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Court of Appeals  
Division II  
State of Washington  
2/7/2019 4:18 PM

No. 51428-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

SCOTT EUGENE RIDGLEY,

Appellant.

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

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APPELLANT'S SUPPLEMENTAL BRIEF

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Jessica Wolfe  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
(206) 587-2711

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A. INTRODUCTION

As part of his sentence, the court ordered Scott Ridgley to pay \$900 in legal financial obligations. However, the sentencing court never conducted an individualized inquiry into Mr. Ridgley's ability to pay. Pursuant to recent statutory changes and supreme court precedent, \$400 of these legal financial obligations should be stricken and the case remanded for resentencing.

B. ASSIGNMENT OF ERROR

The \$200 criminal filing fee, \$100 crime lab fee, and \$100 DNA fee should be stricken from the sentence. CP 77.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The legislature recently passed amendments to the State's legal financial obligation system to prohibit the imposition of criminal filing fees on indigent defendants. These changes also specify a DNA fee should not be imposed if the defendant's DNA was previously collected as a result of a prior conviction. The supreme court recently held these statutory changes apply retroactively to cases that were pending on direct appeal when the statutes were amended. Additionally, crime lab fees cannot be imposed on defendants without the ability to pay. Here, the sentencing court did not conduct the individualized inquiry into Mr. Ridgley's ability to pay legal financial obligations. Mr. Ridgley had also

previously been convicted of a felony. Should Mr. Ridgley's \$200 criminal filing fee, \$100 crime lab fee, and \$100 DNA fee be stricken?

D. SUPPLEMENTARY STATEMENT OF THE CASE

Mr. Ridgley was convicted of two counts of possession of a controlled substance and one count possession of a controlled substance. *See* CP 71. At sentencing, the court below imposed a 96-month sentence as well as \$900 in legal financial obligations, including a \$500 victim penalty assessment, \$200 criminal filing fee, \$100 crime lab fee, and \$100 DNA collection fee. *See* CP 75, 77. When the prosecutor for the State asked, "And the court is making the finding [Mr. Ridgley] has the ability to pay?" the court responded, "Yes." RP 142; *see also* CP 78. However, the court never made an individualized inquiry into Mr. Ridgley's current and future ability to pay.

E. ARGUMENT

**1. Under *Ramirez and Blazina*, this Court should strike \$400 in legal financial obligations and remand for resentencing.**

Last year, the legislature passed amendments to the state's legal financial obligation system to prohibit the imposition of discretionary costs and criminal filing fees on indigent defendants. *See* Laws of 2018, ch. 269, §§ 6(3), 17(2)(h). These amendments also specify a DNA fee should not be imposed if the defendant's DNA was previously collected as

a result of a prior conviction. *See id.* at § 18. The supreme court recently held these statutory changes apply retroactively to cases that were “pending on direct review and thus not final when the amendments were enacted.” *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Prior to imposing discretionary legal financial obligations, the sentencing court must make “an individualized inquiry into the defendant’s current and future ability to pay.” *State v. Blazina*, 182 Wn.2d 827, 830, 344 P.3d 680 (2015). This inquiry must include consideration of the defendant’s incarceration and debts, including restitution, and whether the defendant is indigent under GR 34. *See id.* at 838. The findings of this individualized inquiry must be reflected in the record; “boilerplate language” the court engaged in the required inquiry will not suffice. *See id.*

Here, the sentencing court never conducted an individualized inquiry into Mr. Ridgley’s ability to pay. The court simply responded affirmatively to the prosecutor’s inquiry that it was making a finding of Mr. Ridgley’s ability to pay, and checked boilerplate language on the judgment and sentence that it had conducted the necessary inquiry. *See* RP 142; CP 78. However, the court never inquired into Mr. Ridgley’s debts or how incarceration might impact his ability to pay. *See id.* Further,

the court found Mr. Ridgley indigent for the purposes of his direct appeal. *See* CP 87–88.

The sentencing court imposed a \$200 criminal filing fee pursuant to RCW 36.18.020(2)(h). CP 77. Pursuant to the statutory amendments made last year, “this fee shall not be imposed on a defendant who is indigent.” *See* RCW 36.18.020(2)(h). These amendments apply retroactively to Mr. Ridgley’s case. *Ramirez*, 191 Wn.2d at 747. Accordingly, this fee should be stricken and the sentencing court instructed to conduct the mandatory individualized inquiry into Mr. Ridgley’s ability to pay. *See Blazina*, 182 Wn.2d at 838.

The sentencing court also imposed a \$100 crime lab fee pursuant to RCW 43.43.690. CP 77. The statute in question specifies “the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.” RCW 43.43.690(1). As previously explained, the sentencing court did not conduct the inquiry necessary to determine whether Mr. Ridgley could pay the crime lab fee. Accordingly, this fee should also be stricken with instructions to the sentencing court to perform an inquiry into Mr. Ridgley’s ability to pay.

Finally, the trial court imposed a \$100 DNA collection fee pursuant to RCW 43.43.7541. CP 77. However, under the revised statute, this fee should not be imposed if “the state has previously collected the

offender's DNA as a result of a prior conviction." *See* RCW 43.43.7541. Washington law requires ta DNA sample be taken from all individuals convicted of a felony. *See* RCW 43.43.754(1)(a). Mr. Ridgley's criminal history demonstrates he has been convicted of several felonies in Washington State. CP 73. Accordingly, the DNA fee should be stricken. *See Ramirez*, 191 Wn.2d at 747.

F. CONCLUSION

In the event this Court does not vacate Mr. Ridgley's conviction for the reasons stated in the opening brief, it should strike \$400 in legal financial obligations and remand for resentencing.

DATED this 7th day of February, 2019.

Respectfully submitted,

/s Jessica Wolfe

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Jessica Wolfe – WSBA 52068  
Washington Appellate Project  
Attorney for Appellant

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	)	
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**Washington Appellate Project**  
1511 Third Avenue, Suite 610  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

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