

FILED  
SEPT 02, 2014  
Court of Appeals  
Division III  
State of Washington

No. 32269-6-III  
IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III



Consolidated with 323846

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

GREGG W. HANSEN,

Defendant/Appellant.

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Appellant's Brief

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A. ASSIGNMENT OF ERROR

The trial court erred by imposing a DNA collection fee.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, is a subsequent submission required?

C. STATEMENT OF THE CASE

Mr. Hansen was charged and convicted by the Court of failing to register as a sex offender—third or subsequent offense. CP 15. Mr. Hansen’s criminal history included five prior convictions for failing to register as a sex offender as well as seven other felony convictions. CP 17. He was sentenced on the two most recent convictions after June 12, 2008. Those two convictions were failing to register as a sex offender (sentenced 7/15/10) and unlawful possession of a prescription drug (sentenced 10/20/10). CP 17.

The sentencing court imposed a \$100 DNA collection fee as part of the mandatory legal financial obligation (LFO) in this case. CP 19.

This appeal followed. CP 14.

D. ARGUMENT

If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required.

RCW 43.43.754 provides in pertinent part:

(1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or any of the following crimes (or equivalent juvenile offenses):

...

Failure to register (RCW 9A.44.130)

...

(2) If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.

RCW 43.43.754(1) and (2). The effective date of this statute was June 12, 2008. RCW 43.43.754.

Here, Mr. Hansen's criminal history included five prior convictions for failing to register as a sex offender as well as seven other felony convictions. CP 17. He was sentenced on the two most recent convictions after June 12, 2008. Those two convictions were failing to register as a sex offender (sentenced 7/15/10) and possession of a prescription drug

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(sentenced 10/20/10). CP 17. Both of those convictions required collection of a biological sample for purposes of DNA identification analysis pursuant to the statute. Accordingly, under paragraph two of the statute a subsequent DNA sample was not required. Therefore, the sentencing court should not have imposed a \$100 DNA collection fee as part of the mandatory legal financial obligation (LFO).

E. CONCLUSION

For the reasons stated the \$100 DNA collection fee should be stricken from the judgment and sentence.

Respectfully submitted September 2, 2014,

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PROOF OF SERVICE

I, David N. Gasch, do hereby certify under penalty of perjury that on September 2, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Appellant's Brief:

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