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

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DARRIUS I. BRUTON,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUE

- A. Did the trial court improperly impose discretionary legal financial obligations and the DNA fee on an indigent defendant due to the 2018 legislative amendments to the legal financial obligations statutes?

II. STATEMENT OF THE CASE

On May 1, 2018, the State charged Darius Bruton with Assault in the Second Degree. CP 1-3. The State later amended the information to charge Count I: Assault in the Second Degree and Count II: Custodial Assault. CP 6-7. The charges stem from an incident on January 26, 2018, at Green Hill School, a JRA institution, and was reported as a custodial assault. CP 4.

Bruton, who was 17 years old when the assault occurred, was sitting at a table with one to two other juvenile males. CP 4. Staff member Stubberfield was in conversation with two of the juveniles, turned away, and then Bruton jumped up on the table and ran towards Stubberfield. Bruton struck Stubberfield with his fist, knocking Stubberfield to the ground, then struck Stubberfield several more times and stomped on his head. CP 4-5. Bruton also walks away and then returns kicking Stubberfield again in the head. CP 5.

Bruton pleaded guilty and was sentenced on August 24, 2018. See RP. Bruton's plea deal allowed him to plead to Count I: Assault

in the Second Degree in exchange for an agreement with the State to dismiss Count II: Custodial Assault. RP 2; CP 14-24. The trial court sentenced Bruton to 24 months to run consecutive to the sentence he was currently serving. RP 11-24; CP 28. Bruton was ordered to pay legal financial obligations, including: \$700 court appointed attorney costs, \$100 DNA fee, \$200 criminal filing fee, and \$500 crime victim assessment. RP 13, CP 29-30. Bruton timely appeals his sentence. CP 35.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE RECORD SUPPORTS BRUTON'S ASSERTION HE IS INDIGENT PER SE, THEREFORE, THE STATE CONCEDES SOME OF THE LEGAL FINANCIAL OBLIGATIONS WERE IMPROPERLY IMPOSED.

Bruton 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, eliminate all discretionary legal financial obligations and the DNA fee. Brief of Appellant 3-6. While the legal financial obligation reforms eliminate interest, the DNA fee for previously convicted defendants who have had the sample already taken, and many other useful reforms in

regards to eliminating fees for indigent defendants, all indigent defendants are not created equal. Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20; RCW 10.01.160(3); RCW 10.101.010. Only indigent defendants who fall into the category of indigent “per se” status pursuant to RCW 10.01.160(3) and RCW 10.101.010(3)(a)-(c) qualify to eliminate all discretionary legal financial obligations. The record supports, and the State concedes, Bruton meets the criteria of indigent “per se.”

Pursuant to RCW 43.43.7541, effective June 7, 2018, which therefore applied at the time of Bruton’s sentencing, the imposition of the DNA-collection fee is required “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The State’s records do not show Bruton’s DNA was previously collected and on file with the Washington State Patrol Crime Lab.¹ Bruton’s prior convictions were as a juvenile and when his NCIC is run it does not indicate there is a DNA sample on file. Therefore, on this record it is not appropriate to strike the imposition of the \$100 DNA fee.

Bruton is indigent because he had no income at the time of his sentencing. RP 12; CP 37-39. Income is defined as,

¹ The State acknowledges the record on appeal is lacking this information, but the undersigned deputy prosecutor can attest if this case is remanded this information would be put into the trial record.

Salary, wages, interest, dividends, and others earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistant programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is heling defray the defendant's basic living costs.

RCW 10.101.010 (2)(b).

While Bruton told the trial court he had money coming to him soon, that money had not yet materialized. RP 12. Apparently, Bruton was the beneficiary of a civil lawsuit with a number of other juveniles and was slated to receive approximately \$64,000 into a trust fund. RP 12-13. There was no information about when the money would be deposited into the trust fund, what type of trust fund it would be, and therefore, if the trust fund would qualify as income. See, RP 12-13. Further, Bruton's financial declaration supports that he did not yet have the money at the time of his sentencing. CP 37-38.

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). A person in Bruton's situation is therefore indigent, as he had no income at the time of his sentencing. The State concedes this Court should remand this matter back to the trial court to strike the \$200 filing fee, and the \$700 court appointed attorney cost.

IV. CONCLUSION

Bruton due to being incarcerated, his lack of employment and assets, was indigent per se on the date of sentencing, therefore the State concedes the discretionary legal financial obligations should be stricken. Contrary to Bruton's assertion, the DNA fee does apply to Bruton, as the State has no record of previously collecting his DNA. Therefore, this Court should remand the case to the trial court

to strike the erroneous legal financial obligations but affirm the DNA
fee.

RESPECTFULLY submitted this 11th day of February, 2019.

JONATHAN L. MEYER
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A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

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