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Court of Appeals
Division III
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 36367-8-III

STATE OF WASHINGTON, Respondent,

v.

SCOTT THOMAS PESONEN, Appellant.

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

The State contends that the imposition of the clerk's filing fee was waived when Pesonen did not object to it at sentencing. Because the sentencing court lacked statutory authority to impose the fee, the order is void, and this court should exercise its discretion to strike the fee.

The parties agree that "As of June 7, 2019, trial courts are prohibited from imposing the \$200 criminal filing fee on defendants who are indigent." *Respondent's Brief*, at 5. Consequently, the trial court only has authority to impose the fee on defendants who are not indigent. Because Pesonen was indigent due to his lack of employment, income, and assets, the trial lacked statutory authority to impose the fee.

"A void judgment is one entered by a court . . . which lacks the inherent power to make or enter the particular order involved." *State v. Reanier*, 157 Wn. App. 194, 200, 237 P.3d 299 (2010), *review denied*, 170 Wn.2d 1018 (2011). A sentencing court's authority is limited to what it is conveyed by statute. *State v. Phelps*, 113 Wn. App. 347, 354, 57 P.3d 624 (2002). Here, because the statute establishing the criminal filing fee does not authorize its application against an indigent defendant such as Pesonen, the order imposing it exceeds the sentencing court's authority. Consequently, the imposition is void.

A defendant may seek relief from a void order by motion to the Superior Court under CrR 7.8(b)(4) within a reasonable time. *Reanier*, 157 Wn. App. at 200-01. Alternatively, a defendant subject to a disability resulting from a judgment may seek relief from a sentence imposed in violation of Washington law by way of a personal restraint petition. RAP 16.4(c)(2). Here, Pesonen would be entitled to relief through either process. Accordingly, judicial economy favors reaching the issue now, rather than only after the commencement of a separate, additional proceeding. RAP 1.2 directs the Court of Appeals to interpret its rules liberally to promote justice and grants it the authority to waive the requirements of the rules to serve the ends of justice. Here, where the parties do not seriously dispute the existence of the error or the appropriateness of the remedy, but only the mechanism by which it is presented, the ends of justice favor granting review of the error and striking the criminal filing fee.

II. CONCLUSION

For the foregoing reasons, Pesonen respectfully requests that the Court STRIKE the \$200 criminal filing fee from his judgment and sentence.

RESPECTFULLY SUBMITTED this 20 day of May, 2019.

TWO ARROWS, PLLC

A handwritten signature in black ink, appearing to read "Andrea Burkhart". The signature is written in a cursive style with a large initial 'A' and 'B'.

ANDREA BURKHART, WSBA #38519
Attorney for Appellant

CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Reply Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Scott T. Pesonen, DOC #411252
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And, pursuant to prior agreement of the parties, by e-mail to:

Brian C. O'Brien
Deputy Prosecuting Attorney
SCPAAppeals@spokanecounty.org

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

Signed and sworn this 20 day of May, 2019 in Kennewick,
Washington.



Andrea Burkhart

BURKHART & BURKHART, PLLC

May 20, 2019 - 6:59 AM

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