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Court of Appeals
Division III
State of Washington
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37193-0-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LADARION ROBERTS, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENT OF ERROR

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

II. ISSUES PRESENTED

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

III. STATEMENT OF THE CASE

For purposes of this response, respondent accepts appellant/defendant's statement of the case

IV. ARGUMENT

IF THIS COURT EXERCISES ITS DISCRETION TO REVIEW THE DEFENDANT'S CLAIM, THE \$200 FILING FEE AND \$100 DNA FEE SHOULD BE STRICKEN.

House Bill 1783, which became effective June 7, 2018, prohibits trial courts from imposing discretionary legal financial obligations (LFOs) on defendants who are indigent at the time of sentencing. Laws of 2018, ch. 269, § 6(3); *State v. Ramirez*, 191 Wn.2d 732, 738, 426 P.3d 714 (2018). This change to the criminal filing fee statute is now codified in RCW 36.18.020(2)(h). These changes to the criminal filing fee statute apply

prospectively to cases pending direct appeal prior to June 7, 2018. *Ramirez*, 191 Wn.2d at 747.

In the present case, the trial court ordered defendant to pay a total of \$800 in LFOs, and less than two weeks later found defendant indigent for the purposes of appeal. CP 195-96, 202-03. It would appear from the record that the trial court did not inquire into defendant's ability to pay her LFOs. *See* RP 74-81. As such, it would seem the court did not conduct an adequate individualized inquiry into defendant's ability to pay under both *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), and *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).

The change in law also prohibits imposition of the DNA collection fee when the State has previously collected the offender's DNA because of a prior conviction. Laws of 2018, ch. 269, § 18. The State concedes defendant's DNA has been previously taken.

Therefore, if this issue is reviewed, despite the lack of objection below, this Court should order that the \$200 criminal filing fee and the \$100 DNA fee be stricken from the judgment and sentence. This may be done without a resentencing. *See State v. Ramos*, 171 Wn.2d 46, 48, 246 P.3d 811 (2011) (a ministerial correction does not require a defendant's presence).

V. CONCLUSION

This Court should order that the \$200 criminal filing fee and the \$100 DNA fee be stricken from the judgment and sentence.

Dated this 25 day of June, 2020.

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

STATE OF WASHINGTON,

Respondent,

v.

LADARION ROBERTS,

Appellant.

NO. 37193-0-III

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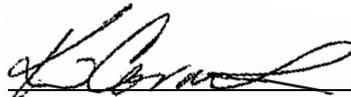
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6/25/2020
(Date)

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(Signature)

SPOKANE COUNTY PROSECUTOR

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