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Division III
State of Washington
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NO. 36422-4-III

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

STATE OF WASHINGTON,

Respondent,

v.

RANDALL GONZALEZ,

Appellant.

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

The Honorable John M. Antosz, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The \$160 in "court costs" imposed by the trial court should be stricken under the Supreme Court's decision in State v. Ramirez.¹

Issue Pertaining to Assignment of Error

Under the Supreme Court's decision in Ramirez, should the \$160 in "court costs" be stricken from appellant's judgment and sentence because he was indigent at the time of sentencing?

B. STATEMENT OF THE CASE

The Grant County prosecutor charged Randall Gonzalez by amended information with one count each of violation of a no contact order and fourth degree assault for incidents alleged to have occurred on May 28, 2005. CP 1-2, 10-11; RP² 3-4.

Gonzalez pled guilty to both charges. CP 12-16; RP 5. The parties jointly recommended that Gonzalez's jail time be suspended. RP 4, 7-8. The trial court imposed concurrent sentences of 300 days confinement on each count. The trial court suspended 270 days and converted the remaining 30 days confinement to community service. CP 17-20; RP 9-10.

The trial court imposed \$410 in legal financial obligations, including \$160 in non-specified "court costs" and \$250 under the crime

¹ State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018).

² This brief refers to the verbatim reports of proceedings of August 2, 2005 as "RP".

victim compensation act. Although defense counsel acknowledged that Gonzalez was "employed full-time" and "does work really regularly," the trial court entered no finding that Gonzalez had the ability to pay any legal financial obligations. RP 9. Gonzalez was also found to be indigent for purposes of appeal. CP 21-24.

Gonzalez timely appeals.³ CP 25.

C. ARGUMENT

THE DISCRETIONARY \$160 IN 'COURT COSTS' IMPOSED BY THE TRIAL COURT SHOULD BE STRICKEN BECAUSE GONZALEZ IS INDIGENT.

The trial court imposed \$160 in non-specified "court costs" on Gonzalez. CP 19; RP 10. The law now prohibits trial courts from imposing these discretionary costs on defendants who are indigent at the time of sentencing. This change in the law applies prospectively to cases on direct appeal at the time the law changed. Therefore, the \$160 in "court costs" imposed here should be stricken.

Although not specified by statutory citation or description in the judgement and sentence, at the time of Gonzalez's August 2, 2005 sentencing, the trial court was authorized to impose certain court costs against a defendant. By House Bill 1783, effective June 7, 2018, former

³ Although the notice of appeal was not filed until November 2, 2018, by Commissioner's Ruling dated December 18, 2018, "this Court accepts [Gonzalez's] notice of appeal as timely filed, and denies the motion to dismiss for untimely filing."

RCW 10.01.160(3) expressly prohibits courts from imposing discretionary costs on defendants who are indigent at the time of sentencing: “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).” LAWS OF 2018, ch. 269, § 6(3).

Here, this direct appeal was not yet final when HB 1783's statutory amendments were enacted. See Laws of 2018, ch. 269, § 17. Therefore, Gonzalez is entitled to benefit from the statutory changes in HB 1783. In Ramirez, the Washington Supreme Court discussed and applied HB 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783), which became effective June 7, 2018 and applies prospectively to cases pending on appeal. Ramirez, 426 P.3d at 718, 721-23.

In Ramirez, following his convictions, the trial court imposed \$2,900 in LFOs on the defendant, including a \$200 criminal filing fee and discretionary LFOs of \$2,100 in attorney fees. 426 P.3d at 716. Following sentencing, the trial court issued an order of indigency. Id.

On appeal, Ramirez argued “the trial court failed to make an adequate individualized inquiry into his ability to pay before imposing discretionary LFOs, contrary to [*State v.*] *Blazina*, 182 Wn.2d [827,] 837-38, 344 P.3d 680 [2015].” Id. at 717. The Supreme Court first held the trial court did not conduct an adequate individualized inquiry into the

defendant's current and future ability to pay before imposing discretionary LFOs. Id. at 718-21. The Court noted that “[n]ormally, this *Blazina* error would entitle [the defendant] to a full resentencing hearing on his ability to pay LFOs.” Id. The Court further observed that after it granted review, the legislature passed HB 1783. Id.

HB 1783 amended “the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c).” Ramirez, 426 P.3d at 721 (citing LAWS OF 2018, ch. 269, § 6(3)); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”).

RCW 10.46.160 was also amended to include the proviso that 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).” LAWS OF 2018, ch. 269, § 9. Thus, applying Ramirez’s reasoning, it is clear that the provisions of RCW 10.46.160 and RCW 10.46.190 are discretionary obligations that may not be imposed on an indigent defendant. Cf. Ramirez, 426 P.3d at 722-23.

Gonzalez qualified for a public defender following a determination of indigency and finding that "the defendant lacks sufficient funds to prosecute an appeal and applicable law grants defendant a right to review at public expense[.]" CP 23-24. No finding of an ability to pay any legal financial obligations was entered at the time of Gonzalez's sentencing. Thus, the record indicates Gonzalez is indigent under RCW 10.101.010(3). Because HB 1783 applies prospectively to his case and because HB 1783 "conclusively establishes that courts do not have discretion" to impose certain fees against those who are indigent, the sentencing court lacked authority to impose the non-specified "court costs". Ramirez, 426 P.3d at 723. Accordingly, the \$160 in "court costs" should be stricken from Gonzalez's judgment and sentence.

D. CONCLUSION

The \$160 in discretionary "court costs" must be stricken based on indigency.

DATED this 21st day of May, 2019.

Respectfully submitted,

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