

FILED
Court of Appeals
Division III
State of Washington
2/8/2019 4:58 PM

NO. 36327-9-III

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

STATE OF WASHINGTON,

Respondent,

v.

TONY BOYER,
Appellant.

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

The Honorable Scott D. Gallina, Judge

BRIEF OF APPELLANT

LISE ELLNER, WSBA NO. 20955
ERIN SPERGER, WSBA NO. 45931
Attorneys for Appellant

LAW OFFICES OF LISE ELLNER
Post Office Box 2711
Vashon, WA 98070
(206) 930-1090
WSB #20955

TABLE OF CONTENTS

	Page
A. ASSIGNMENT OF ERROR.....	1
B. ISSUE PRESENTED ON APPEAL.....	1
C. STATEMENT OF THE CASE.....	1
1. Procedural History.....	1
2. Substantive Facts.....	2
D. ARGUMENT.....	2
1. THE \$100 DNA FEE, THE \$385 SHERIFF SERVICE FEE AND THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN FROM BOYER'S JUDGMENT AND SENTENCE	2
a. The \$100 DNA fee imposed against Boyer is unlawful and should be stricken.....	2
b. The legislature no longer permits imposition of a criminal filing fee or a sheriff service fee in indigent cases.....	3
E. CONCLUSION.....	4

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<i>State v. Ramirez</i> , 191 Wn.2d 732, 426 P.3d 714 (2018).....	3, 4
--	------

RULES, STATUTES, AND OTHERS

House Bill 1783.....	3
LAWS OF 2018.....	3
RCW 10.01.160	3, 4
RCW 26.50.110	1, 2
RCW 36.18.020	4
RCW 43.43.7541	2, 3, 4
RCW 9A.72.120.....	1, 2

A. ASSIGNMENT OF ERROR

1. The \$100 DNA fee, the \$385 sheriff service fee, and the \$200 criminal filing fee should be stricken from Boyer's judgment and sentence.

B. ISSUE PRESENTED ON APPEAL

1. Whether the \$100 DNA fee, the \$385 sheriff fee and the \$200 criminal filing fee should be stricken when the legislature has declared these fees inappropriate for indigent defendants who have previously provided DNA samples?

C. STATEMENT OF THE CASE

1. Procedural History

Tony Boyer pled guilty to one count of Felony Violation of a Court Order (RCW 26.50.110(5)) and one count of tampering with a witness (RCW 9A.72.120) on July 25, 2018. CP 102, 106. At the time of his sentence, Boyer had already been previously convicted of a felony and provided a DNA sample. CP 143-45. The court imposed a subsequent DNA fee of \$100, a \$385 sheriff service fee and a criminal filing fee of \$200. CP 144-45. Boyer timely appeals. CP 159.

2. Substantive Facts

Boyer pled guilty to one count of Felony Violation of a Court Order (RCW 26.50.110(5)) and one count of tampering with a witness (RCW 9A.72.120) on July 25, 2018. CP 102, 106. As part of Boyer's plea agreement he agreed to pay both discretionary and mandatory legal fee obligations. CP 98. These fees included a \$100 DNA fee and a \$200 criminal filing fee. CP 98.

This timely appeal follows. CP 159.

D. ARGUMENT

1. THE \$100 DNA FEE, THE \$385 SHERIFF SERVICE FEE AND THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN FROM BOYER'S JUDGMENT AND SENTENCE

a. The \$100 DNA fee imposed against Boyer is unlawful and should be stricken

At sentencing, the court imposed a DNA fee of \$100, previously a discretionary legal financial obligation. CP 145. Because Boyer has previously been convicted of a felony, DNA has previously been collected. CP 143-44; see RCW 43.43.7541 (mandatory DNA fee upon felony conviction).

Since Boyer was sentenced, the legislature amended RCW

43.43.7541. This statute now only allows the government to collect a DNA fee one time. In this case, the trial court authorized a second collection contrary to RCW 43.43.7541.

The legislature's decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018) ("We hold that House Bill 1783 applies prospectively to Ramirez because the statutory amendments pertain to costs imposed on criminal defendants following conviction, and Ramirez's case was pending on direct review and thus not final when the amendments were enacted.").

Here, Boyer's case was pending on appeal after the effective date of RCW 43.43.7541. Accordingly, the DNA fee imposed must be stricken from the judgment and sentence.

- b. The legislature no longer permits imposition of a criminal filing fee or a sheriff service fee in indigent cases

The Legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018,

ch. 269, § 6(3). The sheriff service fee is a discretionary cost. RCW 10.01.160(1), (2). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

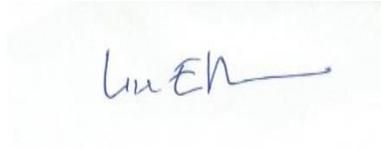
The legislature's decision to eliminate this fee is remedial and applies prospectively to cases pending on appeal. Here, Boyer's case was pending on appeal after the effective date of RCW 43.43.7541. *Ramirez*, 191 Wn.2d at 749. Accordingly, the criminal filing fee and sheriff service fee imposed must be stricken from the judgment and sentence.

E. CONCLUSION

Tony Boyer respectfully requests that this court strike the imposition of the \$100 DNA fee, the \$385 sheriff service fee and the \$200 criminal filing fee from Boyer's judgment and sentence.

DATED this 8th day of February 2019.

Respectfully submitted,

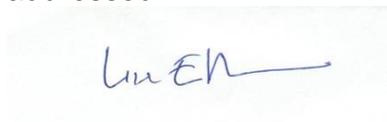


LISE ELLNER, WSBA No. 20955
Attorney for Appellant



ERIN SPERGER, WSBA No. 45931
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Asotin County Prosecutor's Office bnichols@co.asotin.wa.us and Tony Boyer/DOC#829305, Washington Corrections Center, PO Box 900, Shelton, WA 98594 a true copy of the document to which this certificate is affixed on February 8, 2019. Service was made by electronically to the prosecutor and Tony Boyer by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

February 08, 2019 - 4:58 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36327-9
Appellate Court Case Title: State of Washington v. Tony Lee Boyer
Superior Court Case Number: 18-1-00030-2

The following documents have been uploaded:

- 363279_Briefs_20190208165728D3545578_3315.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Boyer AOB .pdf
- 363279_Other_Filings_20190208165728D3545578_8710.pdf
This File Contains:
Other Filings - Appearance
The Original File Name was Boyer Notice of Appearance.pdf

A copy of the uploaded files will be sent to:

- bnichols@co.asotin.wa.us
- erin@legalwellspring.com

Comments:

Sender Name: Lise Ellner - Email: liseellnerlaw@comcast.net
Address:
PO BOX 2711
VASHON, WA, 98070-2711
Phone: 206-930-1090

Note: The Filing Id is 20190208165728D3545578