

FILED
Court of Appeals
Division II
State of Washington
11/15/2018 9:45 AM
NO. 50769-2

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ELIZABETH MCVEY, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Gretchen Leanderson

No. 15-1-00033-2

Supplemental Brief of Respondent

MARK LINDQUIST
Prosecuting Attorney

By
MAUREEN GOODMAN
Deputy Prosecuting Attorney
WSB # 34012

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this court remand for the criminal filing fees to be stricken?
2. Should this court remand for the DNA collection fee to be stricken under cause number 15-1-00033-2?

B. STATEMENT OF THE CASE.

The statement of facts is contained in the State's response brief and incorporated here by reference.

C. ARGUMENT.

1. THIS COURT SHOULD ORDER THAT THE IMPOSITION OF THE CRIMINAL FILING FEE BE STRIKEN.

In these consolidated cases, the trial court found the defendant to be indigent. CP 181 – 182, CP 223 – 224, CP 69 - 70. The defendant's direct appeals are still pending. House Bill 1783, effective March 27, 2018, prohibits the imposition of the \$200.00 filing fee on defendants who were indigent at the time of sentencing. As the court held in *State v. Ramirez*, ___ Wn.2d ___, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that the criminal filing fee of \$200.00 that was imposed in

each of these cases should be stricken. The State further agrees that House Bill 1783 eliminates any interest accrual on nonrestitution legal financial obligations.

The State acknowledges that this defendant was found indigent by the sentencing court, and therefore the \$200.00 criminal filing fees should be stricken.

2. THIS COURT SHOULD ORDER THAT THE IMPOSITION OF THE DNA COLLECTION FEE BE STRIKEN.

The appellant in these case also appeals the imposition of a \$100 DNA-collection fee in the judgment and sentence under cause number 15-1-00033-2, asserting that a DNA sample was previously submitted to the state as a result of a prior qualifying conviction. A legislative amendment to RCW 43.43.7541, which took effect June 7, 2018, requires imposition of the DNA-collection fee “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The amendment applies to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, ___ Wn.2d ___, 426 P.3d 714, (2018).

The State’s records show that this appellant pled guilty to a felony under cause number 16-1-04777-9 on June 20, 2017. The court ordered that the appellant’s DNA be collected and imposed the \$100 DNA

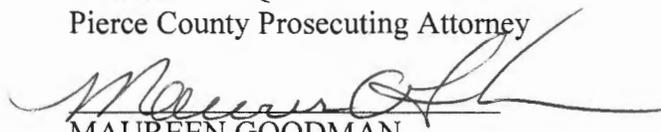
collection fee. The defendant was sentenced under cause number 15-1-00033-2 on June 23, 2017 and a second DNA collection fee was imposed. The appellant's DNA has been collected and is on file with the Washington State Patrol Crime Lab. The State respectfully asks this Court to remand this case to the superior court to amend the judgment and sentence to strike the imposition of the \$100 DNA collection fee imposed under 15-1-00033-2.

D. CONCLUSION.

This court should remand for the trial court to strike the imposition of the \$200.00 filing fees on all three consolidated cases, the imposition of the \$100 DNA collection fee imposed under cause number 15-1-00033-2, and the interest accrual provisions and affirm all other issues as stated in the State's response briefs.

DATED: November 14, 2018

MARK LINDQUIST
Pierce County Prosecuting Attorney



MAUREEN GOODMAN
Deputy Prosecuting Attorney
WSB # 34012

Certificate of Service:

EFile

The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1/15/18 *[Signature]*
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

November 15, 2018 - 9:45 AM

Transmittal Information

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Tacoma, WA, 98402
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