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Division III
State of Washington
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SUPREME COURT NO. 95825-4

NO. 34656-1-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SYLVESTER LOPEZ, SR.,

Petitioner.

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

The Honorable M. Scott Wolfram, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Sylvester Cantu Lopez Sr., the appellant below, seeks review of the Court of Appeals decision in State v. Lopez, noted at 2 Wn. App. 2d 1023, 2018 WL 655590 (2018) (Appendix A), following denial of his motion for reconsideration on March 22, 2018 (Appendix B).

B. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals held that economic considerations lack relevance to a remission petition filed by an incarcerated individual asserting that payment of legal financial obligations (LFOs) would constitute manifest hardship. Because this erroneous statement conflicts with case law interpreting and applying the remission statutes and because it severely undercuts the goals of promoting reentry into society after incarceration, should review be granted pursuant to RAP 13.4(b)(2) and (4)?

2. The trial court gave no reason for denying Lopez's remission motion and gave no indication what legal standard it was using to review the motion, stating only that repayment of nearly $16,000 in LFOs would not impose a manifest hardship on Lopez or his family. The Court of Appeals approved of this boilerplate procedure and also held, without citation to authority, that Lopez was required to present documents signed under penalty of perjury to establish his financial circumstances. Because the Court of Appeals decision conflicts with a decision of the Washington Supreme Court

on the remission process and because the Court of Appeals underscores the need for a meaningful remission procedure, should review be granted pursuant to RAP 13.4(b)(1) and (4)?

3. The Court of Appeals refused to consider whether the Department of Corrections' mandatory deductions from inmate wages qualifies as an "enforced collection," which triggers the constitutional requirement to inquire into ability to pay. Because this refusal conflicts with this court's case law interpreting the constitutional requirements of an LFO system, should review be granted pursuant to RAP 13.4(b)(1) and (3)?

C. STATEMENT OF THE CASE

In January 2000, the State charged Lopez with four counts of first degree assault and one count of unlawful possession of a firearm in the first degree. CP 3-4. A jury convicted him of two counts of first degree assault, two counts of second degree assault, and first degree unlawful possession of a firearm, and he was sentenced to lifetime imprisonment under the Persistent Offender Accountability Act. CP 9. The trial court also imposed $110 in court costs, $70.99 in witness fees, $50 in jury demand fees, $47.70 in sheriff's fees, and a $500 victim penalty assessment, totaling $778.69. CP 8.

Lopez appealed, his lifetime sentence was vacated due to the State's failure to establish the predicate convictions, and his unlawful possession of a firearm charge was also reversed. State v. Lopez, 107 Wn. App. 270, 27 P.3d

237 (2001), aff'd, 147 Wn.2d 515, 55 P.3d 609 (2002). The mandate awarded Lopez $199.72 in costs.

On resentencing, the trial court imposed 297 months' confinement and did not alter the $776.69 imposed in LFOs. CP 48-49, 51. Lopez appealed again, his sentence was affirmed, and Division Three assessed $2,512.49 in appellate costs. CP 74.

While this appeal was pending, Lopez filed a CrR 7.8 motion, which the trial court denied. CP 72. Division Three affirmed and assessed an additional $2,597.45 against Lopez in appellate costs. CP 80.

Lopez filed another CrR 7.8 motion several years later, which was denied. CP 88. Lopez appeal, Division Three affirmed, and $2,477.26 more in appellate costs were imposed. CP 91-97.

In July 2016, Lopez moved to modify his LFOs. CP 99-101. He explained that the trial court made a specific determination that he could pay $778.69 in LFOs but that this amount had increased to $15,703.37, which he could not pay. CP 100-02. He stated he was found indigent and remains indigent. CP 101. He also stated, "the job he is likely to get based upon his age, education and ex-felon status are not likely to generate income above minimum wage. The increased LFO debt is a burden and hardship upon him and his family." CP 101.

The prosecution and trial court conducted an ex parte proceeding to address the remission motion. The prosecutor stated, "That is Mr. Lopez's pro se motion, your Honor. We filed a response." RP 1. The trial court stated, "I have reviewed that. That would be denied. Do you have an order?" RP 1. The trial court entered written findings:

> 1. The mandatory obligations consisting of the criminal clerk's filing fee,[1] and the crime victims penalty cannot be waived;
>
> 2. Requiring the payment of the legal financial obligations by the defendant will not impose a manifest hardship on the defendant or the defendant's immediate family, that none of the grounds for granting relief in RCW 9.94A.7605 or otherwise apply in this case;
>
> 3. The defendant has the right to petition the court for relief after he has been released from confinement; and
>
> 4. The defendant has the right to petition the court for waiver of accrued interest upon payment of the principal amount owed.

CP 103.

Lopez appealed. CP 111. He asserted that the trial court's inquiry into his financial status and boilerplate findings were not sufficient to comply with the remission statutes or case law applying those statutes. Br. of Appellant at 5-10. Lopez also argued that enforcing payment from Lopez's inmate

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[1] The criminal filing fee was never imposed on Lopez. CP 8, 48 (imposing court costs of $110, not the filing fee). The Court of Appeals amended its decision upon Lopez's motion for reconsideration to reflect this. Appendix B.

accounts violated due process without an ability-to-pay determination. Br. of Appellant at 10-16. As discussed in greater detail below, the Court of Appeals rejected Lopez's arguments and affirmed. Appendix A.

D. ARGUMENT IN SUPPORT OF REVIEW

1. REVIEW IS APPROPRIATE BECAUSE THE COURT OF APPEALS DECISION CONFLICTS WITH OTHER DECISIONS OF THE COURT OF APPEALS THAT PERMIT LFO REMISSION MOTIONS TO BE FILED AT ANY TIME

The Court of Appeals decision effectively eliminates the ability for incarcerated individuals to obtain remission of significant amounts of LFOs based on current and future manifest hardship. This conflicts with the pertinent remission statutes and case law interpreting those statutes that permit offenders to petition for and obtain remission at any time.

Under RCW 10.01.160(4) and RCW 10.73.160(4), a defendant who has been ordered to pay costs may "at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof."[2] Division Two of the Court of Appeals has recognized that "the plain and unambiguous language of the statute's first sentence *permits* a defendant to petition the superior court for remission of his LFOs '*at any time*," so long as

[2] Shirts quotes RCW 10.01.160(4)'s language but, despite minor differences between RCW 10.01.160(4) (costs imposed by trial courts) and RCW 10.73.160(4) (appellate costs), the statutes are substantively identical. See State v. Shirts, 195 Wn. App. 849, 854 n.4, 381 P.3d 1223 (2016) (discussing language of both statutes).

the defendant owes LFOs and is not in 'contumacious default.'" State v. Shirts, 195 Wn. App. 849, 859, 381 P.3d 1223 (2016). Division Three agreed with Shirts, and held that "superior courts have no authority to deny a remission petition simply because an individual is in custody. As recognized in Shirts, incarcerated persons can suffer noneconomic harms as a result of LFO orders, such as increased security classification or restricted access to transitional classes or programming." State v. Wilson, 198 Wn. App. 632, 636, 393 P.3d 892 (2017) (citing Shirts, 195 Wn. App. at 852).

Despite the statutory language and the Wilson and Shirts decisions, the Court of Appeals in this case stated, "Economic considerations lack relevance when the State prison system provides one shelter and food." Appendix A at 10. Thus, the Court of Appeals holds that no incarcerated individual may ever obtain remission of LFOs.[3] Because this directly conflicts with Wilson, Shirts, and the plain language of the remission statutes, review is warranted under RAP 13.4(b)(2).[4]

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[3] Lopez recognizes that recent legislation was enacted that amends the statute to permit a defendant "at any time *after release from total confinement* petition the sentencing court for remission of the payment of costs or any unpaid portion thereof." LAWS OF 2018, §§ 6(4), 12(4) (emphasis added). These laws were not in effect when Lopez petitioned for remission.

[4] The Court of Appeals decision is internally inconsistent on this point. While it states that economic considerations lack relevance in deciding the question of remission, it also recognizes that Wilson and Shirts "both acknowledge that inmates have the right to petition for relief under RCW 10.01.160(4) given the

The ability of people in Lopez's position to seek remission before they exit prison is important for their reentry into society. As the King County Prosecutor recently stated,

> Reentry for most inmates leaving prison today consists of just $40, a bus ticket back to the county of conviction, and a brand new official ID that says "Department of Corrections." We should not be surprised that people released from prison who are unable to find housing, a job, or any hope will return to the places and people that got them into trouble at the outset.
>
> A system of reentry support must be built, funded, and operated in partnership with human services groups already doing this work. Reentry is a great untapped field that, if done right, will help people in transition succeed, reduce recidivism, and increase public safety.

Dan Satterberg, 10 Ways Washington State Should Begin Criminal Justice Reform, NW LAWYER, Oct. 2015, at 49. In light of this concern, the Court of Appeals decision that economic considerations "lack relevance" for incarcerated individuals should also be reviewed as a matter of substantial public interest under RAP 13.4(b)(4).

2. REVIEW IS APPROPRIATE TO ESTABLISH WHAT QUALIFIES AS A SUBSTANTIVE DETERMINATION OF "MANIFEST HARDSHIP" UNDER THE REMISSION STATUTES

In City of Richland v. Wakefield, 186 Wn.2d 596, 605, 380 P.3d 459 (2016), this court acknowledged, "We have little case law" on the remission

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statute's 'at any time' language." Appendix A at 11. Both propositions cannot be true.

statutes. However, the court provided discussion and examples of what would qualify as manifest hardship, directing courts faced with remission motions to apply the GR 34 standards. Id. at 606-07.

The trial court did not engage in this analysis here. Instead, the trial court indicated it reviewed Lopez's motion, the State's response, denied the motion, and then entered a written finding stating, "Requiring the payment of the payment of the legal financial obligations by the defendant will not impose a manifest hardship on the defendant or the defendant's immediate family . . . ." CP 103. The trial court did not say why Lopez did not demonstrate manifest hardship given that he asserted his LFOs had increased to nearly $16,000 as a result of compounding interest, that he remained indigent based on his age, education, and ex-felon status, and his indication that, when he exits prison, "his employment opportunity has greatly decreased[, and] most like he will collect Social Security, food stamps and other senior citizen benefits." CP 100-01, 106-07.

Yet the Court of Appeals indicated this was a sufficient inquiry into the remission question because "Outlining all the reasons for the denial on the record serves no purpose when one of the parties is absent. The remission statute does not require oral findings or oral legal conclusions." Appendix A at 9. Thus, according to the Court of Appeals, all the trial court need enter is a boilerplate finding that the defendant has not demonstrated "manifest

hardship," without providing any reason based on the facts the defendant has presented. This result conflicts with Wakefield, meriting RAP 13.4(b)(1) review.

The Court of Appeals also suggested that Lopez was not entitled to relief because he failed to provide "substantiation behind [the manifest hardship] allegation." Appendix A at 10. The Court of Appeals stated that Lopez did not provide a financial statement, an explanation for his inability to work after prison, and then, without citing authority, held, "A party seeking remission of legal financial obligations should declare in a written statement under penalty of perjury or in court under oath as to his or her complete financial circumstances." Appendix A at 10. There is no authority requiring what the Court of Appeals would require from an incarcerated indigent offender. If the courts wish to develop actual standards governing the requirements for the remissions process, Lopez would welcome that development because standards are sorely needed. The Court of Appeals opinion, however, merely underscores the procedural and substantive uncertainty of what is necessary to establish a basis for remission. This is an issue of substantial public interest that should be reviewed under RAP 13.4(b)(4).

3. REVIEW IS APPROPRIATE BECAUSE THE INSANT COURT OF APPEALS DECISION AND ITS DECISION IN STATE v. CROOK[5] CONFLICT WITH CONSTITUTIONAL PRECEDENT OF THE UNTIED STATES AND WASHINGTON SUPREME COURTS REQUIRING AN ABILITY-TO-PAY INQUIRY BEFORE ENFORCED COLLECTION

Lopez asks this court to review whether State v. Crook, 146 Wn. App. 24, 189 P.3d 811 (2008), is incorrect and harmful pursuant to RAP 13.4(b)(1) and (3).

"The imposition and collection of LFOs have constitution implications and are subject to constitutional imitations." State v. Duncan, 185 Wn.2d 430, 436, 374 P.3d 83 (2016). State v. Barklind, 87 Wn.2d 814, 817, 557 P.2d 314 (1976), distilled seven requirements of a constitutional LFO system from Fuller v. Oregon, 417 U.S. 40, 44-47, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974): (1) repayment must not be mandatory; (2) repayment may be imposed only on convicted defendant; (3) repayment may only be ordered if the defendant is or will be able to pay; (4) the financial resources of the defendant must be taken into account; (5) a repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end; (6) the defendant must be permitted to petition the court for remission of the payment of costs or any unpaid portion; (7) the defendant cannot be held in contempt for failure to

[5] 146 Wn. App. 24, 189 P.3d 811 (2008).

repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

The constitutionality of Washington's LFO statutes depends on conducting ability-to-pay inquires at certain times, including "when sanctions are sought for nonpayment," "if the State seeks to impose some additional penalty for failure to pay," and "before enforced collection or any sanction is imposed for nonpayment." State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997) (emphasis added).

However, "enforced collection" occurs for incarcerated individuals without any inquiry into ability to pay, and it occurs with the judiciary's express endorsement. This is so, according to the Court of Appeals, because mandatory Department of Corrections deductions "for payment of LFOs are not collection actions by the State requirement inquiry into a defendant's financial status." State v. Crook, 146 Wn. App. 24, 27-28, 189 P.3d 811 (2008). The Crook court determined that mandatory deductions were not collection actions because "[s]tatutory guidelines set forth specific formulas allowing for fluctuating amounts to be withheld based on designated percentages and inmate account balances, assuring inmate accounts are not reduced below indigency levels. RCW 72.11.020; RCW 72.09.111(1); RCW 72.09.015(10)." Crook, 146 Wn. App. at 28.

Crook is inconsistent with Blank and Fuller. A state agency's mandatory collection from inmate wages is a collection action. The mere fact that statutes[6] provide formulas to facilitate this enforced collection does not exempt the collection from qualifying as enforced collection. The Sentencing Reform Act of 1981 indicates that DOC's deductions are indeed collection actions. "Collect"

> when used in reference to the department [DOC, per RCW 9.94A.030(17)], means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

RCW 9.94A.030(2) (emphasis added). The fact that no court inquires into financial status before the Department of Corrections enforces collection from inmates violates the constitutional principles espoused in Fuller and Blank.

The Court of Appeals refused to consider Lopez's direct challenge to Crook because it claimed he cited "no case authority that directly supports his position." Appendix A at 12. The Court of Appeals apparently overlooked Lopez's reliance on Blank and Fuller to challenge Crook. And the Court of

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[6] See RCW 72.11.020 (DOC secretary is custodian for inmate funds and may disburse money to satisfy LFOs); RCW 72.09.110 (requiring inmates to "participate in the cost of corrections"); RCW 72.09.111 (enumerating deduction schedules and formulas for varying classes of wages).

Appeals also deflected Lopez's challenge by stating that withdrawals from inmates' accounts are not collection actions and citing Crook as authority, the very authority Lopez challenges. Appendix A at 11.

Crook's fiction that DOC collections do not qualify as state collection actions makes no sense and conflicts with Blank and Fuller on the constitutional question of when ability-to-pay inquiries must occur. RAP 13.4(b)(1) and (3) review is warranted to decide whether Crook should be overruled as incorrect and harmful. See In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970) (holding stare decisis "requires a clear showing that an established rule is incorrect and harmful before it is abandoned").

E. CONCLUSION

Because he satisfies all RAP 13.4(b) criteria, Lopez asks that his petition for review be granted.

DATED this 23rd day of April, 2018.

Respectfully submitted,

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APPENDIX A

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

STATE OF WASHINGTON, Respondent, v. SYLVESTER C. LOPEZ SR., Appellant.	)	No. 34656-1-III UNPUBLISHED OPINION

FEARING, C.J. — The trial court denied Sylvester Lopez's motion for remission of legal financial obligations imposed on him by the superior court when the court convicted him of crimes and by this reviewing court after the completion of appeals. Because Lopez's legal financial obligations include mandatory obligations and because Lopez fails to show a manifest hardship in paying other obligations, we affirm the trial court.

FACTS

In May 2000, the superior court convicted Sylvester Lopez of two counts of assault in the first degree, two counts of assault in the second degree, and one count of unlawful possession of a firearm. The court sentenced Lopez to lifetime imprisonment without the possibility of parole and imposed $778.69 in legal financial obligations. The financial obligations consisted of $110.00 in court costs, $70.99 in witness fees, $50.00 in

jury demand fees; $47.70 in sheriff fees, and a $500.00 victim assessment. The May 11, 2000 judgment and sentence directed Lopez to pay $25.00 per month, beginning November 5, 2000, to retire the obligations.

Sylvester Lopez appealed his convictions and sentence, and this court reversed the first degree unlawful possession of a firearm charge and vacated the lifetime sentence due to the State's failure to establish the predicate convictions. On resentencing, the superior court imposed two hundred and ninety-seven months' confinement. The superior court re-imposed the same legal financial obligations. Lopez appealed his sentence again. This court affirmed Lopez's sentence and assessed $2,512.49 against him in appellate costs.

In 2004, Sylvester Lopez filed a CrR 7.8 motion for relief from judgment, which motion the superior court denied. This reviewing court affirmed the denial of the motion and assessed an additional $2,597.45 against Lopez in appellate costs. In 2012, Lopez filed another motion for relief from judgment, which motion the superior court denied. Lopez appealed, and this court affirmed and imposed $2,477.26 more in appellate costs against Lopez.

A Department of Corrections (DOC) accounting sheet shows that Lopez paid nominal sums on the obligations debt in 2013 and 2014. The sums ranged from a penny on October 28, 2013 to $3.89 on August 19, 2014. According to other DOC records, Lopez paid $6 in the fall of 2015 and $48.03 in the spring of 2016 toward financial

obligations.

PROCEDURE

In July 2016, Sylvester Lopez filed a motion with the superior court to remit all of his legal financial obligations. In the alternative, he sought waiver of interest. Lopez then remained in prison.

According to Sylvester Lopez's motion for remission, the sum of the legal financial obligations, by July 2016, had increased to $15,703.37 due to the accumulation of interest. Lopez noted that he possessed a ninth-grade education and will be in his 60s when released from prison. Lopez argued that any job he garners on release from prison will likely not generate income above minimum wage and he will likely rely on government financial assistance. He contended that he and his family would suffer hardship as a result of the burden of the obligations. Lopez failed to provide the superior court any facts under oath.

In response to Sylvester Lopez's motion for remission, the State of Washington argued that Lopez failed to establish manifest hardship to him or his family resulting from the legal financial obligations. The State noted that Lopez held employment in the past and the court should conclude that Lopez will be capable of working once released from incarceration.

Because Sylvester Lopez filed his motion without the assistance of legal counsel and because he remained in prison at the time of the motion hearing, no one appeared on

Lopez's behalf at the hearing. When the superior court entertained the motion on the motion docket, the following exchange occurred between the State's counsel and the court:

> [STATE]: That is Mr. Lopez's pro se motion, your Honor. We filed a response.
> . . . COURT: I have reviewed that. That would be denied. Do you have an order?

Report of Proceedings at 1.

The superior court denied Sylvester Lopez's motion for remission in whole. The written order denying remission reads in part:

> 1. The mandatory legal financial obligations consisting of the criminal clerk's filing fee, and the crime victim[']s penalty cannot be waived;
> 2. Requiring the payment of the legal financial obligations by the defendant will not impose a manifest hardship on the defendant or the defendant's immediate family, that none of the grounds for granting relief in RCW 9.94A.7605 or otherwise apply in this case;
> 3. The defendant has the right to petition the court for relief after he has been released from confinement.

Clerk's Papers at 103.

LAW AND ANALYSIS

Sylvester Lopez asserts three principal arguments on appeal. First, the trial court erroneously denied his motion for remission. Second, the imposition of interest and the forced collection of legal financial obligations from his DOC account without consideration of his ability to pay violates the due process clause. Third, this Court of

Appeals division's general order of June 10, 2016, imposing a procedure for seeking waiver of costs on appeal, conflicts with RAP 14.2 and 15.2. We reject Lopez's first and third argument on their respective merits. We decline review of the second argument because Lopez did not raise the argument below.

Motion for Remission

We first address the merits of Sylvester Lopez's motion for remission. RCW 10.01.160(4) reads:

> A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(Emphasis added.)

Under RCW 10.01.160(4), an offender, who owes legal financial obligations and who is not in "contumacious default," may petition for remission of costs "at any time." RCW 10.01.160(4); *State v. Shirts*, 195 Wn. App. 849, 858-59, 381 P.3d 1223 (2016). If the offender has not contumaciously defaulted, the trial court must determine whether the court's imposition of financial obligations creates a "manifest hardship." RCW 10.01.160(4); *City of Richland v. Wakefield*, 186 Wn.2d 596, 605-06, 380 P.3d 459 (2016); *State v. Wilson*, 198 Wn. App. 632, 634-35, 393 P.3d 892 (2017). If payment will impose manifest hardship on the defendant or the defendant's immediate family, the

court "may" remit all or part of the amount due or modify the method of payment under RCW 10.01.170. RCW 10.01.160(4); *State v. Blank*, 131 Wn.2d 230, 235, 930 P.2d 1213 (1997).

We note the distinction between mandatory and discretionary legal financial obligations. Mandatory legal financial obligations are not "costs" under RCW 10.01.160(1) and (2), and, therefore, the mandatory obligations are not subject to a motion to remit under RCW 10.01.160(4). *State v. Shirts*, 195 Wn. App. at 858 n.7. The May 11, 2000 judgment against Sylvester Lopez levied $778.69 in legal financial obligations. This sum included mandatory obligations of a $500.00 victim assessment fee and a $110.00 criminal case filing fee. Any motion for remission could not remove these $610.00 in mandatory obligations. We do not address whether an offender may obtain remission of interest owed on mandatory legal financial obligations, since Sylvester Lopez does not raise this discrete issue. We instead address whether the trial court should have remitted the remaining $168.69 and appellate costs in discretionary legal financial obligations and any interest thereon.

Sylvester Lopez must show he was not in "contumacious default" when he filed his motion for remission. *Webster's* defines "contumacious" as "perverse in resisting authority" and "stubbornly disobedient." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 497 (1969); *State v. Shirts*, 195 Wn. App. at 859 n.9. The superior court never expressly determined if Sylvester Lopez was in contumacious default.

When Sylvester Lopez filed his motion for remission, he sat in jail. Any employment would have been within the structure of the prison system and the system would have paid Lopez only a nominal amount. We know of no income accrued by Lopez, and Lopez asserted indigency. The State did not argue before the superior court that Lopez willfully defaulted on his financial obligations. We conclude that Lopez was not in contumacious default and therefore free to file his motion.

Sylvester Lopez next needed to prove manifest hardship. The term "manifest hardship" is undefined in RCW 10.01.160(4). *City of Richland v. Wakefield*, 186 Wn.2d at 606 (2016). One's present inability to provide for one's own basic needs, food, shelter, and basic medical expenses, would meet that standard, however. *City of Richland v. Wakefield*, 186 Wn.2d at 606. Possessing some ability to pay does not necessarily preclude payment from creating a manifest hardship. *City of Richland v. Wakefield*, 186 Wn.2d at 605. In determining manifest hardship, the trial court should use GR 34 as a guide. *City of Richland v. Wakefield*, 186 Wn.2d at 606. GR 34 is a court rule designed to simplify the process for determining whether a person is indigent for purposes of court and clerk's fees and charges in civil cases. *City of Richland v. Wakefield*, 186 Wn.2d at 606-07. Under GR 34, "courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline." *City of Richland v. Wakefield*, 186 Wn.2d at 607. If someone meets the GR 34 standard for indigency, courts should

seriously question that person's ability to pay financial obligations. *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015); *City of Richland v. Wakefield*, 186 Wn.2d at 607.

To repeat, RCW 10.01.160(4) reads, in part:

> If it appears to the satisfaction of the court that payment of the *amount due will impose manifest hardship* on the defendant or the defendant's immediate family, the court *may remit* all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(Emphasis added.) We note the statute's employment of the word "may." The legislature's use of the term "may" generally indicates the existence of an option that is a matter of discretion. *Whatcom County v. Western Washington Growth Management Hearings Board*, 186 Wn.2d 648, 694, 381 P.3d 1 (2016). If the superior court becomes satisfied that the offender shows "manifest hardship," the court holds discretion to "remit all or part of the amount due in costs." *State v. Shirts*, 195 Wn. App. at 859-60 (quoting RCW 10.01.160(4)). Therefore, the granting of remission may not automatically follow from a finding of hardship.

Discretion is not unlimited, and the superior court should posit a sound reason if it denies the motion for remission. The trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons. *King County v. Vinci Construction Grands Projects/Parsons RCI/Frontier-Kemper, JV*, 188 Wn.2d 618, 632, 398 P.3d 1093 (2017); *Allard v. First Interstate Bank of Washington, NA*, 112 Wn.2d 145, 148, 768 P.2d 998, 773 P.2d 420 (1989).

In *City of Richland v. Wakefield*, 186 Wn.2d 596 (2016), the Supreme Court ordered that the trial court remit Briana Wakefield's discretionary legal financial obligations. The trial court had ordered Briana Wakefield to pay $15 each month toward her outstanding legal financial obligations. Unlike Sylvester Lopez, Wakefield was homeless and disabled. Her only income was $710 in social security disability payments each month, and, as a result, she struggled to meet her own basic needs. The City of Richland agreed that Wakefield suffered manifest hardship and asked the Supreme Court to reverse the trial court. The high court also noted that Wakefield's only income was social security and, under federal law, no creditor could reach that income. Regardless the court noted that Wakefield had no present or future ability to pay legal financial obligations and she struggled to obtain basic needs such as secure housing, food, and medical care.

On appeal, Sylvester Lopez maintains that the trial court made no substantive determination of the manifest hardship alleged by Lopez. He characterizes the superior court's decision as a "one-sentence ruling." Br. of Appellant at 6. We disagree that the trial court failed to render a substantive ruling. The court bespoke on the record that it reviewed Lopez's motion and the State's response. Such a review and a written order suffices. Outlining all of the reasons for the denial on the record serves no purpose when one of the parties is absent. The remission statute does not require oral findings or oral legal conclusions.

To repeat, Sylvester Lopez remained incarcerated when he filed his motion for remission. Economic considerations lack relevance when the State prison system provides one shelter and food. Although he also claimed the legal financial obligations burdened his family, Lopez supplied no evidence of a family, let alone the income of any family members or the financial circumstances of a family. Lopez forwarded a conclusory statement that he may not be employable when released from prison in his 60s. Nevertheless, he provided no substantiation behind this allegation. He failed to disclose what work he performed before prison. He supplied no explanation as to why he could not continue in such work after prison. He afforded no financial statement that listed assets and debts. Therefore, we conclude that the superior court did not abuse its discretion when denying the motion for remission.

We note that Sylvester Lopez filed no declaration or affidavit under oath. A party seeking remission of legal financial obligations should declare in a written statement under penalty of perjury or in court under oath as to his or her complete financial circumstances.

Sylvester Lopez also argues the superior court erred in its third finding that Lopez holds the right to petition the court for relief after he has been released from confinement. Read literally, this statement of the law is correct. Lopez may bring a motion for remission on his freedom from incarceration. To the extent that the third finding may be read to preclude Lopez from filing a motion for remission until release from prison, we

disagree. *State v. Wilson*, 198 Wn. App. 632 (2017) and *State v. Shirts*, 195 Wn. App. 849 (2016) both acknowledge that inmates have the right to petition for relief under RCW 10.01.160(4) given the statute's "at any time" language.

Interest and Forced Collection

Sylvester Lopez next contends that the imposition of interest and the forced collection of legal financial obligations from his DOC account without any consideration of his ability to pay violates due process. In so arguing, Sylvester Lopez presents decisions that hold, under the due process clause, an offender may not be jailed for failing to pay legal financial obligations when the offender lacks resources to pay. Nevertheless, Lopez cites no decision involving the taking of money from an offender's prison account to pay financial obligations. He forwards no decision that addresses a prisoner's ability to pay under circumstances when the prisoner receives shelter and food from the state corrections system. To the contrary, in *State v. Crook*, 146 Wn. App. 24, 27-28, 189 P.3d 811 (2008), this court held that payment of legal financial obligations does not qualify as a collection action by the state requiring inquiry into a defendant's financial status.

Sylvester Lopez did not raise this second assignment of error before the superior court. A party may not generally raise a new argument on appeal that the party did not present to the trial court. *In re Detention of Ambers*, 160 Wn.2d 543, 557 n.6, 158 P.3d 1144 (2007). A party must inform the court of the rules of law it wishes the court to apply and afford the trial court an opportunity to correct any error. *Smith v. Shannon*,

100 Wn.2d 26, 37, 666 P.2d 351 (1983). We may decline to consider an issue that was inadequately argued below. *International Association of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 36-37, 42 P.3d 1265 (2002); *Mid Mountain Contractors, Inc. v. Department of Labor & Industries*, 136 Wn. App. 1, 8, 146 P.3d 1212 (2006).

RAP 2.5(a) formalizes a fundamental principle of appellate review. The first sentence of the rule reads:

> **Errors Raised for First Time on Review.** The appellate court may refuse to review any claim of error which was not raised in the trial court.

RAP 2.5(a) contains a number of exceptions. RAP 2.5(a)(3) allows an appellant to raise for the first time "manifest error affecting a constitutional right," an exception on which a criminal appellant commonly relies.

A manifest error represents an error easy to find or readily discernable. When the appellant cites no case authority that directly supports his position, we do not consider any assigned error to be manifest. Therefore, we decline to address Sylvester Lopez's second assignment of error.

Division Three General Order

On June 10, 2016, this division of the Court of Appeals adopted a general order that directs an offender appellant to file certain pleadings if he or she wishes the court to deny costs to the State if the State prevails. The order declares in part:

> (2) An adult offender convicted of an offense who wishes this court

> to exercise its discretion not to award costs in the event the State substantially prevails on appeal must make the request and provide argument in support of the request, together with citations to legal authority and references to relevant parts of the record, in the offender's opening brief or by motion as provided in Title 17 of the Rules on Appeal. Any such motion must be filed and served no later than 60 days following the filing of the appellant's opening brief. RAP 17.3 and 17.4 apply to the motion's content, filing and service and to the submission and service of any answer or reply.
>
> (3) If inability to pay is a factor alleged to support the request, then the offender should include in the record on appeal the clerk's papers, exhibits, and the report of proceedings relating to the trial court's determination of indigency and the offender's current or likely ability to pay discretionary financial obligations. The offender shall also file a report as to continued indigency and likely future inability to pay an award of costs on the form set forth below. The original report, signed by the offender under penalty of perjury, shall be filed with the court and a copy shall be served on the respondent no later than 60 days following the filing of the appellant's opening brief.

Gen. Order 2016 of Division III, *In re Court Administration Order Re: Request to Deny Cost Award* (Wash. Ct. App.)

Sylvester Lopez contends our June 10, 2016 general order conflicts with RAP 14.2 and RAP 15.2. Rule 14.2 previously read, "A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review." Former RAP 14.2 (1998). Our Supreme Court amended the rule effective January 31, 2017. Instead of ending the sentence at the word "review," the court added:

> [O]r unless the commissioner or clerk determines an adult offender does not have the current or likely future ability to pay such costs. When the appellate court has entered an order that an offender is indigent for

> purposes of appeal, that finding of indigency remains in effect, pursuant to RAP 15.2(f), unless the commissioner or clerk determines by a preponderance of the evidence that the offender's financial circumstances have significantly improved since the last determination of indigency. The commissioner or clerk may consider any evidence offered to determine the individual's current or future ability to pay.

RAP 14.2. Additionally, RAP 15.2(f) reads:

> A party and counsel for the party who has been granted an order of indigency must bring to the attention of the appellate court any significant improvement during review in the financial condition of the party. The trial court will give a party the benefits of an order of indigency throughout the review unless the appellate court finds the party's financial condition has improved to the extent that the party is no longer indigent.

RAP 15.2(f).

Sylvester Lopez argues this court's general order dated June 10, 2016 conflicts with the presumption of continued indigency that RAP 14.2 and RAP 15.2(f) embrace. Lopez further argues the general order places the burden of proof and production on Lopez to demonstrate continued indigency that Lopez contends contradicts the standards of RAP 14.2 and RAP 15.2. We disagree. Our general order effectuates the rule on appeal, rather than conflicts with the rules.

RAP 15.2(f) states a "appellate court will give a party the benefits of an order of indigency throughout the review unless the appellate court finds the party's financial condition has improved." The offender's filing a report as to continued indigency assists the appellate court in gaining information needed to determine improvement of the offender's financial circumstances. An appellate court cannot know whether the financial

condition has improved if it lacks data of the offender's current condition.

Under both RAP 14.2 and RAP 15.2(f), the burden of proof lies with the offender. RAP 15.2(f) provides, "A party . . . must bring to the attention of the appellate court any significant improvement during review in the financial condition of the party." The amendment to RAP 14.2 states "[t]he commissioner or clerk may consider *any evidence offered* to determine the individual's current or future ability to pay." (Emphasis added.) Thus, the language in the rules anticipates a defendant offering proof of financial conditions to the court or the clerk.

Sylvester Lopez alternatively argues that imposing appellate costs would violate the trial court's order of indigency that granted him a right to appeal at public expense. Nevertheless, while an order of indigency entered pursuant to RAP 15.2 allows a criminal defendant to pursue an appeal at public expense, the order does not prevent the State from attempting to recoup costs if the defendant loses the appeal. *State v. Obert*, 50 Wn. App. 139, 143, 747 P.2d 502 (1987).

Sylvester Lopez also argues that the appellate cost system undermines the attorney-client relationship and creates a conflict of interest because the Office of Public Defense only gets paid when its client loses. We note the remote possibility of such a conflict, but Lopez provides no legal authority, cites no empirical research, and presents no concrete examples of the attorney-client relationship being undermined or a conflict of interest actually occurring in an appeal. This court does not consider bald assertions

lacking cited factual and legal support. RAP 10.3(a)(6); *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012).

CONCLUSION

We affirm the trial court's denial of Sylvester Lopez's motion for remission. Because Lopez filed a report showing continued indigency, we deny the State costs on appeal.

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.

Fearing, C.J.

WE CONCUR:

Siddoway, J.

Lawrence-Berrey, J.

APPENDIX B

FILED
MARCH 22, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF AP PEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SYLVESTER C. LOPEZ, SR., Appellant.	)	No. 34656-1-III ORDER DENYING MOTION FOR RECONSIDERATION AND AMENDING OPINION

THE COURT has considered appellant's motion for reconsideration and the answer thereto, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of February 1, 2018, is hereby denied.

IT IS FURTHER ORDERED the opinion filed February 1, 2018, is amended as follows:

The paragraph that begins on page 6 with "We note the distinction" shall be deleted and the following paragraph shall be substituted in its place:

We note the distinction between mandatory and discretionary legal financial obligations. Mandatory legal financial obligations are not "costs" under RCW 10.01.160(1) and (2), and, therefore, the mandatory obligations are not subject to a

motion to remit under RCW 10.01.160(4). *State v. Shirts*, 195 Wn. App. at 858 n.7. The May 11, 2000 judgment against Sylvester Lopez levied $778.69 in legal financial obligations. This sum included a mandatory obligation of a $500.00 victim assessment fee. Any motion for remission could not remove this $500.00 in mandatory obligations. We do not address whether an offender may obtain remission of interest owed on mandatory legal financial obligations, since Sylvester Lopez does not raise this discrete issue. We instead address whether the trial court should have remitted the remaining $278.69 and appellate costs in discretionary legal financial obligations and any interest thereon.

PANEL: Judges Fearing, Siddoway, Lawrence-Berrey

FOR THE COURT:

GEORGE B. FEARING, Chief Judge

NIELSEN, BROMAN & KOCH P.L.L.C.

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