

FILED  
Court of Appeals  
Division II  
State of Washington  
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NO. 52849-5-II

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

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON GANIS,

Appellant.

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

The Honorable Michael H. Evans, Judge  
The Honorable Stephen M. Warning, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The sentencing court erred when it burdened appellant with community custody supervision fees.

Issue Pertaining to Assignment of Error

The sentencing court found appellant indigent and waived all fees and costs except a mandatory crime victim assessment and a discretionary community custody supervision fee. Must the discretionary supervision fee be stricken in light of State v. Ramirez<sup>1</sup> and recent statutory amendments?

B. STATEMENT OF THE CASE

The Cowlitz County Prosecutor's Office charged Brandon Ganis with possessing a controlled substance (methamphetamine) with intent to deliver. CP 26-27.

The charge stemmed from execution of a search warrant on April 20, 2018, at the Longview home of Ganis's mother. RP 126-127, 228. The warrant authorized officers to search a shed on the property and Ganis himself. RP 127. Ganis was found to have a large quantity of methamphetamine in his pocket (26.5 grams in one container and 2.49 grams in a separate baggy) and \$285.00 in cash. RP 132-139, 180, 187, 194. Inside the shed, officers found

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<sup>1</sup> State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018).

a working digital scale and a bowl, both coated with suspicious residue. RP 155.

At trial, Ganis admitted he was a drug addict and testified the methamphetamine was for personal use only. RP 225, 227-229. He denied any intent to sell or otherwise deliver the substances. RP 223, 226. Defense counsel asked jurors to acquit Ganis on the charged offense and, instead, convict him of mere possession. RP 253-262. This is precisely what the jury did. RP 273; CP 56-57.

At sentencing, the court imposed 7 months in jail and 12 months' community custody. RP 285; CP 63-64. Ganis was represented by a public defender at trial, CP 28, and the court also found him indigent for purposes of appeal. CP 71-73. The court waived or struck multiple discretionary legal financial obligations and imposed the mandatory \$500 victim penalty assessment. CP 65. The one discretionary LFO that was imposed pertains to community custody. The court failed to strike through preprinted language on the judgment ordering Ganis to "pay supervision fees as determined by DOC." CP 64.

Ganis timely filed his Notice of Appeal. CP 74-85.

C. ARGUMENT

THE SENTENCING COURT ERRED WHEN IT REQUIRED PAYMENT OF COMMUNITY CUSTODY SUPERVISION FEES.

The recently amended statute on LFOs prohibits the imposition of discretionary costs on indigent defendants. Here, the court imposed discretionary community custody supervision costs. CP 64. Because Ganis is indigent, this discretionary LFO must be stricken.

RCW 10.01.160(1) authorizes the court to impose costs on a convicted defendant. This general authority is discretionary; the statute states the court “may require the defendant to pay costs.” RCW 10.01.160(1) (emphasis added). Recent amendments to the LFO statute prohibit the imposition of discretionary costs on indigent defendants. “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).” RCW 10.01.160(3). This language became effective on June 7, 2018, several months before Ganis was sentenced. Ramirez, 191 Wn.2d at 738; RP 282 (sentenced on December 11, 2018).

The statute defines “indigent” as a person (a) who 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).

Despite Ganis’s indigency, the court required him to pay “supervision fees as determined by DOC” while on community custody. CP 64. The judgment and sentence does not cite to any legal authority for this requirement, but the cost appears to be authorized by RCW 9.94A.703(2)(d), the statute discussing allowable community custody conditions.

Examination of the statutory language, and recent case law, establishes that these costs are discretionary. Subsection (2) of the statute is titled, “**Waivable conditions**” and provides, “Unless waived by the court, ... the court shall order an offender to: ... (d) Pay supervision fees as determined by the department[.]” RCW 9.94A.703(2)(d) (underlined emphasis added). Given this language, this Court recently noted these fees are discretionary. State v. Lundstrom, 6 Wn. App. 2d 388, 396 n.3, 429 P.3d 1116 (2018) (quoting RCW 9.94A.703(2)(d)). This Court should likewise

find the fees discretionary and thus prohibited.<sup>2</sup> The proper remedy is to remand to the sentencing court to strike this unauthorized expense. Ramirez, 191 Wn.2d at 750.

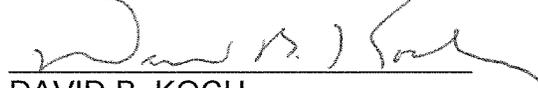
D. CONCLUSION

This Court should remand so that the sentencing court can amend the judgment and sentence by striking the improper imposition of supervision fees.<sup>3</sup>

DATED this 17<sup>th</sup> day of May, 2019.

Respectfully submitted,

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<sup>2</sup> In Lundstrom, this Court recognized that, while the sentencing court there had intended to impose only mandatory fees, it had also inadvertently imposed this discretionary community custody fee. Id. This is likely what occurred in Ganis's case as well.

<sup>3</sup> Undersigned counsel recognizes the court's mistake could be rectified – by agreement of the parties – without the need for this Court's review and intervention, rendering the appeal moot. However, Mr. Ganis may wish to exercise his right to file a Statement of Additional Grounds for Review, thereby requiring review of additional issues concerning his conviction and sentence. Thus, whether this appeal will become moot is not yet clear.

**NIELSEN, BROMAN & KOCH P.L.L.C.**

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**Transmittal Information**

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