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Court of Appeals
Division II
State of Washington
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NO. 52091-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

RONALD MCNEAL,

Appellant.

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

The Honorable J. Andrew Toynbee, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSINGMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	3
LEGAL FINANCIAL OBLIGATIONS IMPOSED IN THE JUDGMENT AND SENTENCE MUST BE STRICKEN GIVEN THE PROSPECTIVE APPLICATION OF LEGISLATIVE AMENDMENTS PERTAINING TO SUCH OBLIGATIONS.....	3
D. <u>CONCLUSION</u>	5

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Ramirez
_ Wn.2d _, _ P.3d _, 2018 WL 4499761, at *6-7 (Sept. 20, 2018) 2

RULES, STATUTES AND OTHER AUTHORITIES

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783, 65th Leg.,
Reg. Sess. (Wash. 2018) (HB 1783)..... 1, 3, 4, 5

Former RCW 10.01.160..... 3

LAWS OF 2018, ch. 269 1, 3

LAWS OF 2018, ch. 269, § 17..... 4

RCW 10.01.160 4

RCW 10.101.010 3, 4

RCW 10.64.015 3

A. ASSIGNMENT OF ERROR

The discretionary legal financial obligations and criminal filing fee should be stricken from Ronald William McNeal's judgment and sentence.

Issue Pertaining to Assignment of Error

Because of legislative amendments and case law applying such amendments prospectively to cases pending on direct appeal, should the discretionary legal financial obligations and criminal filing fee be stricken from McNeal's judgment and sentence?

B. STATEMENT OF THE CASE

Following his last personal restraint petition, this court remanded McNeal's case for correction of two scrivener's errors. CP 77-79 & n.2. On remand, the trial court entered an order amending the judgment and sentence. CP 86-87. The order was entered over McNeal's objection, request to revisit other aspects of his judgment and sentence, and request for counsel. RP 3-5; CP 87 (indicating McNeal refused to sign order amending the judgment and sentence). McNeal timely appealed the order amending the judgment and sentence. CP 88-90.

In the pendency of the appeal, the legislature amended several statutes to prohibit the imposition of certain LFOs on indigent defendants. ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783); LAWS OF 2018, ch. 269 (listing effective date of

June 7, 2018). The Washington Supreme Court recently held that HB 1783 applies prospectively to cases pending on direct review and not final when HB 1783 was enacted. State v. Ramirez, ___ Wn.2d ___, ___ P.3d ___, 2018 WL 4499761, at *6-7 (Sept. 20, 2018).

In 2012, McNeal was sentenced to 144 months of confinement for violations of the uniform controlled substances act. CP 11, 14. The judgment and sentence imposed several financial obligations, including the \$200 criminal filing fee, \$2,400 in fees for court-appointed counsel, and \$500 for the drug enforcement fund. CP 16. Shortly thereafter, another \$883 in costs was added to the judgment and sentence for the cost of court-appointed investigative services. Supp. CP ___ (sub no. 63; order amending judgment and sentence).

At the time of McNeal's sentencing, McNeal was permitted to seek review at public expense based on indigency. Supp. CP ___ (sub no. 58; order of indigency). McNeal had declared under penalty of perjury that he owned no property of any value, had no assets, and owed more than \$16,000 in other debts. Supp. CP ___ (sub no. 57; motion and declaration for order authorizing review at public expense). Thus, there was clear evidence of indigency at the time of sentencing.

With respect to the instant appeal, McNeal confirmed in his motion for order of indigency that his financial circumstances had not changed since

2011, before his sentencing. CP 92. He reiterated that he had no assets or income and that he owed significant undischarged debts. CP 93.

C. ARGUMENT

LEGAL FINANCIAL OBLIGATIONS IMPOSED IN THE JUDGMENT AND SENTENCE MUST BE STRICKEN GIVEN THE PROSPECTIVE APPLICATION OF LEGISLATIVE AMENDMENTS PERTAINING TO SUCH OBLIGATIONS

Under recent case law interpreting recent legislative amendments, trial courts may not impose discretionary costs or filing fees on indigent defendants. For cases pending on appeal, such as this one, the legislative amendments apply prospectively and entitle McNeal to relief from thousands of dollars of LFO debt. Accordingly, McNeal asks that his discretionary LFOs and the \$200 criminal filing fee be stricken from his judgment and sentence.

In Ramirez, the Washington Supreme Court discussed and applied HB 1783, which became effective June 7, 2018 and applies prospectively to cases currently on appeal. Ramirez, 2018 WL 4499761, at *3, 6-8. HB 1783 “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 as defined in RCW 10.101.010(3)(a) through (c).” Ramirez, 2018 WL 4499761, at *6 (citing LAWS OF 2018, ch. 269, § 6(3)); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of

sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”). 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.

HB 1783 also amended RCW 36.18.020(2)(h), which now states the \$200 criminal filing fee “shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) through (c).” LAWS OF 2018, ch. 269, § 17. This amendment “conclusively establishes that courts do not have discretion” to impose the criminal filing fee against those who are indigent at the time of sentencing. Ramirez, 2018 WL 4499761, at *8. In Ramirez, the court accordingly struck the criminal filing fee due to indigency. Id.

There can be no dispute that at the time of sentencing and at the time of remand from which the instant appeal stems, McNeal was indigent under RCW 10.101.010(3). He had no income or assets; he was therefore well below 125 percent of the federal poverty level. CP 92-93; Supp. CP ___ (sub no. 57; motion for order of indigency); cf. Ramirez, 2018 WL 4499761, at *3 (relying on Ramirez’s motion for order of indigency to establish he “unquestionably qualified as indigent at the time of sentencing”).

Nor can there be any dispute that McNeal's financial circumstances have only changed for the worse since sentencing. He still has no income or assets and has accrued significantly more debt while incarcerated. CP 92-93.

McNeal acknowledges he raised no claim on remand with respect to legal financial obligations. But Ramirez did not challenge the imposition of LFOs either. Ramirez, 2018 WL 4499761, at *2. Nonetheless, given the importance of the legislative enactments and their prohibition on imposing discretionary LFOs and the criminal filing fee against indigent defendants, the court applied HB 1783 prospectively to invalidate the discretionary LFOs and criminal filing fee imposed in the judgment and sentence. Ramirez, 2018 WL 4499761, at *6-7. Just like Ramirez, McNeal's case is not terminated, review of the judgment and sentence is not final, and therefore the changes made by HB 1783 apply prospectively to McNeal's judgment and sentence. "Because House Bill 1783's amendments pertain to costs imposed upon conviction and [McNeal's] case was not yet final when the amendments were enacted, [McNeal] is entitled to benefit from this statutory change." Ramirez, 2018 WL 4499761, at *8. The remedy is to strike the improper discretionary LFOs and criminal filing fee from McNeal's judgment and sentence. Id.

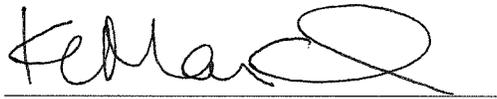
D. CONCLUSION

For the reasons stated, the discretionary legal financial obligations and the filing fee should be stricken from McNeal's judgment and sentence.

DATED this 11th day of October, 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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