Supreme Court No. 101360-4
(COA No. 56530-7-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY RALLS,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Anthony Ralls asks this Court to accept review of the Court of Appeals decision under RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Ralls appealed the trial court's order requiring him to pay a victim penalty assessment and supervision fees. The Court of Appeals affirmed the victim penalty assessment. A copy of the Court of Appeals decision, *State v. Ralls*, No. 56530-7-II, 2022 WL 4482751 (Wash. Ct. App. Sept. 27, 2022), is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. The Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution forbid the government from imposing "excessive fines." A payment is a fine if it is at least partially punitive, and it is excessive if it is grossly disproportional to the offense. A person's ability to pay is the paramount factor when weighing proportionality. Mr. Ralls is unable to pay the $500 fine the trial

court ordered him to pay, and the Court of Appeals affirmed the fine. The Court of Appeals decision conflicts with binding precedent holding the constitutional protection against excessive fines applies so long as the payment is at least partially punitive. In addition, trial courts need guidance on this important constitutional issue of broad import.[1] RAP 13.4(b).

2. There is no meaningful difference in the brain science and behavior of a 17-year-old and an 18-year-old. Therefore, a sentencing court must consider the mitigating qualities of youth and exercise discretion to impose an individualized sentence on a youthful offender. Mr. Ralls was 19 years old when he committed his offense, but he shared many of the same attributes as someone under the age of 18. This Court should

[1] This issue has been raised in at least three other cases currently pending in this Court: Petition for Review *State v. Tatum*, No. 101274-1 (Wash. Sept 6, 2022); *State v. Clement*, No. 100858-9 (Wash. Apr. 21, 2022); Petition for Review, *State v. Widmer*, No. 100857-1 (Wash. Apr. 21, 2022). *Clement* and *Widmer* are scheduled for this Court's October 13, 2022 en banc calendar, and *Tatum* is scheduled for this Court's December 6, 2022 Department calendar.

grant review of the Court of Appeals decision denying Mr. Ralls's request for a new sentence. RAP 13.4(b).

D. STATEMENT OF THE CASE

Mr. Ralls was convicted in 2014. CP 7. The trial court ordered him to pay legal financial obligations, including a $500 victim penalty assessment. CP 9.

After this Court's decision in *State v. Blazina*,[2] the trial court struck a portion of the legal financial obligations, but it again imposed the $500 victim penalty assessment. CP 18-19. Then, the trial court held a new sentencing hearing after this Court's decision in *State v. Blake*.[3] CP 63-67. The court again imposed the $500 victim penalty assessment. CP 66; RP 13.

The Court of Appeals affirmed the fine. App. at 1-6.

[2] 182 Wn.2d 827, 344 P.3d 680 (2015).
[3] 197 Wn.2d170, 481 P.3d 521 (2021)

E. ARGUMENT

1. The Court of Appeals refused to apply the Excessive Fines Clause to the victim penalty assessment. This important issue warrants this Court's review.

The Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution forbid the government from imposing "excessive fines." U.S. Const. amend. VIII; Const. art. I, § 14. The purpose of the excessive fines clause is to "limit the government's power to punish," and it limits the government's ability to require payments "as *punishment* for some offense." *Austin v. United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (emphasis in original, citations omitted).

The analysis under the excessive fines clause is a two-part test. First, the court must determine whether the payment is punishment. *United States v. Bajakajian*, 524 U.S. 321, 328-29, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). Second, the court must evaluate whether the fine is grossly disproportional to the

offense. *Id*. at 334; *City of Seattle v. Long*, 198 Wn.2d 136, 163, 493 P.3d 94 (2021).

The Court of Appeals wrongly declined to apply the excessive fines clause to the mandatory victim penalty assessment. App. at 3. It did so by relying on a case decided before the United States Supreme Court and this Court made clear the excessive fines clause applies so long as the payment is "at least partially punitive." *Timbs v. Indiana*, ___ U.S. ___, 139 S. Ct. 682, 689, 203 L. Ed. 2d 11 (2019); *Long*, 198 Wn.2d at 163; *see* App. at 3 (citing *State v. Mathers*, 193 Wn. App. 913, 376 P.3d 1163 (2016)). The Court of Appeals decision erodes this important constitutional protection and conflicts with decisions by this Court and the Court of Appeals, and it warrants this Court's review. RAP 13.4(b)(1)-(4).

a. The victim penalty assessment is punishment.

In Washington, all persons found guilty of a crime are required to pay a victim penalty assessment. RCW

7.68.035(1)(a). The plain language of the statute makes clear this payment is punishment.

"If a statute's meaning is plain on its face, courts must follow that plain meaning." *Long*, 198 Wn.2d at 148 (citing *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). In *Long*, the appellant challenged the costs associated with the city's impoundment of his truck. *Id.* at 163. This Court examined the municipal code's plain language, which states: "Vehicles in violation of this section are subject to impound . . . in addition to *any other penalty* provided for by law." *Id.* at 164 (emphasis in original, quoting SMC 11.72.440(E)). This Court held the plain language indicated the impoundment costs were partially punitive and, therefore, subject to the excessive fines clause. *Id.*

The plain language of the victim penalty assessment statute mirrors the municipal code in *Long* and demonstrates it is partially punitive. The statute states, where a person is found guilty of a crime, "there shall be imposed by the court upon

such convicted person a penalty assessment. The assessment shall be in addition to *any other penalty or fine* imposed by law." RCW 7.68.035(1)(a) (emphasis added). Similar to the municipal code in *Long*, the statute plainly characterizes the victim *penalty* assessment as a *penalty*. In fact, the statute goes one step further than the language in *Long*, and plainly characterizes it as a *fine*. The victim penalty assessment is partially punitive, and it is subject to the excessive fines clause.

The excessive fines clause is particularly concerned with fines that are "employed 'in a measure out of accord with the penal goals of retribution and deterrence,' for 'fines are a source of revenue.'" *Timbs*, 139 S. Ct. at 689 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 979 n.9, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991)). When fines are used to fund government operations, there is financial incentive for courts to impose fines without a legitimate penological purpose, and "it makes sense to scrutinize governmental action more closely when the State stands to benefit." *Id*.

Mandatory application of the victim penalty assessment warrants this Court's review because it is government revenue. RCW 7.68.035(4). As this Court recognized, "'offender-funded justice' comprises much of the funding for criminal justice across the country." *Long*, 198, Wn.2d at 172; *see also* Cynthia Delostrinos, Michelle Bellmer, & Joel McAllister, State Minority & Justice Comm'n, *The Price of Justice: Legal Financial Obligations in Washington State*, 5 (2021)[4] (explaining how Washington courts "rely primarily upon county and municipal governments for funding").

The victim penalty assessment also has the hallmark characteristics of a punitive fine: it is payable to the government, and it is punishment for an offense. *See Bajakajian*, 524 U.S. at 327-28; *State v. Kinneman*, 155 Wn.2d 272, 278, 119 P.3d 350 (2005) ("Punishment includes both

[4] Available at: https://www.courts.wa.gov/subsite/mjc/docs/MJC_LFO_Price_of_Justice_Report_Final.pdf

imprisonment and other criminal sanctions," such as statutory penalties.). It is partially punitive because it is imposed on all criminal defendants as part of their sentence, regardless of the offense or if anybody was harmed.

But the Court of Appeals avoided the issue of whether the victim penalty assessment is subject to the excessive fines clause. App. at 3. In reaching its conclusion, it relied on *Mathers*, which did not involve a claim under the excessive fines clause. Instead, *Mathers* involved a statutory challenge, and the Court of Appeals concluded the assessment is non-punitive without considering whether it serves in part to punish. *See* App. at 3 (citing *Mathers*, 193 Wn. App. at 920).

Mathers upheld the victim penalty assessment by relying on yet another case that did not involve a challenge under the excessive fines clause. 193 Wn. App. at 920 (citing *State v. Humphrey*, 139 Wn.2d 53, 62, 983 P.2d 1118 (1999)). Instead, *Humphrey* involved a question of whether an amendment increasing the amount of the victim penalty assessment applies

retroactively. 139 Wn.2d at 57. *Humphrey* was concerned with the *amount* of the fine, and does not change the fact that the imposition of the fine at all is at least partially punitive.

In addition, *Mathers* and *Humphrey* were decided well before the United States and this Court held the excessive fines clause applies so long as the payment is "at least partially punitive." *Timbs*, 139 S. Ct. at 659; *Long*, 198 Wn.2d at 163. The plain language of the statutes makes clear the victim penalty assessment is at least partially punitive, and, under both *Timbs* and *Long*, it is therefore subject to the constraints of the excessive fines clause. The Court of Appeals failed to contemplate how binding precedent affects the court's assessment of these mandatory fines.

b. The fines are unconstitutionally excessive because Mr. Ralls cannot pay.

The Court of Appeals did not examine whether the victim penalty assessment is grossly disproportional to the offense. But, because a person's ability to pay is the paramount concern,

the mandatory fine violates the constitutional prohibition against excessive fines.

"'The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality.'" *Long*, 198 Wn.2d at 166 (quoting *Bajakajian*, 524 U.S. at 334). A fine is excessive if it is "grossly disproportional to the gravity of a defendant's offense." *Id.*

The court may consider several factors to determine whether a fine is grossly disproportional, including "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused." *Id.* at 167 (citations omitted). The court must also consider a person's ability to pay. *Id.* at 173.

In *Long*, this Court examined the "weight of history," the present day impact of fines on the homelessness crisis, and the government's reliance on fines to fund its operations to conclude the court must consider a person's ability to pay

before imposing a fine. *Id.* at 171. "[E]xcessiveness concerns more than just an offense itself; it also includes consideration of an offender's circumstances." *Id.* Therefore, "an individual's ability to pay can outweigh all other factors." *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d, 709, 723, 497 P.3d 871 (2021), *review denied* 199 Wn.2d 1003 (2022).

In addition, a punishment must be proportional to the offense and must serve legitimate goals. *See Timbs*, 139 S. Ct. at 688 (noting the Magna Carta required that fines must "'be proportioned to the wrong'" (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 271, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989))). A punishment "lacking any legitimate penological justification is by its nature disproportionate to the offense." *Graham v. Florida*, 560 U.S. 48, 71, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

Mr. Ralls is unable to pay the $500 victim penalty assessment. In addition, the victim penalty assessment is not proportioned to any offense: it is a mandatory fine imposed on

all criminal defendants, regardless of their offense, to generate funds for the government. This mandatory fine is grossly disproportional.

2. Mr. Ralls asks this Court to grant review of the arguments in his Statement of Additional Grounds for Review.

Mr. Ralls advanced two arguments in his Statement of Additional Grounds for Review relating to his youthfulness at the time of the offense. No. 56530-7-II (Wash. Ct. App. Feb. 22, 2022). Mr. Ralls also requests this Court to grant review of those issues.

Mr. Ralls argues, under *Miller v. Alabama*, he is entitled to a new, individualized sentence that considers the mitigating qualities of youth. 567 U.S. 460, 469-80, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). In addition, because he was 19 years old at the time of the offense and shared many of the same attributes as someone under the age of 18, Mr. Ralls argues he is entitled to resentencing under *In re Monschke*, which applied

Miller to defendants who were 19 and 20 years old. 197 Wn.2d 305, 312-13, 482 P.3d 276 (2021).

F. CONCLUSION

Based on the preceding, Mr. Ralls respectfully requests this Court to grant review pursuant to RAP 13.4(b).

I certify this brief contains 2,180 words and complies with RAP 18.17.

Respectfully submitted this 10th day of October 2022.

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APPENDIX

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Filed
Washington State
Court of Appeals
Division Two

September 27, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ANTHONY EUGENE RALLS, Appellant.	No. 56530-7-II UNPUBLISHED OPINION

WORSWICK, J. — Anthony Ralls appeals his amended judgment and sentence following his conviction for first degree murder. Ralls argues that the trial court violated the excessive fines clause by ordering him to pay the $500 crime victim penalty assessment and by imposing supervision fees. In a statement of additional grounds for review, Ralls also argues that he is entitled to resentencing for the trial court to consider the mitigating qualities of his youth at the time of the crime. We disagree with Ralls's arguments and affirm but remand to the trial court to correct its scrivener's error and strike the supervision fees.

FACTS

In 2014, a jury found Ralls guilty of first degree murder stemming from the 1988 killing of Bernard Houston. Ralls was 19 at the time of the murder. The trial court originally sentenced Ralls to 333 months confinement and imposed a total of $2,800 in legal financial obligations (LFOs).

In 2021, following the Washington Supreme Court's decision in *State v. Blake*,[1] the trial court held a resentencing hearing wherein the State and Ralls agreed that the court should correct Ralls's judgment and sentence to reflect a lower offender score and standard sentence range. Ralls also asked the trial court to consider his youthfulness at the time of the offense arguing, "[T]he case law . . . on youthfulness and brain development and childhood influences associated with that have developed quite a bit since [] Ralls was sentenced on this case and when the incident took place." Report of Proceedings (RP) at 6.

In its ruling on resentencing, the trial court considered Ralls's reduced offender score and the fact that he had no prior criminal history at the time of the offense. The trial court also acknowledged the mitigating factor of Ralls's youthfulness at the time of the offense. The trial court imposed 300 months of confinement, a standard range sentence.

Consistent with the Washington Supreme Court's decision in *State v. Blazina*,[2] the trial court also granted the State's motion to strike $2,300 of the legal financial obligations from Ralls's judgment and sentence, leaving only the mandatory $500 crime victim penalty assessment. The order correcting Ralls's judgment and sentence stated the court's intention to waive "all non-mandatory LFOs and interest." CP at 66. But the court did not strike boilerplate language relating to the terms of community custody that permitted the collection of community custody supervision fees.

Ralls appeals.

[1] *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).
[2] *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015).

ANALYSIS

Ralls argues that the trial court violated the excessive fines clause by ordering him to pay the $500 crime victim penalty assessment. We disagree.

The first step in determining whether state action violates the excessive fines clause is determining whether the state action constitutes punishment. *City of Seattle v. Long*, 198 Wn.2d 136, 163, 493 P.3d 94 (2021). The victim penalty assessment is derived from RCW 7.68.035, which states in relevant portion:

> (1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony.

We begin by acknowledging our court's opinion in *Mathers* which unequivocally provided that the crime victim penalty assessment is not punitive in nature. *State v. Mathers*, 193 Wn. App. 913, 920, 376 P.3d 1163 (2016). Ralls ignores this precedent. In the absence of persuasive argument or authority as to why it is distinguishable or should be overturned, we follow our established precedent holding that the crime victim penalty assessment is non-punitive. *See In re Pers. Restraint of Arnold*, 190 Wn.2d 136, 150, 410 P.3d 1133 (2018).

Accordingly, we hold that as a non-punitive assessment, the crime victim penalty assessment does not constitute a penalty for purposes of the excessive fines clause and end our inquiry.

Ralls also argues that the trial court violated the excessive fines clause by ordering him to pay supervision fees. Because the record shows that the trial court intended to waive the supervision fees, we do not reach this issue, but we do remand the case to the trial court to clarify

the judgment and sentence by striking the supervision fees.[3] In its order correcting Ralls's judgment and sentence, the trial court clearly stated its intention to waive all non-mandatory LFOs and interest, leaving only the $500 crime victim penalty assessment. However, the order did not expressly strike the line in the judgment and sentence where the imposition of supervision fees occurs—a brief clause in a block of boilerplate language relating to the terms of community custody. Given the location of the clause, it is easy to understand how the trial court overlooked the need to specifically strike this language from the amended judgment and sentence. Accordingly, we remand to the trial court to correct this scrivener's error and strike the supervision fees from the judgment and sentence.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

In a statement of additional grounds for review, Ralls argues that he is entitled to resentencing for consideration of the mitigating effect of his youth at the time of his crime. Ralls contends that *In re Pers. Restraint of Monschke*,[4] requires he be resentenced because he was 19 years old at the time of his crime. But *Monschke* does not apply to his case.

The plurality decision in *Monschke* split between a lead opinion, concurrence, and dissent. The lead opinion extended the holding of *State v. Bassett*—that mandatorily sentencing juvenile offenders to life without parole or release is unconstitutional—to 20-year olds. *Monschke*, 197 Wn.2d at 326. But our Supreme Court has yet to extend *Monschke* beyond Washington's aggravated murder statute, RCW 10.95.030 which *required* life without parole sentences for defendants aged 18 and older. *See In re Pers. Restraint of Kennedy*, No. 99748-9,

[3] The State expressly does not oppose this course of action. See Br. of Resp't 14.
[4] 197 Wn.2d 305, 482 P.3d 276 (2021).

slip op. at 27, (Wash. Jul. 28, 2022), https://www.courts.wa.gov/opinions/pdf/997489.pdf. Recently, our Supreme Court distinguished *Monschke* from a petition involving a 21-year old convicted of first degree murder and second degree attempted murder. *In re Pers. Restraint of Davis*, No. 98340-2, slip op. at 4, (Wash. Aug. 11, 2022), https://www.courts.wa.gov/opinions/pdf/983402.pdf. The court explained "The [*Monschke*] lead opinion's neuroscientific discussion is tied to its analysis of the aggravated murder statute and its holding and reasoning are limited to the statute at issue (RCW 10.95.030) as applied to the petitioners." *Davis*, slip op. at 10.

As in *Davis*, Ralls was convicted of and sentenced for first degree murder under RCW 9A.32.030(1)(b), and the trial court imposed a sentence of 300 months that was not mandated by any sentencing statute. Unlike in *Monschke*, the trial court here had discretion to depart from the standard range based on youth (among other factors). Accordingly, the *Monschke* lead opinion does not entitle Ralls to the relief he seeks.

Ralls also argues that he is entitled to resentencing based on *Miller v. Alabama*,[5] *State v. Houston-Sconiers*,[6] *In re Pers. Restraint of Ali*,[7] and *In re Pers. Restraint of Domingo-Cornelio*.[8] These cases also fail to provide Ralls the relief he seeks. *Miller* held that the Eighth Amendment forbids mandatory sentences of life without parole for *juvenile* offenders. 567 U.S. at 479-80. In *Houston-Sconiers*, our Supreme Court held that the Eighth Amendment requires the trial court to

[5] 567 U.S. 460, 471-75, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

[6] 188 Wn.2d 1, 20-21, 391 P.3d 409 (2017).

[7] 196 Wn.2d 220, 233-36, 474 P.3d 507 (2020), *cert. denied*, ___ U.S. ___, 141 S. Ct. 1754, 209 L. Ed. 2d 514 (2021).

[8] 196 Wn.2d 255, 262-66, 474 P.3d 524 (2020), *cert. denied*, ___ U.S. ___, 141 S. Ct. 1753, 209 L. Ed. 2d 515 (2021).

consider a juvenile defendant's youth in sentencing, even for statutorily mandated sentences. 188 Wn.2d at 21. But the *Houston-Sconiers* decision was expressly limited to sentencing juveniles in the adult criminal justice system. 188 Wn.2d at 34. Likewise, the defendants in *Ali* and *Domingo-Cornelio* were juveniles when they committed their crimes. *Ali*, 196 Wn.2d at 234-36; *Domingo-Cornelio*, 196 Wn.2d at 263-65. But Ralls was not a juvenile when he committed his crime—he was 19 years old. Ralls fails to argue why *Houston-Sconiers* should be extended to him.

We affirm Ralls's amended judgment and sentence but remand for the trial court to correct its scrivener's error by striking the supervision fees.

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.

Worswick, J.

We concur:

Maxa, J.

Glasgow, C.J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 56530-7-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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