

FILED
Court of Appeals
Division III
State of Washington
1/22/2019 1:29 PM
36138-1-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RAYMOND E. CHANEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
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INDEX

I. APPELLANT’S ASSIGNMENTS OF ERROR 1

II. ISSUES PRESENTED 1

III. STATEMENT OF THE CASE 1

IV. ARGUMENT 2

 A. THE STATE AGREES THAT THIS COURT SHOULD
 ORDER THE CRIMINAL FILING FEE TO BE
 STRICKEN PURSUANT TO *RAMIREZ*..... 2

 B. UNLESS THE DEFENDANT’S FINANCIAL
 CIRCUMSTANCES HAVE IMPROVED SINCE THE
 TRIAL COURT’S ORDER OF INDIGENCY WAS
 ENTERED, RAP 14.2 PROVIDES THAT THE
 PRESUMPTION OF INDIGENCY REMAINS IN
 EFFECT THROUGHOUT HIS APPEAL..... 3

V. CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018)..... 2

State v. Ramos, 171 Wn.2d 46, 246 P.3d 811 (2011) 3

STATUTES

Laws of 2018, ch. 269, § 17 2

Laws of 2018..... 2

RCW 36.18.020 2

RCW 43.43.754 2

RULES

RAP 14.2..... 3

I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred in requiring Mr. Chaney to pay the legal the criminal filing fee under RCW 36.18.020(2)(h).

2. The Court of Appeals should decline to impose appellate costs, should Respondent substantially prevail and request such costs.

II. ISSUES PRESENTED

1. Did the trial court err in requiring Mr. Chaney to pay the criminal filing fee under RCW 36.18.020(2)(h) where the legislature has amended that statute to make it inapplicable to indigent defendants and the Washington Supreme Court has found the change in the statute applicable to cases not yet final on appeal?

2. If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Mr. Chaney is indigent, as noted in the Order of Indigency?

III. STATEMENT OF THE CASE

For purposes of this response and due to the limited issues of this appeal, respondent accepts appellant/defendant's statement of the case.

IV. ARGUMENT

A. THE STATE AGREES THAT THIS COURT SHOULD ORDER THE CRIMINAL FILING FEE TO BE STRICKEN PURSUANT TO RAMIREZ.

The defendant argues this Court should order the trial court to strike the imposition of the \$200 filing fee, imposed at sentencing under RCW 36.18.020(h). The State agrees. In 2018, House Bill 1783 amended the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit courts from imposing the \$200 filing fee on indigent defendants. Laws of 2018, ch. 269, § 17 (2)(h). As of June 7, 2018, trial courts are prohibited from imposing the \$200 criminal filing fee on defendants who are indigent at the time of sentencing. Laws of 2018, ch. 269, § 17; Laws of 2018, pg. ii, “Effective Date of Laws.” In *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018), our high Court addressed the 2018 amendments to RCW 43.43.754 and held that the amendment is applicable to cases pending on direct review and not final when the amendment was enacted. *Id.* at 747.

In the present case, the defendant was sentenced on May 25, 2018, and was pending direct review at the time of the legislative amendments. Thus, this Court should order that the \$200 court cost be stricken from judgment and sentence; this may be done without a resentencing.

See State v. Ramos, 171 Wn.2d 46, 48, 246 P.3d 811 (2011) (a ministerial correction does not require a defendant's presence).

B. UNLESS THE DEFENDANT'S FINANCIAL CIRCUMSTANCES HAVE IMPROVED SINCE THE TRIAL COURT'S ORDER OF INDIGENCY WAS ENTERED, RAP 14.2 PROVIDES THAT THE PRESUMPTION OF INDIGENCY REMAINS IN EFFECT THROUGHOUT HIS APPEAL.

RAP 14.2 allows the clerk of the appellate court to award court costs to the prevailing party on review unless an adult offender lacks the likely current or future ability to pay such costs. An adult offender is presumed indigent if the trial court has entered an order of indigency for appeal purposes.

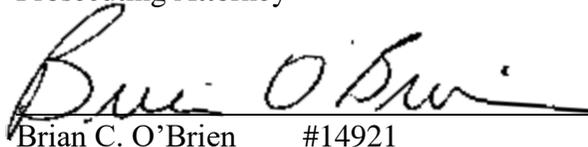
Here, the trial court determined the defendant to be indigent for purposes of his appeal on June 21, 2018, based on a declaration provided by the defendant. CP 125-130. The State is unaware of any change in the defendant's circumstances. Should the defendant's appeal be unsuccessful, this Court should only impose appellate costs in conformity with RAP 14.2 as amended.

V. CONCLUSION

This Court should remand for the trial court to strike the \$200 court cost from judgment and sentence.

Dated this 22 day of January, 2019.

LAWRENCE H. HASKELL
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

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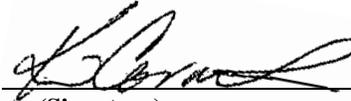
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I certify under penalty of perjury under the laws of the State of Washington, that on January 22, 2019, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Reed Speir
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1/22/2019
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

January 22, 2019 - 1:29 PM

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Appellate Court Case Number: 36138-1
Appellate Court Case Title: State of Washington v. Raymond E. Chaney
Superior Court Case Number: 16-1-04478-7

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