

FILED
Court of Appeals
Division II
State of Washington
9/14/2018 8:10 AM
NO. 50634-3-II

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

STATE OF WASHINGTON, Respondent

v.

MICKEY ROBERT GUAYANTE, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.97-1-01748-3

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

RACHAEL A. ROGERS, WSBA #37878
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

TABLE OF CONTENTS

RESPONSE TO ASSIGNMENT OF ERROR 1

STATEMENT OF THE CASE..... 1

ARGUMENT.....1

I. The State agrees this Court should grant Guayante’s request to have the trial court remit the \$7,500 cost imposed for attorney’s fees...... 1

CONCLUSION.....3

TABLE OF AUTHORITIES

Cases

<i>State v. Clark</i> , 191 Wn.App. 369, 362 P.3d 309 (2015)	2
<i>State v. Lundy</i> , 176 Wn.App. 96, 308 P.3d 755 (2013)	3

Statutes

RCW 10.01.160	2
RCW 10.01.170	2
RCW 10.82.010	2
RCW 10.82.070(1).....	2
RCW 36.10.020	2
RCW 43.43.754	2
RCW 43.43.7541	2
RCW 7.68.035(1)(a)	2
RCW 9.92.070	2
RCW 9.94A.753(4).....	2

RESPONSE TO ASSIGNMENT OF ERROR

- I. The State agrees this Court should grant Guayante's request to have the trial court remit the \$7,500 cost imposed for attorney's fees.

STATEMENT OF THE CASE

The State accepts Guayante's statement of the case.

ARGUMENT

This Court should grant Guayante's request to have only the \$7,500 cost imposed for attorney's fees remitted.

Guayante asks this Court to order the trial court to remit the cost of \$7,500 it imposed for attorney's fees in his case. As the State agreed in its response to Guayante's motion for discretionary review, the Court should order the trial court to remit the only discretionary cost it imposed.

When Guayante filed his motion for discretionary review with this Court, he did not itemize which costs from the judgment and sentence that he wanted remitted. In its response to his motion for discretionary review, the State argued not all costs were subject to remission and argued only the \$7,500 in attorney's fees qualified for remission. In his opening brief to this Court, Guayante only asks that this Court order the trial court to remit the cost for attorney's fees; he does not ask for remission of any

other costs. Accordingly, the State has no objection to this Court ordering the trial court to remit the attorney's fees.

RCW 10.01.160(4), the remission statute, pertains only to costs. Legal financial obligations are broadly described as "costs" when only some of them meet that definition. "Costs" include discretionary attorney's fees, but they do not include restitution, the mandatory victim assessment, or the mandatory DNA collection fee. In considering a motion to remit under RCW 10.01.160, the court must first determine which legal financial obligations are costs and which are non-costs. Fines and restitution are not costs. Regarding fines, see generally RCW 10.01.170, RCW 9.92.070, RCW 10.82.010, *State v. Clark*, 191 Wn.App. 369, 362 P.3d 309 (2015). Regarding restitution, it is not a cost and cannot be remitted under RCW 10.01.160(4). *See* RCW 9.94A.753(4). The victim assessment is a penalty rather than a cost. *See* RCW 7.68.035(1)(a). (See also RCW 10.82.070(1), distinguishing costs from penalties.) Likewise, the DNA collection fee is a fee, not a cost. Further, it is not subject to remission. *See* RCW 43.43.7541 (stating "[e]very sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law.") The criminal filing fee, like the DNA fee, is a fee rather than a cost. Although termed a criminal filing

fee, this fee only becomes due (and mandatory) after conviction. *See* RCW 36.10.020; *State v. Lundy*, 176 Wn.App. 96, 308 P.3d 755 (2013).

In this case, there is only one “cost” on the judgment and sentence. It is the \$7,500 court appointed attorney reimbursement. The State has no objection to this Court entering an order remitting the balance of the only cost that was levied against the defendant in this case—the \$7,500 attorney fee.

CONCLUSION

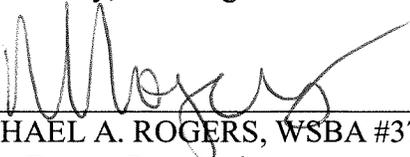
The State has no objection to Guayante’s request for remission of the cost of attorney’s fees imposed by the trial court.

DATED this 14th day of September, 2018.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


RACHAEL A. ROGERS, WSBA #37878
Senior Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

September 14, 2018 - 8:10 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50634-3
Appellate Court Case Title: State of Washington, Respondent v. Mickey R. Guayante, Appellant
Superior Court Case Number: 97-1-01748-3

The following documents have been uploaded:

- 506343_Briefs_20180914080947D2009748_3617.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Brief - Respondent.pdf

A copy of the uploaded files will be sent to:

- skylarbrettlawoffice@gmail.com
- valerie.skylarbrett@gmail.com

Comments:

Sender Name: Ashley Smith - Email: ashley.smith@clark.wa.gov

Filing on Behalf of: Rachael Rogers - Email: rachael.rogers@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

Address:
PO Box 5000
Vancouver, WA, 98666-5000
Phone: (360) 397-2261 EXT 5686

Note: The Filing Id is 20180914080947D2009748