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Court of Appeals  
Division III  
State of Washington  
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NO. 36487-9-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Appellant,

v.

TRAVIS L. PADGETT,

Respondent.

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BRIEF OF RESPONDENT

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## I. ASSIGNMENTS OF ERROR

### A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

The issues raised by the assignments of error can be summarized as follows;

1. Whether the amended judgment and sentence erroneously requires Mr. Padgett to pay a \$100 DNA fee when Padgett has a prior felony conviction, and the court indicated its intent to strike the fee?
2. Whether the trial court made “scrivener’s errors” on the amended judgment and sentence?

### B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The trial court erred in not striking the DNA fee after it indicated that the court’s intent was to strike the fee.
2. The “scrivener’s errors” should be corrected by the trial court.

## II. STATEMENT OF THE CASE

The State accepts the appellant’s statement of the case as sufficient for addressing the issues presented in appellant’s brief.

## III. ARGUMENT.

- A. The trial court failed to strike the \$100 DNA fee when it determined that the defendant had already been assessed the fee in a prior felony conviction, and had expressed the intent to strike the \$100 DNA fee.

The State concedes error when the sentencing court failed to strike the \$100 DNA fee when it had determined that the defendant had already

been assessed the fee in a prior felony conviction and when it had express the intent to strike the DNA fee. (11-02-2018 CP 22). As pointed out by appellant, RCW 43.43.7541 provides that “[e]very sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The sentencing court determined that the DNA fee had previously been assessed.

B. The State agrees that the scrivener’s errors in the amended judgment and sentence should be remanded to the trial court to strike or correct.

The appellant correctly points out several scrivener’s errors that are apparent in the amended judgment and sentence. CrR 7.8 (a) provides that “clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time . . .” See also State v. Naillieux, 158 Wn. App. 630, 646, 241 P.3d 1280 (2010).

The first scrivener’s error, contained in the amended judgment and sentence header, incorrectly states that that count 9 is dismissed, when this court determined that count 8 should be dismissed.

The second scrivener’s error, section 1.2 states that “[t]he defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered.” CP 51. The record should

be clarified that the appellant waived his right to be present at the resentencing. (11-02-18 RP 2); CP 41-42. Also, section 1.2 should note that the appellant was provided the right to allocution at the original sentencing hearing on November 21, 2014. (11-21-2014 RP 1672-84).

The third, fourth and fifth scrivener's errors, as pointed out by the appellant, contained in section 2.1 of the amended judgment and sentence, should be corrected pursuant to the appellant's argument.

The sixth error, regarding the appellant's financial ability, the state concedes that section 2.7 should be struck since the court had found the appellant indigent.

#### IV. CONCLUSION

For the reasons set forth above, this court should remand this case to the sentencing court to correct the errors stated above. In the interests justice and judicial economy this court should order the agreed upon order which corrects these issues shall be entered ex parte and without the need to return this Appellant to Yakima County.

Respectfully submitted this 15<sup>th</sup> day of October 2019/

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DECLARATION OF SERVICE

I, David B. Trefry state that on October 15, 2019, I emailed a copy of the Respondent's Brief to: Lisa Tabbut at [ltabbutlaw@gmail.com](mailto:ltabbutlaw@gmail.com)

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15<sup>th</sup> day of October, 2019 at Spokane, Washington.

s/ David B. Trefry  
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**YAKIMA COUNTY PROSECUTORS OFFICE**

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