

FILED  
Court of Appeals  
Division II  
State of Washington  
11/19/2018 2:34 PM

NO. 51973-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION II

---

STATE OF WASHINGTON,

Respondent,

vs.

SHANE I. VANDERVORT,

Appellant.

---

BRIEF OF APPELLANT

---

John A. Hays, No. 16654  
Attorney for Appellant

1402 Broadway  
Suite 103  
Longview, WA 98632  
(360) 423-3084

**TABLE OF CONTENTS**

	Page
A. TABLE OF AUTHORITIES .....	iii
B. ASSIGNMENT OF ERROR	
1. Assignment of Error .....	1
2. Issue Pertaining to Assignment of Error .....	1
C. STATEMENT OF THE CASE .....	2
D. ARGUMENT	
<b>THE TRIAL COURT ERRED WHEN IT IMPOSED A SECOND DNA     FEE AND WHEN IT IMPOSED A FILING FEE UPON APPELLANT     BECAUSE HE IS INDIGENT</b> .....	<b>4</b>
E. CONCLUSION .....	6
F. APPENDIX	
1. RCW 36.18.020 .....	7
2. RCW 43.43.7541 .....	7
G. AFFIRMATION OF SERVICE .....	8

**TABLE OF AUTHORITIES**

Page

***State Cases***

*State v. Ramirez*, WL 4499761 (September 20, 2018) ..... 4, 5

***Statutes and Court Rules***

RCW 36.18.020(2)(h) ..... 5

RCW 43.43.7541 ..... 4

## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

The trial court erred when it imposed a second DNA fee and when it imposed a filing fee upon appellant because he is indigent.

### ***Issues Pertaining to Assignment of Error***

Does a trial court err if it imposes a second DNA fee and when it imposed a filing fee upon an indigent defendant?

## STATEMENT OF THE CASE

On May 5, 2017, the defendant Shane I. Vandervort entered an *Alford* plea in Jefferson County Superior Court on an amended information to one count of possession of methamphetamine and one count of first degree criminal trespass. CP 5-6, 7-17. Three weeks later the court granted the defendant's request and imposed a sentence under the residential drug offender sentence alternative (DOSA) on the felony, and a sentence of 30 days with credit for time served on the misdemeanor. CP 19-26. As part of the sentence the court ordered the defendant to pay a \$200.00 criminal filing fee and a \$100.00 DNA fee. CP 23. In fact, the defendant has 10 prior felony convictions in which the DNA fee was presumably imposed, and at all times relevant to this case the defendant was indigent. CP 79-80.

On December 1, 2017, the defendant appeared for a DOSA revocation hearing upon the state's allegation that he had not reported for treatment, among other alleged violations. RP 25-34.<sup>1</sup> At that time the defendant also had a motion to withdraw guilty plea pending before the court. CP 38-49. At the end of the December 1<sup>st</sup> hearing the court revoked

---

<sup>1</sup>The record on appeal includes one volume of continuously numbered verbatim reports of the guilty plea hearing held on 5/5/17, the sentencing hearing held on 5/26/17, the violation hearing held on 12/1/17, and the motion to withdraw guilty plea hearings held on 4/13/18, 6/8/18 and 6/29/18. They are referred to herein as "RP [page #]."

the defendant's DOSA adjudication and amended the original sentence to impose a term of confinement of 18 months in prison. CP 30; RP 25-34. At that time the parties did not address the pending motion to withdraw guilty plea. *Id.* Four months later the trial court entered an amended order adding 12 months community custody to the 18 months prison term already imposed. CP 65. Finally, on May 18, 2018, the defendant filed a Notice of Appeal from the decision revoking the DOSA sentence and imposing prison time and community custody. CP 73.

## ARGUMENT

**THE TRIAL COURT ERRED WHEN IT IMPOSED A SECOND DNA FEE AND WHEN IT IMPOSED A FILING FEE UPON APPELLANT BECAUSE HE IS INDIGENT.**

Effective March 27, 2018, the legislature amended the statute requiring the imposition of a DNA fee upon convicted felons to preclude a second imposition this legal financial obligation. The following quotes the first two lines of this statute and underlines the added sentence.

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. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law.

RCW 43.43.7541 (first two lines showing amendment).

This amendment applies to all DNA fees imposed following its effective date as well as all previously imposed DNA fees imposed for cases on appeal as of the effective date. *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018) (“We hold that House Bill 1783 applies prospectively to Ramirez because the statutory amendments pertain to costs imposed on criminal defendants following conviction, and Ramirez’s case was pending on direct review and thus not final when the amendments were enacted.”).

In the case at bar the defendant has prior felony convictions in which the court imposed DNA fees. Thus, the trial court erred when it

imposed a \$100.00 DNA fee.

In addition, effective June 7, 2018, the legislature amended RCW 36.18.020(2)(h) to prohibit the imposition of a filing fee upon an indigent defendant following conviction. The following quotes this section of the statute with the modifications underlined.

(2) Clerks of superior courts shall collect the following fees for their official:

. . . .

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

RCW 36.18.020(2)(h) (showing amendments underlined).

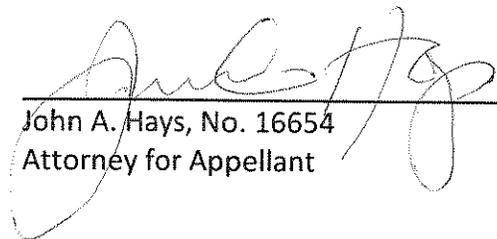
As with the DNA fee, the Washington Supreme Court has also held that this amendment applies to all cases still on appeal when it became effective. *See Ramirez, supra*. Thus, in this case the trial court also erred when it imposed a filing fee because the defendant is indigent. Consequently, this court should remand this case to the trial court to strike these two legal financial obligations.

**CONCLUSION**

The trial court erred when it imposed a second DNA fee and when it imposed a filing fee as part of the defendant's legal-financial obligations.

DATED this 19<sup>th</sup> day of November, 2018.

Respectfully submitted,



---

John A. Hays, No. 16654  
Attorney for Appellant

**APPENDIX**  
**RCW 36.18.020(2)(h)**  
**Clerk's fees, surcharges**

(2) Clerks of superior courts shall collect the following fees for their official services:

. . .

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

**RCW 43.43.7541**  
**DNA identification system – Collection of biological samples – Fee**

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. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754. This fee shall not be imposed on juvenile offenders if the state has previously collected the juvenile offender's DNA as a result of a prior conviction.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,  
Respondent,

vs.

SHANE I. VANDERVORT.  
Appellant.

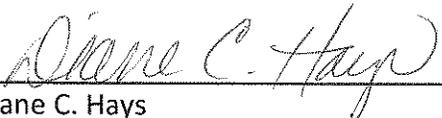
NO. 51973-9-II

AFFIRMATION  
OF SERVICE

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Michael Haas  
Jefferson County Prosecuting Attorney  
P.O. Box 1220  
Port Townsend, WA 98368  
mhaas@co.jefferson.wa.us
2. Mr. Shane I. Vandervort, No. 884549  
c/o Randall Tremain  
Community Corrections Officer  
P.O. Box 1009  
Shelton, WA 98584

Dated this 19<sup>th</sup> day of November, 2018, at Longview, WA.

  
Diane C. Hays

**JOHN A. HAYS, ATTORNEY AT LAW**

**November 19, 2018 - 2:34 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51973-9  
**Appellate Court Case Title:** State of Washington, Respondent v. Shane I. Vandervort, Appellant  
**Superior Court Case Number:** 17-1-00052-9

**The following documents have been uploaded:**

- 519739\_Briefs\_20181119143400D2114269\_5546.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Vandervort Brief of App.pdf*

**A copy of the uploaded files will be sent to:**

- lmikelson@co.jefferson.wa.us
- mhaas@co.jefferson.wa.us

**Comments:**

---

Sender Name: Diane Hays - Email: jahayslaw@comcast.net

**Filing on Behalf of:** John A. Hays - Email: jahayslaw@comcast.net (Alternate Email: jahayslaw@comcast.net)

Address:  
1402 Broadway  
Longview, WA, 98632  
Phone: (360) 423-3084

**Note: The Filing Id is 20181119143400D2114269**