

FILED  
Court of Appeals  
Division III  
State of Washington  
11/9/2018 4:17 PM

No. 35726-1-III

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

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STATE OF WASHINGTON,

Respondent,

v.

NICHOLAS ANDRES FUENTES III,

Appellant.

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

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SUPPLEMENTAL BRIEF OF APPELLANT

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## A. ARGUMENT

**The legislature recently changed the law as to legal financial obligations. Under *Ramirez*, these changes apply to cases on appeal. Applying the law in effect, the Court should order \$300 in legal financial obligations against Mr. Fuentes stricken.**

In 2018, the law on legal financial obligations changed. Now, it is categorically impermissible to impose any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). Now, the previously mandatory \$200 filing fee cannot be imposed on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h). It is also improper to impose the \$100 DNA collection fee if the defendant's DNA has been collected as a result of a prior conviction. LAWS OF 2018, ch. 269, § 18.

Our Supreme Court recently held that these changes apply prospectively to cases on appeal. *State v. Ramirez*, No. 95249-3, 2018 WL 4499761, at \*6 (Wash. Sept. 20, 2018). In other words, that the statute was not in effect at time of the trial court's decision to impose legal financial obligations does not matter. *Id.* at \*7-8. Applying the change in the law, our Supreme Court in *Ramirez* ruled the trial court impermissibly imposed discretionary legal financial obligations, including the \$200 criminal filing fee. *Id.* at \*8.

Here, Mr. Fuentes is indigent. CP 45-48. The trial court imposed the \$200 filing fee and the \$100 DNA fee against Mr. Fuentes. CP 190-91.

As in *Ramirez*, the change the law applies to Mr. Fuentes's case because it is on direct appeal and not final. Accordingly, this Court should strike the \$200 filing fee. *Ramirez*, at \*8. Because Mr. Fuentes has previously had his DNA collected as a result of prior convictions, the Court should also order the \$100 DNA collection fee stricken. CP 185-86 (recounting prior criminal convictions).

If the Court reverses Mr. Fuentes's conviction and orders a new trial, the foregoing argument is moot. Otherwise it is not. If the court affirms Mr. Fuentes's conviction, the Court should order the \$300 in legal financial obligations stricken.

## **B. CONCLUSION**

Unless this Court reverses the conviction and orders a new trial, this Court should instruct the trial court to strike the \$200 filing fee and the \$100 DNA collection fee in the judgment and sentence.

Respectfully submitted this 9<sup>th</sup> day of November 2018.

*/s Thomas M. Kummerow*  
\_\_\_\_\_  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 35726-1-III
	)	
NICHOLAS FUENTES,	)	
	)	
APPELLANT.	)	

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SIGNED IN SEATTLE, WASHINGTON THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2018.

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# WASHINGTON APPELLATE PROJECT

November 09, 2018 - 4:17 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35726-1  
**Appellate Court Case Title:** State of Washington v. Nicholas Andres Fuentes, III  
**Superior Court Case Number:** 17-1-01016-3

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