

FILED  
Court of Appeals  
Division III  
State of Washington  
11/8/2018 2:09 PM

#357040

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

v.

ERIC L. OLSEN,

Appellant.

---

DIRECT APPEAL  
FROM THE SUPERIOR COURT  
OF WALLA WALLA COUNTY

---

RESPONDENT'S SUPPLEMENTAL BRIEF

---

Respectfully submitted:



by: Teresa Chen, WSBA 31762  
Deputy Prosecuting Attorney

P.O. Box 4242  
Pasco, Washington 99302  
(509) 545-3543

TABLE OF CONTENTS

	Page No.
I. <u>IDENTITY OF RESPONDENT</u> .....	1
II. <u>RELIEF REQUESTED</u> .....	1
III. <u>ISSUE</u> .....	1
IV. <u>STATEMENT OF THE CASE</u> .....	1
V. <u>ARGUMENT</u> .....	2
VI. <u>CONCLUSION</u> .....	3

TABLE OF AUTHORITIES

State Case

Page No.

*Sears v. Int'l Bhd. of Teamsters, Chauffeurs, Stablemen & Helpers  
of Am., Local No. 524,  
8 Wn.2d 447, 112 P.2d 850 (1941) ..... 3*

Statutes

RCW 10.101.010.....2, 3  
RCW 36.18.020(2)(h).....1, 2

## **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

## **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the sentencing of the Defendant.

## **III. ISSUE**

Did the superior court err in imposing the mandatory criminal filing fee?

## **IV. STATEMENT OF THE CASE**

On October 30, 2017, the superior court imposed sentence and ordered the Defendant Eric Olsen to pay the criminal filing fee in accordance with RCW 36.18.020(2)(h). CP 37-46.

The Defendant filed a supplemental brief five months after the filing of the Respondent's Brief, alleging for the first time that the imposition of this fee was error. The Defendant alleges that the fee could not have been assessed upon him, based on information at CP 51-52. Supplemental Brief of Appellant at 1. He claims that these

pages demonstrate that he “fell below the poverty guidelines under RCW 10.101.010 and federal law.” *Id.*

The document does not allege or demonstrate that the Defendant is or was receiving public assistance, was civilly committed, or earns less than 125% of the federal poverty guidelines. The order of indigency and related affidavit only demonstrate that the Defendant cannot afford to hire an attorney. The court’s actual finding is that the Defendant “lacks funds sufficient to prosecute an appeal.” CP 50. This finding is based on defense counsel’s observation that Mr. Olsen was “previously found to be indigent,” presumably related to the appointment of defense counsel before the superior court). CP 51.

## **V. ARGUMENT**

The State maintains and incorporates by reference all arguments made in the Objection to Motion to File Supplemental Brief and in the Motion to Modify Clerk’s Ruling.

Under the amended statute which came into effect on June of 2018, the criminal filing fee remains mandatory. There is no discretion. An adult defendant in a criminal case “shall” be liable for a fee of two hundred dollars. RCW 36.18.020(2)(h). If, however, the

defendant is “indigent as defined in RCW 10.101.010(3) (a) through (c),” then the fee “shall not be imposed.” RCW 36.18.020(2)(h). There is no discretion on the matter.

The Defendant is not indigent under subsections (a), (b), or (c). Therefore he “shall be liable.” And the court did not err.

The Defendant is indigent under subsection (d). This is not a lawful basis to skirt the mandatory imposition of the fee. The Legislature explicitly excluded subsection (d) from consideration when imposing the cost. RCW 36.18.020(2)(h). It also has indicated that a person can be both “indigent” in the meaning of being “unable to pay the anticipated cost of counsel” and “able to contribute” toward costs at the same time. RCW 10.101.010(4)

The State requests this Court find that this supplemental claim:

- is not available for consideration (*Sears v. Int'l Bhd. of Teamsters, Chauffeurs, Stablemen & Helpers of Am., Local No. 524*, 8 Wn.2d 447, 457, 112 P.2d 850, 854 (1941) (where there is no assignment of error made to the matter in the appellant’s brief, it is “not here for consideration”); and
- is without merit.

**VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction and sentence.

DATED: November 8, 2018.

Respectfully submitted:



\_\_\_\_\_  
Teresa Chen, WSBA#31762  
Deputy Prosecuting Attorney

<p>Jared Steed <a href="mailto:steedj@nwattorney.net">steedj@nwattorney.net</a> <a href="mailto:sloanej@nwattorney.net">sloanej@nwattorney.net</a></p>	<p>A copy of this supplemental brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED November 8, 2018, Pasco, WA  Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p>
--	--

**November 08, 2018 - 2:09 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35704-0  
**Appellate Court Case Title:** State of Washington v. Eric Leon Olsen  
**Superior Court Case Number:** 17-1-00032-6

**The following documents have been uploaded:**

- 357040\_Briefs\_20181108140721D3927897\_1110.pdf  
This File Contains:  
Briefs - Respondents - Modifier: Supplemental  
*The Original File Name was 357040 STATES SUPP BRIEF.pdf*
- 357040\_Motion\_20181108140721D3927897\_4202.pdf  
This File Contains:  
Motion 1  
*The Original File Name was 357040 MOTION TO MODIFY.pdf*

**A copy of the uploaded files will be sent to:**

- jnagle@co.walla-walla.wa.us
- steedj@nwattorney.net

**Comments:**

---

Sender Name: Teresa Chen - Email: tchen@co.franklin.wa.us  
Address:  
PO BOX 4242  
PASCO, WA, 99302-4242  
Phone: 509-545-3543

**Note: The Filing Id is 20181108140721D3927897**