

FILED
Court of Appeals
Division III
State of Washington
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NO. 37193-0-III

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

STATE OF WASHINGTON,
Respondent,

v.

LADARION ROBERTS,
Appellant.

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

The Honorable Anthony D. Hazel, Judge

BRIEF OF APPELLANT

LISE ELLNER, WSBA No. 20955
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A. ASSIGNMENT OF ERROR

1. The \$100 DNA fee and the \$200 criminal filing fee should be stricken from Roberts' judgment and sentence.

B. ISSUES PRESENTED ON APPEAL

1. Should the \$100 DNA fee be stricken from Roberts' judgment and sentence when the fee was previously charged to Roberts?
2. Should the \$200 criminal filing fee be stricken from Roberts' judgment and sentence when Roberts is indigent?

C. STATEMENT OF THE CASE

1. Procedural History

Ladarion Roberts was charged by information with Count I First Degree Burglary, Count II First Degree Robbery, and Count III Kidnapping in the first degree. CP 3-4. After trial, the trial court dismissed Count I for insufficient evidence as a matter of law. CP 186-87, 192. The jury convicted Roberts of Counts II and III. CP 153, 180.

At Roberts' sentencing hearing on October 24, 2019 the court imposed a criminal filing fee of \$200 without inquiring whether Roberts was indigent. RP 77 (10/24/19). At that time Roberts had

been previously convicted of a felony but the court imposed a DNA fee of \$100. In addition, and a criminal filing fee of \$200. CP 190, 195-96.

This timely appeal follows. CP 204.

D. ARGUMENT

1. THE \$100 DNA FEE AND THE \$200 CRIMINAL FILING FEE SHOULD BE STRICKEN FROM ROBERTS' JUDGMENT AND SENTENCE

- a. The \$100 DNA fee imposed against Roberts is unlawful and should be stricken.

In 2018 the legislature amended RCW 43.43.7541 to only allow the government to collect a DNA fee one time. At sentencing, the court imposed a DNA fee of \$100. CP 196. Because Roberts has previously been convicted of a felony, DNA has previously been collected. CP 190; see RCW 43.43.7541 (mandatory DNA fee upon felony conviction).

In this case, the trial court authorized a second collection contrary to RCW 43.43.7541. Accordingly, the DNA fee imposed must be stricken from the judgment and sentence.

- b. The legislature no longer permits imposition of a criminal filing fee in indigent cases.

In 2018, the Legislature enacted House Bill 1783, which amended former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. 2018, c 269, § 17(2)(h). This statute became effective June 7, 2018. 2018, c 269, § 17(2)(h). Roberts was sentenced on October 24, 2019 after RCW 36.18.020(2)(h)'s effective date.

Because Roberts was found indigent this criminal filing fee should be stricken from her judgment and sentence. CP 202-03; RCW 36.18.020(2)(h).

E. CONCLUSION

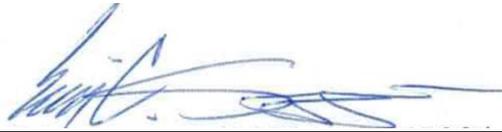
Ladarion Roberts respectfully requests that this court strike the \$100 DNA fee and the \$200 criminal filing fee.

DATED this 6th day of May 2020.

Respectfully submitted,



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Attorney for Appellant



ERIN C. SPERGER, WSBA No. 45931
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I, Lise Ellner, a person over the age of 18 years of age, served the Spokane County Prosecutor's Office SCPAappeals@spokanecounty.org and Ladarion Roberts, c/o Kootenai County Jail, PO Box 9000, Coeur d'Alene, ID 83816 a true copy of the document to which this certificate is affixed on May 6, 2020. Service was made by electronically to the prosecutor and Ladarion Roberts by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

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