

5 FILED
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WASHINGTON STATE
SUPREME COURT

96399-1

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

STATE OF WASHINGTON,

Respondent,

vs.

COREY K. KNUDSVIG,

Appellant.

No. 35169-6-III

MOTION ON COSTS IMPOSED
BY TRIAL COURT

1. PERSON FILING THE MOTION

This motion is filed by Andrea Burkhart and Two Arrows, PLLC, attorneys of record for the Appellant herein.

2. RELIEF REQUESTED

Appellant respectfully requests this Court accept this motion as a supplemental brief to reverse the trial court's imposition of a \$200 criminal filing fee and a \$100 DNA collection fee.

3. REFERENCE TO RECORD

On March 27, 2017, Mr. Knudsvig filed a notice of appeal and was found to be indigent for appeal purposes. CP 74, 80. On October 17, 2017, he filed an opening brief. The opening brief was filed before the June 7, 2018 effective date of House Bill 1783, but the appeal was pending when House Bill 1783 took effect.

This court filed an opinion on August 30, 2018, and a petition for review is pending before the Supreme Court. Pursuant to RAP 7.3, this court retains authority to act as the Supreme Court has not directed otherwise and has not granted review.

1 Pursuant to the recent Washington Supreme Court decision in *State v. Ramirez*,
2 426 P.3d 714 (Wash. 2018), the statutory amendments in House Bill 1783 apply
3 prospectively to this case. However, because *State v. Ramirez* was issued on
4 September 20, 2018, Appellant was unable in the opening brief to brief the issue related
5 to the imposition of a \$200 criminal filing fee and a \$100 DNA collection fee.

6 4. GROUNDS FOR RELIEF REQUESTED

7 Effective June 7, 2018, by House Bill 1783, our Legislature amended several
8 statutory provisions related to the imposition and collection of legal financial obligations
9 (LFOs). See Laws of 2018, ch. 269. Among its many amendments, House Bill 1783
10 amends the discretionary LFO statute, former RCW 10.01.160(3), to prohibit trial courts
11 from imposing discretionary costs on indigent defendants: "The court shall not order a
12 defendant to pay costs if the defendant at the time of sentencing is indigent as defined
13 in RCW 10.101.010(3)(a) through (c)." Laws of 2018, ch. 269, § 6(3) (emphasis added).

14 House Bill 1783 also amends former RCW 36.18.020(2)(h) to prohibit the
15 imposition of a \$200 criminal filing fee on indigent defendants:

16 (2) Clerks of superior courts shall collect the following fees for their official
17 services . . . (h) Upon conviction . . . an adult defendant in a criminal case
18 shall be liable for a fee of two hundred dollars, except this fee shall not be
19 imposed on a defendant who is indigent as defined in RCW 10.101.010(3)
20 (a) through (c).

21 Laws of 2018, ch. 269, § 17 (emphasis added). In addition, House Bill 1783 amends
22 former RCW 43.43.7541 to make the DNA database fee no longer mandatory if a
23 defendant's DNA has been collected because of a prior conviction:

24 Every sentence imposed for a crime specified in RCW 43.43.754 must
25 include a fee of one hundred dollars unless the state has previously
26 collected the offender's DNA as a result of a prior conviction.

27 Laws of 2018, ch. 269, § 18 (emphasis added).

Our Supreme Court recently held the statutory amendments set forth in House
Bill 1783 apply prospectively to cases on direct appeal at the time the amendment was
enacted. See *State v. Ramirez*, 426 P.3d 714 (Wash. 2018). In *Ramirez*, following his
convictions in Superior Court, the court imposed \$2,900 in LFOs on the defendant,
including a \$200 criminal filing fee and a DNA collection fee. *Ramirez*, 426 P.3d at 714.
Following sentencing, the trial court issued an order of indigency. *Id.*

The Court held "House Bill 1783 applies prospectively to [the defendant] because
the statutory amendments pertain to costs imposed on criminal defendants following
conviction, and [the defendant's] case was pending on direct review and thus not final

1 when the amendments were enacted." *Id.* The Court concluded the defendant was
2 entitled to benefit from the statutory changes in House Bill 1783. *Id.* The Court
3 remanded the case for the trial court to strike these the \$200 criminal filing fee and the
\$100 DNA collection fee from the judgment and sentence. *Id.*

4 Here, the direct appeal was not yet final when House Bill 1783's statutory
5 amendments were enacted, effective June 7, 2018. See Laws of 2018, ch. 269.
6 Therefore, Mr. Knudsvig is entitled to benefit from the statutory changes in House Bill
1783. See *Ramirez*, 426 P.3d at 714.

7 Because Mr. Knudsvig was found to be indigent, the \$200 criminal filing fee
8 should not be imposed under the rule amendments. CP 67, 80. The trial court also
9 erred in imposing a \$100 DNA collection fee because Mr. Knudsvig has previously been
10 convicted of a felony; and therefore a DNA sample has previously been collected. CP
62, 67; see also RCW 43.43.7541; Laws of 2018, ch. 269, § 18. The trial court
authorized a second collection contrary to the amended RCW 43.43.7541.

11 This court should remand this case for the trial court to strike the \$200 criminal
12 filing fee and the \$100 DNA collection fee from Mr. Knudsvig's judgment and sentence.

13 Respectfully submitted this 22 day of October, 2018.

14 TWO ARROWS, PLLC



15 Andrea Burkhart, WSBA #38519
16 Attorney for Appellant

17 **CERTIFICATE OF SERVICE**

18 I certify under penalty of perjury under the laws of the State of Washington, that
19 on the 22 day of October, 2018, I served a copy of the foregoing MOTION ON COSTS
20 IMPOSED BY TRIAL COURT, pursuant to prior agreement of the parties, by e-mail to
the following:

21 Brian O'Brien
22 Deputy Prosecuting Attorney
23 SCPAAppeals@spokanecounty.org



24 Andrea Burkhart
25 Signed this 22 day of October, 2018, at
26 Walla Walla, WA

BURKHART & BURKHART, PLLC

October 22, 2018 - 9:06 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35169-6
Appellate Court Case Title: State of Washington v. Corey Keith Knudsvig
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Motion on Costs - Ramirez

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