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Court of Appeals
Division II
State of Washington
4/15/2019 10:29 AM

NO. 52171-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ANTHONY HUVER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Elizabeth P. Martin

No. 16-1-03556-8

Brief of Respondent

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By
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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this court remand for the criminal filing fee to be stricken?

2. Should this court remand for the DNA collection fee to be stricken

B. STATEMENT OF THE CASE.

For the purposes of this brief, the State accepts the procedural and factual history as presented in the Appellant's brief.

C. ARGUMENT.

1. THIS COURT SHOULD ORDER THAT THE IMPOSITION OF THE CRIMINAL FILING FEE BE STRIKEN.

In this case, the trial court found the defendant to be indigent. CP 89. House Bill 1783, effective March 27, 2018, prohibits the imposition of the $200.00 filing fee on defendants who were indigent at the time of sentencing. As the court held in ***State v. Ramirez***, 191 Wn.2d 732, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that the criminal filing fee of $200.00 that was imposed in this case should be stricken. The State

further agrees that House Bill 1783 eliminates any interest accrual on nonrestitution legal financial obligations.

The State acknowledges that this defendant was found indigent by the sentencing court, and therefore the $200.00 criminal filing fee should be stricken.

2. THIS COURT SHOULD ORDER THAT THE IMPOSITION OF THE DNA COLLECTION FEE BE STRIKEN.

The appellant in this case also appeals the imposition of a $100 DNA-collection fee in the judgment and sentence, asserting that a DNA sample was previously submitted to the state as a result of a prior qualifying conviction. A legislative amendment to RCW 43.43.7541, which took effect June 7, 2018, requires imposition of the DNA-collection fee "unless the state has previously collected the offender's DNA as a result of a prior conviction." The amendment applies to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. ***State v. Ramirez***, 191 Wn.2d 732, 426 P.3d 714, (2018).

The State's records show that this appellant's DNA was previously collected and is on file with the Washington State Patrol Crime Lab. The State respectfully asks this Court to remand this case to the superior court

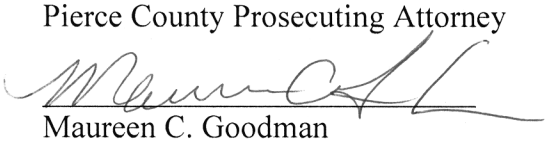
to amend the judgment and sentence to strike the imposition of the $100 DNA collection fee.

D. CONCLUSION.

This court should remand for the trial court to strike the imposition of the $200.00 filing fee, the imposition of the $100 DNA collection fee and the interest accrual provision.

DATED: April 15, 2019

MARY E. ROBNETT
Pierce County Prosecuting Attorney



Maureen C. Goodman
Deputy Prosecuting Attorney
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The undersigned certifies that on this day she delivered by ~~U.S. mail~~ EFile or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/15/19 Alisha Johnson
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

April 15, 2019 - 10:29 AM

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