

FILED
Court of Appeals
Division II
State of Washington
9/27/2018 9:45 AM

NO. 51277-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

JENNIFER BROCKETT,

Appellant.

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

The Honorable Gary Bashor, Judge
The Honorable Stephen Warning, Judge
The Honorable Michael Evans, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

JENNIFER WINKLER
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>SUPPLEMENTAL ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Supplemental Assignments of Error</u>	1
B. <u>SUPPLEMENTAL STATEMENT OF THE CASE</u>	1
C. <u>SUPPLEMENTAL ARGUMENTS</u>	2
1. THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN UNDER <i>STATE V. RAMIREZ</i>	2
2. THE \$100 DNA FEE SHOULD ALSO BE STRICKEN.....	5
D. <u>CONCLUSION</u>	6

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Blank
131 Wn.2d 230, 930 P.2d 1213 (1997)..... 4

State v. Blazina
182 Wn.2d 827, 344 P.3d 680 (2015)..... 2

State v. Ramirez
__ Wn.2d __, __ P.3d __, 2018 WL 4499761 (Sept. 20, 2018).passim

RULES, STATUTES AND OTHER AUTHORITIES

House Bill 1783 2, 3, 4, 5

Laws of 2018, ch. 269, § 1 3

Laws of 2018, ch. 269, § 6 2, 3, 4

Laws of 2018, ch. 269, § 7 3

Laws of 2018, ch. 269, § 17 3

Laws of 2018, ch. 269, § 18 3, 5

RCW 7.68.035 1

RCW 10.01.160 3

RCW 10.101.010 4, 5

RCW 36.18.020 1, 3

RCW 43.43.754 5

RCW 43.43.7541 1, 5

A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. The criminal filing fee should be stricken under the Supreme Court's recent decision in State v. Ramirez.¹

2. For similar reasons, the DNA fee should be stricken.

Issues Pertaining to Supplemental Assignments of Error

1. Under the Supreme Court's recent Ramirez decision, should the \$200 criminal filing fee be stricken?

2. Should the \$100 DNA fee also be stricken as well?

B. SUPPLEMENTAL STATEMENT OF THE CASE

After sentencing appellant Jennifer Brockett to a lengthy term of imprisonment, the trial court ordered that she pay \$800 in legal financial obligations including the \$500 crime victim assessment,² a \$100 DNA database fee,³ and a \$200 criminal filing fee.⁴ CP 70.

Brockett appealed. CP 76. She submitted a declaration indicating he had no source of income. CP 77-79. The court found her indigent and

¹ State v. Ramirez, __ Wn.2d __, __ P.3d __, 2018 WL 4499761 (Sept. 20, 2018).

² RCW 7.68.035 authorizes crime victim penalty assessments. In relevant part, RCW 7.68.035(1)(a) provides: "The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor."

³ RCW 43.43.7541

⁴ RCW 36.18.020

ruled that she was entitled to counsel on appeal at public expense. CP 80-81.

C. SUPPLEMENTAL ARGUMENTS

1. THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN UNDER *STATE V. RAMIREZ*.

Brockett is indigent under the applicable statutory criteria, and the trial court so found. The criminal filing fee should be stricken under the recent Ramirez decision.

In Ramirez, an appellant challenged discretionary legal financial obligations (LFOs) on the grounds that the trial court had not engaged in an appropriate inquiry regarding his ability to pay under State v. Blazina.⁵ State v. Ramirez, ___ Wn.2d, ___ P.3d ___, 2018 WL 4499761, at *2 (Sept. 20, 2018).

The Supreme Court agreed, setting forth detailed instructions regarding the appropriate inquiry. Id. at *4-6.

But, based on watershed statutory amendments that took effect while Ramirez’s appeal was pending, the Supreme Court ultimately granted relief on statutory grounds.

The Court explained that Laws of 2018, ch. 269, § 6(3) (“House Bill 1783”) made substantial modifications to several facets of

⁵ State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)

Washington’s LFO system. In doing so, the legislature “address[ed] some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction.” Ramirez, 2018 WL 4499761 at *6.

For example, House Bill 1783 eliminates interest accrual on the nonrestitution portions of LFOs, establishes that the DNA database fee is no longer mandatory if the offender’s DNA has been collected because of a prior conviction, and provides that a court may not sanction an offender for failure to pay LFOs *unless* the failure to pay is willful. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, §§ 1, 18, 7.)

It amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, § 6(3)). It also prohibits imposing the \$200 filing fee on indigent defendants. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, § 17).⁶

⁶ RCW 36.18.020(2)(h) now provides that

Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).

As Ramirez further noted, a trial 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).” Ramirez, 2018 WL 4499761 at *7 (quoting Laws of 2018, ch. 269, § 6(3)). Thus, indigency may be established by three objective criteria. “Under RCW 10.101.010(3)(a) through (c), a person is ‘indigent’ if the person receives certain types of public assistance, is involuntarily committed to a public mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level.” Ramirez, 2018 WL 4499761 at *7.⁷

Crucially to this case, the Court also held that the House Bill 1783 amendments applied prospectively to cases not yet final on appeal. Ramirez, 2018 WL 4499761 at *7-8 (citing State v. Blank, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997)).

The Supreme Court concluded that the trial court impermissibly imposed discretionary LFOs, as well as the \$200 criminal filing fee, on Ramirez. The Court remanded for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs. Ramirez, 2018 WL 4499761 at *8.

⁷ If none of these criteria apply, only then must the trial court engage in an individualized inquiry into current and future ability to pay. Ramirez, 2018 WL 4499761 at *7.

Here, the record indicates Brockett is indigent under RCW 10.101.010(3). And House Bill 1783 applies prospectively to her case. Consistent with Ramirez, this Court should remand for the \$200 filing fee to be stricken.

2. THE \$100 DNA FEE SHOULD ALSO BE STRICKEN.

This Court should also strike the DNA fee under House Bill 1783 and Ramirez.

RCW 43.43.7541, the statute controlling the imposition of a DNA fee, was amended under House Bill 1783.

The statute now provides that

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender's DNA as a result of a prior conviction.*

RCW 43.43.7541 (emphasis added.); Laws of 2018, ch. 269, § 18.

Brockett has prior felony convictions. CP 64. Clearly, the State has previously collected her DNA. Because her case is not yet final, the new statute applies. Ramirez, 2018 WL 4499761 at *7-8. And under Ramirez, the DNA fee must be considered a discretionary LFO, which may not be imposed on an indigent defendant. Id. at *6-7. Thus, the DNA fee should be stricken.

D. CONCLUSION

This Court should remand for the \$200 criminal filing fee and the \$100 DNA fee to be stricken.

DATED this 27th day of September, 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER WINKLER

WSBA No. 35220

Office ID No. 91051

Attorney for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

September 27, 2018 - 9:45 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51277-7
Appellate Court Case Title: State of Washington, Respondent v. Jennifer A. Brockett, Appellant
Superior Court Case Number: 15-1-01194-1

The following documents have been uploaded:

- 512777_Briefs_20180927094132D2963275_4461.pdf
This File Contains:
Briefs - Appellants - Modifier: Supplemental
The Original File Name was SBOA 51277-7-II.pdf

A copy of the uploaded files will be sent to:

- appeals@co.cowlitz.wa.us
- nguyenm@co.cowlitz.wa.us
- rampersadr@nwattorney.net

Comments:

Copy mailed to: Jennifer Brockett, 861973 Washington Corrections Center for Women 9601 Bujacich Rd NW Gig Harbor, WA 98332

Sender Name: John Sloane - Email: Sloanej@nwattorney.net

Filing on Behalf of: Jennifer M Winkler - Email: winklerj@nwattorney.net (Alternate Email:)

Address:
1908 E. Madison Street
Seattle, WA, 98122
Phone: (206) 623-2373

Note: The Filing Id is 20180927094132D2963275