

FILED  
Court of Appeals  
Division II  
State of Washington  
8/15/2019 8:35 AM

NO. 53005-8-II

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

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STATE OF WASHINGTON, Respondent

v.

JOSEPH WAYNE RHODES, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.18-1-01725-4

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BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. The State agrees the trial court erroneously imposed the criminal filing fee.**
- II. The jury demand fee was a scrivener's error that should be corrected.**
- III. The Supervision Fees are discretionary costs that should not have been imposed on someone who has been found to be indigent.**
- IV. The portion of the judgment and sentence which requires the financial obligations shall bear interest should be amended.**

## STATEMENT OF THE CASE

Joseph Rhodes (hereafter 'Rhodes') was charged by information with felony domestic violence court order violation. CP 8. Rhodes was convicted at trial as charged. RP 233; CP 50. The trial court then sentenced Rhodes to a standard range sentence, which included 12 months of community custody. RP 247; CP 62-63.

At sentencing, the court found Rhodes was indigent pursuant to RCW 10.101.010(3)(c). CP 61-62. The judge indicated his intent to impose only the "mandatory minimum" legal financial obligations. RP 247. The judgment and sentence reflects that a \$500 victim penalty was assessed, along with a \$200 criminal filing fee, and possibly, a \$250 jury demand fee, though the main portion of which the jury demand fee is a

part was struck out. CP 64. The judgment also ordered Rhodes to pay for supervision fees while on community custody. CP 63. And in addition, the court ordered that interest shall accrue on all LFOs. CP 66.

Rhodes timely filed the instant appeal. CP 74.

### **ARGUMENT**

#### **I. The State agrees the trial court erroneously imposed the criminal filing fee.**

Rhodes notes that the trial court, despite finding him indigent, imposed the \$200 criminal filing fee. The State agrees this was in error and the filing fee should be stricken.

RCW 36.18.020(2)(h) prohibits imposition of the \$200 criminal filing fee on defendants who are “indigent” as that term is defined in RCW 10.101.010(3)(a)-(c). This statute acts as a prohibition against imposing the criminal filing fee if a defendant is indigent; it is not a matter of the trial court’s discretion. In Rhodes’ case, the trial court found that he was indigent pursuant to RCW 10.101.010(3)(c). CP 61-62. This finding of indigence prohibited the court from imposing the criminal filing fee. *See* RCW 36.18.020(2)(h). Therefore the trial court erred in imposing the criminal filing fee and the matter should be remanded with direction to strike the filing fee.

**II. The jury demand fee was a scrivener's error that should be corrected.**

The trial court crossed out the line for costs that related to "court costs." CP 64. As a subset of "court costs" is a line for a jury demand fee. That amount remained on the judgment and sentence. CP 64. The court clearly intended to strike all "court costs" by striking through the line that served as a total amount for all court costs, of which the jury demand fee is one. Therefore it seems clear that the jury demand fee remained on the judgment and sentence in error.

Additionally, as Rhodes points out, the jury demand fee is discretionary, and as Rhodes was found to be indigent, the court was prohibited from imposing discretionary costs. RCW 10.01.160(3). Thus for this reason, even if the jury demand fee did not remain on the judgment and sentence in error, it must be stricken from the judgment.

**III. The Supervision Fees are discretionary costs that should not have been imposed on someone who has been found to be indigent.**

Rhodes claims that the trial court erroneously imposed supervision fees for the time he is to be on community custody as this is a discretionary cost. The State agrees such cost is discretionary and should not be imposed on someone who is indigent as defined in RCW

10.101.010(3)(a)-(c) as Rhodes was found to be. Accordingly, this term should be stricken from Rhodes' judgment and sentence.

The requirement that a trial court order an offender to pay supervision fees as determined by the department of corrections may be waived by the court. RCW 9.94A.703(2). Given RCW 10.01.160's prohibition on assessing costs to indigent defendants, if they meet the definition of indigence as set forth in RCW 10.101.010(3)(a)-(c), it makes sense that those same indigent individuals should not be required to pay supervision fees. Additionally, the judge in Rhodes' case clearly indicated his intent to have Rhodes pay the minimum amount of fees required in his case. Accordingly, to ensure the intent of the trial court is met, the supervision fees should be stricken.

**IV. The portion of the judgment and sentence which requires the financial obligations shall bear interest should be amended.**

As of June 7, 2018, RCW 10.82.090(1) no longer permitted interest to accrue on nonrestitution legal financial obligations. The judgment and sentence in Rhodes' case appears not to have been updated to comport with the change in the statute. Accordingly, the trial court ordered that interest shall accrue on all of Rhodes' LFOs. This is impermissible under the new version of RCW 10.92.090(1). In applying the correct statutory requirements, it is clear that the portion of Rhodes' judgment and sentence

which imposes interest on nonrestitution LFOs is erroneous. This matter should be remanded to strike the provision that interest shall accrue on nonrestitution LFOs.

#### CONCLUSION

The State agrees with Rhodes' contentions that the criminal filing fee was improperly imposed, that the jury demand fee should not have been imposed, that the court should not have ordered that he pay for supervision on community custody, and that the court should not have ordered that Rhodes pay interest on the remaining LFOs. This matter should be remanded to the trial court to make the necessary revisions to the judgment and sentence to comport with Rhodes' claims.

DATED this 15<sup>th</sup> day of August, 2019.

Respectfully submitted:

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August 15, 2019 - 8:35 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53005-8  
**Appellate Court Case Title:** State of Washington, Respondent v. Joseph W. Rhodes, Appellant  
**Superior Court Case Number:** 18-1-01725-4

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