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Court of Appeals  
Division III  
State of Washington  
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No. 36689-8-III

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

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STATE OF WASHINGTON,

Respondent,

v.

GLORIA R. REDMANN

Appellant.

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

The Honorable Annette S. Plese

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APPELLANT'S OPENING BRIEF

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### **A. SUMMARY OF ARGUMENT**

Gloria R. Redmann pleaded guilty to manslaughter in the first degree and was sentenced to 78 months of confinement. She was found indigent for purposes of this appeal.

The trial court imposed a term of community custody with conditions. One condition requires Ms. Redmann to pay discretionary supervision fees as determined by DOC (Department of Corrections), which is an error due to her indigency. The condition should be stricken.

The trial court also erred by imposing \$200 in court costs, and this provision should also be stricken because Ms. Redmann was deemed indigent.

### **B. ASSIGNMENTS OF ERROR**

1. The trial court erred in imposing a condition of community custody requiring Ms. Redmann to pay supervision fees as determined by DOC.
2. The trial court erred in imposing \$200 in court costs.

### **C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Issue 1: Whether the trial court erred in imposing a condition of community custody requiring Ms. Redmann to pay supervision fees as determined by DOC.

Issue 2: Whether the trial court erred in imposing \$200 in court costs.

#### **D. STATEMENT OF THE CASE**

Gloria R. Redmann was sentenced to manslaughter in the first degree after accepting a guilty plea offer from the State. (CP 378-389, 407-419; RP 327-356). The conviction stemmed from events occurring in November 2016. (CP 2-5).

At sentencing, the trial court imposed a term of community custody with conditions. (CP 412). One condition required Ms. Redmann pay supervision fees as determined by DOC (Department of Corrections). (CP 412). Ms. Redmann agreed to the community custody conditions. (RP 346).

Also at sentencing the trial court ordered Ms. Redmann pay \$200 in court costs. (CP 413).

Ms. Redmann timely appealed. (CP 422-436).

#### **E. ARGUMENT**

**Issue 1: Whether the trial court erred in imposing a condition of community custody requiring Ms. Redmann to pay supervision fees as determined by DOC.**

The trial court erred in imposing a condition of community custody requiring Ms. Redmann to pay supervision fees as determined by DOC, because this fee is a discretionary legal financial obligation (LFO), and the trial court found Ms. Redmann indigent. The condition should be stricken from her judgment and sentence.

Ms. Redmann challenges this community custody condition for the first time on appeal. (CP 412; RP 346). Sentencing errors may be raised for the first

time on appeal. *See State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (stating that “[i]n the context of sentencing, established case law holds that illegal or erroneous sentences may be challenged for the first time on appeal.”) (*quoting State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)). While Ms. Redmann did agree to the community custody conditions, the requirement she pay supervision fees as determined by DOC is not legal because she is indigent.

A trial court may impose a sentence only if it is authorized by statute. *In re Postsentence Review of Leach*, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). Whether the trial court has statutory authority to impose a community custody condition is reviewed de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Where the trial court lacked authority to impose a community custody condition, the appropriate remedy is to remand to strike the condition. *See, e.g., State v. O’Cain*, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

The trial court erred in imposing a condition of community custody requiring Ms. Redmann pay supervision fees as determined by DOC. The community custody supervision fee is a discretionary LFO, because it can be waived by the sentencing court. *State v. Lundstrom*, 6 Wn. App. 2d 388, 396 n.3, 429 P.3d 1116 (2018); *see also* RCW 9.94A.703(2)(d) (2014) (allowing the sentencing court to impose, or to waive, a condition of community custody

requiring an offender to “[p]ay supervision fees as determined by the department[.]”).

Discretionary LFOs cannot be imposed on a defendant who is indigent at the time of sentencing. *See* RCW 10.01.160(3); *see also* RCW 10.101.010(3)(a)-(c) (defining indigent). Ms. Redmann was found indigent and was granted a right to review at public expense. (CP 442-443). Therefore, the condition of community custody requiring Ms. Redmann to pay supervision fees as determined by DOC should be stricken. *See State v. Taylor*, Nos. 51291-2-II, 51301-3-II, 2019 WL 2599184, \*4 (Wash. Ct. App. June 25, 2019) (holding that because the defendant was found indigent at sentencing, the community custody supervision fee must be stricken under RCW 10.01.160(3); *State v. Etpison*, No. 80103-1, 2019 WL 4415209, at \*6 (Wash. Ct. App. Sept. 16, 2019) (striking community supervision fees due to indigency); *see also* GR 14.1(a) (authorizing citation to unpublished opinions of the Court of Appeals filed on or after March 1, 2013, as nonbinding authority).

The trial court erred and the community custody supervision fees must be stricken.

**Issue 2: Whether the trial court erred in imposing \$200 in court costs.**

The trial court imposed \$200 in court costs on Ms. Redmann. The law now prohibits trial courts from imposing \$200 in court 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 \$200 in court costs should be stricken.

At the time of Ms. Redmann's sentencing on March 6, 2019, the trial court was no longer authorized to impose a \$200 criminal filing fee on indigent defendants. (RP 337-356; CP 407-419). Effective June 7, 2018, by House Bill 1783, our Legislature amended RCW 36.18.020(2)(h) to prohibit the imposition of the \$200 criminal filing fee on indigent defendants:

(2) Clerks of superior courts shall collect the following fees for their official services . . . (h) Upon conviction . . . an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, *except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).*

Laws of 2018, ch. 269, § 17 (emphasis added).

Here, Ms. Redmann was sentenced after the effective date of House Bill 1783, and therefore, she is entitled to benefit from the statutory changes in House Bill 1783. *See* Laws of 2018, ch. 269, § 17; *see also State v. Ramirez*, 191 Wn.2d 732, 745-749, 426 P.3d 714 (2018) (holding these statutory amendments apply prospectively to cases on direct appeal at the time the amendment was enacted).

Ms. Redmann was indigent at the time of resentencing. (CP 442-443); *see also* RCW 10.101.010(3)(a)-(d) (defining indigent). Therefore, the trial court erred in imposing \$200 in court costs. *See* RCW 36.18.020(2)(h).

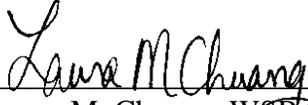
This court should remand this case for the trial court to strike the \$200 in court costs from Ms. Redmann's judgment and sentence.

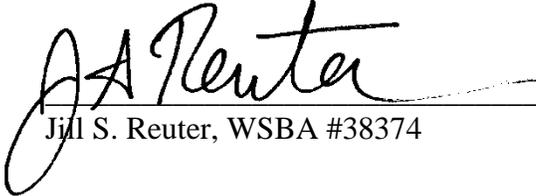
**F. CONCLUSION**

The trial court erred by entering a community custody condition requiring Ms. Redmann pay community supervision fees because the fees are discretionary and she is indigent. The condition must be stricken.

The trial court also erred by imposing \$200 in court costs. Ms. Redmann requests this Court strike the \$200 court cost.

Respectfully submitted this 31st day of October, 2019.

  
\_\_\_\_\_  
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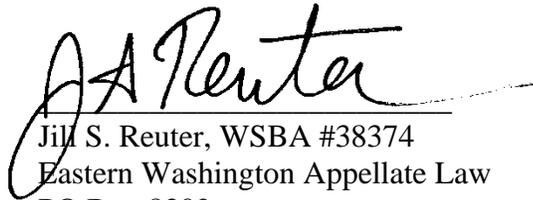
STATE OF WASHINGTON ) COA No. 36689-8-III  
Plaintiff/Respondent )  
vs. ) Spokane Co. No. 16-1-04940-1  
)  
GLORIA R. REDMANN, ) PROOF OF SERVICE  
Defendant/Appellant )  
\_\_\_\_\_)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on October 31, 2019, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Gloria Rae Redmann, DOC No. 414922  
Washington Corrections Center for Women  
9601 Bujacich Rd. NW  
Gig Harbor, WA 98332-8300

Having obtained prior permission, I also served a copy on the Respondent at [SCPAappeals@SpokaneCounty.org](mailto:SCPAappeals@SpokaneCounty.org) using the Washington State Appellate Courts' Portal.

Dated this 31st day of October, 2019.

  
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