

FILED
Court of Appeals
Division II
State of Washington
2/13/2019 8:00 AM

NO. 52171-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY HUVER,
Appellant.

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

The Honorable Elizabeth P. Martin, Judge

BRIEF OF APPELLANT

LISE ELLNER, WSBA NO. 20955
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Attorneys for Appellant

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A. ASSIGNMENTS OF ERROR

1. The amendment to RCW 43.43.7541 applies to this case requiring the court vacate the criminal filing fee in all indigent cases.

2. This court should vacate the imposition of the criminal filing fee and the DNA fee pursuant to the newly amended RCW 43.43. 7541 and under *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).

B. ISSUES PRESENTED ON APPEAL

1. Must this court remand the to the sentencing court to vacate imposition of the criminal filing fee because Huver is indigent?

2. Must this court remand the to the sentencing court to vacate imposition of the DNA fee because the courts have previously obtained Huver's DNA?

C. STATEMENT OF THE CASE

1. Procedural History

Anthony Huver pled guilty to two counts of second degree assault (counts I and II) and one count of unlawful possession of a controlled substance (count III) on January 11, 2017. CP 11. At

sentencing, the court imposed a DNA fee of \$100, and a criminal filing fee of \$200. CP 29. At the time of his sentence, Huver had already been previously convicted of a felony, and subsequently, the courts previously obtained Huver's DNA. CP 27.

Huver brought a CrR 7.8 motion to correct his judgment and sentence, which the trial court denied. CP 43, 58, 83. Huver timely appeals. CP 84.

D. ARGUMENT

1. THE CRIMINAL FILING FEE AND DNA FEES MUST BE STRICKEN IN THIS INDIGENT CASE

Mr. Huver challenges the court's imposition of the criminal filing fee and the DNA fee in his case, where he is indigent and the state had Huver's DNA on file prior to this case. CP 82-83.

a. The \$100 DNA fee imposed against Huver is unlawful and should be stricken

At sentencing, the court imposed a DNA fee of \$100, previously a discretionary legal financial obligation, and a criminal filing fee of \$200. CP 29 Because Huver has previously been convicted of a felony, DNA has previously been collected. CP 27; see RCW 43.43.7541 (mandatory DNA fee upon felony conviction).

Since Huver was sentenced, the legislature amended RCW

43.43.7541. This statute now only allows the government to collect a DNA fee one time. In this case, the trial court authorized a second collection contrary to RCW 43.43.7541.

The legislature's decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. Here, Huver's case was pending on appeal/or initiated after the effective date of RCW 43.43.7541. *Ramirez*, 191 Wn.2d at 747 ("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.").

Accordingly, the DNA fee imposed must be stricken from the judgment and sentence.

b. The legislature no longer permits imposition of a criminal filing fee in indigent cases

The legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee

statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

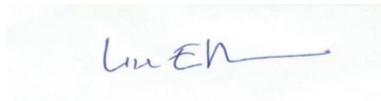
The legislature's decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. Here, appellant's case was pending on appeal/or initiated after the effective date of RCW 43.43.7541. *Ramirez*, 191 Wn.2d at 749. Accordingly, the criminal filing fee imposed must be stricken from the judgment and sentence.

E. CONCLUSION

Anthony Huver respectfully requests that this court strike the imposition of the \$100 DNA fee and the \$200 criminal filing fee from Huver's judgment and sentence.

DATED this 13th day of February 2019.

Respectfully submitted,

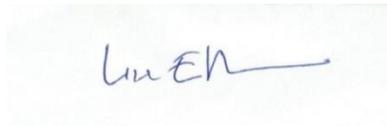
A handwritten signature in blue ink, appearing to read "Lise Ellner", is written over a light blue rectangular background.

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I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor's Office pcpatcef@co.pierce.wa.us and Anthony Huver/DOC#997716, Monroe Corrections Center, PO Box 777, Monroe, WA 98272 a true copy of the document to which this certificate is affixed on February 13, 2019. Service was made by electronically to the prosecutor and Anthony Huver by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

February 12, 2019 - 6:04 PM

Transmittal Information

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Appellate Court Case Number: 52171-7
Appellate Court Case Title: State of Washington v. Anthony Jay Huver
Superior Court Case Number: 16-1-03556-8

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