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Court of Appeals  
Division II  
State of Washington  
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No. 51118-5-II

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

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STATE OF WASHINGTON, Respondent

v.

ERIC LEMUS, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF PIERCE COUNTY  
THE HONORABLE TIMOTHY L. ASHCRAFT

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SUPPLEMENTAL BRIEF OF APPELLANT

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Marie J. Trombley, WSBA 41410  
PO Box 829  
Graham, WA  
253-445-7920

## TABLE OF CONTENTS

I.	ASSIGNMENT OF ERROR.....	1
II.	STATEMENT OF FACTS.....	1
III.	ARGUMENT.....	1
	A.    The Criminal Filing Fee Must Be Stricken From The Judgment and Sentence.....	1
IV.	CONCLUSION.....	3

## TABLE OF AUTHORITIES

### *Washington State Cases*

<i>State v. Ramirez</i> , 426 P.3d 714, 2018 WL 4499761 (September 20, 2018) .....	2
--	---

### *Statutes*

RCW 10.01.160 .....	2
RCW 36.18.020 .....	2

### *Other Authorities*

House Bill 1783.....	2
LAWS of 2018 ch. 269 § 17 .....	2
LAWS OF 2018 ch. 269 § 6 .....	2

## I. ASSIGNMENT OF ERROR

- A. The Criminal Filing Fee Must Be Stricken From The Judgment and Sentence.

## ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

- A. Must the legal financial obligation for the criminal filing fee be stricken from the judgment and sentence?

## II. STATEMENT OF FACTS

Appellant relies on the facts presented in the opening brief and adds facts as necessary in the argument section of this brief.

## III. ARGUMENT

- A. The Criminal Filing Fee Must Be Stricken From The Judgment and Sentence.

At sentencing, the trial court waived all nonmandatory legal fees and imposed only the mandatory DNA collection and criminal filing fees as part of the judgment and sentence. CP 144; RP 684. The court did not conduct a complete *Blazina* inquiry but was aware that Mr. Lemus may have seasonal work as a roofer when released from incarceration and that he had a newborn child. RP 674. The court signed an order of indigency for purposes of an appeal. CP 156-57.

Under former RCW 36.18.020(2)(h), upon conviction of a plea of guilty, an adult criminal defendant was liable for a filing fee of \$200. House Bill 1783 modified Washington's system of legal financial obligations. *State v. Ramirez*, 426 P.3d 714, 2018 WL 4499761 (September 20, 2018). It amended former RCW 10.01.160(3) to expressly prohibit a court from imposing discretionary costs on defendants who are indigent at the time of sentencing. LAWS OF 2018 ch. 269 § 6(3). The cost of the criminal filing fee which formerly was mandatory has become a discretionary cost. LAWS of 2018 ch. 269 § 17(2)(h).

The statute's effective date was June 7, 2018. LAWS OF 2018 at ii (see (5)(a) setting out the effective date.). Our Supreme Court held that individuals whose case was not final at the statute's effective date were entitled to the benefit from the amended criminal filing fee statute. *Ramirez*, 426 P.3d 714.

Here, at the time the trial court imposed sentence, it did not have the benefit of the amended statute. The trial court found Mr. Lemus indigent at the time of sentencing. His case is on direct appeal and therefore, not final. He is entitled to the benefit of the amended statute, and the two hundred dollar criminal filing fee should be stricken from the judgment and sentence.

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Lemus respectfully asks this Court to vacate the criminal filing fee and remand to the trial court with instructions that the fee be stricken from the judgment and sentence.

Respectfully submitted this 29<sup>th</sup> day of November 2018.

*Marie Trombley*

Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA 98338

## CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on November 29, 2018, I mailed to the following US Postal Service first class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Supplemental Brief of Appellant to the following: Pierce County Prosecuting Attorney at [pcpatcecf@co.pierce.wa.us](mailto:pcpatcecf@co.pierce.wa.us) and to Eric Lemus/DOC#403629, Monroe Correctional Complex – TRU, PO Box 888, Monroe, WA 98272

*Marie Trombley*

Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA 98338

**MARIE TROMBLEY**

**November 29, 2018 - 10:55 AM**

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Address:  
PO Box 829  
Graham, WA, 98338  
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