

FILED
Court of Appeals
Division III
State of Washington
2/15/2019 3:46 PM

No. 36327-9-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

TONY L. BOYER, Appellant.

BRIEF OF RESPONDENT

CURT L. LIEDKIE
Asotin County Chief Deputy
Prosecuting Attorney
WSBA #30371

P. O. Box 220
Asotin, Washington 99402
(509) 243-2061

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. SUMMARY OF ISSUES	1
II. SUMMARY OF ARGUMENT	1
III. STATEMENT OF THE CASE	2
IV. DISCUSSION	2
V. CONCLUSION	4

TABLE OF AUTHORITIES

State Supreme Court Cases

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

Statutes

LAWS OF 2018, ch. 269 2, 3, 4

RCW 10.60.160 3

RCW 36.18.020 3

RCW 43.43.7541. 2

I. SUMMARY OF ISSUES

1. DID THE COURT IMPROPERLY IMPOSE CERTAIN LEGAL FINANCIAL OBLIGATIONS?

II. SUMMARY OF ARGUMENT

1. THE COURT IMPROPERLY IMPOSED CERTAIN LEGAL FINANCIAL OBLIGATIONS AND THE MATTER SHOULD BE REMANDED FOR ENTRY OF AN ORDER STRIKING THE DNA FEE, FILING FEE AND SHERIFF'S SERVICE FEES.

III. STATEMENT OF THE CASE

The Appellant, Tony Boyer was sentenced¹ on August 23, 2018, and the sentencing court imposed as legal financial obligations, a one-hundred dollar (\$100.00) DNA fee, a two-hundred dollar (\$200.00) filing fee, and sheriff's service fees (costs) of three-hundred eighty-five dollars (\$385.00). Clerk's Papers (hereinafter CP) 144-145. The Appellant has previously submitted a DNA sample, under previous felony convictions. CP 143-144.² The Appellant has now appealed, claiming that these legal financial obligations should not have been imposed at sentencing.

IV. DISCUSSION

The Appellant asserts that the sentencing court should not have imposed a DNA fee because he has previously had his DNA sampled and submitted. The State concurs and concedes this was error. See RCW 43.43.7541. Previous versions of this statute required imposition of the fee for each conviction. However, the statute was amended to only require the fee where the offender has not previously had DNA collected. See LAWS OF 2018, ch. 269

¹The charges for which the Appellant was sentenced are irrelevant to the issue presented herein. Therefore, discussion thereof is omitted.

²The State does not concede that the fact of a prior felony conviction necessarily means that the offender's DNA was actually collected and submitted. However, upon receipt of the Appellant's brief, the State confirmed, by way of NCIC III report, that the Appellant's DNA has been previously collected and submitted.

(hereinafter HB 1783) Contrary to the Appellant's assertion,³ the amendment was effective prior to the Appellant's sentencing hearing. As such, it was error for the court to impose the fee, irrespective of whether HB 1783 is prospectively applicable to his case on appeal. See State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018)

The Appellant also claims that the filing fee and sheriff's service costs should be stricken. The State also agrees that this was error. HB 1783 was the law in effect at the time of the Appellant's sentencing hearing. Under that law, a sentencing court is precluded from imposing costs, pursuant to RCW 10.60.160(3) against a defendant who is indigent. HB 1783 further precludes a court from imposing a filing fee under RCW 36.18.020 against an indigent defendant. The Appellant was certainly capable of working at a skilled trade (electrician) when not incarcerated for committing crimes. Report of Proceedings (hereinafter RP) 82. However, as he sat before the court at the time of sentencing, the Appellant met the indigency requirements for court appointed counsel.⁴ CP 169-170.

³The Appellant asserts that the effective date of HB 1783 was after his sentencing but while the matter was pending appeal. See Brief of Appellant, p. 2-3.

⁴Noticeably absent from the Appellant's brief is any reference to the record of his indigence. In fact, the Appellant makes no claim in his brief of his status as indigent. In absence of a showing thereof, discussion HB 1783 and its benefits has no application to this case. However, the State is aware and concedes that the Appellant was determined to be eligible for indigent counsel both at the trial and appellate level.

Pursuant to HB 1783, the court should not have imposed the sheriff's service fees as costs or a filing fee. The State hereby concedes and agrees to remand for entry of an order striking these legal financial assessments.

V. CONCLUSION

While the Appellant fails to properly support his claims and further misstates the chronology, it is clear, based upon the law set forth above, that the Appellant is entitled to the relief he requests. The State would request this Court enter a decision remanding for entry of an order striking the Filing Fee, Sheriff's Service Fees, and DNA Fee.

Dated this 15th day of February, 2019.

Respectfully submitted,



CURT L. LIEDKIE, WSBA #30371
Attorney for Respondent
Deputy Prosecuting Attorney for Asotin County
P.O. Box 220
Asotin, Washington 99402
(509) 243-2061

COURT OF APPEALS OF THE STATE OF
WASHINGTON - DIVISION III

THE STATE OF WASHINGTON,

Respondent,

v.

TONY L. BOYER,

Appellant.

Court of Appeals No: 36327-9-III

DECLARATION OF SERVICE

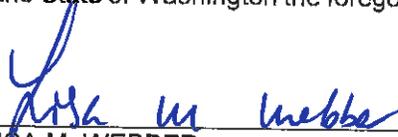
DECLARATION

On February 15, 2019 I electronically mailed, through the portal, a copy of the BRIEF OF RESPONDENT in this matter to:

LISE ELLNER
liseellnerlaw@comcast.net

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on February 15, 2019.


LISA M. WEBBER
Office Manager

DECLARATION
OF SERVICE

ASOTIN COUNTY PROSECUTOR'S OFFICE

February 15, 2019 - 3:46 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_Plus_20190215154537D3173093_2655.pdf
This File Contains:
Affidavit/Declaration - Service
Briefs - Respondents
The Original File Name was Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- Liseellnerlaw@comcast.net
- bnichols@co.asotin.wa.us
- cliedkie@co.asotin.wa.us
- erin@legalwellspring.com
- valerie.liseellner@gmail.com

Comments:

Sender Name: Lisa Webber - Email: lwebber@co.asotin.wa.us

Filing on Behalf of: Curtis Lane Liedkie - Email: cliedkie@co.asotin.wa.us (Alternate Email:)

Address:
135 2nd Street
P.O. Box 220
Asotin, WA, 99402
Phone: (509) 243-2061

Note: The Filing Id is 20190215154537D3173093