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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

GLORIA N. INGIGUEZ GONZALEZ,

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 5, 2019 ruling by Commissioner Bearse accepting Iniguez Gonzalez's Supplemental Brief and calling for the State to file its Supplemental Response Brief within 21 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 Iniguez Gonzalez.

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

III. ARGUMENT

A. THE STATE CONCEDES INIGUEZ GONZALEZ IS INDIGENT PER SE, THEREFORE, THE FILING FEE SHOULD BE STRICKEN FROM THE JUDGMENT AND SENTENCE.

Iniguez Gonzalez asserts she was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative amendments to the legal financial obligation 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 1-2. The State concedes Iniguez Gonzalez is correct and requests this Court to strike the \$200 filing fee.

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747-49, 426 P.3d 714 (2018). Therefore, Iniguez Gonzalez receives the benefit of the amendments that apply to her, which in Iniguez Gonzalez's case would be the filing fee, as all discretionary legal financial obligations were not imposed. RP 126.

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).

Iniguez Gonzalez is per se indigent, pursuant to RCW 10.101.010(3)(a). Iniguez Gonzalez told the trial court she received public assistance in the form of food stamps and WIC. RP 123-26. The trial court imposed only those legal financial obligations which were mandatory at the time due to Iniguez Gonzalez's inability to pay. RP 126. Due to the change in the law, this Court must now strike the \$200 filing fee the trial court imposed.

IV. CONCLUSION

Iniguez Gonzalez is indigent per se due to being on public assistance at the time of her sentencing. This Court should remand this matter back for the trial court to strike the \$200 filing fee.

RESPECTFULLY submitted this 11th day of February, 2019.

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A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

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