

FILED  
Court of Appeals  
Division II  
State of Washington  
12/27/2018 11:47 AM  
NO. 52311-6-II

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

GUADALUPE CRUZ-CAMACHO, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Stanley J. Rumbaugh, Judge

No. 12-1-01854-7

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**Brief of Respondent**

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

1. Should this Court remand for the trial court to strike the \$700 in court appointed attorney costs and \$200 filing fee where the State concedes that the amendments in House Bill 1783 apply to defendant's case?

B. STATEMENT OF THE CASE.

On May 21, 2012, the Pierce County Prosecuting Attorney charged Guadalupe Cruz-Camacho, hereinafter "defendant," with one count of unlawful possession of a controlled substance with intent to deliver (methamphetamine), and one count of unlawful possession of a controlled substance with intent to deliver (heroin) with a Uniform Controlled Substance Act violation aggravator and school zone enhancement on each count. CP 47-48. On October 18, 2013, defendant was found guilty and was sentenced to 96 months with a 24 month enhancement on each count to run concurrently, for a total of 120 months. CP 1-14.

The court entered an order of indigency on December 6, 2013. CP 42-43. The order states, "the defendant shall be allowed (x) To appeal from the certain judgement and sentence and every part thereof in the

above-entitled cause, entered on 10-18-13, at public expense - - to include the following: ... 2.) Attorney fees.” CP 42.

On appeal, the court found defendant’s trial counsel was ineffective for failing to argue that his two convictions constituted the same criminal conduct and the trial court erred when it imposed discretionary legal financial obligations (“LFOs”) without inquiring into his ability to pay. RP 4; *State v. Espinoza*, No. 45611-7-II, 2017 WL 3267937, at \*22-23 (Wash. Ct. App. Aug. 1, 2017)(unpublished). At resentencing, the court affirmed defendant’s convictions but reduced his sentence by six months and reduced the LFOs to \$1500, which included the \$500 crime victim penalty assessment, \$200 filing fee, \$100 DNA fee, and \$700 in court appointed attorney fees. CP 8-9, RP 20-33. The court subsequently entered an order of indigency on July 6, 2018. CP 36-37.

Defendant filed this appeal May 1, 2018. CP 38-39.

C. ARGUMENT.

1. THIS COURT SHOULD REMAND FOR THE TRIAL COURT TO STRIKE THE \$700 IN COURT APPOINTED ATTORNEY COSTS AND \$200 FILING FEE WHERE THE STATE CONCEDES THAT THE AMENDMENTS IN HOUSE BILL 1783 APPLY TO DEFENDANT’S CASE.

When a person is convicted in superior court, the court may order the payment of LFOs as part of the sentence. *State v. Kuster*, 175 Wn.

App. 420, 424, 306 P.3d 1022 (2013) (*citing* RCW 9.94A.760(1)). Courts review a sentencing court's decision on whether to impose LFOs for abuse of discretion. *State v. Clark*, 191 Wn. App. 369, 372, 362 P.3d 309 (2015). A court abuses its discretion when it imposes an LFO based on untenable grounds or for untenable reasons. *Id.*

The legislature recently enacted Engrossed Second Substitute House Bill 1783 (House Bill 1783), which amended the LFO statutory scheme. *See*, Laws of 2018, ch. 269, §§17, 18. Effective June 7, 2018, courts may no longer impose costs on a defendant who is indigent at the time of sentencing. RCW 10.01.160(3). Similarly, courts may no longer impose the \$200 filing fee on defendants who are indigent at the time of sentencing. RCW 36.18.020(2)(h).

In *Ramirez*, the Supreme Court held that the recent LFO statutory amendments in House Bill 1783 apply to cases that were pending on appeal when the amendments went into effect. *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). When a controlling law is amended while a case is pending on review, “it would be anomalous for an appellate court to apply an obsolete law where no vested right or contrary legislative intent is disturbed by applying a more current law.” *Marine Power & Equip. Co. v. Washington State Human Rights Comm'n Hearing Tribunal*, 39 Wn. App. 609, 621, 694 P.2d 697 (1985).

Defendant argues the \$700 court appointed attorney costs and \$200 filing fee should be stricken. Brief of Appellant 4. Defendant was last sentenced on February 7, 2018. CP 20-33. Defendant filed this appeal May 1, 2018. CP 34-35. Defendant's case was pending on appeal when the above amendments went into effect on June 7, 2018. Accordingly, the State concedes that he is entitled to the benefit of the amendments in House Bill 1783.

Amended RCW 10.01.160(3) prohibits courts from imposing costs, which includes court appointed attorney costs, on defendants who are indigent at the time of sentencing. *See, State v. Diaz-Farias*, 191 Wn. App. 512, 521, 362 P.3d 322 (2015) (The cost of a court appointed attorney is one that can be imposed under RCW 10.01.160). Defendant was found indigent, so he should be exempt from court appointed attorney costs. CP 36-37, 42-43. For the same reason, defendant should be exempt from the \$200 filing fee under amended RCW 36.18.020(2)(h).

This Court should remand for the trial court to strike the \$700 in court appointed attorney costs and \$200 criminal filing fee.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests that this Court remand for the trial court to strike the \$700 in court appointed attorney costs and \$200 criminal filing fee.

DATED: December 27, 2018

MARK LINDQUIST  
Pierce County Prosecuting Attorney



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WSB #34012

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BRENNA QUINLAN  
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail 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.

12.27.18   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**December 27, 2018 - 11:47 AM**

**Transmittal Information**

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**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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