

FILED
Court of Appeals
Division II
State of Washington
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NO. 50892-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

ANDRE VARGAS,

Appellant.

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

The Honorable Shelly Speir, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

1. The \$200 criminal filing fee should be stricken from the judgment and sentence based on appellant Andre Vargas's indigency.

Issue Pertaining to Supplemental Assignment of Error

Under the Washington Supreme Court's recent decision in State v. Ramirez, __ Wn.2d __, 426 P.3d 714 (2018), must the \$200 criminal filing fee be stricken from the judgment and sentence, where Vargas was indigent at the time of sentencing?

B. SUPPLEMENTAL ARGUMENT

THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN FROM THE JUDGMENT AND SENTENCE BASED ON VARGAS'S INDIGENCY.

In Ramirez, 426 P.3d at 717, 722, the Washington Supreme Court discussed and applied House Bill (HB) 1783, which took effect on June 7, 2018 and applies prospectively to cases on direct appeal. HB 1783 amended RCW 10.01.160(3) to mandate: "The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c)." Laws of 2018, ch. 269, § 6. The bill also amended RCW 36.18.020(2)(h) to prohibit imposing the \$200 criminal filing fee on indigent defendants. Laws of 2018, ch. 269, § 17. Under RCW 10.101.010(3)(c), a person is "indigent" if he or she receives an annual income after taxes of 125 percent or less of the current federal poverty level.

This amendment “conclusively establishes that courts do not have discretion to impose such LFOs” on individuals “who are indigent at the time of sentencing.” Ramirez, 426 P.3d at 723. In Ramirez, the court struck discretionary LFOs and the \$200 criminal filing fee because Ramirez was indigent at the time of sentencing, i.e., his income fell below 125 percent of the federal poverty guideline. Id.

At sentencing, the trial court ordered Vargas to pay the previously mandatory \$200 criminal filing fee. CP 79. The trial court, however, found Vargas to be indigent and allowed him to seek appellate review at public expense. CP 67-69 (motion for indigency), 70-71 (order of indigency). The record therefore demonstrates Vargas was indigent at the time of sentencing. HB 1783 applies prospectively to Vargas because his direct appeal is still pending. As such, the sentencing court improperly imposed the \$200 criminal filing fee, which may not be imposed on indigent defendants. Ramirez, 426 P.3d at 723.

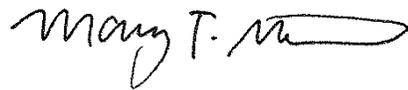
C. CONCLUSION

Pursuant to Ramirez, this Court should remand for the trial court to strike the \$200 criminal filing fee from the judgment and sentence.

DATED this 28th day of November, 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Mary T. Swift", with a horizontal line drawn through the end of the signature.

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