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Court of Appeals
Division III
State of Washington
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No. 36287-6-III

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

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND EDWARD CHANEY,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

The $200 criminal filing fee must be stricken because Chaney is indigent.

Chaney may challenge the $200 criminal filing fee for the first time on appeal because the trial court exceeded its statutory authority in imposing the fee.

A trial court's authority to impose a sentence is derived wholly from statute. In re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980).

It is well established that when a trial court exceeds its statutory authority in imposing a sentence, the error may be raised for the first time on appeal. State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). "'A defendant may challenge a sentence imposed in excess of statutory authority for the first time on appeal because 'a defendant cannot agree to punishment in excess of that which the Legislature has established.'" State v. Rice, 180 Wn. App. 308, 312-13, 320 P.3d 723 (2014) (quoting In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002)).

A trial court exceeds its statutory authority when it imposes a $200 criminal filing fee on a defendant who is indigent. RCW 36.18.020(2)(h) expressly provides: "an adult defendant in a criminal

case shall be liable for a fee of two hundred dollars, *except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c)*" (emphasis added).

In addition, RCW 10.01.160 provides: "The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c)."

"Indigent" means a person who is:

> (a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or
> (b) Involuntarily committed to a public mental health facility; or
> (c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

RCW 10.101.010(3); see also State v. Ramirez, 191 Wn.2d 732, 748, 426 P.3d 714 (2018) (a criminal defendant is "indigent" for purposes of House Bill 1783 if he satisfies the requirements of RCW 10.101.010(3) at the time of sentencing).

In Ramirez, in a financial statement attached to his declaration of indigency, Ramirez asserted he had no source of income or assets.

Ramirez, 191 Wn.2d at 736. The supreme court held, "there is no question that Ramirez satisfied the indigency requirements of RCW 10.101.010(3)(c) at the time of sentencing." Id. at 748. Therefore, the trial court impermissibly imposed the $200 criminal filing fee on Ramirez. Id. at 748-49.

Here, as in Ramirez, the record establishes that Chaney was indigent for purposes of the statute. In a financial statement attached to his declaration of indigency, he asserted he had no source of income or assets. CP 133. Therefore, he satisfied the indigency requirements of RCW 10.101.010(3)(c) at the time of sentencing. Ramirez, 191 Wn.2d at 748.

Because Chaney was "indigent" at the time of sentencing, the trial court acted without statutory authority in imposing the $200 criminal filing fee. RCW 10.01.160; RCW 10.101.010(3)(c); RCW 36.18.020(2)(h); Ramirez, 191 Wn.2d at 748-49.

The sentence imposed exceeded the court's statutory authority. Chaney may challenge the error for the first time on appeal. Goodwin, 146 Wn.2d at 873-74; Ford, 137 Wn.2d at 477; Rice, 180 Wn. App. at 312-13.

B. CONCLUSION

As argued above and in the opening brief, the trial court acted without statutory authority in imposing the $200 criminal filing fee on Chaney because he was indigent at the time of sentencing. Also, as the State concedes, the court acted without authority in requiring interest payments for non-restitution legal financial obligations. The $200 filing fee must be stricken and the interest accrual provision must be corrected to indicate only restitution obligations may bear interest.

Respectfully submitted this 28th day of June, 2019.

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v.	)	NO. 36287-6-III
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RAYMOND CHANEY III,	)	
	)	
APPELLANT.	)	

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SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF JUNE, 2019.

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