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Court of Appeals
Division II
State of Washington
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NO. 53147-0-III

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

STATE OF WASHINGTON,

Respondent,

v.

LEONA RUTH STARR,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable Stephen E. Brown, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The judgment and sentence mistakenly burdens appellant with an unauthorized and unintended legal financial obligation (LFO).

Issue Pertaining to Assignment of Error

The sentencing court found appellant indigent, waived multiple discretionary fees and costs, and intended only imposition of a \$500 mandatory crime victim assessment. Unfortunately, the judgment also imposes an additional discretionary LFO (community custody supervision fees). Must this LFO be stricken?

B. STATEMENT OF THE CASE

The Grays Harbor Prosecutor's Office charged Ruth Starr with Felony Violation Of A No Contact Order – Domestic Violence. CP 33-34.

Evidence at trial established that, on November 18, 2018, Hoquiam Police responded to a 911 call regarding an argument taking place in the YMCA parking lot. 1RP¹ 66-67, 73-74, 79. The two individuals engaged in the argument were Leona Starr (a.k.a. Leona Martin) and her boyfriend, Jason Saviage. 1RP 66-70, 74-

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – January 17, 2019; 2RP – January 17, 2019 (initial proceedings) and January 24, 2019 (sentencing).

76, 79-82, 85-88. At the time, there was a no-contact order prohibiting Starr from having any contact with Saviage. 1RP 70-71, 76-77, 82, 93; exhibit 1. Starr stipulated that she had two prior convictions for violating the provisions of a court order. 1RP 62; 2RP 4-5; exhibit 6.

Jurors convicted Starr. CP 18-19. The Honorable Stephen Brown imposed a standard range 16-month sentence and 12 months' community custody. 2RP 22; CP 9, 11. Judge Brown found Starr indigent. CP 10. Consistent with this finding, the only LFO he intended to impose was a \$500 crime victim assessment. CP 13; 2RP 22-23 ("So no other costs will be assessed.").

Unfortunately, the judgment and sentence form is inconsistent with Judge Brown's intent. In preprinted language, the judgment also orders Starr to "pay supervision fees as determined by DOC." CP 12. Starr timely filed her Notice of Appeal. CP 6.

C. ARGUMENT

THE JUDGMENT ERRONEOUSLY REQUIRES PAYMENT OF DOC SUPERVISION FEES.

The current statute on LFOs prohibits the imposition of discretionary costs on indigent defendants. Despite Starr's

indigency, and Judge Brown's intention, the judgment erroneously imposes a discretionary fee. This 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 Starr was sentenced. State v. Ramirez, 191 Wn.2d 732, 738, 426 P.3d 714 (2018); 2RP 10 (sentenced on January 24, 2019).

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 Brown expressly found that Starr met this definition. See CP 10.

Despite Starr's indigency, the judgment requires her to "pay supervision fees as determined by DOC" while on community custody. CP 12. 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 fees 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 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)), review denied, 193 Wn.2d 1007, 443 P.3d 800 (2019). And, more recently, this Court has cited Lundstrom as authority to strike the supervision fees imposed on an indigent defendant. State v. Taylor, 9 Wn. App. 2d. 1042, at *4 (June 25, 2019) (unpublished).² Division One has done the same.

² GR 14.1(a) permits citation to unpublished decisions as non-binding, persuasive authority.

State v. Reamer, 9 Wn. App. 2d 1077, at *5 (July 29, 2019)
(unpublished).

Judge Brown did not intend to impose any costs on Starr beyond the mandatory crime victim assessment. 2RP 23. This Court should strike the discretionary supervision fees.

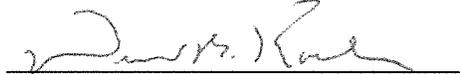
D. CONCLUSION

This Court should remand so that the sentencing court can amend the judgment and sentence by striking the improper discretionary supervision fees.³

DATED this 21st day of November, 2019.

Respectfully submitted,

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³ Undersigned counsel recognizes this mistake on the judgment could be rectified – by agreement of the parties – without the need for this Court’s review and intervention, thereby rendering the appeal moot. However, Ms. Starr may wish to exercise her right to file a Statement of Additional Grounds for Review, thereby requiring review of additional issues concerning her 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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