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Court of Appeals
Division III
State of Washington
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No. 35380-0-III

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

STATE OF WASHINGTON, Respondent

v.

DAVID MCCONVILLE, Appellant

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY
THE HONORABLE JUDGE RANDALL C. KROG

SUPPLEMENTAL BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

A. The DNA Collection Fee And The Criminal Filing Fee
Must Be Stricken From The Judgment and Sentence.

ISSUE RELATED TO ASSIGNMENTS OF ERROR

Must the legal financial obligations be stricken from Mr.
McConville's judgment and sentence?

II. STATEMENT OF FACTS

Appellant relies on the facts presented in the opening brief
and adds facts as necessary in the argument section of this brief.

III. ARGUMENT

A. The DNA Collection Fee and Criminal Filing Fee Must
Be Stricken.

The trial court sentenced Mr. McConville to a period of 84
months of incarceration. CP 174. The court found him to be
indigent for purposes of appeal. CP 198-99. At sentencing, the
court did not conduct a full *Blazina* inquiry, but acknowledged that
Mr. McConville was going to spend a substantial amount of time in
prison, and already had over \$36,000 of outstanding legal financial
obligations. RP 384, 394; CP 173. The court intended to impose
only nondiscretionary fees of DNA collection and the criminal filing

fee. CP 176; RP 394. Mr. McConville filed a report as to continued indigency with this Court on July 21, 2017.

House Bill 1783 modified Washington's system of legal financial obligations. *State v. Ramirez*, 426 P.3d 714, 2018 WL 4499761 (September 20, 2018). It amended former RCW 10.01.160(3) to expressly prohibit a court from imposing discretionary costs on defendants who are indigent at the time of sentencing as defined in RCW 10.101.010(3)(a)-(c). LAWS OF 2018 ch. 269 § 6(3).

The cost of the criminal filing fee which formerly was mandatory has become a discretionary cost and must not be imposed on a criminal defendant who is indigent. LAWS OF 2018 ch. 269 § 17(2)(h). RCW 36.18.020(h). The LAWS OF 2018 Ch. 269 § 18 provide that a DNA collection fee of one hundred dollars must be imposed for a crime specified in RCW 43.43.754 *unless the state has previously collected the offender's DNA as a result of a prior conviction.*

The statute's effective date was June 7, 2018. LAWS OF 2018 at ii (see (5)(a) setting out the effective date.). Our Supreme Court held that individuals whose case was not final at the statute's

effective date were entitled to the benefit from the amended statute.

Ramirez, 426 P.3d 714.

Mr. McConville's case is on direct appeal and therefore, not final. This Court has scheduled his case to be determined on January 31, 2019. He is entitled to the benefit of the amended statute. He has a history of prior convictions in Washington State and his DNA is in the state database. CP 172. The one hundred dollar fee should be stricken.

The trial court found him indigent, and Mr. McConville's term of incarceration will keep him impecunious with an annual income of less than 125% of the federal poverty rate. RCW 10.101.010(3)(c). The discretionary criminal filing fee of two hundred dollars should be stricken in accordance with RCW 10.01.160(3).

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. McConville respectfully asks this Court to vacate the DNA collection fee and the criminal filing fee, and remand to the trial court with instructions that they be stricken.

Respectfully submitted this 29th day of November 2018.

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for David McConville, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Supplemental Brief of Appellant was sent by first class mail, postage prepaid, on November 29, 2018, to:

David McConville/DOC#980579
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

And I electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Supplemental Brief to the Klickitat County Prosecuting Attorney (at davidq@klickitatcounty.org).

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