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

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RONALD McNEAL,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUE

- A. The State concedes the 2018 legislative amendments to the legal financial obligation statutes apply prospectively to McNeal, who is per se indigent, and therefore, all discretionary legal financial obligations and the criminal filing fee should be vacated.

II. STATEMENT OF THE CASE

McNeal's Statement of the Case accurately reflects the procedural history of his case and the facts relevant to this appeal. Therefore, the State adopts McNeal's Statement of the Case for the purpose of this appeal but reserves the right to further supplement the facts in its argument section below as necessary.

III. ARGUMENT

- A. THE STATE CONCEDES THE STATUTORY AMENDMENTS TO LEGAL FINANCIAL OBLIGATIONS ENACTED IN JUNE 2018 APPLY TO McNEAL, THEREFORE, ALL LEGAL FINANCIAL OBLIGATIONS SHOULD BE VACATED EXCEPT THE MANDATORY CRIME VICTIM ASSESSMENT.**

McNeal argues pursuant to the recent legislative amendments the discretionary legal financial obligations and \$200 filing fee imposed by the trial court must be vacated because he was indigent. The State concedes the legislative amendments enacted June 2018 are applied prospectively to cases pending on appellate review and, therefore, entitle McNeal to have all but the

\$500 Crime Victim assessment vacated from his judgment and sentence.

The Supreme Court in *State v. Ramirez*, found the 2018 legislative amendments to the legal financial obligation statutes apply prospectively to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, ___ Wn.2d ___, ___ P.3d ___, 2018 WL 4499761, at 18-23, No. 95249-3, (Sept. 20, 2018); *See also* RCW 10.101.010; RCW 10.01.160; RCW 10.64.015; RCW 43.43.7541; RCW 36.18.020(h). Indigency is now broken into two groups. The first group of defendant, a person can be indigent for court appointed counsel purposes, but not categorically barred from having discretionary legal financial obligations imposed. RCW 10.101.010(3)(d); RCW 36.18.020(h); The trial court is still required to do a full inquiry regarding the defendant's ability to pay legal financial obligations and make an individualized determination on the record before imposing any discretionary legal financial obligations. *Ramirez* at 18-23.

The other category of indigent defendants can be found in sections (a), (b), and (c) of RCW 10.101.010(3), and they create a per se category of indigency.

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c). The legislative amendments, which took effect June 7, 2018, amended RCW 10.64.015 to include, "The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c)." Laws of 2018, c 269, § 10. Trial courts are no longer able to impose discretionary costs on indigent defendants who meet the per se indigency prong. RCW 10.01.160; RCW 10.64.015; RCW 10.101.010(3)(a)-(c). Further pursuant to the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under the per se

prong. RCW 36.18.020(h), *citing* RCW 10.101.010(3)(a)-(c).

The State acknowledges McNeal, according to his original affidavit for indigency filed contemporaneously with the signing of his original judgment and sentence, would be considered indigent under RCW 10.101.010(3)(c), his income was below 125 percent of the federal poverty level. CP 11; 99-106. McNeal's financial situation has not changed in the last six years, as indicated in the financial declaration he signed for this appeal. CP 91-94. Therefore, McNeal fell under the per se indigency prong at the time of his original sentencing, and continued to do so at the time the State had his scrivener's error corrected. CP 86-87, 91-94.

Currently McNeal has the following assessed legal financial obligations \$200 criminal filing fee, \$2,400 court appointed attorney fees, \$3,000 VUSA fine, \$500 Lewis County Drug Fund Fee, and \$500 Crime Victim Assessment. CP 16. Further, this Court assessed the following appellate costs, which were added to McNeal's judgment and sentence, \$72 to the Lewis County Prosecutor's Office and \$3,680.59 to the Office of Public Defense Appellate Indigent Defense Fund. CP 49. Due to McNeal's indigency status under RCW 10.101.010(3)(c) and the prospective application of legislative amendments, this Court should vacate all

legal financial obligations with the exception of the \$500 Crime Victim Assessment.

IV. CONCLUSION

The State concedes the 2018 legislative amendments to the legal financial obligation statutes prospectively apply to McNeal because his case was on appeal at the time they became effective. McNeal is indigent, as he falls under RCW 10.101.010(3)(c), his income is below 125 percent of the federal poverty level. This Court should order the trial court to vacate all legal financial obligations except the \$500 Crime Victims Assessment.

RESPECTFULLY submitted this 19th day of November, 2018.

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by: _____
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LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

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