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Division II
State of Washington
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No. 51428-1-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SCOTT RIDGLEY,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Supplemental Brief

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I. ISSUE

- A. Did the trial court improperly impose legal financial obligations on an indigent defendant due to the retroactivity of the 2018 legislative amendments to the legal financial obligations statutes?

II. STATEMENT OF THE CASE

The State relies on the Statement of the Case it submitted in its original response brief for the underlying facts and procedures. This Supplemental Response Brief is in response to the Court's February 8, 2019 ruling by Commissioner Schmidt accepting Ridgley's Supplemental Brief and calling for the State to file its Supplemental Response Brief within 30 days. This briefing is solely in regards to the 2018 amendments to the legal financial obligations statutes and their effect the trial court's imposition of certain legal financial obligations upon Ridgley.

The State will provide further substantive facts in its supplemental brief below as required.

III. ARGUMENT

A. THE STATE CONCEDES THERE WAS A FINDING RIDGLEY WAS INDIGENT, BUT THE RECORD IS LACKING TO SUPPORT A FINDING RIDGLEY IS INDIGENT PER SE, THEREFORE, THIS COURT MUST REMAND THE MATTER BACK TO THE TRIAL COURT FOR A RESENTENCING TO DETERMINE IF RIDGLEY QUALIFIES TO HAVE HIS LEGAL FINANCIAL OBLIGATIONS STRICKEN.

Ridgley asserts he was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative amendments to the legal financial obligations statutes enacted under Engrossed Second Substitute House Bill 1783, eliminate the \$200 filing fee, as it is no longer a nondiscretionary legal financial obligation for indigent defendants. See Supp. Brief of Appellant 3-5. The State concedes the trial court did find Ridgley indigent for purposes of seeking an appeal at public expense. CP 87-88. The State further concedes, as Ridgley asserts, the trial court did not adequately conduct an individualized inquiry of Ridley's ability to pay his legal financial obligations. See RP 140-44. The record is lacking information as to Ridgley's indigency, therefore, this Court must remand for a full inquiry prior and resentencing on the legal financial obligations with the information obtained from the inquiry.

Ridgley correctly asserts to this Court, a criminal defendant shall not be assessed **costs** at the conclusion of their case if the

defendant is determined to be indigent. RCW 10.01.160 (emphasis added). Since, the fee for laboratory testing, RCW 43.43.690, is a fee, not a cost, RCW 10.01.160, requires a full colloquy to determine a defendant's ability to pay. *State v. Ramirez*, 191 Wn.2d 732, 744-46, 426 P.3d 714 (2018).

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *Ramirez*, 191 Wn.2d at 747-49. Therefore, Ridgley receives the benefit of the amendments that apply to him.

Pursuant to RCW 43.43.7541, effective June 7, 2018, and retroactively applied to Ridgley, the imposition of the DNA-collection fee is required “unless the state has previously collected the offender's DNA as a result of a prior conviction.” The State's records show Ridgley's DNA was previously collected and is on file with the Washington State Patrol Crime Lab. Therefore, if Ridgley meets the indigency requirements, the trial court must strike the \$100 DNA fee.

Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent “per se” under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a

defendant to pay costs. RCW 10.01.160(3).

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c). As the record lacks any information regarding how Ridgley is indigent the State cannot know if Ridgley meets the requirements of indigent per se. CP 85-86. The Motion and Declaration for an Order Authorizing Ridgley to Seek Review at Public Expense merely states, "[t]he defendant was previously found to be indigent." *Id.* Ridgley had retained counsel for his trial, so it is difficult to ascertain what his financial situation was without a complete inquiry, as required, or a complete affidavit.

IV. CONCLUSION

The trial court failed to conduct an inquiry into Ridgley's financial status and ability to pay his legal financial obligations. Therefore, this Court must remand the matter back to the trial court to conduct a full inquiry. If the trial court determines Ridgley is either indigent per se or indigent and unable to repay then it must strike the discretionary legal financial obligation and the \$100 DNA fee it imposed.

RESPECTFULLY submitted this 19th day of February, 2019.

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