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Division II
State of Washington
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COA NO. 53428-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

JESSE JOHNS,

Appellant.

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

The Honorable Brian Coughenhour, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The $100 crime lab fee is unauthorized by statute.

2. The interest provision in the judgment and sentence is unauthorized by statute.

Issues Pertaining to Assignments of Error

1. Where a 2018 statutory amendment prohibits the imposition of discretionary costs on indigent defendants, whether the $100 crime lab fee must be vacated because appellant is indigent?

2. Whether all non-restitution interest on legal financial obligations must be stricken and the provision in the judgment and sentence directing accrual of interest corrected to state that no interest shall accrue on non-restitution obligations, as mandated by the amended statute applicable to appellant's case?

B. STATEMENT OF THE CASE

Jesse Johns pleaded guilty to two counts of possession of a controlled substance. CP 11, 24-34. The court imposed 6+ months in confinement. CP 14. As part of the sentence, it also imposed a $100 crime lab fee and interest on legal financial obligations. CP 17-18; RP[1] 108. Johns appeals. CP 8-9.

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[1] The verbatim report of proceedings is cited as follows: RP - one volume consisting of 2/6/19, 3/19/19, 3/21/19, 4/4/19.

C. ARGUMENT

1. THE COURT LACKED STATUTORY AUTHORITY TO IMPOSE THE CRIME LAB FEE ON JOHNS DUE TO INDIGENCY.

Recent statutory amendments addressing legal financial obligations (LFOs) prohibit the imposition of discretionary costs on indigent defendants. Here, the court imposed a $100 crime lab fee as part of the sentence. This discretionary cost must be stricken because Johns is indigent.

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). A 2018 statutory amendment prohibits 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). RCW 10.101.010 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. RCW 10.101.010(3).

Johns's indigency at the time of sentencing is established in the record. The State identified the $100 crime lab fee among the LFOs and requested the court inquire into ability to pay. RP 106-07. The State noted Johns had over $10,000 in LFO debt. RP 107. Defense counsel noted the debt and told the court that if Johns was employable, it would be a minimum wage job at best. RP 107. Counsel asked the court to only impose mandatory costs. RP 107. The court inquired when Johns was last employed. RP 108. Johns answered that he was last employed in 2015 and had worked under the table since, though he did not "really consider that a job." RP 108. He was now on food stamps. RP 108. The trial court therefore determined Johns was "legally defined as indigent." RP 108. Being a food stamp recipient qualifies a defendant as indigent under RCW 10.101.010(3)(a). The court nonetheless imposed a $100 crime lab fee as part of the sentence. CP 17; RP 108.

RCW 43.43.690(1) provides:

> When an adult offender has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted. Upon a verified petition by the person assessed the fee, *the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.*

The plain language of the statute authorizes suspension of the fee if the person does not have the ability to pay it. The lab fee is therefore discretionary. State v. Malone, 193 Wn. App. 762, 764, 376 P.3d 443 (2016). By statute, discretionary costs cannot be imposed on indigent defendants. RCW 10.01.160(3). Johns is legally defined as indigent because he is on food stamps. RCW 10.101.010(3)(a). When legal financial obligations are impermissibly imposed, the remedy is to strike them. State v. Ramirez, 191 Wn.2d 732, 749-50, 426 P.3d 714 (2018). The $100 lab fee must be stricken from the judgment and sentence because it is discretionary and Johns is indigent.

2. THE COURT LACKED AUTHORITY TO IMPOSE INTEREST ON NON-RESTITUTION LEGAL FINANCIAL OBLIGATIONS

The law on interest has changed, no longer applying to non-restitution costs. The judgment and sentence must be amended to state that non-restitution legal financial obligations will not accrue interest. Any accrued non-restitution interest must be stricken.

The judgment and sentence states: "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." CP 18. This mandate does not comply with current law.

The current version of RCW 10.82.090(1), effective June 7, 2018, provides in relevant part that "restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations."

This statute was amended as part of HB 1783's overhaul of the LFO system. State v. Catling, 193 Wn.2d 252, 259 n.5, 438 P.3d 1174 (2019); Laws of 2018, ch. 269 § 1. The judgment and sentence must be modified to reflect that no interest shall accrue on non-restitution legal financial obligations in accordance with RCW 10.82.090(1). Catling, 193 Wn.2d at 259 n.5. Imposition of interest must be stricken. State v. Houck, __Wn. App. 2d__, 446 P.3d 646, 653 (2019).

D. CONCLUSION

For the reasons stated, Johns requests the $100 crime lab fee be stricken, the interest provision in the judgment and sentence be modified, and imposition of interest be stricken.

DATED this 21st day of October 2019

Respectfully Submitted,

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