

FILED
Court of Appeals
Division III
State of Washington
4/25/2019 8:27 AM

NO. 35752-0-III

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

STATE OF WASHINGTON,

Respondent,

v.

JOSE M. QUINTERO,

Appellant.

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

The Honorable John W. Lohrmann, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

Issue 1: Quintero’s convictions should be reversed and his case remanded for retrial because the court denied him his constitutional right to impeach key witnesses with the State’s offer of help on immigration issues.

Quintero stands on the argument made in his opening brief. See Brief of Appellant, pages 7-14.

In deciding this issue, Quintero asks this Court to ignore the State’s invitation to rely on the following irrelevant information sources referenced in its Statement of the Case:

- Respondent’s Brief, page 2, *State v. Dodd*, 181 Wn. App. 1029 (2014) referring to an unrelated “other informant murder” in Walla Walla
- Respondent’s Brief, page 6, footnote 1, *State v. Maldonado*, 4 Wn. App. 2d 1017 (2018), wherein the State invites the court to consider witness Bante’s testimony in a different trial as discussed in an unrelated appeal
- Respondent’s Brief, page 6, footnote 2, wherein the State asked the court to review the Respondent’s Brief submitted in the unrelated case of *State v. Gomez*, 180 Wn. App. 1012 (2014)

- Respondent’s Brief, page 6, footnote 3, wherein the State asks the court to review the Appellant's Opening Brief in *State v. Arroyo*, 1 Wn. App. 2d 1010 (2017)

Issue 2: Quintero is entitled to a reduction of his legal financial obligations.

At the sentencing hearing, the court indicated its desire and intent to impose only mandatory LFOs. RP3 1473. The court struck non-mandatory LFOs from the judgment and sentence. CP 201.

As of the December 21, 2017 sentencing, the \$100 DNA collection fee and the \$200 filing fee were mandatory. *State v. Ramirez*, 191 Wn.2d 732, 739, 426 P.3d 714 (2018). But that has since changed, and the change applies to cases on appeal. *Id.* at 747. In keeping with the trial court’s intent and Quintero’s indigency while serving a 780-month sentence, the trial court should be directed to strike the additional \$300 of discretionary LFOs.

The state cites RCW 43.43.7541 to argue that because there is no record Quintero paid the \$100 DNA collection fee on his 2016 possession of a stolen firearm conviction, a felony, the trial court was, post-*Ramirez*, required to impose the DNA fee again. Brief of Respondent at 18. RCW 43.43.7541 does not support the State’s argument.

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. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754. This fee shall not be imposed on juvenile offenders if the state has previously collected the juvenile offender's DNA as a result of a prior conviction.

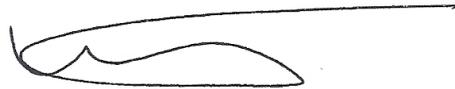
The uncontested record established that Quintero has a 2016 Washington felony. CP 200. Since 1990, Washington law has required defendants with a felony conviction to provide a DNA sample. Laws of 1989, ch. 350 s. 4; RCW 43.43.754. Given the uncontested record, this court can presume that a DNA sample has been collected from Quintero before his current judgment and sentence. Quintero requests the trial court strike the DNA collection fee. The mandatory \$500 victim assessment and the \$14,048.26 restitution obligation are mandatory financial obligations that Quintero, absent a reversal of his convictions, must pay. CP 201.

B. CONCLUSION

The trial court's error in preventing witness impeachment on immigration issues requires reversal of Quintero's convictions.

Absent a reversal of Quintero's convictions, the \$200 filing fee and the \$100 DNA collection fee should be stricken from Quintero's legal financial obligations.

Respectfully submitted April 25, 2019.

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LISA E. TABBUT/WSBA 21344
Attorney for Jose M. Quintero

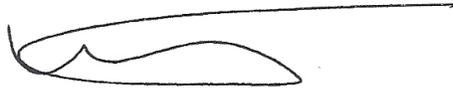
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares:

On today's date, I filed the Reply Brief of Appellant to (1) Walla Walla County Prosecutor's Office, at jnagle@co.walla-walla.wa.us; (2) the Court of Appeals, Division III; and (3) I mailed it to Jose M. Quintero, DOC#388625, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed April 25, 2019, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Jose M. Quintero

LAW OFFICE OF LISA E TABBUT

April 25, 2019 - 8:27 AM

Transmittal Information

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