

September 12, 2023

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

LARRY DWAYNE BLACKWELL,

Appellant.

No. 57194-3-II

UNPUBLISHED OPINION

CRUSER, A.C.J. – Larry Blackwell was resentenced in 2022 for a crime he was convicted of in 2006. Blackwell’s 2006 sentence included a \$200 criminal filing fee and \$100 DNA collection fee. The resentencing court reimposed those fees without consideration of Blackwell’s indigency. We hold that it erred in doing so and remand for both fees to be stricken. We also reject the claim of error raised in Blackwell’s statement of additional grounds (SAG).<sup>1</sup>

**FACTS**

In 2006, Blackwell was sentenced to 375 months confinement after a jury convicted him of first degree assault, second degree assault, and unlawful possession of a firearm. At the time, Blackwell had no income or assets and had been incarcerated since 2004. Blackwell’s sentence was based on an offender score that included six prior felony convictions, including two convictions for unlawful possession of a controlled substance.

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<sup>1</sup> RAP 10.10.

After our supreme court decided *State v. Blake*,<sup>2</sup> Blackwell was resentenced to 274 months confinement. The resentencing court carried over the remaining terms of Blackwell's original Judgment and Sentence, including a \$200 criminal filing fee and a \$100 DNA collection fee. The record does not reflect that the court considered Blackwell's indigency. Blackwell now appeals, asking that the fees be stricken.

## ANALYSIS

### A. FILING FEE

Criminal filing fees are mandatory only if the defendant is not indigent. RCW 36.18.020(2)(h). For indigent defendants, the court may not order the payment of such fees. RCW 10.01.160(3). Based on Blackwell's financial circumstances, it appears the court would almost certainly have found him to be indigent if it had considered the issue before imposing the fee.<sup>3</sup> The State concedes that "his continued incarceration and financial declaration make it highly likely that the court would find him indigent under RCW 10.101.010(3)(c)." Br. of Resp't at 4. Therefore, as the parties agree, the court erred in imposing the \$200 filing fee and it should be stricken.

### B. DNA COLLECTION FEE

Effective July 1, 2023, DNA collection fees are no longer authorized. RCW 43.43.7541(2); *see also* LAWS OF 2023, ch. 449, § 4. Blackwell is entitled to the benefit of this statutory amendment because his case is on direct appeal. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). On remand, the trial court is directed to strike the DNA collection fee.

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<sup>2</sup> 197 Wn.2d 170, 481 P.3d 521 (2021) (holding unconstitutional the crime of unlawful possession of a controlled substance).

<sup>3</sup> Indeed, the court found in 2006 that Blackwell was entitled to appeal at public expense.

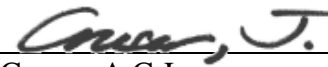
SAG

Blackwell has filed a SAG. The SAG Blackwell filed is a photo copy of the CrR 7.8 motion Blackwell filed in October, 2022 that this court treated as a personal restraint petition under cause number 57507-8-II.<sup>4</sup> In his SAG, Blackwell again argues that the amended information on which he proceeded to trial used an incorrect statutory citation for the firearm enhancement. This claim of error exceeds the scope of this appeal. This appeal is of the order correcting Blackwell's sentence pursuant to *Blake*. The proper time for Blackwell to raise this issue was in his original appeal of his convictions. We reject this claim of error.


CONCLUSION

We remand for the court to strike the \$200 filing fee and the \$100 DNA collection fee.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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Cruser, A.C.J.

We concur:

  
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MAXA, J.

  
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CHE, J.

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<sup>4</sup> Blackwell merely changed the caption from “Motion to Correct Sentence” to “Statement of Additional Grounds.” *Compare* Mot. to Correct Sentence, *In re Pers. Restraint of Blackwell*, No. 57507-8-II (Wash. Ct. App. Oct. 18, 2022), *with* SAG at 1.