

FILED
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 OPENING BRIEF

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A. ASSIGNMENT OF ERROR

Certain legal financial obligation provisions in the judgment and sentence are not authorized because Chaney is indigent.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Should Raymond Chaney's case be remanded to the trial court to strike certain cost provisions in the judgment and sentence that are not authorized due to Chaney's indigency?

C STATEMENT OF THE CASE

Chaney was charged and convicted of one count of attempting to elude a police vehicle, RCW 46.61.024. CP 59, 81. By special verdict, the jury made a finding of fact necessary to impose a one-year sentencing enhancement under RCW 9.94A.834. CP 82.

At sentencing, the court imposed a high-end standard-range sentence of 29 months plus 12 months for the sentencing enhancement. CP 114. In addition, Chaney had yet to serve a 10-year sentence for a conviction he had received in Montana. RP 412.

In a financial declaration attached to his motion for indigency, Chaney asserted he has no assets, is not employed and has no income. CP 132-34. He was incarcerated continuously since his arrest on this

charge. RP 423. The court found Chaney indigent and entitled to appeal at public expense. CP 130-31.

Nonetheless, the court imposed a \$200 filing fee. CP 116. Also, the judgment and sentence states, “The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments.” CP 118.

In imposing the \$200 filing fee, the court relied entirely upon a statement made by a friend of Chaney’s at the sentencing hearing. RP 431. Chaney’s friend Travis Kubik asserted, without any support in the record,

[Chaney is] going to be part owner of a multi-million-dollar business called KC Buggies. We’ve actually got a patent right now and it’s actually going on its way to getting everything taken care of. It’s actually a big business and it’s going to be – he’s actually a part owner of it.

RP 419.

The court made no inquiry about this supposed business or whether and when Chaney would actually make any money from it. The court did not inquire of Chaney himself, or defense counsel, about Chaney’s financial situation. Instead, the court concluded, based solely upon Kubik’s unsupported assertions, that Chaney was not indigent. RP 431. The court reasoned,

you have a friend here indicating you're going to be very rich from a company. I don't have anything else to indicate that you won't be, so at this point in time, I'm going to impose a \$200 filing fee as well, and cannot make a finding of indigency based upon what the Court was presented with today.

RP 431.

D. ARGUMENT

The court erred in imposing certain LFOs that are not authorized due to Chaney's indigency.

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783) amended the statutes governing the legal financial obligation (LFO) system in Washington State. These amendments took effect on June 7, 2018, two months before Chaney's sentencing.

Now, trial courts may not impose discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). Specifically, trial courts may no longer impose the \$200 filing fee on indigent defendants. *Id.* § 17. Also, House Bill 1783 eliminates interest accrual on the non-restitution portions of LFOs. *Id.* § 1.

The trial court found that Chaney is indigent. CP 130-31. At the time of sentencing, he was unemployed and had no income or assets.

CP 132-34.

The new law prohibits charging the \$200 filing fee to defendants who are indigent. State v. Ramirez, 191 Wn.2d 732, 746, 426 P.3d 714 (2018). Therefore, the filing fee must be stricken from Chaney's judgment and sentence. CP 116.

Also, the judgment and sentence states that interest shall begin accruing immediately. CP 118. But House Bill 1783 eliminates interest accrual on all non-restitution LFOs. Ramirez, 191 Wn.2d at 747. That portion of the judgment must be amended to provide that interest may not accrue on any non-restitution LFOs.

In deciding to impose the \$200 filing fee, the court erred in relying entirely upon the unsupported assertions made by Chaney's friend Kubik at the sentencing hearing. RP 431. Chaney himself did not offer this information. To the contrary, Chaney's financial declaration establishes that he is indigent. CP 132-34; Ramirez, 191 Wn.2d at 748; RCW 10.101.010(3)(c).

In determining whether a defendant is indigent for purposes of imposing discretionary LFO's, a trial court may not rely upon information offered at the sentencing hearing for a different purpose. Ramirez, 191 Wn.2d at 745-46. Here, Kubik provided information about Chaney's supposed part-ownership in a business for the purpose

of persuading the judge that Chaney was “a really good person” and deserved a “low-end sentence.” RP 419. The judge was not permitted to rely upon Kubik’s unsupported assertions about “KC Buggies” to find that Chaney was not indigent and had the ability to pay discretionary LFOs. Ramirez, 191 Wn.2d at 745-46.

Like Ramirez, Chaney was subjected to LFOs that are no longer authorized under House Bill 1783. His case should be remanded to the trial court to strike the improper filing fee and amend the interest accrual portion.

E. CONCLUSION

The judgment and sentence must be remanded to the trial court to strike the \$200 filing fee and amend the interest accrual portion to provide that interest may not accrue on any non-restitution LFOs.

Respectfully submitted this 1st day of May, 2019.

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

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