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Court of Appeals
Division II
State of Washington
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No. 50731-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

GINA BUSH-FORD
Appellant.

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

The Honorable Carol Murphy
Cause No. 15-1-01419-0

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the imposition of mandatory legal financial obligations violates 42 U.S.C. § 407(a) where the trial court did not order that payment be made with Social Security Funds.
2. Whether the holding of State v. Ramirez partially resolves the issues raised in this matter.

B. STATEMENT OF THE CASE.

In addition to the State's original Brief of Respondent, the State now files this supplemental brief addressing the recent holding in State v. Catling, __ Wn.2d. __; __ P.3d __, (2019), Slip Op. No. 95794-1. The State relies on the Statement of the Case in its original brief.

C. ARGUMENT

1. The imposition of mandatory legal financial obligations does not violated the anti-attachment provision of the Social Security Act.

In State v. Catling, __ Wn.2d. __; __ P.3d __, (2019), Slip Op. No. 95794-1, the State Supreme Court definitively answered the question that Bush-Ford raises regarding whether imposition of mandatory legal financial obligations violates the anti-attachment provision of the Social Security Act. 42 U.S.C § 407(a). It does not. Catling, Slip Op. at 12. Because the court has not ordered

that Bush-Ford use Social Security to pay, as applied to this case RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 do not conflict with the anti-attachment provisions of the Social Security Act and therefore do not violate the Supremacy Clause. U.S. Const. art. VI, pt. II.

2. State v. Ramirez does apply to certain portions of this case as it did in State v. Caitling.

Legislative amendments to RCW 43.43.7541 and RCW 36.18.020(2)(h), which took effect on June 7, 2018, require that costs as described in RCW 10.01.160, which include the \$200 filing fee, “shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c), and that the \$100 DNA fee not be collected if the State has previously collected the offender’s DNA as a result of a prior conviction. Laws of 2018, ch. 269, § 17.

The amendments apply prospectively to defendants whose appeals were pending when the amendment was enacted. State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714, (2018). However, the “crime victim penalty assessment under RCW 7.68.035 may not be reduced, revoked, or converted to community restitution hours.” RCW 10.01.180(5). In Catling, the State Supreme Court noted that

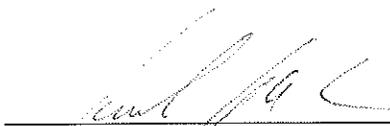
Ramirez partially resolved some of the legal financial obligations that were raised. Slip Op. at 4.

The State concedes that the same rationale applies here and does not oppose remand for the purpose of striking the \$200 filing fee. The record does not indicate whether or not Bush-Ford has previously provided a sample of her DNA; however, the State's records indicate that she has. Therefore, in the interest of expediency, the State does not oppose the entry of an order striking the \$100 DNA fee on remand. The \$500 crime victim's compensation fee should remain.

D. CONCLUSION.

In light of recent rulings of the State Supreme Court, the State does not oppose the entry of an order striking the \$200 filing fee and the \$100 DNA fee. The trial court's imposition of the \$500 crime victim's compensation fee did not violate the anti-attachment provisions of the Social Security Act or the Supremacy Clause. 42 U.S.C. § 407(a); U.S. Const. art. VI, pt. II.

Respectfully submitted this 30th day of April, 2019.



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CERTIFICATE OF SERVICE

I certify that I served a copy of the Supplemental Brief of Respondent on the date below as follows:

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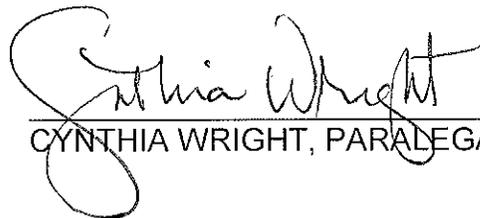
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 30th day of APRIL, 2019, at Olympia, Washington.



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THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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