;....

is covered by the amendments to the LFO statutes. Thus it is necessary for the trial court to make that factual determination of whether Ingram received public assistance of some sort so that he qualifies as indigent under RCW 10.101.010(3)(a), whether Ingram makes less than 125% of the federal poverty guidelines after taxes pursuant to RCW 10.101.010(3)(c), or whether Ingram was indigent as defined in RCW 10.101.010(3)(d). If Ingram is not indigent under RCW 10.101.010(3)(a), the assessments, fees, and costs are not prohibited, but instead there is different inquiry the trial court must make, and the decision whether to impose LFOs remains discretionary. If the trial court found Ingram indigent as defined by RCW 10.101.010(3)(a)-(c), then the trial court was prohibited from imposing certain costs. Thus it is important to know how and why the trial court concluded Ingram was indigent to determine whether the LFOs were property imposed.

Ingram discusses four separate fees in his supplemental brief. Those include: 1) criminal filing fee; 2) the DNA fee; 3) the Domestic Violence fee; and 4) the Domestic Violence no contact order violation fee. The State addresses the applicability of House Bill 1783 and *Ramirez, supra* for each fee in turn.

a. Criminal Filing Fee

House Bill 1783 amended RCW 36.18.020(2)(h), changing the criminal filing fee from a mandatory fee to a fee which shall be assessed unless the defendant is “indigent” as defined in RCW 10.101.010(3)(a)-(c). Therefore, when the superior court now sentences a defendant, the court shall impose the filing fee unless the defendant is “indigent” as defined in RCW 10.101.010(3)(a)-(c). With *Ramirez*’s holding that the changes included in House Bill 1783 shall apply prospectively, Ingram should have the benefit of this statutory amendment. However, the trial court has never found that Ingram meets the definition of “indigent” under RCW 10.101.010(3)(a)-(c). Therefore, the criminal filing fee should not be stricken, but rather the matter should be remanded for consideration of whether Ingram meets the definition of “indigent” contained in RCW 10.101.010(3)(a)-(c), and then whether imposition of the filing fee pursuant to Current RCW 36.18.020(2)(h) is proper.

Ingram’s argument that the criminal filing fee should be stricken because of the Supreme Court’s holding in *Ramirez* is incorrect. While the Court in *Ramirez* did strike the fees it found had been affected by House Bill 1783, that was only because the defendant had already been found to meet the definition of “indigent” pursuant to RCW 10.101.010(3)(a)-(c). *Ramirez*, 426 P.3d at 722 (stating “in this case, there is no question that

Ramirez satisfied the indigency requirements of RCW 10.101.010(3)(c).”). Therefore Ramirez was “indigent” under one of the applicable definitions, and the statutory amendment would prohibit the Court from imposing the criminal filing fee or any other fee imposed under RCW 10.01.160, thus remand for resentencing was unnecessary. The same is not true for Ingram. There has been no factual determination that he qualifies as “indigent” pursuant to the definition found in RCW 10.101.010(3)(a)-(c). That factual question is for the trial court to determine; therefore remand for resentencing on the criminal filing fee is necessary and appropriate. It would be improper to strike the filing fee in its entirety, prior to a factual finding that Ingram meets the definition of “indigent.”

b. DNA fee

House Bill 1783 did amend RCW 43.43.7541, which governs imposition of a DNA fee. The bill amended the statute to make the imposition of the fee contingent upon whether the State has previously collected the defendant’s DNA as a result of a prior conviction. RCW 43.43.7541. Ingram has not alleged his DNA has previously been collected, and this is not a finding the trial court made at sentencing below. Accordingly, this Court should remand the matter for the trial court to determine whether Ingram has previously had his DNA collected pursuant to a prior conviction in this State. If he has, the trial court should

strike the DNA fee. RCW 43.43.7541. If Ingram has not previously had his DNA collected, then the fee is mandatory and is not waivable due to indigency pursuant to RCW 43.43.7541.

c. Domestic Violence

Ingram also argues that the Domestic Violence assessment imposed pursuant to RCW 10.99.080 should be stricken from his judgment and sentence. House Bill 1783 did not amend RCW 10.99.080 and therefore the holding in *Ramirez* is inapplicable to this assessment.

The main LFO statute, RCW 10.01.160 does not govern every cost, fee, and assessment that may be imposed pursuant to a criminal conviction. The only costs that RCW 10.01.160 applies to are those specially incurred by the state in prosecuting the defendant or in administering a deferred prosecution or for pretrial supervision. RCW 10.01.160(2). This statute also specifically includes costs imposed under RCW 10.46.190 within its application, but does not include fees for DNA, the criminal filing fee, the crime laboratory fee, the domestic violence fee, the domestic violence contact order violation fee, or the victim assessment fee. *See State v. Howland*, 196 Wn.App. 1031, slip. op. 2 \*unpublished (Div. 1 2016)<sup>2</sup> (stating the domestic violence penalty is not a “cost” under RCW 10.01.160). Some of the statutes governing other fees, like the criminal filing fee, and the DNA fee, were amended pursuant to House Bill 1783 and thus *Ramirez* applies, but other fees, like the domestic

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<sup>2</sup> GR 14.1 allows for citation to unpublished opinions of the Court of Appeals; these opinions are not binding on this Court and may be given as much persuasive value as this Court chooses.

violence fee and the domestic violence no contact order fee were not amended by House Bill 1783.

RCW 10.99.080(1) provides that a court “may” impose up to a \$115 penalty for anyone convicted of a domestic violence crime. The language of “may” makes the fee non-mandatory. The statute also encourages the judge to seek victim input regarding the defendant’s ability to pay, his/her current financial obligations, family circumstances, and ongoing restitution. RCW 10.99.080(5). Read as a whole, this statute requires the trial court to assess the defendant’s ability to pay the penalty prior to assessing it. *See Howland, supra*, slip op. at 2, \*unpublished.<sup>3</sup> Ingram did not contest the trial court’s finding of his future ability to pay either at the time of sentencing, in his initial appellate brief, or in his supplemental brief to this Court. As House Bill 1783 and *Ramirez* do not affect the imposition of the Domestic Violence penalty pursuant to RCW 10.99.080, and Ingram has not assigned error to the trial court’s exercise of its discretion under this statute (and instead improperly claims it should be stricken due to the holding in *Ramirez*), this Court should not reconsider the trial court’s determination that Ingram could pay the domestic violence assessment in the future.

d. Domestic Violence No Contact Order fee

RCW 26.50.110(b)(ii) requires that a trial court impose a fine of \$15 for violation of a domestic violence protection order issued under that

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<sup>3</sup> GR 14.1 allows for citation to unpublished opinions of the Court of Appeals; these opinions are not binding on this Court and may be given as much persuasive value as this Court chooses.

chapter. This fee is mandatory, not subject to discretion, and is not waivable due to indigency. The imposition of this fee was not affected by the holding in *Ramirez*, it is not a “cost” that is covered in RCW 10.01.160, and the statute requiring the fee was not amended by House Bill 1783. Ingram was conviction of violating a domestic violence protection order contrary to RCW 26.50.110. CP 10, 155. Therefore, the trial court was required to impose the \$15 fee as required by RCW 26.50.110(b)(ii). The amendment to RCW 10.01.160(3) does not affect the mandatory nature of this fee, and the holding in *Ramirez* had not effect on the imposition of this fee. This Court should not order the trial court to strike or reconsider the imposition of the domestic violence no contact order violation fee.

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**CONCLUSION**

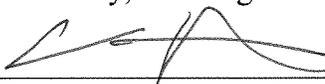
This Court should remand this matter to the trial court for determination of indigency pursuant to RCW 10.101.010(3). If the trial court finds Ingram is indigent pursuant to RCW 10.101.010(3)(a), (b), or (c), it should strike the \$200 criminal filing fee imposed upon Ingram's conviction. The trial court should also make a factual determination as to whether Ingram has previously had DNA collected pursuant to a prior conviction in this state. If he has, then the trial court should strike the DNA fee imposed at sentencing. This Court should not order the trial court to reconsider the domestic violence assessment or the no contact order violation fee as those fees were not affected by House Bill 1783 or *Ramirez*.

DATED this 19<sup>th</sup> day of November, 2018.

Respectfully submitted:

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## Transmittal Information

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