

FILED
Court of Appeals
Division II
State of Washington
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NO. 51769-8-II

IN THE COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

Nanambi Gamet, Appellant

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend

No. 17-1-02716-4

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this Court remand for the trial court to strike the \$200 criminal filing fee and \$100 DNA fee where the amendments in House Bill 1783 apply to defendant's case?

B. STATEMENT OF THE CASE.

On July 18, 2017, the Pierce County Prosecuting Attorney charged Nanambi Ibo Gamet, hereinafter "defendant," with one count of assault in the second degree with a deadly weapon: a knife. CP 3-4. On February 15, 2018, defendant pleaded guilty to an amended information which charged him with two counts of criminal mischief/riot with a deadly weapon. CP 59-60, 61-70.

Defendant entered his plea pursuant to *In re Barr*.¹ CP 69. Instead of making a statement of his guilt, defendant agreed that "the court may review the police reports and/or a statement of probable cause supplied by

¹ When the record establishes a factual basis for the crimes originally charged and reveals defendant's understanding of his complicity in those crimes, the failure to state a basis for all the elements of the offense substituted for the first two charges after plea bargaining will not preclude a finding that the plea to the substituted charge is voluntary and intelligent. *In re Personal Restraint of Barr*, 102 Wn.2d 265, 271, 684 P.2d 712 (1984).

the prosecution to establish a factual basis for the plea.” CP 69. The declaration for determination of probable cause alleged the following:

A Tacoma officer is dispatched to a report of a person being chased by another with a knife. He arrives to find two Puyallup Tribal Officers on the west sidewalk near 32nd and East Portland. The Tribal officers are taking the defendant to the ground and the Tacoma officers assist as they handcuff the defendant. A Leatherman type knife, with the blade extended, is lying next to the defendant on the ground.

The Tacoma officer interviews the victim, A.S., and witness, L. Dillon. They state they are driving in a car near 32nd and Portland and they saw the defendant engaged in a physical altercation on top of a female who the two thought they may know. The defendant was on top of this person and appeared to be holding her by the neck. A.S., the victim, exited the car and yelled for the defendant to get off of her. The defendant responded by saying, "Fuck you, mind your own business." The victim approached and continued to yell at the defendant to get off of the female. The defendant then got off her and then went towards the victim, asking if he wanted to fight. The defendant then pulled out a knife and extended the blade. The victim said he backed away as the defendant came towards him. The defendant was yelling he was going to "slash" him up. The defendant chased after the victim, swinging and slashing the knife towards the victim. The victim crossed the street to try and get away. Witness Dillon was on the phone with 911 throughout the event. She said if the Tribal Officers had not shown up when they did, she said the victim may have been stabbed. She gave a similar account as the victim. Officers could not locate the female who the defendant was on top off when the incident. She fled after the defendant had gotten off of her.

The defendant was read his Miranda rights. He later signed that the jail. He told the officer that the victim had gotten into his "business" when he shouldn't have. The victim wanted to fight so the defendant thought it was fair to pull out his knife because he didn't know if the victim may have a gun. The defendant said "if he would have just pulled out a knife, then

it would have been a fair fight, but a gun, that would be just wrong." When asked who the female was, all he would say was she was a prior girlfriend and he was "getting her back to normal." When asked further about the incident, the defendant began to ramble about things which did not make sense.

CP 1-2.

Defendant agreed to the State's recommendation of 12 months in the Department of Corrections on each count, to run consecutively to each other, for a total amount of 24 months in the Department of Corrections, followed by 12 months of community custody. RP 7-8; CP 64, 77-78. The court accepted the joint recommendation of the parties. RP 14-15. The court found defendant indigent and waived any discretionary legal financial obligations ("LFOs"). RP 15. The court imposed the \$500 crime victim assessment fee, \$100 DNA fee, and \$200 criminal filing fee. CP 79-94.

Defendant timely appealed. CP 97-99.

C. ARGUMENT.

1. THIS COURT SHOULD REMAND FOR THE TRIAL COURT TO STRIKE THE \$200 CRIMINAL FILING FEE AND \$100 DNA FEE WHERE THE AMENDMENTS IN HOUSE BILL 1783 APPLY TO DEFENDANT'S CASE.

When a person is convicted in superior court, the court may order the payment of LFOs as part of the sentence. *State v. Kuster*, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (citing RCW 9.94A.760(1)). Courts

review a sentencing court's decision on whether to impose LFOs for abuse of discretion. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015). A court abuses its discretion when it imposes an LFO based on untenable grounds or for untenable reasons. *Id.*

The legislature recently enacted Engrossed Second Substitute House Bill 1783 (House Bill 1783), which amended the LFO statutory scheme. *See* Laws of 2018, ch. 269, §§17, 18. Effective June 7, 2018, courts may no longer impose the \$200 filing fee on defendants who are indigent at the time of sentencing. RCW 36.18.020(2)(h). Additionally, the DNA fee statute was amended to state:

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).

In *Ramirez*, the Washington Supreme Court held that the above LFO statutory amendments apply to cases that were pending on appeal when the amendments went into effect. *State v. Ramirez*, ___ Wn.2d ___, 426 P.3d 714, 722 (2018). When a controlling law is amended while a case is pending on review, “it would be anomalous for an appellate court to apply an obsolete law where no vested right or contrary legislative intent is disturbed by applying a more current law.” *Marine Power &*

Equip. Co. v. Washington State Human Rights Comm'n Hearing Tribunal, 39 Wn. App. 609, 621, 694 P.2d 697 (1985).

Defendant argues the \$200 criminal filing fee and \$100 DNA fee should be stricken. Brief of Appellant 1. Defendant was sentenced on February 15, 2018. CP 79-94. Defendant filed his appeal April 23, 2018. CP 97-99. Defendant's case was pending on appeal when the amendments to RCW 36.18.020 and RCW 43.43.7541 went into effect on June 7, 2018. Accordingly, the State concedes that he is entitled to the benefit of the amendments in House Bill 1783.

RCW 36.18.020(2)(h) prohibits the imposition of the \$200 filing fee on defendants who are found indigent at the time of sentencing. The court found defendant indigent at the time of sentencing, so he should be exempt from the filing fee. RP 15. Furthermore, the State's records show that defendant's DNA was previously collected and is on file with the Washington State Patrol Crime Lab. *See also*, CP 71-76. Accordingly, defendant is exempt from the DNA fee under RCW 43.43.7541.

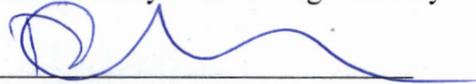
This Court should remand for the trial court to strike the \$200 filing fee and the \$100 DNA fee.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests that this Court remand for the trial court to strike the \$200 filing fee and \$100 DNA fee.

DATED: November 26, 2018.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11.26.18 Therese K
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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