FILED
Court of Appeals
Division II
State of Washington
11/9/2018 2:45 PM

NO. 51344-7-II

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

STATE OF WASHINGTON
v.

Richard Bagley,

Appellant.

ON APPEAL FROM LEWIS COUNTY SUPERIOR COURT

The Honorable J. Andrew Toynbee, Judge

APPELLANT'S SUPPLEMENTAL BRIEF

LISE ELLNER
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A. IDENTITY OF APPELLANT

Richard Bagley asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. DECISION

Appellant requests review of the trial court's 2018 motion challenging appellant's motion to remit legal financial obligations (LFOs).

C. SUPPLEMENTAL ISSUES PRESENTED FOR REVIEW

1. The amendment to RCW 43.43.7541 applies to this case, but due to the timing of the case, this issue was unavailable until the State Supreme Court amended RCW 43.43.7541.

2. This court should vacate the imposition of the criminal filing fee and the DNA fee pursuant to the newly amended RCW 43.43.7541 and under *State v. Ramirez*, __ Wn.2d __, __ P.3d __, 2018 WL 4499761 at *6 (September 20, 2018).

D. STATEMENT OF THE CASE

A. Because the government has previously collected a DNA fee from appellant, this Court should order the fee stricken from the judgment and sentence.

At sentencing, the court imposed a DNA fee of $100, previously a discretionary legal financial obligation, and a criminal filing fee of $200. CP 48. Because appellant has previously been convicted of a felony, DNA has previously been collected. CP 39; see RCW 43.43.7541 (mandatory DNA fee upon felony conviction).

Since appellant was sentenced, the legislature amended RCW 43.43.7541. This statute now only allows the government to collect a DNA fee one time. In this case, the trial court authorized a second collection contrary to RCW 43.43.7541.

The legislature's decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. Here, appellant's case was pending on appeal /or initiated after the effective date of RCW 43.43.7541. *Ramirez*, 2018 WL 4499761 at *6 ("We hold that House Bill 1783 applies prospectively to Ramirez because the statutory amendments pertain to costs imposed on criminal defendants following conviction, and Ramirez's case was pending on

direct review and thus not final when the amendments were enacted.”).

Accordingly, the DNA fee imposed must be stricken from the judgment and sentence.

B. The legislature no longer permits imposition of a criminal filing fee in indigent cases.

The Legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the $200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

The legislature’s decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. Here, appellant’s case was pending on appeal /or initiated after the effective date of RCW 43.43.7541. *Ramirez*, 2018 WL 4499761 at *6. Accordingly, the criminal filing fee imposed must be stricken from the judgment and sentence.

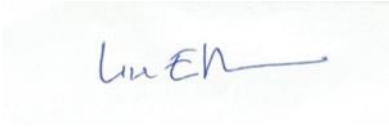
E. CONCLUSION

For the foregoing reasons, Richard Bagley asks this court to remove the DNA fee and the criminal filing fee from the judgment and sentence.

DATED this 9th day of November 2018.

Respectfully submitted,

LAW OFFICES OF LISE ELLNER



_____
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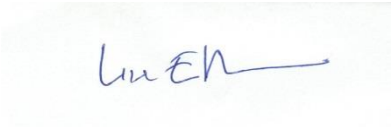
I, Lise Ellner, a person over the age of 18 years of age, served the Lewis County Prosecutor's Office appeals@lewiscountywa.gov and sara.beigh@lewiscountywa.gov and Richard Bagley, 2301 10th Ave., Milton, WA 98354 a true copy of the document to which this certificate is affixed on November 9, 2018. Service was made by electronically to the prosecutor and Richard Bagley by depositing in the mails of the United States of America, properly stamped and addressed.



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November 09, 2018 - 2:45 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	51344-7
Appellate Court Case Title:	State of Washington, Respondent v. Richard J. D. Bagley, Appellant
Superior Court Case Number:	17-1-00090-1

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