

FILED
Mar 23, 2015
Court of Appeals
Division III
State of Washington

32478-8-III
COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CYNTHIA F. THORNTON, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

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I. APPELLANT'S ASSIGNMENTS OF ERROR

The trial court erred by imposing a DNA collection fee.

II. ISSUES PRESENTED

Did the trial court err by imposing a DNA collection fee when that fee is mandated by RCW 43.43.7541?

III. STATEMENT OF THE CASE

Defendant was convicted by jury of possession of a controlled substance – heroin. CP 17. The sentencing court imposed a \$100 DNA fee as part of the sentence, listing RCW 43.43.7541 as the statutory authority for the fee. CP 41.

IV. ARGUMENT

The trial court correctly imposed a DNA collection fee as mandated by RCW 43.43.7541.

Defendant claims that once a defendant has a sample of his or her DNA on file with the Washington State Patrol Crime Laboratory, no additional DNA fee is assessable to the defendant in subsequent cases.¹ This argument does not comport with the statutes covering DNA collection, submission, and court-ordered legal financial obligations.

¹ The Court is not required to address this issue. The defendant has not established that she already had a DNA sample on file with the crime laboratory. Appellant assumes facts not in the record. The party seeking review has the burden of perfecting the record so that this court has before it all evidence relevant to the issue. *State v. Jackson*, 36 Wn. App. 510, 516, 676 P.2d 517, 521 *aff'd*, 102 Wn.2d 689 (1984).

The *collection* of a DNA sample from a defendant is distinct from the *submission* of the sample (after it is collected) to the DNA database. The mandatory *imposition* of a \$100 fee for “every sentence” involving a felony and the disbursement of that fee is discussed separately in RCW 43.43.7541 from the collection and submission of the samples in RCW 43.43.754 (1) and (2).

RCW 43.43.7541, the court fee imposition statute, mandates the imposition of a fee of one hundred dollars in *every sentence* imposed for a felony.² Appellant does not mention this statute in her brief. The language is clear and unambiguous. “*Every sentence imposed for a*

² RCW 43.43.7541 provides:

DNA identification system — Collection of biological samples — Fee.

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94.A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754.

[felony] *must* include a fee of one hundred dollars.” (Emphasis added).³

This fee is not contingent upon anything other than the fact that a sentence is imposed. This statute then designates the priority of payment by the defendant and the transmittal of the fee when received to the appropriate agencies. The statute sits alone. It is unambiguous. Because there is no ambiguity, we derive the statute’s meaning from its language alone. *Geschwind v. Flanagan*, 121 Wn.2d 833, 840-41, 854 P.2d 1061 (1993).

There is no conflict between this 2011 statute and the earlier 2008 statute RCW 43.43.754, which requires the *collection* of a DNA sample from every felon, but does not require the *submission* of the sample to the Washington State Patrol Crime Lab if the lab already has a sample from that individual.⁴ “*Collection*” of a sample is a term separate from the term “*submission*” to the lab, and neither term supplants the requirement

³ “Words or phrases which are generally regarded as making a provision mandatory, include ‘shall,’ and ‘must.’ On the other hand, a provision couched in permissive terms is generally regarded as directory or discretionary. This is true of the word, ‘may,’” *State ex rel. Billington v. Sinclair*, 28 Wn.2d 575, 581, 183 P.2d 813, 816 (1947).

⁴ If there were a conflict, the later in sequence and time, and also the more specific statute, RCW 43.43.754 would control. “Under the first canon of construction, the provision coming later in the chapter must prevail so long as it is more specific than the provision occurring earlier in the sequence.” *State v. J.P.*, 149 Wn.2d 444, 453-54, 69 P.3d 318, 322 (2003).

of the “*imposition of a fee*” of \$100 mandated by a different statute, RCW 43.43.7541.

The court is to employ the plain and ordinary meaning of words as found in the dictionary in the absence of a statutory definition of words. *State v. Bolar*, 129 Wn.2d 361, 366, 917 P.2d 125 (1996). All of these terms - collected, submitted, and imposed - are easily understood words and different from each other – both in purpose and effect. In interpreting a statute, the court should assume that the Legislature meant exactly what it said. *King Cy. v. Taxpayers of King Cy.*, 104 Wn.2d 1, 5, 700 P.2d 1143 (1985). Courts are obliged to give the plain language of a statute its full effect, even when its results may seem unduly harsh. *State v. Pike*, 118 Wn.2d 585, 591, 826 P.2d 152 (1992).

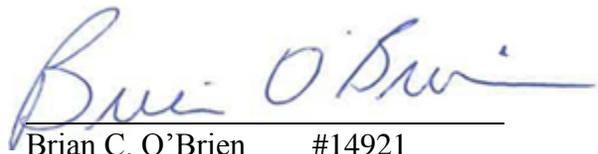
Under 43.43.7541, *every sentence* imposed for a felony *must* include a fee of one hundred dollars. The language could not be clearer. It speaks to every sentence, not every first felony sentence or every sentence where a DNA fee was not collected from that defendant before. The language is mandatory and not in conflict with the other separate statutes dealing with the collection of DNA samples and the submission of DNA samples. There was no error in the court ordered \$100 DNA fee in this case.

V. CONCLUSION

For the reasons stated above, the defendant's sentence requirement of a \$100 DNA fee should be affirmed.

Dated this 23rd day of March, 2015.

LAWRENCE H. HASKELL
Prosecuting Attorney

A handwritten signature in blue ink, appearing to read "Brian O'Brien", written over a horizontal line.

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Respondent,

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CYNTHIA F. THORNTON,

Appellant,

NO. 32478-8-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on March 23, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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3/23/2015

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Spokane, WA

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Crystal McNees

(Signature)