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Court of Appeals
Division II
State of Washington
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NO. 51354-4-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ANDRE JONES TAYLOR, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Garold E. Johnson

No. 14-1-04131-6

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this Court remand to Superior Court to enter an order dismissing defendant's robbery in the first degree conviction with prejudice as it is barred by the statute of limitations?
2. Should this Court remand to strike the criminal filing fee and DNA collection fee?

B. STATEMENT OF THE CASE.

1. PROCEDURE

Andre Jones Taylor, hereinafter "defendant," was charged by amended information with one count each of rape in the first degree, rape in the second degree, and robbery in the first degree. CP 28-29.¹ He was alleged to have committed his crimes in 2003. *Id.* Following a bench trial defendant was convicted as charged. CP 48-54.

2. FACTS²

On July 19, 2003, victim C.A. went drinking at the Western R on Puyallup Avenue in Tacoma and became extremely intoxicated. CP 48-54

¹ Defendant was originally charged under two cause numbers for separate incidents. The amended information consolidated the two cases into one. CP 28-29.

² The State's factual information is taken directly from the trial court's Findings of Fact and Conclusions of Law for the bench trial. CP 48-54. They are referenced by CP 48-54 followed by the Finding of Fact (FoF) number.

at FoF 7. She went to an area in the rear of the bar in an attempt to sober up. *Id.* Unfortunately, she was coaxed into a vehicle and taken to the McKinley Park area. *Id.* There, she was hit several times in the face and began to see stars. *Id.*

Defendant engaged in sexual intercourse with C.A. by means of forcible compulsion by repeatedly striking her in the head. CP 48-54 at FoF 6. During the rape, defendant threatened to use a firearm. *Id.* The victim was eventually found with her pants and shoes missing and crying hysterically. *Id.* She repeatedly indicated she was afraid her attacker would return. *Id.* She was screaming that she had been raped. CP 48-54 at FoF 9. Police and medical aid responded and found C.A. wearing only a shirt and underwear and wrapped in a blanket provided by a neighbor. *Id.*

C.A. was taken by ambulance to a hospital where a medical exam occurred which included biological samples taken from her vaginal and rectal areas. CP 48-54 at FoF 6. The sexual assault nurse conducting the rape exam found leaves and other debris in her hair and clothes consistent with being on the ground. CP 48-54 at FoF 10. The nurse noted bruising all over C.A.'s body and cuts to her head. *Id.* She told the nurse she had been raped by an unknown black male and hit in the head. *Id.* C.A. also stated the male had penetrated her vaginal area. *Id.*

The samples from the vaginal swabs were matched to defendant's DNA. CP 48-54 at FoF 6. It would take a sample approximately 7,500 times the current population of Earth to see the same DNA profile in an individual other than defendant. CP 48-54 at FoF 12.

On November 19, 2003, defendant approached victim D.M. as she was walking to a residence in the 2500 block of South Yakima Street in Tacoma following a trip to visit her daughter. CP 48-54 at FoF 13. Defendant engaged in sexual intercourse with D.M. by forcible compulsion after he grabbed D.M. from behind, held her neck, and covered her mouth as he told her not to scream or defendant would "choke her out." *Id.* Defendant's actions limited D.M.'s ability to breathe to the point where D.M. thought she would die if she did not submit to him. *Id.* Defendant undid his jeans, took off D.M.'s pants, and penetrated her vagina with his penis. *Id.* He ejaculated on her leg and on the ground. *Id.*

After he raped D.M., defendant took several rings from her. CP 48-54 at FoF 16. She gave the rings to him because she was afraid he would hurt her even more if she did not give him the rings. *Id.* D.M. gave them to him against her will by defendant's use and threatened use of immediate force, violence, or fear of personal injury. *Id.* The fear and force included D.M. being strangled, raped, and suffering bodily injury to her throat, mouth, and genitals. *Id.* Following the rape and robbery, defendant left the

area on foot. CP 48-54 at FoF 13. D.M. went into the residence she was originally walking to and called the police a short time later. *Id.*

D.M. later spoke with police and fire personnel. CP 48-54 at FoF 14. She was then transported to a hospital for a rape exam. *Id.* D.M. spoke with a nurse at the hospital and told her about the rape. *Id.* She had urinated in her pants during the incident and had a swollen lip. *Id.* Before the forensic exam could be completed, D.M. left the hospital and did not return. *Id.*

A semen specimen was collected from the ground where the rape had occurred. CP 48-54 at FoF 15. A reference sample obtained from defendant matched the semen on the ground in the alley where D.M. was raped. *Id.*

C. ARGUMENT.

1. THE STATE CONCEDES THAT REMAND IS APPROPRIATE SO THE COURT CAN DISMISS DEFENDANT'S CONVICTION FOR ROBBERY IN THE FIRST DEGREE WITH PREJUDICE AS SUCH IS BARRED BY THE STATUTE OF LIMITATIONS.

The statute of limitations affects the authority of a court to sentence a defendant for a crime. *State v. Peltier*, 181 Wn.2d 290, 298, 332 P.3d 457 (2014). Our legislature has expressly determined the period of time for the statute of limitations. RCW 9A.04.080. The statute provides a certain period of time for the statute of limitations based upon the specific crime for which

one is accused of committing. *Id.* A rape that is reported to law enforcement within one year of its commission has a ten year statute of limitations. RCW 9A.04.080(1)(b)(iii)(A). But if the rapist is not known within the ten year period, but is eventually determined due to DNA evidence, the statute of limitations extends to one year past the date on which the identity of the suspect is conclusively established. RCW 9A.04.080(3). For felonies not given a specific period of time for which the statute of limitations applies, the time period is three years after the commission of the crime. RCW 9A.04.080(1)(i). Robbery in the first degree does not have a specifically enumerated period of time, hence its statute of limitations is three years. *Id.*

The State concedes that the robbery charge here was brought outside of the period of the statute of limitations. CP 28-29. The crime in question, was committed in 2003 and was not charged until 2014, a period of more than three years. *Id.* Thus, the Court did not have authority to sentence defendant for the robbery as it was charged outside of the statute of limitations period. *Peltier*, 181 Wn.2d at 298.

The rape convictions were charged however within the appropriate period of time to comply with the statute of limitations.³ *Id.* They were charged within one year of defendant being identified as a suspect.

³ Defendant does not challenge his rape convictions as being outside of the statute of limitations.

9/25/17RP 18, 31; CP 84-85. Thus, they meet the requirements of the statute of limitations.

Because the robbery in the first degree conviction was charged outside of the period for the statute of limitations, the State concedes remand is appropriate to dismiss the conviction with prejudice. While the count will be dismissed, it will not affect defendant's offender score as he is already a 9+, even without the robbery conviction. CP 127-129. Thus, a full resentencing hearing is not necessary, merely dismissing the robbery conviction with prejudice.

2. THIS COURT SHOULD ORDER THE IMPOSITION OF THE CRIMINAL FILING FEE AND DNA COLLECTION FEE BE STRIKEN.

In this case, the trial court found the defendant to be indigent. CP 75-76. Defendant's direct appeal is still pending. House Bill 1783, effective March 27, 2018, prohibits the imposition of the \$200.00 filing fee on defendants who were indigent at the time of sentencing. As the court held in *State v. Ramirez*, ___ Wn.2d ___, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that the criminal filing fee of \$200.00 that was imposed in this case should be stricken. The State further agrees that House Bill 1783 eliminates any interest accrual on nonrestitution legal financial obligations.

The State acknowledges that this defendant was found indigent by the sentencing court, and therefore the \$200.00 criminal filing fee should be stricken.

The appellant in this case also appeals the imposition of a \$100 DNA-collection fee in the judgment and sentence, asserting that a DNA sample was previously submitted as a result of a prior qualifying conviction. A legislative amendment to RCW 43.43.7541, which took effect June 7, 2018, requires imposition of the DNA-collection fee “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The amendment applies to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, ___ Wn.2d ___, 426 P.3d 714, (2018).

The State’s records show that this appellant’s DNA was previously collected and is on file with the Washington State Patrol Crime Lab. 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 collection fee.

D. CONCLUSION.

For the aforementioned reasons, the State concedes that the robbery in the first degree conviction should be remanded and dismissed with prejudice as it is barred by the statute of limitations. The State also concedes

that on remand the criminal filing fee and the DNA collection fee should be struck as well.

DATED: February 12, 2019.

MARY E. ROBNETT
Pierce County
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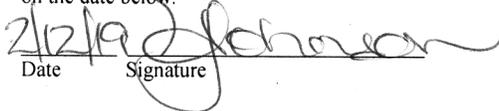


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For

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.


Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

February 12, 2019 - 2:00 PM

Transmittal Information

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