

FILED
Court of Appeals
Division III
State of Washington
12/21/2018 10:36 AM

NO. 35917-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

ANTONIO TORRES,

Appellant.

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

The Honorable Raymond F. Clary, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by ordering Mr. Torres pay a \$200 criminal filing fee.

2. The trial court erred by ordering Mr. Torres pay a \$100 DNA collection fee.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The recent amendments to the statutes addressing legal financial obligations (LFOs) apply prospectively to all cases on direct appeal. Those amendments prohibit the imposition of a filing fee upon indigent criminal defendants. Must this court vacate the trial court order requiring Mr. Torres, who is indigent, to pay a \$200 criminal filing fee?

2. The recent amendments to the statutes addressing legal financial obligations (LFOs) apply prospectively to all cases on direct appeal. Those amendments prohibit the imposition of a DNA collection fee upon an offender whose DNA has already been collected pursuant to a previous felony conviction. Must this court vacate the trial court order requiring Mr. Torres to pay a \$100 DNA collection fee when his DNA has already been collected in the past?

C. STATEMENT OF THE CASE

A jury found Antonio Torres guilty of robbery in the first degree and assault in the fourth degree. CP 3, 5.

Court appointed counsel represented Mr. Torres at the trial court. Supplemental Designation of Clerk's Papers, Public Defense Assessment.

The court imposed standard range sentences. CP 12-13.

Per page 8 of the Judgment and Sentence, the trial court ordered Mr. Torres to pay a \$200 criminal filing fee (CP 31). Per page 8 of the Judgment and Sentence, the trial court ordered Mr. Torres to pay a \$100 DNA collection fee (CP 31). Per page 3 of the Judgment and Sentence, Mr. Torres, as an adult, has a Washington felony conviction in 2014. (CP 26).

D. ARGUMENT

THE WASHINGTON SUPREME COURT'S RECENT DECISION IN RAMIREZ REQUIRES THIS COURT TO VACATE THE ORDERS REQUIRING MS. TORRES TO PAY A CRIMINAL FILING FEE AND A DNA COLLECTION FEE.

On September 20, 2018, the Washington Supreme Court decided in *State v. Ramirez*, __ Wn.2d __, 426 P.3d 714 (September 20, 2018), that the amendments to the Legal Financial Obligations (LFO) statutes passed as HB 1783 applies prospectively to all cases pending on direct appeal. *Ramirez*, __ Wn.2d at __, 426 P.2d at 722. Pursuant to those amendments,

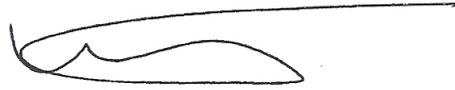
a trial court may no longer impose discretionary LFOs upon indigent persons. RCW 10.01.160(3). Likewise, a sentencing court may no longer order an indigent person to pay the \$200 criminal filing fee. Laws of 2018, ch. 269, § 17; *Ramirez*, ___ Wn.2d at ___, 426 P.2d at 722. Finally, a sentencing court may not order an indigent person to pay a \$100 DNA collection fee if he has already paid that fee previously because of a prior felony conviction. Laws of 2018, ch. 269, §§ 1, 18, 7; *Id.* Mr. Torres has a prior adult felony conviction committed in 2013 and sentenced in 2014. (CP 26).

Because he is indigent, the sentencing court is prohibited from ordering Mr. Torres to pay the \$200 criminal filing fee under HB 1783. *Id.* CP 40-41. Also, because he has already had DNA collected as a result of a previous felony conviction, the sentencing court is prohibited from ordering him to pay the \$100 DNA collection fee. *Id.*

E. CONCLUSION

Ramirez applies prospectively to Mr. Torres' case which is currently pending on direct appeal. *Id.* Accordingly, this Court must vacate the orders requiring Mr. Torres to pay a \$200 criminal filing fee and a \$100 DNA collection fee.

Respectfully submitted December 21, 2018.

A handwritten signature in black ink, appearing to read "Lisa E. Tabbut". The signature is fluid and cursive, with a long horizontal stroke at the top that tapers to the right.

LISA E. TABBUT/WSBA 21344
Attorney for Antonio Torres

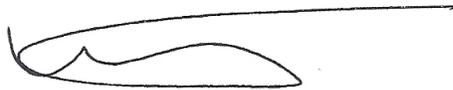
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I filed the Brief of Appellant to (1) Spokane County Prosecutor's Office at bobrien@spokanecounty.org; (2) Douglas Phelps at phelps@phelpslaw1.com; (3) the Court of Appeals, Division III; and (4) I mailed it to Antonio Torres, DOC#406156, Airway Heights Corrections Center, PO Box 2049, Airway Heights, WA 99001.

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

Signed December 21, 2018, in Winthrop, Washington.

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

Lisa E. Tabbut, WSBA No. 21344
Attorney for Antonio Torres, Appellant

LAW OFFICE OF LISA E TABBUT

December 21, 2018 - 10:36 AM

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