

FILED  
Court of Appeals  
Division II  
State of Washington  
10/30/2018 4:36 PM

No. 98496-4

No. 52450-3-II

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

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STATE OF WASHINGTON,

Respondent,

v.

ALAN JENKS,

Appellant.

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

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SUPPLEMENTAL BRIEF OF APPELLANT

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## A. ARGUMENT

**The legislature recently changed the law as to legal financial obligations. Under *Ramirez*, these changes apply to cases on appeal. Applying the law in effect, the Court should order \$300.00 in legal financial obligations against Mr. Jenks stricken.**

In 2018, the law on legal financial obligations changed. Now, it is categorically impermissible to impose any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). Now, the previously mandatory \$200 filing fee cannot be imposed on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h). It is also improper to impose the \$100 DNA collection fee if the defendant's DNA has been collected as a result of a prior conviction. LAWS OF 2018, ch. 269, § 18.

Our Supreme Court recently held that these changes apply prospectively to cases on appeal. *State v. Ramirez*, No. 95249-3, 2018 WL 4499761, at \*6 (Wash. Sept. 20, 2018). In other words, that the statute was not in effect at time of the trial court's decision to impose legal financial obligations does not matter. *Id.* at \*7-8. Applying the change in the law, our Supreme Court in *Ramirez* ruled the trial court impermissibly imposed discretionary legal financial obligations, including the \$200 criminal filing fee. *Id.* at \*8.

Here, Mr. Jenks has already been determined to be indigent. CP 146-50. The trial court imposed the \$200 filing fee and the \$100 DNA fee

against Mr. Jenks. CP 112-22. As in Ramirez, the change the law applies to Mr. Jenks's case because it is on direct appeal and not final.

Accordingly, this Court should strike the \$200 filing fee. Ramirez, at \*8.

Because Mr. Jenks has previously had his DNA collected as a result of prior convictions, the Court should also order the \$100 DNA collection fee stricken. CP 110-11 (recounting prior felony history).

Because Mr. Jenks's DNA sample was previously collected, the DNA fee is no longer mandatory under RCW 43.43.7541. The fee is discretionary. And under the current statute, discretionary fees may not be imposed on indigent defendants such as Mr. Jenks. RCW 10.01.160(3). Therefore, the sentencing court lacked the authority to impose the DNA fee or the filing fee, and they should be stricken.

## **B. CONCLUSION**

Unless this Court reverses and orders a new trial, this Court should instruct the trial court to strike the \$200 filing fee and the \$100 DNA collection fee from the judgment and sentence.

Respectfully submitted this 30th day of October 2018.

s/ Jan Trasen

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Washington Appellate Project (#91052)  
Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 52450-3-II
	)	
ALAN JENKS,	)	
	)	
APPELLANT.	)	

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# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52450-3  
**Appellate Court Case Title:** State of Washington, Respondent v. Alan D. Jenks, Appellant  
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