

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

STATE OF WASHINGTON,	)	No. 36367-8-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
SCOTT THOMAS PESONEN,	)	
	)	
Appellant.	)	

PENNELL, A.C.J. — Scott Thomas Pesonen appeals a \$200 criminal filing fee, imposed as part of his sentence for first degree burglary. Mr. Pesonen’s objections to the fee are well taken. We therefore remand with instructions to strike the fee from the judgment and sentence.

BACKGROUND

Mr. Pesonen was convicted of first degree burglary following a bench trial. At sentencing, the trial court imposed a \$200 criminal filing fee, stating “I cannot waive [the filing fee]” because Mr. Pesonen was and “potentially could be employed, especially based on the letter that [the court] received from [Mr. Pesonen’s] employer.” 1 Report of Proceedings (Sept. 13, 2018) at 360. The trial court ordered the payments on the criminal

filing fee to begin in a year, when Mr. Pesonen would remain incarcerated, but had “hopefully some ability to make payments.” *Id.* at 361. The court noted Mr. Pesonen could challenge this finding “at a legal financial obligation hearing,” and if he had “issues” with the payments, he could “address those through the clerk’s office.” *Id.* at 360-61. Mr. Pesonen’s counsel did not object.

Immediately after sentencing, Mr. Pesonen signed a certificate of indigency for purposes of appeal, indicating he had no income or assets. The trial court then issued an order of indigency and Mr. Pesonen filed the instant appeal.

#### ANALYSIS

The only issue on appeal is whether the trial court erroneously imposed the \$200 criminal filing fee. Although this issue was not raised at sentencing, we have discretion to review it under RAP 2.5(a). *State v. Blazina*, 182 Wn.2d 827, 834-35, 344 P.3d 680 (2015). We exercise our RAP 2.5(a) discretion based on the parties’ agreement that the \$200 filing fee was unlawful.

Pursuant to RCW 10.101.010(3)(c), Mr. Pesonen was indigent at the time of sentencing (after-tax income of 125 percent or less of the federal poverty level). As a result, the trial court lacked discretion to impose the \$200 criminal filing fee, regardless of Mr. Pesonen’s employability or future ability to pay. RCW 36.18.020(2)(h) (The \$200

No. 36367-8-III  
*State v. Pesonen*

filing fee “shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c).”). The current version of the filing fee statute was in effect at the time of Mr. Pesonen’s sentencing. As a result, the \$200 filing fee should not have been imposed.

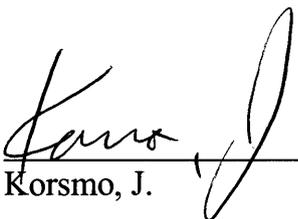
CONCLUSION

This matter is remanded with instructions to strike the \$200 criminal filing fee from Mr. Pesonen’s judgment and sentence.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Pennell, A.C.J.

WE CONCUR:

  
\_\_\_\_\_  
Korsmo, J.

  
\_\_\_\_\_  
Siddoway, J.