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NO. 51769-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

NANAMBI GAMET,

Appellant.

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

The Honorable Stephanie Arend, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The criminal filing fee should be stricken under the Supreme Court's recent decision in State v. Ramirez.¹

2. For similar reasons, the DNA fee should be stricken.

Issues Pertaining to Assignments of Error

1. Under the Supreme Court's recent Ramirez decision, should the \$200 criminal filing fee be stricken?

2. Should the \$100 DNA fee also be stricken as well?

B. STATEMENT OF THE CASE

Based on events occurring in July of 2017, the State charged appellant Nanambi Gamet with second degree assault. CP 3; RCW 9A.36.021. The State also alleged that Gamet was armed with a deadly weapon at the time of the assault. CP 3; RCW 9.94A.825.

While the charges were pending, Gamet, who has a history of mental health issues, underwent two competency evaluations, one at the Pierce County jail and one at Western State Hospital. CP 5-12, 45-55.

Eventually, Gamet pleaded guilty to two counts of criminal mischief, an unranked felony with a zero- to 12-month sentencing range.

¹ State v. Ramirez, __ Wn.2d __, __ P.3d __, 2018 WL 4499761 (Sept. 20, 2018).

RP 12; CP 61; RCW 9.94A.505(b); RCW 9A.84.010; see In re Pers. Restraint of Barr, 102 Wn.2d 265, 684 P.2d 712 (1984).²

He stipulated that there was a basis to run the sentences on each count consecutive to the other. CP 77-78.

At a February 2018 sentencing hearing, the court imposed consecutive 12-month sentences. It also imposed 12 months of community custody, and it imposed several standard conditions. CP 87-88.

The court also ordered that Gamet pay \$800 in legal financial obligations including the \$500 crime victim assessment,³ a \$100 DNA database fee,⁴ and a \$200 criminal filing fee.⁵ CP 86. However, the court found Gamet indigent and announced that it was waiving all discretionary fines. RP 14-15.

² Under Barr, an accused person may plead guilty to technically infirm charges to avoid conviction for a greater offense. Barr, 102 Wn.2d at 269-70. To comport with due process, such a plea must be based on an “informed review of all the alternatives before the accused.” Id. at 270. The accused must understand “the nature and consequences of the plea bargain” and have “determined the course of action that he believes is in his best interest.” Id.

³ RCW 7.68.035 authorizes crime victim penalty assessments. In relevant part, RCW 7.68.035(1)(a) provides: “The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor.”

⁴ RCW 43.43.7541

⁵ RCW 36.18.020

Gamet timely appealed. CP 75. He submitted a declaration indicating he had no source of income and \$50,000 in debts. CP 109. The superior court found Gamet to be indigent and ruled that he was entitled to counsel on appeal at public expense. CP 112-14.

C. ARGUMENT

1. THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN UNDER *STATE V. RAMIREZ*.

Gamet is indigent under the applicable statutory criteria, and the trial court so found. The criminal filing fee should be stricken under the recent Ramirez decision.

In Ramirez, an appellant challenged discretionary legal financial obligations (LFOs) on the grounds that the trial court had not engaged in an appropriate inquiry regarding his ability to pay under State v. Blazina.⁶ State v. Ramirez, ___ Wn.2d, ___ P.3d ___, 2018 WL 4499761, at *2 (Sept. 20, 2018).

The Supreme Court agreed, setting forth detailed instructions regarding the appropriate inquiry. Id. at *4-6.

But, based on watershed statutory amendments that took effect while Ramirez's appeal was pending, the Supreme Court ultimately granted relief on statutory grounds.

⁶ State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)

The Court explained that Laws of 2018, ch. 269, § 6(3) (“House Bill 1783”) made substantial modifications to several facets of Washington’s LFO system. In doing so, the legislature “address[ed] some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction.” Ramirez, 2018 WL 4499761 at *6.

For example, House Bill 1783 eliminates interest accrual on the nonrestitution portions of LFOs, establishes that the DNA database fee is no longer mandatory if the offender’s DNA has been collected because of a prior conviction, and provides that a court may not sanction an offender for failure to pay LFOs *unless* the failure to pay is willful. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, §§ 1, 18, 7.)

It amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, § 6(3)). It also prohibits imposing the \$200 filing fee on indigent defendants. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, § 17⁷).

⁷ RCW 36.18.020(2)(h) now provides that

Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a

As Ramirez further noted, a trial court “shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).” Ramirez, 2018 WL 4499761 at *7 (quoting Laws of 2018, ch. 269, § 6(3)). Thus, indigency may be established by three objective criteria. “Under RCW 10.101.010(3)(a) through (c), a person is ‘indigent’ if the person receives certain types of public assistance, is involuntarily committed to a public mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level.” Ramirez, 2018 WL 4499761 at *7.⁸

Crucially to this case, the Court also held that the House Bill 1783 amendments applied prospectively to cases not yet final on appeal. Ramirez, 2018 WL 4499761 at *7-8 (citing State v. Blank, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997)).

The Supreme Court concluded that the trial court impermissibly imposed discretionary LFOs, as well as the \$200 criminal filing fee, on Ramirez. The Court remanded for the trial court to amend the judgment

defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).

⁸ If none of these criteria apply, only then must the trial court engage in an individualized inquiry into current and future ability to pay. Ramirez, 2018 WL 4499761 at *7.

and sentence to strike the improperly imposed LFOs. Ramirez, 2018 WL 4499761 at *8.

Here, the record indicates Gamet is indigent under RCW 10.101.010(3). And House Bill 1783 applies prospectively to his case. Consistent with Ramirez, this Court should remand for the \$200 filing fee to be stricken.

2. THE \$100 DNA FEE SHOULD ALSO BE STRICKEN.

This Court should also strike the DNA fee for two reasons.

First, the fee should be stricken under House Bill 1783 and Ramirez.

RCW 43.43.7541, the statute controlling the imposition of a DNA fee, was amended under House Bill 1783.

The statute now provides that

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender's DNA as a result of a prior conviction.*

RCW 43.43.7541 (emphasis added.); Laws of 2018, ch. 269, § 18.

Mr. Gamet has a robust criminal history. CP 82-84. Clearly, the State has previously collected his DNA. Because Gamet's case is not yet final, the new statute applies. Ramirez, 2018 WL 4499761 at *7-8. And under Ramirez, the DNA fee must be considered a discretionary LFO,

which may not be imposed on an indigent defendant. Id. at *6-7. Thus, the DNA fee should be stricken.

The fee should be stricken for a separate reason. Under RCW 9.94A.777

(1) Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation.

Gamet notified his competency evaluator that he had qualified for Supplemental Security Income (SSI).⁹ Although the competency evaluators eventually found Gamet competent to stand trial, their reports detail a history of serious mental health diagnoses. CP 5-12, 45-55. Thus, the record indicates that Gamet suffers from a qualifying mental health condition. For this reason, as well, the \$100 DNA fee should be stricken.

⁹ CP 8 (August 2017 competency evaluation). The federal SSI program pays benefits to disabled adults and children who have limited income and resources. <https://www.ssa.gov/benefits/ssi/> (last accessed Sept. 21, 2018).

D. CONCLUSION

This Court should remand for the \$200 criminal filing fee and the \$100 DNA fee to be stricken.

DATED this 25th day of September, 2018.

Respectfully submitted,

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