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Court of Appeals
Division II
State of Washington
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NO. 52534-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

DARRIUS BRUTON,

Appellant.

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

The Honorable James L. Lawler, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The \$100 DNA fee imposed by the trial court should be stricken under the Supreme Court's recent decision in State v. Ramirez.¹

2. The \$200 "criminal filing fee" imposed by the trial court at sentencing should be stricken under Ramirez.

3. The \$700 "fees for appointed attorney" imposed by the trial court at sentencing should be stricken under Ramirez.

Issue Pertaining to Assignments of Error

Under the Supreme Court's decision in Ramirez, should the \$100 DNA fee, \$200 criminal filing fee and \$700 appointed counsel fee be stricken from appellant's judgment and sentence because he was indigent at the time of sentencing?

B. STATEMENT OF THE CASE

The Lewis County prosecutor charged appellant Darrius Bruton by amended information with one count each of second degree assault and custodial assault for an incident alleged to have occurred on January 26, 2018. CP 6-7.

¹ State v. Ramirez, ___ Wn.2d, ___, 426 P.3d 714, 2018 WL 4499761 (Sept. 20, 2018).

Bruton waived his right to a jury trial and pled guilty to second degree assault in exchange for the prosecutor agreeing to dismiss the custodial assault count. RP² 2-5; CP 14-24.

Based on an offender score of five, the trial court sentenced Bruton to 24 months imprisonment to run consecutive to the current juvenile confinement term he was already serving. The trial court also imposed 18 months of community custody. CP 25-34; RP 11-14.

The court also ordered that Burton pay \$1,500 in legal financial obligations including the \$500 crime victim assessment,³ a \$100 DNA database fee,⁴ a \$200 criminal filing fee,⁵ and \$700 in court appointed attorney fees. CP 29-30; RP 12-13. Imposition of these legal financial obligations was based on Burton's assertions at sentencing that he was the beneficiary of a \$64,000 trust fund that he was eligible to collect upon release from prison. RP 12-13.

² This brief refers to the verbatim reports of proceedings for August 24, 2018 as "RP".

³ RCW 7.68.035 authorizes crime victim penalty assessments. In relevant part, RCW 7.68.035(1)(a) provides: "The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor."

⁴ RCW 43.43.7541

⁵ RCW 36.18.020

As part of his notice of appeal, Bruton submitted declarations indicating he had no source of income, owned no real property, was not the beneficiary of a trust fund, and was unemployed. CP 36-40. The superior court found Burton to be indigent and ruled that he was entitled to counsel on appeal at public expense. CP 41-43. Bruton timely appeals. CP 35.

C. ARGUMENT

THE DISCRETIONARY LFOs AND DNA FEE IMPOSED BY THE TRIAL COURT SHOULD BE STRICKEN BECAUSE BRUTON WAS INDIGENT AT THE TIME OF SENTENCING.

Bruton is indigent under the applicable statutory criteria. CP 36-43. Therefore, the \$200 Criminal filing fee, and \$700 in “Fees for court appointed attorney,” all of which are discretionary, should be stricken from Bruton's judgment and sentence under the recent Ramirez decision.

In Ramirez, the Washington Supreme Court discussed and applied Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783), which became effective June 7, 2018 and applies prospectively to cases pending on appeal. Ramirez, 426 P.3d at 718, 721-23.

HB 1783 amended “the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is *indigent at the time of sentencing* as defined in RCW

10.101.010(3)(a) through (c).” Ramirez, 426 P.3d at 721 (citing LAWS OF 2018, ch. 269, § 6(3)) (emphasis added); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”).

HB 1783 “also amends the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit charging the \$200 criminal filing fee to defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 17.” Ramirez, 426 P.3d at 722. Thus, HB 1783 establishes that the \$200 criminal filing fee is no longer mandatory if the defendant is indigent. Accordingly, the Ramirez court struck the fee due to indigency. Ramirez, 426 P.3d at 723. Because Bruton is indigent, this Court should similarly strike the \$200 criminal filing fee from his judgment and sentence.

HB 1783 also amends the RCW 9.94A.760, which now provides: “The court may not order an offender to pay costs as described in RCW 10.01.160 if the court finds that the offender at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c).” LAWS OF 2018, ch. 269, § 14. Bruton's judgment and sentence states the \$700 in “Fees for court appointed attorney” was imposed under the authority of RCW 9.94A.760. CP 30. Because HB 1783 amended RCW 9.94A.760

to prohibit imposition of such costs and fees on indigent defendants, and Bruton is indigent, this Court should strike the fee from his judgment and sentence.

This Court should also strike the DNA fee under House Bill 1783 and Ramirez. RCW 43.43.7541, the statute controlling the imposition of a DNA fee, was amended under House Bill 1783.

The statute now provides that

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.*

RCW 43.43.7541 (emphasis added); Laws of 2018, ch. 269, § 18.

Bruton has prior criminal history as evidenced by an offender score of five. CP 11-13, 25-34; RP 3. Clearly, the State has previously collected his DNA. See State v. Maling, ___ Wn. App. ___, ___ P.3d ___, 2018 WL 6630313 (December 18, 2018), *3 (striking \$100 DNA fee based on Maling's indigence and because "Mr. Maling's lengthy felony record indicates a DNA fee has previously been collected."). Because Bruton's case is not yet final, the new statute applies. Ramirez, 2018 WL 4499761 at *7-8. As a result, the DNA fee must be considered a discretionary LFO, which may not be imposed on an indigent defendant. Thus, the DNA fee should be stricken.

Bruton anticipates that State will, nonetheless, argue that he had the future ability to pay the discretionary LFOs as evidenced by his representation during sentencing that he was set to receive a trust fund settlement. RP 12-13. This does not change the analysis. First, there was no independent verification that Bruton was actually the recipient of a trust fund settlement. Significantly, although Bruton told the court at sentencing about the trust, his subsequent motion and declaration for order of indigency denies that he is the beneficiary of any trust account. Compare RP 12-13 with CP 37.

Moreover, as Ramirez makes clear, HB 1783 now prohibits courts from imposing discretionary costs on defendants who are *indigent at the time of sentencing*. 426 P.3d at 718. Thus, regardless of whether Bruton is the beneficiary of a trust or not, there can be no dispute that at the time of sentencing, he was indigent. CP 36-43.

D. CONCLUSION

Remand in necessary to strike the discretionary LFOs and the \$100 DNA fee imposed by the trial court in violation of HB 1783.

DATED this 20th day of December, 2018.

Respectfully submitted,
NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Jared B. Steed", is written over a horizontal line.

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