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Court of Appeals  
Division II  
State of Washington  
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NO. 53005-8-II

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

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STATE OF WASHINGTON,

Respondent,

v.

JOSEPH RHODES,

Appellant.

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

The Honorable Robert Lewis, 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 discretionary legal financial obligations (LFOs) and non-restitution interest.

Issue Pertaining to Assignment of Error

The sentencing court found appellant indigent, waived or struck multiple discretionary fees and costs, and only intended to impose a \$500 mandatory crime victim assessment. Unfortunately, the judgment also appears to impose additional discretionary LFOs and imposes unauthorized interest payments. Must these additional obligations be stricken?

B. STATEMENT OF THE CASE

The Clark County Prosecutor's Office charged Joseph Rhodes with one count of felony domestic violence court order violation. CP 8.

Evidence at trial established that, on June 16, 2018, Rhodes was the passenger in a car driven by his former girlfriend, Lori Goodlow. RP 108-110, 121-123. A Vancouver police officer conducted a traffic stop on the car and discovered two no contact orders prohibiting Rhodes from contacting Goodlow. RP 121-125, 140-141, 160-167. One order was from 2011 and the other from

2014. See exhibits 1-2. According to the officer, Rhodes said he knew there was an existing order. RP 140. Rhodes testified that it had been about four years since he had seen Goodlow, she initiated the contact, and he had no idea the no contact orders were still in effect after so many years. RP 184-186, 194. He denied telling the officer otherwise. RP 188. Rhodes had four prior convictions for violating a no contact order. RP 172-177; exhibits 3-5.

A jury convicted Rhodes of the felony offense, but by special verdict answered “no” when asked if Rhodes and Goodlow were members of the same family or household. RP 233; CP 50, 52. At sentencing, the Honorable Robert Lewis imposed 15 months’ confinement and 12 months’ community custody. RP 247; CP 62-63.

In an affidavit of indigency, Rhodes indicated he had no assets or income other than what he received monthly in food stamps. CP 75-79. Judge Lewis found him indigent for purposes of sentencing and for purposes of appeal. CP 61-62, 80-82. Consistent with these findings, Judge Lewis indicated on the record that he was imposing only “the mandatory minimum” legal financial obligations. RP 247.

Unfortunately, the judgment and sentence form is inconsistent with Judge Lewis's intent. The form properly imposes a mandatory \$500 victim penalty. CP 64. But the form also appears to include two discretionary fees: a \$200 criminal filing fee and a \$250 jury demand fee. CP 64. Whether these discretionary fees have been imposed is not entirely clear, however, because the judgment contains no total figure for all legal financial obligations. See CP 65 (total left blank).

In preprinted language, the judgment and sentence form also orders Rhodes to "pay supervision fees as determined by DOC," CP 63, and imposes interest on financial obligations "at the rate applicable to civil judgments." CP 66.

Rhodes timely filed his Notice of Appeal. CP 74.

C. ARGUMENT

THE JUDGMENT ERRONEOUSLY REQUIRES PAYMENT OF DISCRETIONARY FINANCIAL OBLIGATIONS AND NON-RESTITUTION INTEREST.

The recently amended statute on LFOs prohibits the imposition of discretionary costs on indigent defendants. Despite Rhodes's indigency, and Judge Lewis's intentions, the judgment erroneously imposes discretionary fees. The judgment also

imposes unauthorized non-restitution interest payments. These LFOs 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, well before Rhodes was sentenced. State v. Ramirez, 191 Wn.2d 732, 738, 426 P.3d 714 (2018); RP 240 (sentenced on December 5, 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). As previously noted, Judge Lewis expressly found that Rhodes met this definition. See CP 61-62.

1. Filing Fee and Jury Demand Fee

As part of the recent amendments to the LFO statute, the Legislature also amended RCW 36.18.020(2)(h), which now states the \$200 criminal filing fee "shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c)." Laws of 2018, ch. 269, § 17. This amendment "conclusively establishes that courts do not have discretion" to impose the criminal filing fee against those who are indigent at the time of sentencing. Ramirez, 191 Wn.2d at 749. In Ramirez, the Supreme Court accordingly struck the criminal filing fee due to indigency. Id. The same result is required here. The reference to a \$200 filing fee must be stricken from Rhodes's judgment.

Regarding the \$250 jury demand fee, RCW 36.18.016(3)(b) provides, "Upon conviction in criminal cases a jury demand charge of . . . two hundred fifty dollars for a jury of twelve *may be imposed* as costs under RCW 10.46.190." (emphasis added)). Because this fee is discretionary, it is now prohibited under RCW 10.01.160(3) and must also be stricken from Rhodes's judgment.

## 2. Supervision Fees

Despite Rhodes's indigency, the judgment requires him to pay "supervision fees as determined by DOC" while on community custody. CP 63. The judgment and sentence does not cite any legal authority for this requirement, but it 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.

## 3. Non-Restitution Interest

The judgment and sentence also indicates, "The 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 judgments. RCW 10.82.090.” CP 66. By its terms, this provision applies to all financial obligations imposed in Rhodes’s judgment.

RCW 10.82.090 requires the court to impose interest on restitution costs. RCW 10.82.090(1). The statute also states, “As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1). No restitution was ordered in this case. Therefore, this provision should also be stricken from the judgment.

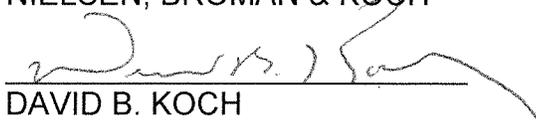
D. CONCLUSION

This Court should remand so that the sentencing court can amend the judgment and sentence by striking the improper discretionary LFOs and interest.

DATED this 28<sup>th</sup> day of June, 2019.

Respectfully submitted,

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**Transmittal Information**

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