

FILED
Court of Appeals
Division II
State of Washington
12/13/2018 4:43 PM

No. 50826-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

JOSE MORENO-HERNANDEZ,

Appellant.

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

SUPPLEMENTAL BRIEF OF APPELLANT

KATE BENWARD
Attorney for Appellant

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TABLE OF CONTENTS

A. ARGUMENT 1

The legislature recently changed the law as to legal financial obligations. Under *Ramirez*, these changes apply to cases on appeal. Applying the law in effect, this Court should strike the \$200 in legal financial obligations on Mr. Moreno-Hernandez..... 1

B. CONCLUSION 2

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

State v. Ramirez, 426 P.3d 714 (2018)..... 1

Statutes

LAWS OF 2018, ch. 269§ 6(3)..... 1

LAWS OF 2018, ch. 269, § 17(2)(h).....1

A. ARGUMENT

The legislature recently changed the law as to legal financial obligations. Under *Ramirez*, these changes apply to cases on appeal. Applying the law in effect, this Court should strike the \$200 in legal financial obligations on Mr. Moreno-Hernandez.

In 2018, the law on legal financial obligations changed. Now, it is categorically impermissible to impose any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). This includes the previously mandatory \$200 filing fee. LAWS OF 2018, ch. 269, § 17(2)(h).

Our Supreme Court recently held that these changes apply prospectively to cases on appeal. *State v. Ramirez*, 426 P.3d 714, 722 (2018). In other words, the statute applies to cases pending on appeal even though the statute was not in effect at time of the trial court's decision to impose legal financial obligations. *Id.* Applying the change in the law, *Ramirez* ruled the trial court impermissibly imposed discretionary legal financial obligations, including the \$200 criminal filing fee. *Id.*

Here, Mr. Moreno-Hernandez is indigent. CP 314-319. The trial court imposed the \$200 filing fee. CP 159. As in *Ramirez*, the change the law applies to Mr. Moreno-Hernandez's case because it is on direct appeal and not final. Accordingly, this Court should strike the \$200 filing fee.

If the Court reverses Mr. Moreno-Hernandez's conviction and orders a new trial, the foregoing argument is moot. Otherwise it is not, and this Court should order the \$200 in legal financial obligations stricken.

B. CONCLUSION

Unless this Court reverses Mr. Moreno-Hernandez's conviction and orders a new trial, this Court should instruct the trial court to strike the \$200 filing fee in the judgment and sentence.

Respectfully submitted this 13th day of December 2018.

/s Kate Benward
Kate Benward – WSBA #43651
Washington Appellate Project (#91052)
Attorney for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 50826-5-II
)	
JOSE MORENO-HERNANDEZ,)	
)	
Appellant.)	

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SIGNED IN SEATTLE, WASHINGTON THIS 13TH DAY OF DECEMBER, 2018.



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