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Court of Appeals  
Division II  
State of Washington  
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NO. 51401-0-II

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

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STATE OF WASHINGTON, Respondent

v.

KEANDRE BROWN, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO. 16-1-02249-9

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SUPPLEMENTAL BRIEF OF RESPONDENT

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## **RESPONSE TO SUPPLEMENTAL ASSIGNMENT OF ERROR**

- I. Brown is entitled to the benefit of the *Ramirez* decision and the \$200 criminal filing fee should be stricken as Brown is indigent.

## **SUPPLEMENTAL STATEMENT OF THE CASE**

The court sentenced Brown on his conviction for Robbery in the First Degree, four counts of Assault in the Second Degree, and two counts of Unlawful Possession of a Firearm in the First Degree on October 10, 2017. At the time of sentencing, House Bill 1783 had not yet been passed. The trial court found Brown was presently indigent, but had a future ability to pay, and ordered a \$200 criminal filing fee, the victim assessment and the DNA collection fee. CP 32, 34-35. The trial court did not enter a finding as to which subsection of RCW 10.101.010(3) applied to its finding of indigency. *Id.*

## **SUPPLEMENTAL ARGUMENT**

**Brown is entitled to the benefit of the *Ramirez* holding and the \$200 criminal filing fee should be stricken as Brown is indigent.**

Amendments to several LFO statutes went into effect on June 7, 2018, while Brown's case was still pending on appeal. LAWS OF 2018, ch. 269. Those amendments, collectively made law by House Bill 1783, apply prospectively to any cases that were still pending on appeal when the costs statutes were amended. *State v. Ramirez*, \_\_\_ Wn.2d \_\_\_, 426 P.3d 714, 722 (2018). Accordingly, under *Ramirez*'s findings, the now current version of RCW 10.01.160, and several other LFO statues, should apply to

Brown. The State agrees with Brown that he should get the benefit in the amendments brought forth to the LFO statutes by House Bill 1783 as required by *Ramirez, supra*. Typically, the State would argue that a trial court could only strike the \$200 criminal filing fee upon a necessary factual finding of indigency pursuant to RCW 10.101.010(3)(a)-(c), but the facts known to the parties in this case show unequivocally that Brown is indigent and remand is unnecessary for further fact-finding.

At the sentencing hearing, neither party discussed, nor did the trial court discuss how or why Brown was indigent, other than noting Brown was young and was going to prison for a lengthy period of time. RP 683. Therefore we cannot know whether the trial court found Brown indigent as defined in RCW 10.101.010(3)(a), (b), (c), or (d) at the time of sentencing. Not every definition of indigency is covered by the amendments to the LFO statutes. While it would ordinarily be necessary for this matter to be remanded for the trial court to make that factual determination of whether Brown received public assistance of some sort so that he qualifies as indigent under RCW 10.101.010(3)(a), or whether Brown makes less than 125% of the federal poverty guidelines after taxes pursuant to RCW 10.101.010(3)(c), as this Court is not a fact-finding Court, it is unnecessary in this case given the facts known to the parties. At the time of sentencing Brown was in custody and had been sentenced to thirty years in prison; he clearly does not earn more than 125% of the federal poverty guidelines after taxes. Thus, if this matter were remanded, the trial court would find Brown indigent pursuant to RCW 10.101.010(3)(c). If Brown is indigent pursuant to RCW 10.101.010(3)(c),

the trial court is prohibited from assessing the \$200 criminal filing fee. It is unnecessary to remand the matter to the trial court for additional fact-finding, and this Court should strike the \$200 criminal filing fee that was assessed.

House Bill 1783 amended RCW 36.18.020(2)(h), changing the criminal filing fee from a mandatory fee to a fee which shall be assessed unless the defendant is “indigent” as defined in RCW 10.101.010(3)(a)-(c). Therefore, when the superior court now sentences a defendant, the court shall impose the filing fee unless the defendant is “indigent” as defined in RCW 10.101.010(3)(a)-(c). With *Ramirez*’s holding that the changes included in House Bill 1783 shall apply prospectively, Brown should have the benefit of this statutory amendment.

In *Ramirez*, the appellate court did strike the fees it found had been affected by House Bill 1783 because the defendant clearly met the definition of “indigent” pursuant to RCW 10.101.010(3)(a)-(c). *Ramirez*, 426 P.3d at 722 (stating “in this case, there is no question that Ramirez satisfied the indigency requirements of RCW 10.101.010(3)(c).”). Therefore Ramirez was “indigent” under one of the applicable definitions, and the statutory amendment would prohibit the Court from imposing the criminal filing fee or any other fee imposed under RCW 10.01.160, thus remand for resentencing was unnecessary. The same is true for Brown. While there was no specific factual determination that he qualifies as “indigent” pursuant to the definition found I RCW 10.101.010(3)(a)-(c), it is clear from the facts known to the parties that he qualifies as “indigent”

under RCW 10.101.010(3)(c). This Court should strike the filing fee imposed in this case.

**CONCLUSION**

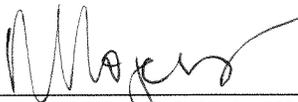
This Court should grant Brown's request to strike the criminal filing fee as he is indigent.

DATED this 31<sup>st</sup> day of December, 2018.

Respectfully submitted:

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**Transmittal Information**

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