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Court of Appeals
Division II
State of Washington
11/29/2018 11:03 AM

No. 50691-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent

v.

JOHN C. MILAM, Appellant

APPEAL FROM THE SUPERIOR COURT

OF GRAYS HARBOR COUNTY

THE HONORABLE JUDGE THOMAS A. COPLAND

SUPPLEMENTAL BRIEF OF APPELLANT

Marie J. Trombley, WSBA 41410
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I. ASSIGNMENT OF ERROR

The Criminal Filing Fee Must Be Stricken From The Judgment And Sentence.

ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Must the legal financial obligation of the criminal filing fee be stricken from the judgment and sentence?

II. STATEMENT OF FACTS

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

III. ARGUMENT

The Criminal Filing Fee Must Be Stricken From The Judgment and Sentence.

At the time of Mr. Milam's sentencing, the court did not conduct a *Blazina* inquiry, but was aware that Mr. Milam was on permanent disability. 5/8/17 RP 7. The court found Mr. Milam to be indigent. CP 32-34. The court imposed the mandatory criminal filing fee of two hundred dollars. 5/8/17 RP 7; CP 49.

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

At the time of sentencing, the record reflects Mr. Milam met the definition of indigent as defined by RCW 10.101.010(3)(a) as he was on permanent disability. However, when the trial court imposed sentence, it did not have the benefit of the amended statute which made the criminal filing fee a discretionary cost, or the prohibition against imposition of a discretionary fee on an indigent criminal defendant.

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 from the amended criminal filing fee statute. *Ramirez,* 426 P.3d 714.

Mr. Milam's case is on direct appeal and has not been set on the Court's calendar. He is entitled to the benefit of the amended statute, and the two hundred dollar criminal filing fee should be stricken from the judgment and sentence.

IV. CONCLUSION

Based on the preceding facts and authority, Mr. Milam respectfully asks this Court to vacate the criminal filing fee and remand to the trial court with instructions to strike the fee from the judgment and sentence.

Respectfully submitted this 29th day of November 2019.

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for John Milam, 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 November 29, 2018 to:

John Milam
505 Polk Street
Hoquiam, WA

And electronically served, by prior agreement between the parties, to the Grays Harbor County Prosecuting Attorney (at appeals@co.grays-harbor.wa.us).

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