

FILED  
Court of Appeals  
Division II  
State of Washington  
11/1/2018 10:59 AM

NO. 52311-6-II

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

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STATE OF WASHINGTON,

Respondent,

v.

GUADALUPE CRUZ-CAMACHO,

Appellant.

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

The Honorable Stanley J. Rumbaugh, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

Legal financial obligations for court appointed attorney costs and the criminal filing fee were improperly imposed and must be stricken.

Issue pertaining to assignment of error

Where appellant was indigent at the time of resentencing, must the legal financial obligations for court appointed attorney costs and the criminal filing fee be stricken?

B. STATEMENT OF THE CASE

In October 2013, appellant Guadalupe Cruz-Camacho was convicted in Pierce County Superior Court of two counts of unlawful possession of a controlled substance with intent to deliver, with a major violation of the Uniform Controlled Substances Act aggravator and school zone enhancement for each offense. CP 3-4. The court counted each offense separately in calculating his offender score and imposed an exceptional sentence of 96 months, with a 24 month enhancement, for a total of 120 months confinement. CP 4, 7. The court also imposed standard and discretionary legal financial obligations. CP 5.

Cruz-Camacho appealed, and this Court affirmed his convictions, but it held that Cruz-Camacho received ineffective assistance of counsel when his attorney failed to argue that his convictions constituted the same

criminal conduct for sentencing purposes. It also held that the sentencing court erred when it imposed discretionary LFOs without inquiring into Cruz-Camacho's ability to pay. The Court remanded for resentencing. *State v. Espinoza*, 200 Wn. App. 1011 (2017), *review denied*, 189 Wn.2d 1030 (2017).

At the resentencing hearing on February 7, 2018, the State conceded that Cruz-Camacho's two convictions constitute the same criminal conduct and his offender score is therefore 0, but it asked the court to impose the same sentence. RP 4. Cruz-Camacho informed the court of the work and classes he had completed while incarcerated and asked the court to reduce his sentence so that he could be released. RP 5-7. He told the court he intended to return to Fresno upon release and resume his business selling fruit. RP 8.

The court reduced Cruz-Camacho's sentence by six months and reduced his LFOs to \$1500, including \$700 for court appointed attorney fees and the \$200 criminal filing fee. CP 24-26; RP 8. The court entered an order of indigency, and Cruz-Camacho filed this appeal. CP 36-29.

C. ARGUMENT

STATUTORY AMENDMENTS PROHIBITING IMPOSITION OF CERTAIN LEGAL FINANCIAL OBLIGATIONS APPLY TO CRUZ-CAMACHO'S CASE, AND THOSE LFOS MUST BE STRICKEN.

Cruz-Camacho was represented by appointed counsel at trial, sentencing and resentencing under a finding of indigency, and the court entered orders of indigency authorizing appellate review at public expense. CP 5, 24, 36-37; Supp. CP (Order of Indigency, filed 12/6/13). Despite his indigency, the court ordered Cruz-Camacho to pay \$700 in fees for his court appointed attorney and the \$200 criminal filing fee. CP 24-25.

In March 2018, the Legislature enacted Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018), modifying Washington's system for imposing and collecting LFOs. Under this bill, statutory amendments prohibit the imposition of costs if the defendant is indigent at the time of sentencing<sup>1</sup> and prohibit imposition of the \$200 criminal filing fee on an indigent defendant.<sup>2</sup> Laws of 2018,

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<sup>1</sup> "The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c). In determining the amount and method of payment of costs for defendants who are not indigent as defined in RCW 10.101.010(3) (a) through (c), the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3).

<sup>2</sup> "Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two

ch. 269 § § 6, 17. These amendments went into effect on June 7, 2018.  
*Id.*

The Washington Supreme Court recently held that the statutory amendments enacted by House Bill 1783 apply to cases pending on direct appeal when the amendments went into effect. *State v. Ramirez*, \_\_\_ Wn.2d \_\_\_, 426 P.3d 713, 722 (2018). Because these amendments pertain to costs imposed upon conviction, and Cruz-Camacho’s case was not yet final when the amendments were enacted, he is entitled to benefit from this statutory change. *Id.*, at 723.

Cruz-Camacho remained indigent and was represented by appointed counsel at the time of resentencing. Supp. CP (Notice of Appearance filed 1/16/18). Because the statutory amendments expressly prohibit courts from imposing discretionary costs and the criminal filing fee on indigent defendants, both the court appointed attorney costs and the filing fee must be stricken from his judgment and sentence. *See Ramirez*, 426 P.3d at 723 (remedy is to remand for trial court to strike improperly imposed LFOs).

D. CONCLUSION

Improperly imposed LFOs must be stricken from the judgment and sentence.

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hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).” RCW 36.18.202(2)(h).

DATED November 1, 2018.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Catherine E. Glinski".

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CATHERINE E. GLINSKI

WSBA No. 20260

Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant and Supplemental Designation of Clerk's Papers in *State v. Guadalupe Camacho*, Cause No. 52311-6-II as follows:

Guadalupe Camacho DOC# 369755  
Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



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Catherine E. Glinski  
Done in Manchester, WA  
November 1, 2018

**GLINSKI LAW FIRM PLLC**

**November 01, 2018 - 10:59 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52311-6  
**Appellate Court Case Title:** State of Washington, Respondent v. Guadalupe Cruz-Camacho, Appellant  
**Superior Court Case Number:** 12-1-01854-7

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