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Supreme Court No. 101512-7
COA No. 82818-5-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON MICHAEL RAMOS,

Petitioner.

AMICI CURIAE MEMORANDUM OF CIVIL SURVIVAL
PROJECT, WASHINGTON DEFENDER ASSOCIATION,
PUBLIC DEFENDER ASSOCIATION, FINES AND FEES
JUSTICE CENTER, AND KING COUNTY DEPARTMENT
OF PUBLIC DEFENSE IN SUPPORT OF PETITION FOR
REVIEW

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I. INTRODUCTION

This case presents the Court with the opportunity to resolve an inaccurate interpretation of *City of Seattle v. Long* by the lower court when applied to the imposition of mandatory legal financial obligations (LFOs) and to address the significant equity issues implicated by it. Mr. Ramos is indigent and was experiencing homelessness prior to his conviction and incarceration. Inconsistent with the law, the sentencing court imposed substantial mandatory LFOs, including the \$500 victim penalty assessment and \$50,591.70 in restitution, with restitution accruing interest at 12 percent, without regard to Mr. Ramos's ability to pay. The LFOs imposed in this case were grossly disproportional to Mr. Ramos's crimes.

The disproportionality analysis demanded by the excessive fines clauses in both the Eighth Amendment to the United States Constitution and article 1, section 14 of the Washington State Constitution requires courts to consider

ability to pay. Imposition of excessive LFOs fall hardest on the shoulders of poor people and Black, Indigenous, and people of color (“BIPOC”) despite these constitutional protections, compounding the inequities of the criminal legal system.

The disproportionality analysis applied by courts is one that requires significantly more attention. The analysis must take into consideration the severe inequities in the criminal legal system that are compounded by the mandatory imposition of LFOs. Thus, the impacts of the lower court’s decision in this case only serve to aggravate the symptoms of institutional racism.

II. IDENTITY AND INTEREST OF AMICI

The identity and interest of amici are set forth in their Motion for Leave to File.

III. STATEMENT OF THE CASE

Amici adopt and incorporate by reference Mr. Ramos’s Statement of the Case.

IV. ARGUMENT

A. Burdening Indigent People with Significant Mandatory Restitution Debt Creates Insurmountable Financial and Social Barriers that Raise Issues of Substantial Public Interest.

Restitution is one of Washington's few remaining mandatory LFOs. The mandatory imposition of restitution absent an ability to pay determination creates insurmountable financial and social burdens and leaves poor people with little to no means of satisfying this obligation and successfully reentering their communities.

LFOs disproportionately punish BIPOC and poor people.¹ Not only does this exacerbate economic inequality by race but guarantees prolonged involvement with the criminal

¹ See generally Lindsay Bing et al., *Incomparable Punishments: How Economic Inequality Contributes to the Disparate Impact of Legal Fines and Fees*, 8 (2) RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI., 118-136 (2022), <https://doi.org/10.7758/RSF.2022.8.2.06>

legal system.² This results in a multitude of barriers to reentry while also increasing the risk of recidivism. *See State v. Blazina*, 182 Wn.2d 827, 837, 344 P.3d 680 (2015).

While the concept of restitution as a mechanism to make victims whole is sound, in practice, it is illogical when most criminalized people are poor and have no means of paying restitution.³ The legislature's original intent in requiring restitution is aligned with the position of most people convicted of crimes who, when asked about restitution, accept that they should be held accountable for harm that occurred as a result of their behavior.⁴ Nevertheless, restitution often remains unpaid to victims, sometimes for years after the commission of the

² *See generally* Karin Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 ANN. REV. OF CRIMINOLOGY, 471-495 (2018).

³ *See id.*

⁴ Katherine A. Beckett et al., Washington State Minority & Justice Commission, *The Assessment and Consequences of Legal Financial Obligations in Washington State* at 76 (2008), http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.

offense, or indefinitely.⁵ As a result, restitution “frequently fail[s] to serve [its] purpose: if a defendant can only afford ten dollars per month in LFOs, a \$3,000 restitution LFO will keep the state waiting for twenty-five years before it is paid off.”⁶

The current return rate on LFOs in Washington state is a mere 23.8%.⁷ These numbers are consistent with nationwide trends – at the federal level, it was found that \$100 billion of unpaid restitution was deemed uncollectible because of people’s inability to pay.⁸

⁵ *See id.*

⁶ R.K. Brinkmann, Comment, *Never Mistake Law for Justice: Releasing Indigent Defendants from Legal Purgatory*, 95 WASH. L. REV. 1953, 1957 (2020).

⁷ *See id.* at 1986.

⁸ U.S. Gov’t Accountability Off., GAO-18-203, *Federal Criminal Restitution: Most Debt Is Outstanding and Oversight of Collections Could Be Improved* (2018), <https://www.gao.gov/assets/690/689830.pdf>; *See also* Brittany Friedman et al., *What Is Wrong with Monetary Sanctions? Directions for Policy, Practice, and Research*, 8 (1) RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 221–244 (2022), <https://www.rsjournal.org/content/8/1/221.abstract>.

This model for ordering restitution is not only unrealistic for indigent people ordered to pay, but also for victims to whom it is owed. Mandatory imposition of substantial restitution on an indigent person within a system that provides extremely few options for relief gives victims false hope that they will be compensated. Restitution ordered without regard to ability to pay does not serve the victim, the person ordered to pay, or the community at large. Mandatory LFOs such as restitution only serves the maintenance of a regressive and racist system in which people are unable to successfully reenter their communities.

By limiting relief from restitution, courts saddle people with debt and forcibly bind them to the criminal legal system, propelling them into ever-increasing, harsh collateral consequences.⁹ An LFO debtor must satisfy this debt,

⁹ Nathan W. Link et al., *Monetary Sanctions, Legal and Collateral Consequences, and Probation & Parole: Where Do We Go from Here?*, 4 UCLA CRIM. JUSTICE LAW REV. 199, 203-204 (2020).

regardless of ability to pay, in order to vacate a conviction.

When a person is unable to clear their record, they are left with a host of barriers to reentry such as obtaining housing, employment, loans, and recovering full civil rights.¹⁰

Washington's courts and legislature have made strides in recent years to rethink the role LFOs play in criminal cases and have worked to alleviate their impact on indigent people. *See Blazina*, 182 Wn.2d at 837; *City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016); *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018); H.B. 1412, Laws of 2022, ch. 260. However, some LFOs, including restitution, have remained mandatory and impervious to this reform. Maintenance of mandatory LFOs, only leads to further social stratification as poor and BIPOC communities disproportionately bear the

¹⁰*See generally* Daniel J. Boches et al., *Monetary Sanctions and Symbiotic Harms*, 8 (2) RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 98 (2022), <https://policycommons.net/artifacts/2177374/monetary-sanctions-an-symbiotic-harms/2933237/>.

weight of consequences that come with the inability to pay. The result is the enhanced criminalization of poverty. This case demands the Court's attention because it illuminates a uniquely oppressive component of the law that is of substantial public interest.

B. The Role of Restitution Must Be Revisited to Align with the Changing Policy and Legal Landscape to Resolve a Conflict with this Court's Decisions.

Washington began imposing LFOs to “hold[] offenders accountable ... for the assessed costs associated with their crimes; and [to] provide[] remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior.” *See* 1989 Wash. Sess. Laws 1170. While the intent to make victims whole, as a policy consideration, has remained consistent, the law has changed drastically since 1989, as it keeps pace with societal shifts.

The original motive behind LFOs was to hold people accountable to the legal system and greater community. However, the validity of this purpose has diminished with time and with an understanding that LFOs are a poor accountability tool that only serves to further impoverish indigent people and so often fail to accomplish their ostensible goals.

This case calls upon the Court to correct the lower court's failure to both apply the Excessive Fines Clause in light of the changing policy landscape and to incorporate a consideration of Mr. Ramos's circumstances as is required under *Long*. Omitting this perspective and analysis only serves to amplify inequities created and sustained by the criminal legal system and does little to hold people accountable and make victims whole.

- i. The Excessive Fines Clause Proportionality Analysis Demands Consideration of Individual Circumstances, and, by Extension, the History of Societal Racism.

Both the Washington State and federal constitution provide protection from excessive fines. WASH. CONST. art. 1, § 14; U.S. CONST. amend. VIII. The excessive fines analysis orbits around the principle of proportionality. *See United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). A punitive fine violates the Eighth Amendment if it is “grossly disproportional to the gravity of the offense.” *Id.* When considering whether a fine is constitutionally excessive, a person’s ability to pay must be considered. *Long*, 198 Wn.2d at 173.

In this case, the lower court avoided an examination of Mr. Ramos’s ability to pay under the Excessive Fines Clause by incorrectly determining *Long* was “distinguishable” from the instant case. *State v. Ramos*, ___ Wn. App. 2d ___, 520 P.3d 65, 79 (2022). By circumventing this comparison, the lower court found that, while restitution met the punishment element under the excessive fines clause analysis, restitution interest did not. *Ramos*, 520 P.3d at 78. In reaching this conclusion, the court

equated civil and criminal judgments and, in doing so, arrived at the conclusion that restitution interest is not punitive, and therefore not subject to excessive fines analysis. This comparison is wholly incongruent.

In making this comparison, the lower court relied heavily on the provision in RCW 9.94A.750(8) allowing victims to enforce criminal restitution in the same way as a judgment in a civil action. The court made the unfounded leap to read into this statute a legislative intent to treat criminal and civil judgments alike, beyond the scope of enforcement alone. While RCW 9.94A.750 permits victims to use civil remedies to obtain ordered restitution, no authority permits a court to treat civil and criminal judgments similarly in every other way.

The lower court's misplaced reliance on civil caselaw in determining that restitution interest is not punitive ignores the reality for many defendants – that staggeringly high interest amounts punish as harshly, if not more, than the principal

amount itself.¹¹ To insist that restitution and restitution interest be analyzed separately in determining whether interest is punishment requires a suspension of reality. It posits the legal fiction that a person experiencing the punishment of the principal amount of restitution somehow experiences the principal's interest in a different way – even when the enforcement mechanism for the interest is identical to that for the principal.

In *Long*, this Court analyzed the Excessive Fines Clause in light of historical considerations dating back to the English Bill of Rights up to the more recent homelessness crisis, and the “[m]any factors that have contributed to this emergency: volatile housing markets, uncertain safety nets, colonialism, slavery, and discriminative housing practices – all exacerbated by the global COVID-19 pandemic.” *Long*, 198 Wn.2d at 159-172. This Court made the vital connection that the excessive

¹¹ Mr. Ramos's approximate interest balance four months prior to resentencing was \$34,228.89.

excessive fines clause is meant to protect people from LFOs “that would deprive them of their ability to live” and how that is directly related to a person’s circumstances such as “homelessness and the circumstances forcing individuals into it.” *Id.* at 172.

Indeed, it follows that courts must consider the historical implications and current social crises when undertaking the excessive fines analysis.

The lower court in this case not only failed to consider the “weight of history” and the experience of “homelessness and the circumstances forcing individuals into it” when considering whether the LFOs imposed are excessive in this case but ignored *Long*’s application to it altogether. *Ramos*, 520 P.3d at 79.

In doing so, the lower court failed to consider the lived experience of Mr. Ramos which the excessive fines clause analysis requires and instead reached for inapplicable civil caselaw to reach its conclusion. The unsuitable analogy by the court showcases a failure to consider the unique positioning of

the criminal legal system and its impacts on marginalized communities. In failing to consider Mr. Ramos's individual circumstances and the factors that contribute to them, such as historical racism, the court misapplied our state and federal constitutions and caselaw interpreting them.

- ii. The Recent Passage of HB 1412 Supports a Disproportionality Analysis that Incorporates Equity Considerations, Including Ability to Pay, When Imposing Restitution.

The recent passage of HB 1412 demonstrates a shift in perceptions surrounding LFOs and restitution in particular. Laws of 2022, ch. 260, §§ 3, 12. HB 1412 comes in the wake of significant changes in the law wherein Washington courts and the legislature have recognized the disproportionate impacts of LFOs on indigent people. *See e.g. Blazina*, 182 Wn.2d at 837; *Wakefield*, 186 Wn.2d at 607.

HB 1412 speaks directly to the issues in this case. In enacting it, the legislature demonstrated an understanding of the impact of restitution on indigent debtors and recognized the

distinction between restitution that directly compensates an individual versus restitution that compensates an entity, such as an insurer or state agency. Collectively, HB 1412 and this Court's own decisions point toward a cultural shift in our understanding of the true impacts of LFOs on indigent people.

Considering this change in law, the lower court's reasoning fails on multiple counts. As the court identified, previously, the legislature only allowed an exception to waiving restitution in a felony case under "extraordinary circumstances." According to the lower court, the statute does not evidence an intent to waive restitution based upon inability to pay. The law has changed, however. It allows judicial discretion to impose or waive restitution and interest in certain circumstances. The bill demonstrates a repositioning of legislative intent evidencing the need for closer examination when restitution and interest are imposed on indigent people.

While the State may argue that the legislative change renders Mr. Ramos's constitutional challenge moot, this is

incorrect. Although HB 1412 gives the court discretion to waive some of Mr. Ramos’s restitution and interest, it still fails to guarantee Mr. Ramos’s constitutional protections under the Excessive Fines Clause. The law does not mandate courts to consider individual circumstances as required by law and instead offers the possibility for a person’s indigency to be considered – inviting disparate application among courts. Giving a trial court the power to decide whether a person may invoke constitutional protections fails to adequately remedy the issues Mr. Ramos’s petition highlights.

As Justice González recently recognized in his oral address to the legislature, “[c]ourt fees and fines are disparately imposed on the poorest and most marginalized communities. This needs to change. It’s the right thing to do.”¹² Amici agree and strongly urge the Court to accept review to address this

¹² State Supreme Court Chief Justice Steven C. González, Address at Joint Session of Washington State Legislature (Jan. 11, 2022).

conflict between the lower court and *Long* and to maintain Washington's momentum towards resolving severe social inequities compounded by the criminal legal system.

V. CONCLUSION

For the foregoing reasons, amici urge the Court to accept review of this case pursuant to RAP 13.4.

RAP 18.17 Certification

The undersigned certifies the number of words contained in this document, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, and signature blocks, complies with the provisions of RAP 18.17. The total number of words contained in amici curiae brief is 2,494/2,500, including footnotes, endnotes, and cover sheet.

Respectfully submitted this 27th day of January, 2023

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