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Division III
State of Washington
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NO. 36146-2-III

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

STATE OF WASHINGTON,

Respondent,

v.

JOSEPHINE GUERNSEY,

Appellant.

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

The Honorable Scott D. Gallina, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Because appellant is indigent, the \$200 criminal filing fee, \$165 sheriff service fee, and \$750 fee for a court appointed attorney should be stricken from appellant's judgment and sentence.

2. On remand, the sentencing judge should also decide whether the \$1,000 VUCSA fine should be waived based on appellant's indigency.

Issues Pertaining to Assignments of Error

1. Appellant is indigent. Under the Supreme Court's recent decision in State v. Ramirez,¹ must the above discretionary fees be stricken?

2. At sentencing, the court imposed a \$1,000 VUCSA fine, which is mandatory unless an individual is found to be indigent. Weeks later, the court determined that appellant qualified as indigent. On remand, should the court assess whether to waive the \$1,000 VUCSA fine in light of its post-sentencing indigency finding?

¹ State v. Ramirez, 191 Wn 2d 732, 426 P.3d 714 (2018).

B. STATEMENT OF THE CASE

The Asotin County Prosecutor's Office charged Josephine Guernsey with one count of possession of a controlled substance: methamphetamine. CP 6.

Guernsey moved to suppress all evidence of the methamphetamine, arguing it was the product of an unlawful traffic stop. CP 7-18. Following an evidentiary hearing, the motion was denied. RP 3-19; CP 19-21. Guernsey waived her right to trial by jury and proceeded by way of a bench trial on stipulated facts. RP 26-27; CP 22-24. The Honorable Scott Gallina found her guilty. RP 27; CP 25

Judge Gallina imposed 30 days' confinement, which he converted to 240 hours of community service. RP 28, 30-31; CP 32. In addition, the State requested \$3,715 in fees and fines, which Judge Gallina imposed as follows: \$500 victim penalty assessment; \$200 criminal filing fee; \$165 sheriff service fee; \$750 fee for court appointed attorney; \$100 felony DNA collection fee; \$1,000 fine; and an additional \$1,000 VUCSA fine. RP 28; CP 30.

Seeking to appeal, Guernsey submitted a sworn declaration, which indicates personal gross monthly income of \$1,800² and

² Guernsey works as a traffic flagger. RP 28-29; CP 51.

monthly living expenses of \$1,780. CP 51. Guernsey is financially responsible for three children and, at the time of her declaration, had merely \$25 in cash and no significant assets or property. CP 51. Judge Gallina found that Guernsey lacks sufficient funds to prosecute an appeal and declared her indigent. CP 53-54.

Guernsey timely filed a Notice of Appeal. CP 40-49.

C. ARGUMENT

ALL DISCRETIONARY FEES MUST BE STRICKEN BASED ON GUERNSEY'S INDIGENCY.

Guernsey is indigent under the applicable statutory criteria. CP 50-54. Therefore, the \$200 criminal filing fee, \$165 sheriff service fee, and \$750 fee for a court appointed attorney, all of which are discretionary, should be stricken from her judgment and sentence under the recent Ramirez decision.

In Ramirez, the Washington Supreme Court discussed and applied Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783), which became effective June 7, 2018 and applies prospectively to cases pending on appeal. Ramirez, 426 P.3d at 718, 721-23.

HB 1783 amended "the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary

costs on a defendant who is *indigent at the time of sentencing* as defined in RCW 10.101.010(3)(a) through (c).” Ramirez, 426 P.3d at 721 (citing LAWS OF 2018, ch. 269, § 6(3)) (emphasis added); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”).

The \$165 sheriff’s service fee is discretionary under RCW 10.01.160(2) – authorizing “expenses specially incurred by the state in prosecuting the defendant” – and therefore could not be imposed upon Guernsey based on her indigency.

HB 1783 “also amends the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit charging the \$200 criminal filing fee to defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 17.” Ramirez, 426 P.3d at 722. Thus, HB 1783 establishes that the \$200 criminal filing fee is no longer mandatory if the defendant is indigent. Accordingly, the Ramirez court struck the fee due to indigency. Ramirez, 426 P.3d at 723. Because Guernsey is indigent, this Court should similarly strike the \$200 criminal filing fee from her judgment and sentence.

HB 1783 also amends RCW 9.94A.760, which now provides: “The court may not order an offender to pay costs as described in RCW 10.01.160 if the court finds that the offender at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c).” LAWS OF 2018, ch. 269, § 14. Guernsey’s judgment and sentence states the \$750 in “Fees for court appointed attorney” was imposed under the authority of RCW 9.94A.760. CP 30. Because HB 1783 amended RCW 9.94A.760 to prohibit imposition of such costs and fees on indigent defendants, and Guernsey is indigent, this Court should also strike the fee from her judgment and sentence.

Finally, since remand will be required to correct the judgment and sentence in Guernsey’s case, this Court should also instruct Judge Gallina to assess whether the \$1,000 VUCSA fine should be waived based on Guernsey’s indigency.

The sentencing court must conduct an individualized inquiry into the defendant’s present and future ability to pay before imposing discretionary costs. State v. Blazina, 182 Wn.2d 827, 838, 344 P.3d 680 (2015); see also Ramirez, 426 P.3d at 720 (clarifying a heightened standard for Blazina inquiries based on financial statements contained in motions for indigency). This

specific, detailed inquiry did not occur at Guernsey's sentencing hearing. See RP 28-34.

Under RCW 69.50.430(1), a \$1,000 VUCSA fine is mandatory "[u]nless the court finds the adult offender to be indigent," in which case the fine can be deferred. Judge Gallina imposed this fine at sentencing on June 4, 2018. CP 29-30. But Guernsey's indigency was not found until June 26, 2017. CP 50-52. Had her indigency been known to Judge Gallina at sentencing, he may not have imposed the VUCSA fine. Now that indigency has been established, Judge Gallina should be afforded an opportunity to waive the fine.

D. CONCLUSION

All discretionary fees should be stricken. On remand, Judge Gallina should also assess whether his post-sentencing indigency finding warrants striking the discretionary \$1,000 VUCSA fine.

DATED this 31st day of December, 2018.

Respectfully submitted,

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