

FILED
Court of Appeals
Division III
State of Washington
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NO. 36631-6-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

RICHARD EUGENE YALLUP Jr.,

Appellant.

BRIEF OF RESPONDENT

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Attorney for Respondent

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in imposing a \$200 filing fee despite the appellant's indigence.
2. The trial court erred by imposing interest on all legal financial obligations (LFOs)

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant sets forth two assignments of error. These can be summarized as follows;

1. In light of recent statutory amendments and the Supreme Court's decision in State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018), should the \$200 criminal filing fee be stricken from the appellant's judgment and sentence?
2. The judgment and sentence contains a provision requiring the appellant to pay interest on all LFOs. Based on recent statutory amendments and the? Ramirez decision, must the provision imposing interest be modified to reflect that no interest shall accrue on non-restitution LFOs as of June 7, 2018?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

Yallup has assigned error to two issues, the State's answer to those two allegations is as follows:

Issues 1 – 2. The State concedes these two issues. Both the filing fee and the interest provision should be stricken from the Appellant's judgment and sentence.

II. STATEMENT OF THE CASE

This Court's remanded the case for consideration of costs and restitution. The court found the restitution imposed was correctly decided and reconfirmed the original amounts imposed.

The Court stated it would waive all non-mandatory LFOs. RP 7. Specifically, the trial court indicated it was waiving the costs of supervision, the costs of incarceration, and the DNA fee. RP 10.

The court did not address the \$200 criminal filing fee, which it had previously imposed. CP 78. The court also did not alter the judgment and sentence requiring Yallup pay interest on all LFOs. CP 78.

The judgment and sentence set out that:

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. CP 78.

Yallup has now appealed this latest hearing. CP 161. Yallup is indigent. CP 166, 168-69; see also CP 319-23 (indigency motion and order, prior appeal).

III. ARGUMENT

Response to Allegation 1-2 The trial court did not strike the \$200.00 in court costs and should have also struck the imposition of interest imposed on non-restitution legal financial obligations.

Based on the recent statutory amendments and the Supreme Court's decision in State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018), the State concedes the \$200 criminal filing fee should be stricken from the appellant's judgment and sentence.

Further, based on recent statutory amendments and the Ramirez

decision the provision imposing interest must be modified to reflect that no interest shall accrue on non-restitution LFOs. RCW 10.82.090(1).

This court need only order remand for entry of an ex parte order striking the \$200.00 LFO and amending the judgment and sentence to strike the imposition of non-restitution interest after June 7, 2018 and the State shall comply. The action ordered should be done with specific indication that the Appellant shall NOT be returned to Yakima County for this ministerial action.

IV. CONCLUSION

For the reasons set forth above this court should grant the appeal as to the two issues raised by appellant counsel, the \$200.00 filing fee and imposition of interest on non-restitution LFO's as of the date RCW 10.82.090(1) came into effect, June 7, 2018.

Respectfully submitted this 9th day of December 2016,

By: s/ David B. Trefry

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DECLARATION OF SERVICE

I, David B. Trefry state that on December 9, 2019 emailed a copy, by agreement of the parties, of the Respondent's Brief, to Jennifer Winkler at Sloanej@nwattorney.net

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

DATED this 9th day of December, 2019 at Spokane, Washington.

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