

FILED
Court of Appeals
Division II
State of Washington
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NO. 52703-8-11

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BLESS CHIECHI,

Appellant.

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

The Honorable Stephen M. Warning, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. The sentencing court erred by imposing an interest accrual provision in the Judgment and Sentence following the Supreme Court's decision in *State v. Ramirez*¹ and after enactment of House Bill 1783. Clerk's Papers (CP) 103.

2. The sentencing court erred by imposing a Department of Corrections (DOC) community custody supervision fee. CP 101.

B. ISSUES PERTAINING TO SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. Do recent statutory amendments affecting discretionary legal financial obligations (LFOs) require remand to the trial court to strike the imposition of interest accrual on non-restitution LFOs? Assignment of Error 1?

2. Do recent statutory amendments affecting discretionary LFOs require remand to strike the imposition of those costs where the trial court imposed the costs of community supervision? Assignment of Error 2.

C. STATEMENT OF THE CASE

1. Procedural facts:

Sentencing took place on July 11, 2018. 1Report of Proceedings (RP) at 60-70. Including a deadly weapon enhancement, Mr. Chiechi was

¹191 Wn.2d 732, 742, 426 P.3d 714 (2018).

sentenced to 96 months, followed by 36 months of community custody. 1RP at 67; CP 100, 101. The court waived non-mandatory legal financial obligations (LFOs) and ordered that Mr. Chiechi pay a \$500.00 victim assessment and \$100.00 DNA collection fee. CP 102. In addition, the judgment and sentence states “[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgment.” CP 103. The judgment and sentence also provides that while on community custody, Mr. Chiechi shall “pay supervision fees as determined by DOC.” CP 101.

Appellant’s opening brief was filed March 8, 2019. Counsel was granted leave to file a supplemental brief on May 6, 2019.

D. ARGUMENT

1. THE COURT ERRED IN IMPOSING INTEREST ACCRUAL AND COMMUNITY SUPERVISION FEES

Mr. Chiechi was represented by appointed counsel by the trial court and the court waived all LFOs with the exception of a \$500.00 crime victim assessment and \$100.00 DNA collection fee. CP 102. The judgment and sentence provides that Mr. Chiechi shall “pay supervision fees as determined by DOC” and interest accrual. CP 101, 103. Because the supervision costs and interest accrual are discretionary costs and prohibited by statutory amendments, this Court should remand to strike those LFOs.

a. Recent statutory amendments prohibit discretionary costs for indigent defendants

In 2018, the law on legal financial obligations changed when the legislature enacted *Second Substitute House Bill (SSH) 1783*, effective June 7, 2018, which amended several statutes related to the imposition of discretionary costs on indigent defendants and interest on such costs. See *LAWS OF 2018*, ch. 269. In *State v. Ramirez*, 191 Wn.2d 732, 742, 426 P.3d 714 (2018), the Supreme Court held that these amendments applied to cases that are not yet final. *Ramirez*, 191 Wn.2d at 747-50. In *Ramirez*, an appellant challenged discretionary LFOs, arguing the trial court had not engaged in an appropriate inquiry regarding his ability to pay under *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). *Rameriz*, 191 Wn.2d at 742. Because the defendant in *Ramirez* was indigent, the Supreme Court ordered the filing fee stricken. *Id.* at 748-50.

RCW 10.01.160 both establishes and limits a court's authority to impose legal financial obligations (LFOs) in criminal cases. As amended in 2018, subsection.160(3) now states, “[t]he 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).” RCW 10.01.160(3).

Subsection.010(3) defines “indigent” as a person who (a) receives certain forms of public assistance, (b) is involuntarily committed to a public mental health facility, (c) whose annual after-tax income is 125% or less than

the federally established poverty guidelines, or (d) whose “available funds are insufficient to pay any amount for the retention of counsel” in the matter before the court. RCW 10.101.010(3).

b. The community custody supervision fee is discretionary

In this case, the sentencing court found Mr. Chiechi to be indigent and waived nonmandatory financial penalties, including the criminal filing fee. CP 102. Shortly after sentencing the court found Mr. Chiechi indigent and unable to contribute to the costs of his appeal while ordering the appeal to proceed solely at public expense. CP 116-18. In short, when sentenced, Mr. Chiechi was “indigent” as defined by RCW 10.101.010(3)(d).

The trial court erred by imposing discretionary community supervision and interest accrual LFOs

In Section 4.2 of the judgment and sentence, the court directed Mr. Chiechi to “pay supervision fees as determined by DOC” for community supervision. CP 101. Although the judgment and sentence cites no authority for these costs, a statute allows them as a discretionary community custody condition. RCW 9.94A.703(2)(d). Mr. Chiechi was ordered to have 36 months of community custody. CP 101.

This Court recently made it clear these costs are discretionary. *State v. Lundstrom*, 6 Wn.App.2d 388, 396 n.3, 429 P.3d 1116 (2018) (citing subsection .703(2)(d), which states: “Unless waived by the court, ... the court

shall order an offender to: ... (d) Pay supervision fees as determined by the Department.” This Court recognized in *Lundstrom* that while the sentencing court had intended to impose only mandatory fees, it inadvertently imposed this discretionary fee. *Id.* This also appears to have also happened to Mr. Chiechi.

The legislature passed HB 1783 on March 7, 2018 and it became effective June 7, 2018. *Ramirez*, 191 Wn.3d at 749. Mr. Chiechi was sentenced July 11, 2018. For the reasons discussed above, this Court should find the current LFO statute prohibits the imposition of the discretionary community supervision fee and remand to the sentencing court to strike the LFO.

c. The court also erred by imposing interest accrual

Mr. Chiechi also challenges the interest accrual on non-restitution LFOs assessed in Section 4.3 of the judgment and sentence. CP 103. The 2018 legislation eliminated the accrual of interest on non-restitution LFOs. The judgment and sentence states that financial obligations imposed shall bear interest from the date of the judgment until payment in full at the rate applicable to civil judgments. CP 103. The 2018 legislation states that as of its effective date “penalties, fines, bail forfeitures, fees, and costs imposed against a defendant in a criminal proceeding shall not accrue interest.” As amended, RCW 10.82.090 now provides:

- (1) Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil

judgments. As of the effective date of this section [June 7, 2018], no interest shall accrue on non-restitution legal financial obligations.

See Laws of 2018, ch. 269.

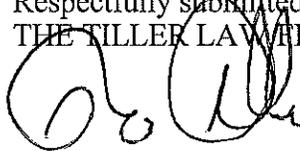
Here, the judgment and sentence was filed July 11, 2018. CP 97. Accordingly, the interest accrual provision in the judgment and sentence pertaining to non-restitution LFOs should be stricken.

E. CONCLUSION

For the reasons stated above, Mr. Chiechi respectfully requests this Court remand for resentencing with instructions to strike community custody supervision fee and the interest accrual provision to the extent it applies to non-restitution LFOs.

DATED: May 7, 2019.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned certifies that on May 7, 2019, that this Appellant's Supplemental Opening Brief was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and Ryan Jurvakainen, Cowlitz County Prosecuting Attorney's Office and copies were mailed by U.S. mail, postage prepaid, to the following:

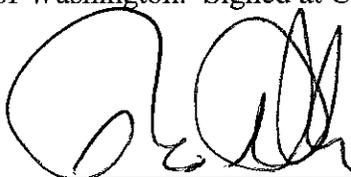
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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on May 7, 2019.



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