

FILED
Court of Appeals
Division III
State of Washington
11/8/2018 10:28 AM

No. 97283-4

NO. 35530-6-III

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JULIA ELIZABETH TUCKER,

Defendant/Appellant.

SECOND SUPPLEMENTAL BRIEF OF APPELLANT

Dennis W. Morgan WSBA #5286
Attorney for Appellant
P.O. Box 1019
Republic, Washington 99166
(509) 775-0777

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ASSIGNMENT OF ERROR

1. The trial court erroneously imposed the \$200.00 filing fee and the \$100.00 DNA fee when it sentenced Julia Elizabeth Tucker on December 28, 2017. (CP 185)

ISSUE RELATING TO ASSIGNMENT OF ERROR

1. Even though the trial court was unaware that the Legislature was going to enact a new statute effective June 7, 2018, did the enactment of that statute result in the need to relieve Ms. Tucker of the obligation to pay a filing fee and a DNA fee?

ARGUMENT

On September 20, 2018 the State Supreme Court entered its opinion in *State v. Ramirez*, slip opinion 95249-3.

Counsel was aware of the enactment of ESHB 1783, **LAWS OF 2018**, but was unaware that the Supreme Court would rule that it applied prospectively.

On November 1, 2018 Ms. Tucker filed a Motion to File Supplemental Brief. The Court of Appeals granted that Motion on November 5, 2018.

The following excerpt from the *Ramirez* decision supports Ms. Tucker's position that she should be relieved of the obligation to pay a court filing fee:

After we granted review, the legislature enacted House Bill 1783 which amends former RCW 10.01.160 (3) to categorically prohibit the imposition

of any discretionary costs on indigent defendants. Laws of 2018, ch. 269, § 6 (3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020 (2)(h)(2015), to prohibit courts from imposing the \$200.00 filing fee on indigent defendants. Laws of 2018, ch. 269, § 17 (2)(h).

State v. Ramirez, slip opinion, p. 7.

Additionally, former RCW 43.43.7541, relating to the DNA fee, was also amended to preclude collecting that fee if it was previously collected. Ms. Tucker has multiple prior felonies per her Judgment and Sentence and it is certain that the fee has been collected. *See: LAWS OF 2018*, ch. 269, § 18.

The \$200.00 filing fee and \$100.00 DNA fee should both be removed from the Judgment and Sentence.

DATED this 8th day of November, 2018.

Respectfully submitted,

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant.
P.O. Box 1019
Republic, WA 99166
(509) 775-0777
(509) 775-0776
nodblspk@rcabletv.com

NO. 35530-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

| | | |
|-------------------------|---|-------------------------------|
| STATE OF WASHINGTON, |) | |
| |) | KITTITAS COUNTY |
| Plaintiff, |) | NO. 16 1 00082 6 |
| Respondent, |) | |
| |) | |
| v. |) | CERTIFICATE OF SERVICE |
| |) | |
| JULIA ELIZABETH TUCKER, |) | |
| |) | |
| Defendant, |) | |
| Appellant. |) | |
| _____ |) | |

I certify under penalty of perjury under the laws of the State of Washington that on this 8th day of November, 2018, I caused a true and correct copy of the *SECOND SUPPLEMENTAL BRIEF OF APPELLANT* to be served on:

COURT OF APPEALS, DIVISION III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

CERTIFICATE OF SERVICE

Kittitas County Prosecuting Attorney
Attn: Gregory Zempel
greg.zempel@co.kittitas.wa.us

E-FILE

Julia E. Tucker #367372
Washington Correction Center for Women
9601 Bujacich Rd. NW
Gig Harbor, Washington 98332-8300

U.S. MAIL

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant.
P.O. Box 1019
Republic, WA 99169
Phone: (509) 775-0777
Fax: (509) 775-0776
nodblspk@rcabletv.com

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Transmittal Information

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