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

STATE OF WASHINGTON, Respondent

v.

RICARDO DIMAS, Appellant

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY
THE HONORABLE JUDGE MICHAEL MCCARTHY

AMENDED SUPPLEMENTAL BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

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

ISSUE RELATING TO ASSIGNMENTS OF ERROR

- A. Must the discretionary legal financial obligations be stricken from Mr. Dimas'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, Criminal Filing, and Jury Demand Fees Must Be Stricken From The Judgment and Sentence.

At sentencing, the trial court imposed a \$100 DNA collection fee, a Criminal Filing Fee of \$200, and a Jury Demand fee of \$250.

CP 393. At sentencing the court said:

As far as the financial order is concerned, I'm going to assume that – and I'll probably be signing an order of indigency, here, in just a few minutes – that there is restitution in the sum of \$1,895.17. There's a \$500 crime penalty assessment, a \$100 DNA collection fee, and the costs of incarceration and the costs of medical are capped at zero.

9/8/17 RP 60. The court did not conduct a *Blazina* inquiry, but found Mr. Dimas indigent for purposes of appeal. CP 397-403. Mr. Dimas has filed a report of continued indigency with this Court. (4/12/2018).

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. LAWS OF 2018 ch. 269 § 17 (2)(h). The jury fees under RCW 10.46.190 is also a discretionary fee, as it *may* be included in costs the court *may* require a defendant to pay. LAWS OF 2018 Ch. 269 § 6 (2).

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. Dimas's case is on direct appeal and therefore, not final. He is entitled to the benefit of the amended statute. He has a history of prior conviction in Washington State and his DNA is, therefore, in the state database. CP 383. The one hundred dollar fee should be stricken.

The trial court found him indigent, and Mr. Dimas'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 and the jury service fee of two hundred and fifty dollars should be stricken in accordance with RCW 10.01.160(3).

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Dimas respectfully asks this Court to vacate the DNA collection fee, the

criminal filing fee, and the jury fee, and remand with instructions to the trial court 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 Ricardo Dimas, 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 Amended Supplemental Brief of Appellant was sent by first class mail, postage prepaid, on November 28, 2018 to:

Ricardo Dimas/DOC 843993
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

And I electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Opening Brief to the Yakima County Prosecuting Attorney (at appeals@co.yakima.wa.us).

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Comments:

Amended brief updates page numbers for tables. No other changes have been made to the contecnt of the brief.

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