

FILED
MAY 2, 2024
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

STATE OF WASHINGTON,)	
)	No. 39154-0-III
Respondent,)	
)	
v.)	
)	
PAUL ANTHONY MCVAY,)	UNPUBLISHED OPINION
)	
Appellant.)	

COONEY, J. — Paul McVay was convicted of three crimes. At sentencing, the trial court imposed a \$500 victim penalty assessment (VPA). Mr. McVay appeals. Because Mr. McVay was indigent, we remand for the trial court to strike the VPA.

BACKGROUND

The facts underlying Mr. McVay’s conviction are largely irrelevant to this appeal. In short, on July 15, 2022, a jury found Mr. McVay guilty of first degree burglary, second degree assault, and fourth degree assault. Later, the trial court sentenced Mr. McVay to 140 months of confinement. Before considering the imposition of legal financial obligations (LFOs), the trial court found Mr. McVay indigent. The court waived all discretionary LFOs and ordered Mr. McVay to pay a \$500 VPA.

Mr. McVay appeals.

ANALYSIS

Mr. McVay asserts that recent amendments to RCW 7.68.035 entitle him to relief from the \$500 VPA. The State concedes.

Formerly, RCW 7.68.035(1)(a) (2018) required the imposition of a VPA on any adult found guilty of a crime in superior court. Effective July 1, 2023, RCW 7.68.035 was amended to prohibit a trial court from imposing a VPA on a defendant found indigent as defined in RCW 10.01.160(3). *See LAWS OF 2023, ch. 449, §§ 1, 4.*

Amendments to statutes that impose costs upon conviction apply prospectively to cases pending on appeal. *State v. Ramirez*, 191 Wn.2d 732, 748-49, 426 P.3d 714 (2018).


Because Mr. McVay's case is pending on appeal, the amendment to RCW 7.68.035 applies. We remand for the trial court to strike the \$500 VPA.

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.




Cooney, J.

WE CONCUR:



Fearing, J.



Pennell, J.