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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DERRICK L. LYONS,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Supplemental Brief

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I. ISSUE

- A. Did the trial court improperly impose legal financial obligations on an indigent defendant due to the retroactivity of the 2018 legislative amendments to the legal financial obligations statutes?

II. STATEMENT OF THE CASE

The State relies on the Statement of the Case it submitted in its original response brief for the underlying facts and procedures. This Supplemental Response Brief is in response to the Court's May 7, 2019 ruling accepting Lyon's Supplemental Brief and calling for the State to file its Supplemental Response Brief on or before June 5, 2019. This briefing is solely in regards to the 2018 amendments to the legal financial obligations statutes and their effect the trial court's imposition of certain legal financial obligations upon Lyons.

The State will provide further substantive facts in its supplemental brief below as required.

III. ARGUMENT

- A. THE STATE CONCEDES LYONS IS INDIGENT PER SE, THEREFORE, THE FILING FEE AND INTEREST SHOULD BE STRICKEN FROM THE JUDGMENT AND SENTENCE. HOWEVER, LYONS IS REQUIRED TO PAY THE DNA FEE IMPOSED BY THE TRIAL COURT.**

Lyons asserts he was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative

amendments to the legal financial obligation statutes enacted under Engrossed Second Substitute House Bill 1783, eliminates the \$200 filing fee, as it is no longer a nondiscretionary legal financial obligation for indigent defendants. See Supp. Brief of Appellant. Lyons also contends the 2018 amendments require the interest to be waived on his legal financial obligations. *Id.* The State concedes Lyons is correct and requests this Court to strike the \$200 filing fee and the interest from the judgment and sentence. Lyons also argues the DNA fee imposed should be stricken per the 2018 amendments. *Id.* Lyons assertion is incorrect, this Court should affirm the DNA fee imposed by the trial court.

The 2018 amendments apply 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, 747-49, 426 P.3d 714 (2018). Therefore, Lyons receives the benefit of the amendments that apply to him, which in Lyons' case would be the filing fee and any interest obligation imposed, as all discretionary legal financial obligations were not imposed. RP (4/16/18) 37-38; CP 180-81.

The legislature removed the accrual of nonrestitution interest from legal financial obligations imposed in the 2018 amendments.

RCW 10.82.090(1); Laws 2018, ch. 269, §1. The 2018 amendments also changed the mandatory imposition of a \$100 DNA fee upon the offender on every sentence. Laws 2018, ch. 269, §18. The law now only requires the DNA fee to be imposed if the state has not previously collected the offender's DNA. RCW 43.43.7541.

Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent "per se" under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a defendant to pay costs. RCW 10.01.160(3).

(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).

While the record is not clear, Lyons would likely be considered per se indigent, pursuant to RCW 10.101.010(3)(c). If the State was required to resentence Lyons and do a full inquiry regarding his ability to pay at this point in time, he would qualify under this provision, as Lyons has been continually incarcerated. The trial court found Lyons indigent when he first appeared and appointed him counsel. CP 11, 19. Lyons was held continually in custody since December 25, 2017, until his sentencing on April 19, 2018. CP 11, 175. Therefore, the State can deduce Lyons is indigent pursuant to RCW 10.101.010(3)(c).

Further, the trial court imposed only those legal financial obligations which were mandatory at the time due to Lyons inability to pay. RP 37-38. The trial court imposed the \$200 filing fee, the \$500 crime victim assessment, and the \$100 DNA fee. RP 37-38; CP 180-81. The judgment and sentence also has the standard language regarding interest accruing at the rate of a civil judgment. CP 181. Due to the change in the law, the State concedes the Court must now strike the \$200 filing fee the trial court imposed and language requiring the judgment to accrue interest.

However, the trial court correctly imposed the \$100 DNA fee. Lyons crafts a creative argument, asserting his multiple Oregon

felonies would have required Lyons' DNA to be collected in Oregon, and therefore, pursuant to RCW 43.43.7541, the trial court erroneously imposed the DNA fee. Supp. Brief of Appellant 4-5. The DNA fee is not required to be collected when a sample has been previously collected for the Washington State DNA database.

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender's DNA as a result of a prior conviction. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754. This fee shall not be imposed on juvenile offenders if the state has previously collected the juvenile offender's DNA as a result of a prior conviction.

RCW 43.43.7541. The exemption from paying the \$100 fee is only when the "state" has previously collected an offender's DNA and this is because the fee is used to support the "state" DNA database. RCW 43.43.753; RCW 43.43.7532; RCW 43.43.7541. The purpose is to enter a person's DNA into the Washington State DNA database.

RCW 43.43.754. Lyons' DNA had not been previously submitted to the Washington state DNA database. CP 177. The DNA fee was correctly imposed by the trial court.

IV. CONCLUSION

The trial court correctly imposed the DNA fee upon Lyons, as Washington State had not previously collected a DNA sample from Lyons. The State concedes this Court should remand this matter back for the trial court to strike the \$200 filing fee and interest accrual language from the judgment and sentence pursuant to the 2018 legislative amendments.

RESPECTFULLY submitted this 30th day of May, 2019.

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