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Court of Appeals  
Division III  
State of Washington  
10/31/2019 9:55 AM

NO. 36845-9-III

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

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STATE OF WASHINGTON,

Respondent,

v.

SHAWN STAHLMAN,

Appellant.

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

The Honorable Scott R. Sparks, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The \$200 criminal filing fee imposed by the trial court should be stricken under the Supreme Court's decision in State v. Ramirez.<sup>1</sup>

2. The \$100 DNA collection fee imposed by the trial court should be stricken under Ramirez.

3. The discretionary legal financial obligations (LFOs) interest accrual provision should be stricken under Ramirez.

Issue Pertaining to Assignments of Error

Under the Supreme Court's decision in Ramirez, should the \$200 criminal filing fee, \$100 DNA collection fee, and interest accrual provision be stricken from appellant's judgment and sentence because he was indigent at the time of sentencing?

B. STATEMENT OF THE CASE

The Kittitas County prosecutor charged appellant Shawn Stahlman by amended information with 15 criminal charges for incidents alleged to have occurred between August 9 and 17, 2015. CP 9-14.

Stahlman pled guilty to three counts of second degree identity theft and one count of theft of a firearm. CP 33-46; 1RP<sup>2</sup> 3-6. Pursuant to the

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

plea agreement, the parties jointly recommended that the four offenses be run concurrently to one another. CP 22-32.

At sentencing, the prosecutor requested that Stahlman's concurrent sentence under this appeal be run consecutively to his sentence under Yakima County cause number 15-1-01489-2, for which he had already been sentenced. 1RP 8-9. In contrast, Stahlman requested that his concurrent sentence under this appeal be run concurrently to the Yakima County case. 1RP 9-12.

The trial court imposed concurrent sentences totaling 77 months for the offenses Stahlman plead guilty to. The trial court, however, ran the 77 months consecutively to Stahlman's sentence in the Yakima County case, citing Stahlman's criminal history and noting that some of his offenses would go unpunished if both sentences were run concurrently. The trial court also imposed 12 months community custody. 1RP 13-15; CP 33-46.

The trial court imposed \$800 in legal financial obligations, including a \$500 victim penalty assessment, \$200 criminal filing fee, and \$100 DNA collection fee attorney fee. CP 39; 1RP 14.

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<sup>2</sup> This brief refers to the verbatim reports of proceedings as follows: 1RP – June 6 & 10, 2016; 2RP – March 26, 2018.

On March 13, 2018, the State brought a motion to amend Stahlman's 2016 judgment and sentence to reflect that his 77 month sentence was to run consecutively to the sentence under the Yakima County case. Supp. CP \_\_\_\_ (sub no. 39, Motion to Amend Judgment and Sentence Without Presence of Defendant (Clerical Error), filed 3/13/18). An order amending the judgment and sentence was entered on March 26, 2018, reflecting the sentences were to run consecutively. Stahlman was not personally present at the March 26 hearing but was represented by counsel. CP 47-48; 2RP 3-4.

Stahlman was found to be indigent for purposes of appeal. CP 54-58. Stahlman timely appeals.<sup>3</sup> CP 49-53.

C. ARGUMENT

THE DNA COLLECTION FEE, THE CRIMINAL FILING FEE, AND THE INTEREST ACCRUAL PROVISION MUST BE STRICKEN FROM STAHLMAN'S JUDGMENT AND SENTENCE BASED ON INDIGENCY.

Engrossed Second Substitute House Bill 1783, 65<sup>th</sup> Leg., Reg. Sess. (Wash. 2018) (HB 1783) applies prospectively to cases currently pending on direct appeal. State v. Ramirez, 191 Wn.2d 732, 747-50, 426 P.3d 714 (2018). When legal financial obligations are impermissibly

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<sup>3</sup> Although the notice of appeal was not filed until May 22, 2019, by Commissioner's Ruling dated July 23, 2019, this Court granted Stahlman's motion to extend time for filing the notice of appeal. CP 15-19.

imposed, the remedy is “for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs.” Id. at 750.

The DNA collection fee, the criminal filing fee, and the interest accrual provision were imposed against Stahlman in the judgment and sentence. CP 39; 1RP 14. However, Stahlman is indigent and has qualified as such throughout these proceedings. CP 54-58. Accordingly, the DNA collection fee, criminal filing fee, and interest accrual provision must be stricken from Stahlman’s judgment and sentence pursuant to Ramirez’s prospective application of HB 1783.

At the time of Stahlman’s June 10, 2016 sentencing, the trial court was authorized to impose certain court costs against a defendant. By House Bill 1783, effective June 7, 2018, former 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, Stahlman is entitled to benefit from the statutory changes in HB 1783.

RCW 43.43.7541, whose title applies to collection of biological samples for the DNA identification system, was amended by HB 1783 to read, “Every 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.” LAWS OF 2018, ch. 269, § 18 (emphasis added). RCW 43.43.754(1)(a) requires the DNA fee to be imposed in every adult felony case. Per Stahlman’s criminal history stated in the judgment and sentence, Stahlman has several prior felony convictions. See CP 35. Therefore, the DNA fee was already imposed. Because HB 1783 applies prospectively and because the DNA fee was already imposed against Stahlman for at least one prior conviction, his instant judgment and sentence should not have imposed the DNA fee. The fee should be stricken. Ramirez, 191 Wn.2d at 749-50.

Likewise, RCW 36.18.020(2)(h) now states that the \$200 criminal filing 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. Stahlman’s indigency is established in the record, given that the order of indigency allows Stahlman to proceed on appeal at public expense. CP54-58. Therefore, Stahlman is “entitled to benefit from this statutory change,” requiring the criminal filing fee to be stricken from his judgment and sentence. Ramirez, 191 Wn.2d at 749.

HB 1783 also eliminated interest accrual on nonrestitution LFOs. LAWS OF 2018, ch. 269, § 1 (codified as amended at RCW 10.82.090); Ramirez, 191 Wn.2d at 747. Although interest must accrue on restitution amounts, if any, “[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1). The judgment and sentence in this case was imposed on June 10, 2016 and amended March 26, 2018. CP 33-46, 48. Thus, it was not error to impose an interest accrual provision from June 10 2016 to June 6, 2018. However, the interest accrual provision requires that all LFOs imposed in the judgment and sentence “bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090[.]” CP 40. This provision should be stricken because it violates RCW 10.82.090(1) for interest to accrue after June 7, 2018. Accordingly, this court should strike the interest accrual provision from the judgment and sentence.

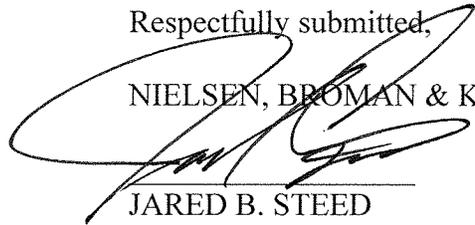
D. CONCLUSION

For the reasons stated, the DNA collection fee, the criminal filing fee, and the interest accrual provision should be stricken from Stahlman's judgment and sentence.

DATED this 30<sup>th</sup> day of October, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A large, stylized handwritten signature in black ink, appearing to read 'Jared B. Steed', is written over the printed name and firm name.

JARED B. STEED

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**NIELSEN, BROMAN & KOCH P.L.L.C.**

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