

FILED
Court of Appeals
Division II
State of Washington
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NO. 52040-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

SEAN FORSMAN,

Appellant.

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

The Honorable Jerry T. Costello, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Mr. Forsman is not required to pay a \$200 criminal filing fee.
2. Mr. Forsman is not required to pay a \$100 DNA collection fee.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The recent amendments to the statutes addressing legal financial obligations (LFOs) apply prospectively to all cases on direct appeal. Those amendments prohibit the imposition of a filing fee upon indigent criminal defendants. Must this court vacate the trial court order requiring Mr. Forsman, who is indigent, to pay a \$200 criminal filing fee?

2. The recent amendments to the statutes addressing legal financial obligations (LFOs) apply prospectively to all cases on direct appeal. Those amendments prohibit the imposition of a DNA collection fee upon an offender whose DNA has been collected under a previous felony conviction. Must this court vacate the trial court order requiring Mr. Forsman pay a \$100 DNA collection fee when his DNA has been collected in the past?

C. STATEMENT OF THE CASE

This Court remanded Mr. Forsman's case to the trial court to hold a full resentencing hearing. See *State v. Sean Allen Forsman*, No. 49743-3-II (filed February 13, 2018).

On June 1, 2018, Mr. Forsman appeared before the trial court and waived his right to be represented by counsel at resentencing. RP¹ 5-7.

The trial court heard the full resentencing hearing on June 8. RP 10-44. Prior to the hearing, Mr. Forsman reiterated his desire to self-represent. RP 11.

At the start of the hearing, the court assured Mr. Forsman the hearing would be a full resentencing hearing. RP 11.

The court reviewed prior sentencing paperwork admitted as Exhibits 1-5.

At the hearing, the court declined to hear what it characterized as Mr. Forsman's motion to withdraw his plea in Pierce County case number 98-1-00372-5 wherein Forsman pleaded guilty to three counts of unlawful delivery of a controlled substance. RP 22, 25, 30.

Mr. Forsman also argued his 1995 conviction for conspiracy to deliver a controlled substance was facially invalid as it was classified as a Class B felony. RP 24, 30-34. The court disagreed with Mr. Forsman's analysis finding pursuant to RCW 69.50.407, that conspiracy to deliver a

¹ "RP" refers to the single volume of verbatim report of proceedings prepared for the appeal.

controlled substance is a Class B felony and required inclusion in the offender score calculation as it had not washed out. RP 34-36.

Consequently, the court included at least four 1995 and 1998 convictions as criminal history. CP 4; RP 35.

Mr. Forsman's accomplishments and personal growth while in DOC impressed the court. RP 38-42. The court imposed 10 fewer months than at the previous sentencing. RP 42-43.

The judgment and sentence included a \$200 filing fee and a \$100 DNA collection fee. CP 6. Mr. Forsman has prior Pierce County felony convictions from 1995, 1998, and 1999. CP 4.

Mr. Forsman appeals from his resentencing. CP 15-16.

D. ARGUMENT

The Washington Supreme Court's recent decision in *Ramirez* requires this court to vacate the orders requiring Mr. Forsman to pay a criminal filing fee and a DNA collection fee.

The Washington Supreme Court's recent decision in *Ramirez* requires this court to vacate the orders requiring Mr. Forsman to pay a criminal filing fee and a DNA collection fee.

On September 20, 2018, the Washington Supreme Court decided *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). *Ramirez* held that the amendments to the Legal Financial Obligations (LFO) statutes passed

as HB 1783 applies prospectively to all cases pending on direct appeal. *Ramirez*, 191 Wn.2d at 747.

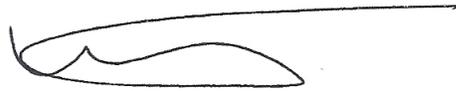
Under those amendments, a trial court may no longer impose discretionary LFOs upon indigent persons. RCW 10.01.160(3). Likewise, a sentencing court may no longer order an indigent person to pay the \$200 criminal filing fee. Laws of 2018, ch. 269; *Ramirez*, 191 Wn.2d at 748. Finally, a sentencing court may not order an indigent person to pay a \$100 DNA collection fee if he has paid that fee previously because of a prior felony conviction. Laws of 2018, ch. 269. Mr. Forsman has at least three prior felony convictions in Washington. CP 4.

Because he is indigent, the sentencing court cannot order Mr. Forsman to pay the \$200 criminal filing fee under HB 1783. *Ramirez*, 191 Wn.2d at 748. CP 6. Also, because he has had DNA collected because of previous felony convictions, the sentencing court is prohibited from ordering him to pay the \$100 DNA collection fee. Laws of 2018, ch. 269. CP 6.

E. CONCLUSION

This Court should remand Mr. Forsman's case to the trial court to strike the filing fee and the DNA collection fee.

Respectfully submitted February 6, 2019.

A handwritten signature in black ink, appearing to read "Lisa E. Tabbut". The signature is written in a cursive style with a long horizontal stroke at the top.

LISA E. TABBUT/WSBA 21344
Attorney for Sean Forsman

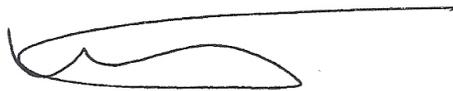
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares:

On today's date, I filed the Brief of Appellant to (1) Pierce County Prosecutor's Office, at pcpatcecf@co.pierce.wa.us; (2) the Court of Appeals, Division II; and (3) I am maintaining a copy in my file until I have an updated address for appellant.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed February 6, 2019 in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', written over a horizontal line.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Sean Forsman, Appellant

LAW OFFICE OF LISA E TABBUT

February 06, 2019 - 5:39 PM

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