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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**CLARISSA ALISHA LOPEZ,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Supplemental Brief**

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**I. ISSUE**

- A. Did the trial court improperly impose discretionary legal financial obligations on an indigent defendant due to the retroactivity of the 2018 legislative amendments to the legal financial obligations statutes?

**II. STATEMENT OF THE CASE**

The State relies on the Statement of the Case it submitted in its original response brief for the underlying facts and procedures. This Supplemental Response Brief is in response to the Court's December 4, 2018 ruling by Commissioner Schmidt accepting Lopez's Supplemental Brief and calling for the State to file its Supplemental Response Brief within 30 days. This briefing is solely in regards to the 2018 amendments to the legal financial obligations statutes and their effect the trial court's imposition of certain legal financial obligations upon Lopez.

The State will provide further substantive facts in its supplemental brief below as required.

### III. ARGUMENT

#### A. THE RECORD DOES NOT SUPPORT LOPEZ'S ASSERTION SHE IS INDIGENT PER SE, BUT RATHER INDIGENT ONLY FOR OBTAINING COUNSEL, THEREFORE, THE LEGAL FINANCIAL OBLIGATIONS WERE PROPERLY IMPOSED.

Lopez asserts she was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative amendments to the legal financial obligation statutes enacted under Engrossed Second Substitute House Bill 1783, eliminate all discretionary legal financial obligations and the DNA fee. See Supp. Brief of Appellant 1-4. While the legal financial obligation reforms eliminate interest, the DNA fee for previously convicted defendants who have had the sample already taken, and many other useful reforms in regards to eliminating fees for indigent defendants, all indigent defendants are not created equal. Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20; RCW 10.01.160(3); RCW 10.101.010. It is not clear from this record Lopez falls into the category of indigent defendant who would qualify under a “per se” status to eliminate all discretionary legal financial obligations. RP (9/25/17) 16-21.

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747-

49, 426 P.3d 714 (2018). Therefore, Lopez receives the benefit of the amendments that apply to her, which in Lopez's case is only the DNA provision. Pursuant to RCW 43.43.7541, effective June 7, 2018, and retroactively applied to Lopez, the imposition of the DNA-collection fee is required "unless the state has previously collected the offender's DNA as a result of a prior conviction." The State's records show Lopez's DNA was previously collected and is on file with the Washington State Patrol Crime Lab.<sup>1</sup> 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 fee.

Lopez asserts she is indigent for counsel purposes because her annual income is 125 percent or less of the current federally established poverty level. Brief of Appellant 2-3. The record on this is not clear. Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent "per se" under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a

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<sup>1</sup> The State acknowledges the record on appeal is lacking this information, but the undersigned deputy prosecutor can attest if this case is remanded to strike the fee, this information would be put into the trial record.

defendant to pay costs. RCW 10.01.160(3).

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c).

There is no evidence in the record Lopez meets this criteria of indigence. Simply having court appointed counsel only falls under RCW 10.101.010(3)(d), not the subsection that exempts a defendant from paying the filing fee or paying the cost of his court appointed counsel. Lopez's recitation of her work history in her supplemental brief minimizes what she actually told the court at sentencing. Supp. Brief of Appellant 1; RP (9/25/17) 19. The trial court asked Lopez to tell it a little bit about what Lopez had done in the past for work. RP (9/25/17) 19. Lopez responded, "I've worked at Kohlers. I was a manager at McDonald's for a few years. And I've worked at two tree

farms.” *Id.* At the time of sentencing Lopez only had herself to support. *Id.* There was nothing in the record that showed, after taxes, she had an annual income of 125 percent or less of the federally established poverty level.

If this Court accepts Lopez’s argument that being sentenced to 80 months in prison makes her indigent, this would literally make every person sentenced to prison indigent. This cannot be the intent of the legislative reform, nor is it the way the statute reads. RCW 10.01.160(6); RCW 10.101.010(3). Further, being pregnant does not make a person indigent, as Lopez seems to imply in her briefing.

The State acknowledges Lopez had considerable self-reported debt, approximately \$30,000. RP (9/25/17) 20. The trial court took Lopez’s considerable debt into consideration when it did not impose the \$3,000 drug fine and the \$100 lab fee. The trial court correctly found Lopez was able to pay her \$700 in attorney fees and ordered her also to pay the \$200 filing fee. *Id.*

Therefore, this Court should affirm the trial court’s imposition of the filing fee and recoupment of court appointed attorney fees. This Court should remand the case back to the trial court for it to strike the DNA fee, as Lopez’s DNA had already been provided.

**IV. CONCLUSION**

Lopez is not indigent per se, and therefore the trial court correctly imposed the criminal filing fee and court appointed attorney fees. This Court should remand this matter back for the trial court to strike the DNA fee, as Lopez has previously been convicted of a felony and has had her sample taken.

RESPECTFULLY submitted this 7<sup>th</sup> day of December, 2018.

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A handwritten signature in blue ink, appearing to be 'SIB', is written above a horizontal line.

by: \_\_\_\_\_  
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**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

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