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Court of Appeals  
Division II  
State of Washington  
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No. 51474-5-II

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

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STATE OF WASHINGTON,

Respondent,

v.

SAGE CREE BEAR,

Appellant.

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

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SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

Certain cost provisions in the judgment and sentence are no longer authorized after enactment of House Bill 1783.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

Should Sage Bear's case be remanded to the trial court to strike cost provisions in the judgment and sentence that are no longer authorized after enactment of House Bill 1783?

C. SUPPLEMENTAL STATEMENT OF THE CASE

In Bear's judgment and sentence, the trial court imposed a \$100 DNA database fee and a \$200 criminal filing fee. CP 87. The judgment and sentence also states, "The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments." CP 88.

Bear has multiple prior felony convictions. CP 83-84.

Shortly after sentencing, the trial court found Bear indigent and entitled to appeal at public expense. CP 93-94. In a certificate attached to his motion for order of indigency, Bear certified he has never been employed and has no property or funds that could be used to help pay for an appeal. CP 95-96.

D. SUPPLEMENTAL ARGUMENT

**Certain cost provisions in the judgment and sentence must be stricken in light of amendments to the LFO statutes.**

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783) amended the statutes governing the legal financial obligation (LFO) system in Washington State. These amendments took effect on June 7, 2018.

Now, trial courts are prohibited from imposing discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). The DNA fee is now discretionary if the offender's DNA has already been collected because of a prior conviction. Id. § 18. Also, trial courts may no longer impose the \$200 filing fee on indigent defendants. Id. § 17. And House Bill 1783 eliminates interest accrual on the non-restitution portions of LFOs. Id. § 1.

Our supreme court recently held that these changes to the LFO statutes apply prospectively to cases on direct appeal and not yet final when the amendments took effect. State v. Ramirez, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Bear's case was not yet final when House Bill 1783 took effect and therefore the amendments apply to him. Id. Shortly after sentencing, the trial court found he is indigent. CP 93-94.

The new law prohibits charging the \$200 filing fee to defendants who are indigent. Ramirez, 191 Wn.2d at 739; Laws of 2018, ch. 269, § 17. Therefore, the filing fee must be stricken from Bear's judgment and sentence. CP 87.

The trial court also imposed a \$100 DNA collection fee. CP 87. But Bear has previously been convicted of multiple felonies, so DNA was already collected. CP 83-84; see RCW 43.43.7541 (mandatory DNA fee upon felony conviction). The \$100 DNA collection fee must be stricken.

Finally, the judgment and sentence states that interest shall begin accruing immediately. CP 88. But House Bill 1783 eliminates interest accrual on all non-restitution LFOs. Ramirez, 191 Wn.2d at 747; Laws of 2018, ch. 269, § 1. That portion of the judgment must also be stricken.

Like Ramirez, Bear was subjected to LFOs that are no longer authorized under House Bill 1783. His case should be remanded to the trial court to strike the improper fees and the interest accrual portion.

#### E. CONCLUSION

The statutory changes of House Bill 1783 apply to Bear and he is entitled to relief. This Court should order the trial court to strike the

criminal filing fee, the DNA collection fee, and that portion of the judgment and sentence requiring that interest begin accruing immediately.

Respectfully submitted this 14th day of January, 2019.

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SAGE CREE BEAR,	)	
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X \_\_\_\_\_

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# WASHINGTON APPELLATE PROJECT

January 14, 2019 - 4:30 PM

## Transmittal Information

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**Appellate Court Case Title:** State of Washington, Respondent v. Sage Cree Bear, Appellant  
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