

FILED
Court of Appeals
Division II
State of Washington
3/12/2019 4:45 PM

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

STATE OF WASHINGTON,

Respondent,

v.

RYAN ESTAVILLO,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 18-1-00078-18

SUPPLEMENTAL BRIEF OF RESPONDENT

CHAD M. ENRIGHT
Prosecuting Attorney

JOHN L. CROSS
Deputy Prosecuting Attorney

614 Division Street
Port Orchard, WA 98366
(360) 337-7174

SERVICE

Casey Grannis
Nielson, Broman & Koch
1908 East Madison
Seattle, WA 98122
Email: grannisc@nwattorney.net

This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically*. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED March 12, 2019, Port Orchard, WA 
Original e-filed at the Court of Appeals; Copy to counsel listed at left.
Office ID # 91103 kcpa@co.kitsap.wa.us

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. COUNTERSTATEMENT OF THE ISSUES (concession of error)	1
II. STATEMENT OF THE CASE.....	1
A. BECAUSE ESTAVILLO WAS FOUND TO BE INDIGENT, NO DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS SHOULD HAVE BEEN IMPOSED AND NO SUCH OBLIGATIONS, BESIDES RESTITUTION, MAY ACCRUE INTEREST.	1
III. CONCLUSION.....	4

TABLE OF AUTHORITIES

CASES

State v. Ramirez,
191 Wn.2d 732, 426 P.3d 714 (2018)..... 2, 3

STATUTORY AUTHORITIES

RCW 10.82.090 2
RCW 10.101.060 2
RCW 36.18.020(2)(h) 2
RCW 43.43.754 2

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court erred by imposing discretionary legal financial obligations (LFO) and ordering the accrual of interest thereon on a defendant who has been declared to be indigent? (concession of error)

II. STATEMENT OF THE CASE

The state accepts the appellant's statement of the case for the purpose of this supplemental brief.

III. ARGUMENT

A. BECAUSE ESTAVILLO WAS FOUND TO BE INDIGENT, NO DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS SHOULD HAVE BEEN IMPOSED AND NO SUCH OBLIGATIONS, BESIDES RESTITUTION, MAY ACCRUE INTEREST.

Estavillo claims that the trial court erred in imposing a \$200 filing fee, a \$100 DNA fee, and collection and supervision costs. Further, he claims that the judgment and sentence erroneously orders the accrual of interest. The state agrees with Estavillo's claims, concedes error, and requests that the matter be remanded to strike those provisions without a formal resentencing hearing.

First, the state takes no issue with the finding of indigency in this

case. Estavillo screened as indigent for the services of trial counsel and appellate counsel. With a 190 month sentence to serve, Estavillo's financial status is unlikely to change in the foreseeable future.

Second, this uncontestable indigent status is the necessary and sufficient reason that relief should be given here. Recent legislative enactments and our Supreme Court's interpretation of those enactments make clear that it is presently the policy of the law to unburden indigent defendants from the imposition of substantial debt that will follow them after release.

RCW 10.101.060 provides that a trial court may not assess discretionary costs on an indigent defendant. *See State v. Ramirez*, 191 Wn.2d 732, 739, 426 P.3d 714 (2018). This provision is broad enough to cover the collection and supervision costs ordered here because those costs are discretionary as argued by Estavillo. Further, RCW 36.18.020(2)(h) specifically disallows the \$200 filing fee. And, the state has no doubt that Estavillo has been subject to DNA collection on a prior conviction so, pursuant to the amendment of RCW 43.43.754, the present \$100 order should be stricken. Finally, RCW 10.82.090 does away with interest on legal financial obligations (except restitution) and the provision of the judgment and sentence in the present case that orders interest on nonrestitution LFO should be stricken.

In *Ramirez, supra*, the Washington Supreme Court held that the new LFO statutes apply to any case pending on appeal. 191 Wn.2d at 749-50. This is such a case. But as in *Ramirez*, the case need not be remanded for a resentencing hearing. This court should remand with order to correct the judgment and sentence by striking the prohibited costs and the prohibited interest provision.

IV. CONCLUSION

For the foregoing reasons, the matter should be remanded for correction of the judgment and sentence.

DATED March 12, 2019.

Respectfully submitted,
CHAD M. ENRIGHT
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Chad M. Enright". The signature is written in a cursive style with a large initial "C" and "E".

JOHN L. CROSS
WSBA No. 20142
Deputy Prosecuting Attorney

Office ID # 91103
kcpa@co.kitsap.wa.us

KITSAP COUNTY PROSECUTOR'S OFFICE - CRIMINAL DIVISION

March 12, 2019 - 4:45 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51629-2
Appellate Court Case Title: State of Washington, Respondent v Ryan Estavillo, Appellant
Superior Court Case Number: 18-1-00078-3

The following documents have been uploaded:

- 516292_Briefs_20190312164416D2883268_9993.pdf
This File Contains:
Briefs - Respondents - Modifier: Supplemental
The Original File Name was Estavillo Ryan 20190312 resp supp brief.pdf

A copy of the uploaded files will be sent to:

- grannisc@nwattorney.net
- rsutton@co.kitsap.wa.us

Comments:

Sender Name: Elizabeth Allen - Email: erallen@co.kitsap.wa.us

Filing on Behalf of: John L. Cross - Email: jcross@co.kitsap.wa.us (Alternate Email:)

Address:
614 Division Street, MS-35
Port Orchard, WA, 98366
Phone: (360) 337-7171

Note: The Filing Id is 20190312164416D2883268