

FILED
January 22, 2015
Court of Appeals
Division III
State of Washington

No. 32478-8-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

CYNTHIA F. THORNTON,

Defendant/Appellant.

Appellant's Brief

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A. ASSIGNMENT OF ERROR

The trial court erred by imposing a DNA collection fee.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, is a subsequent submission required?

C. STATEMENT OF THE CASE

Ms. Thornton was charged and convicted of possession of a controlled substance--heroin. CP 17. Ms. Thornton's criminal history included a 2014 conviction for possession of a controlled substance. CP 37. The sentencing court imposed a \$100 DNA collection fee as part of the mandatory legal financial obligation (LFO) in this case. CP 41.

This appeal followed. CP 48.

D. ARGUMENT

If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required.

RCW 43.43.754 provides in pertinent part:

(1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or any of the following crimes (or equivalent juvenile offenses):

...

Failure to register (RCW 9A.44.130)

...

(2) If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.

RCW 43.43.754(1) and (2). The effective date of this statute was June 12, 2008. RCW 43.43.754.

Here, Ms. Thornton's criminal history included a 2014 conviction for possession of a controlled substance. CP 37. Since this prior conviction occurred after June 12, 2008, it required collection of a biological sample for purposes of DNA identification analysis pursuant to the statute. Accordingly, under paragraph two of the statute a subsequent DNA sample was not required. Therefore, the sentencing court should not

have imposed a \$100 DNA collection fee as part of the mandatory legal financial obligation (LFO).

E. CONCLUSION

For the reasons stated the \$100 DNA collection fee should be stricken from the judgment and sentence.

Respectfully submitted January 22, 2015,

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PROOF OF SERVICE

I, David N. Gasch, do hereby certify under penalty of perjury that on January 22, 2015, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Appellant's Brief:

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