

FILED
Court of Appeals
Division II
State of Washington
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No. 53092-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

DENNIS OYA,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it ordered collection of the \$100 legal financial obligation (LFO) for DNA collection, when the State had previously collected Mr. Oya's sample.

2. The trial court erred when it imposed interest on Mr. Oya's non-restitution LFOs.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Under RCW 43.43.7541, the DNA collection fee is not mandatory if an individual's DNA was previously collected due to a prior conviction. Did the court err when it ordered Mr. Oya to pay the DNA collection fee upon his resentencing, and should the fee be stricken?

2. Under RCW 10.82.090(1), no interest may accrue on non-restitution LFOs after June 7, 2018, and the trial court must affirmatively waive non-restitution interest after June 7, 2018. RCW 10.82.090(1), (2)(a). Must this Court remand Mr. Oya's case for further proceedings regarding interest accrual?

C. STATEMENT OF THE CASE

Dennis Oya was convicted in 2009 of first degree assault with a firearm enhancement, as well as unlawful possession of a firearm in the

first degree. CP 20-30. He entered an Alford¹ plea in exchange for an agreed sentence of 240 months, plus a 60-month firearm enhancement, to run consecutively. CP 240; 7/28/09 RP 26; 8/28/09 RP 6-8. Mr. Oya was also sentenced to a term of community custody of 24 to 48 months. CP 25.

Subsequently this Court granted a personal restraint petition, concluding that Mr. Oya's offender score and term of community custody were unlawful. In the Matter of the Personal Restraint Petition of Dennis Oya, No. 51355-2-II, 6 Wn. App.2d 1007 (2018).

This Court remanded Mr. Oya's judgment and sentence for resentencing with a correct offender score and a correct term of community custody. Id.²

Mr. Oya was resentenced based on the correct offender score and with a proper term of community custody. 3/1/19 RP 3, 16; CP 102-03.

As to legal financial obligations (LFOs), the court waived the \$200 filing fee, noting the law had changed since Mr. Oya's original

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

² This Court found the error in the offender score did not render Mr. Oya's plea involuntary, and denied the portion of the PRP on that issue.

sentence. CP 100; 3/1/19 RP 17. However, the trial court failed to remove the \$100 DNA database fee, despite the change in law as to this discretionary fee as well. The court also did not address the change in law regarding the interest accrual provision as to LFOs, which remains in effect, due to the court's error. CP 101.

D. ARGUMENT

1. This Court must strike the \$100 DNA database fee.

Under RCW 43.43.7541, it is improper to impose the \$100 DNA collection fee if the defendant's DNA has been collected as a result of a prior conviction. RCW 43.43.7541.

This Court has held the DNA fee is no longer mandatory if an offender's DNA has been previously collected. E.g., State v. Kotlyarov, No. 51402-8-II, 2019 WL 4034388, at *4 (Aug. 27, 2019); State v. Rahnert, No. 52657-3-II, 2019 WL 3307538, at *1 (July 23, 2019).³

Here, Mr. Oya would have previously provided the State crime laboratory with his DNA sample in 2006, when he was sentenced for three felony offenses on the same date – unlawful delivery, third degree

³ Unpublished opinions, cited pursuant to GR 14.1(a), may only be accorded such persuasive value as the Court deems appropriate, as they have no precedential value and are not binding authority.

assault, and first-degree possession of stolen property. CP 98; 3/1/19 RP 3-5. The DNA fee was again imposed in 2019. CP 100. In addition, Mr. Oya was determined to be indigent at sentencing. CP 117-18. Despite this, the court imposed the \$100 DNA fee. CP 100.

Because Mr. Oya's DNA sample was previously collected, the DNA fee is no longer mandatory under RCW 43.43.7541 and is merely discretionary. Under the current statute, discretionary fees may not be imposed on indigent defendants such as Mr. Oya. RCW 10.01.160(3). Therefore, the sentencing court lacked the authority to impose the DNA fee, and the fee must be stricken.

Under RCW 43.43.7541, the trial court erred in imposing the DNA fee. Accordingly, this Court should strike the \$100 fee, or remand for further proceedings to determine whether the DNA fee was previously paid.

2. The trial court erred by imposing interest on Mr. Oya's non-restitution LFOs, and by failing to waive the interest accrual provision; therefore, this Court must strike all accrued interest and waive interest going forward.

Pursuant to RCW 10.82.090, interest shall not accrue on non-restitution LFOs owed after June 7, 2018, and the trial court shall waive

non-restitution interest after June 7, 2018. See Kotlyarov, *supra*, 2019 WL 4034388, at *4; Rahnert, *supra*, 2019 WL 3307538, at *1.

At resentencing, the court did not address the interest accrual provision pertaining to LFOs. CP 101. This means that Mr. Oya's LFO's continue to accrue interest, due to the court's error. CP 101. The court found Mr. Oya indigent in April 2019. CP 117-18. Under RCW 43.43.7541, the DNA collection fee must be stricken. And under RCW 10.82.090, the interest accrual provision must be effectuated to waive all interest owed by Mr. Oya.

E. CONCLUSION

This Court should strike the \$100 DNA collection fee from the judgment and sentence, or in the alternative, remand with instructions to determine whether the fee was previously paid. In addition, the Court should strike the interest accrual provision from the judgment and sentence, ordering all interest owed on LFOs waived.

Respectfully submitted this 3rd day of September, 2019.

s/ Jan Trasen

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

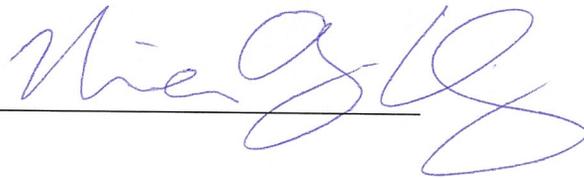
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 53092-9-II
)	
DENNIS OYA,)	
)	
Appellant.)	

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<input checked="" type="checkbox"/> DENNIS OYA 783284 CLALLAM BAY CORRECTIONS CENTER 1830 EAGLE CREST WAY CLALLAM BAY, WA 98326	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF SEPTEMBER, 2019.

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