

FILED
Court of Appeals
Division III
State of Washington
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NO. 35536-5-III

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

STATE OF WASHINGTON,

Respondent,

v.

THOMAS ROBERTSON,

Appellant.

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

The Honorable Henry Rawson, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

The \$100 DNA fee should be stricken from the judgment and sentence.

Issue Pertaining to Assignment of Error

Under the Supreme Court's recent decision in State v. Ramirez,¹ must the \$100 DNA fee be stricken?

B. SUPPLEMENTAL STATEMENT OF THE CASE

At sentencing, Thomas Robertson was ordered to pay a \$100 DNA fee. CP 24. Following entry of judgment and sentence, defense counsel moved for an order of indigency because Robertson fell below the poverty guidelines under RCW 10.101.010(3) and federal law. The trial court found Robertson to be indigent and lacking sufficient funds to prosecute an appeal. CP 1-2.

C. ARGUMENT

THE \$100 DNA FEE MUST BE STRICKEN.

In State v. Ramirez, the Supreme Court discussed and applied Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783), which became effective June 7, 2018 and applies prospectively to cases currently on appeal. Ramirez, 4499761 at *3, 6-8.

¹ State v. Ramirez, ___ Wn.2d ___, 426 P.3d 714, 2018 WL 4499761 (September 20, 2018).

HB 1783 “amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c).” Ramirez, at *6 (citing LAWS of 2018, ch. 269, § 6(3)); see also RCW 10.64.015 (2018) (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c).”). Under RCW 10.101.010(3)(a) through (c), a person is “indigent” if the person receives certain types of public assistance, is involuntarily committed to a public mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level.

HB 1783 also amends RCW 43.43.7541 to read, “Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender’s DNA as a result of a prior conviction.*” Laws of 2018, ch. 269, § 18 (emphasis added). HB 1783 “establishes that the DNA database fee is no longer mandatory if the offender’s DNA has been collected because of a prior conviction.” Ramirez, at *6.

RCW 43.43.754(1)(a) requires collection of a biological sample for purposes of DNA identification analysis from every adult or juvenile convicted of a felony or certain other crimes. Robertson has previous felony convictions. CP 31. He would necessarily have had his DNA sample collected pursuant to RCW 43.43.754(1)(a).

Because Robertson's DNA sample was previously collected, the DNA fee in the present case is no longer mandatory under RCW 43.43.7541. The fee is discretionary. And, under the current version of RCW 10.01.160(3), discretionary fees may not be imposed on indigent defendants. The sentencing court lacked authority to impose the \$100 DNA fee.

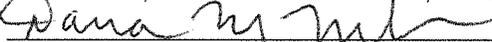
D. CONCLUSION

This Court should strike the \$100 DNA fee.

DATED this 23rd day of October, 2018.

Respectfully submitted,

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