

NO. 53556-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

RHONDA MCINTOSH-LIND,

Appellant.

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

The Honorable David E. Gregerson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court lacked authority to impose the criminal filing fee.

2. Inclusion of the criminal filing fee in the ordered legal financial obligations is a scrivener's error which must be corrected.

Issues pertaining to assignments of error

The sentencing court found appellant indigent and stated its intention to strike all non-mandatory fees. Nonetheless, the \$200 criminal filing fee was included in the legal financial obligations imposed in the judgement and sentence. Must this unauthorized and unintended fee be stricken?

B. STATEMENT OF THE CASE

On May 30, 2019, appellant Rhonda McIntosh-Lind pled guilty to third degree assault, acknowledging that she was armed with a knife during commission of the offense. CP 5-20; RP 10. She pled guilty to offenses in two other causes at the same hearing, and the court proceeded to sentencing on all counts. RP 10-13. The court imposed a standard range sentence of 16 months, plus a 6-month deadly weapon enhancement. CP 24.

When the court inquired about legal financial obligations, the defense responded that McIntosh-Lind has no source of income and is

about \$25,000 in debt. RP 18. The court stated that it would strike the discretionary legal financial obligations and impose only the minimum it was required to impose. RP 18. The judgment and sentence indicates that the court found McIntosh-Lind to be indigent, in that she receives an annual income of 125% or less of the current poverty level. CP 24. Nonetheless, the \$200 criminal filing fee was included in the ordered legal financial obligations. CP 26.

McIntosh-Lind filed this timely appeal. CP 36.

C. ARGUMENT

THE UNAUTHORIZED CRIMINAL FILING FEE MUST BE STRICKEN.

Under RCW 36.18.020(2)(h), the sentencing court is prohibited from imposing the \$200 criminal filing fee on an indigent defendant:

Upon conviction or plea of guilty,... an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).

The court below found that McIntosh-Lind is indigent because she receives “an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level[.]” RCW 10.101.010(3)(c); CP 24. Thus, the court had no authority to impose the criminal filing fee. RCW 36.19.020(2)(h) (“this fee shall not be imposed on a defendant who is indigent...”).

Moreover, the court stated its intention to strike this fee from the judgment and sentence. RP 18. It appears that in the course of completing judgment and sentence forms in the three separate causes of action, the court inadvertently failed to strike the criminal filing fee from the form in this case. This is a scrivener's error which must be corrected.

A scrivener's error is a clerical mistake that, when amended, would correctly convey the court's intention, as expressed in the record at sentencing. *State v. Davis*, 160 Wn. App. 471, 478, 248 P.3d 121 (2011); *see also Presidential Estates Apartment Assocs. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996). “[T]he amended judgment should either correct the language to reflect the court's intention or add the language that the court inadvertently omitted.” *State v. Snapp*, 119 Wn. App. 614, 627, 82 P.3d 252 (2004). The remedy for a scrivener's error in a judgment and sentence is to remand to the trial court for correction. *State v. Makekau*, 194 Wn. App. 407, 421, 378 P.3d 577 (2016).

The court lacked authority to impose the criminal filing fee, and it appears from the record that it inadvertently failed to strike the fee when completing the judgment and sentence form. This Court should remand to the trial court for correction of the judgment and sentence by striking the unauthorized fee.

D. CONCLUSION

The unauthorized criminal filing fee must be stricken, and this Court should remand for correction of the scrivener's error.

DATED November 21, 2019.

Respectfully submitted,

GLINSKI LAW FIRM PLLC

A handwritten signature in cursive script, appearing to read "Catherine E. Glinski".

CATHERINE E. GLINSKI
WSBA No. 20260
Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in
State v. Rhonda McIntosh-Lind, Cause No. 53556-4-II as follows:

Rhonda McIntosh-Lind/DOC#383106
Washington Corrections Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
November 21, 2019