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**SUPREME COURT
OF THE STATE OF WASHINGTON**

TERENCE R. JOHNSON,

APPELLANT,

V.

WASHINGTON STATE DEPT. OF LICENSING,

RESPONDENT.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This Court has already reviewed and upheld the sufficiency of the Department of Licensing's mandatory driver's license suspension and administrative review procedures challenged in this case. *City of Bellevue v. Lee*, 166 Wn.2d 581, 210 P.3d 1011 (2009). And it has upheld other mandatory suspension statutes that similarly limit the Department's administrative review to confirming the accuracy of the information it receives from a corollary proceeding that results in the need for the Department to impose a suspension. *State v. Scheffel*, 82 Wn.2d 872, 514 P.2d 1052 (1973); *City of Redmond v. Bagby*, 155 Wn.2d 59, 117 P.3d 1126 (2005); *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 143 P.3d 571 (2006). The unpublished Court of Appeal's decision merely applied that legal precedent to the facts of this case. *Johnson v. Dep't of Licensing*, No. 84246-3-I, slip op. (Wash. Ct. App. May 8, 2023) (unpublished).

This case does not raise any new issues of constitutional magnitude or substantial public interest warranting the Court's further review. RAP 13.4(b)(3), (4). That is particularly true here, when Petitioner Terence Johnson, whose driver's license was suspended after he was convicted of driving under the influence and then failed to pay court-imposed legal financial obligations (LFOs), did not object to the criminal court's imposition of those LFOs at his sentencing or appeal the Judgment and Sentence to superior court. Johnson's opportunity for relief was from the court that imposed the obligation or on appeal from the court's original order. *Johnson*, slip op. at 12. It was not from the administrative agency tasked with imposing the consequences of non-compliance with the court's order. And, indeed, when Johnson finally sought such relief from the municipal court, he immediately obtained substantial relief. *Id*. at 4.

The Court of Appeals properly determined that the Department is neither obligated, nor equipped, to provide such relief. "Johnson cannot hold the Department accountable for his

failure to object to the court's imposition of LFOs." *Id.* at 12. Johnson's insistence on collaterally attacking the LFOs in the wrong tribunal does not present a compelling issue warranting review by this Court.

The Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES

Under RCW 46.20.245, the Department offers drivers an administrative review to correct any potential ministerial errors before suspending a driver's license for failing to pay court-ordered legal financial obligations. Where drivers have an opportunity to challenge their ability to pay legal financial obligations in municipal court, or on appeal in their underlying criminal case, did the Court of Appeals properly apply *City of Bellevue v. Lee* to hold that the administrative review procedure satisfied Johnson's due process rights?

III. COUNTERSTATEMENT OF THE CASE

A. Courts Adjudicate and Administer LFOs Stemming From Criminal Convictions

If a person is convicted of a criminal driving violation, the court enters a judgment and sentence, imposing jail time, if any, and mandatory and discretionary LFOs. CrRLJ 7.2, 7.3; *see* ch. 46.61 RCW (imposing penalties for various driving violations). At the time of sentencing, a criminal defendant must personally appear, has the right to counsel, and is afforded all constitutional protections, including the right to appeal. *City of Redmond v. Bagby*, 155 Wn.2d 59, 64, 117 P.3d 1126 (2005). Before imposing LFOs, the court makes an individualized inquiry into the defendant's ability to pay the discretionary LFOs, and shall not order the defendant to pay them if the defendant is indigent. RCW 10.01.160(3); *State v. Lundy*, 176 Wn. App. 96, 103-04, 308 P.3d 755 (2013).

If the defendant believes the municipal court has erred in imposing LFOs at sentencing, they may file a motion directly with the municipal court. CrRLJ 7.8. Alternatively, a defendant

can appeal a municipal court's judgment and sentence to superior court. RALJ 2.2, CrRLJ 9.1. However, a defendant who does not object to the imposition of LFOs at sentencing is not automatically entitled to review. *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015).

B. The Department of Licensing Must Suspend a Driver's License if It Receives Notice from the Criminal Court that a Driver Has Failed to Comply with Traffic Related Penalties

If a driver "fails to comply with the terms of a . . . criminal citation for a moving violation, the court with jurisdiction over the . . . traffic-related criminal complaint . . . shall promptly give notice of such fact to the department of licensing." RCW 46.64.025. Failing to comply with the terms of a traffic-related criminal complaint includes failing to pay post-conviction court-imposed LFOs. *State v. Johnson*, 179 Wn.2d 534, 551, 315 P.3d 1090 (2014).

The court's notice under RCW 46.64.025 triggers the Department's mandatory duty to suspend the driver's license:

> [T]he department *shall* suspend all driving privileges of a person when the department receives notice from a court under . . . RCW 46.64.025 that the person has . . . failed to comply with the terms of a criminal complaint or criminal citation for a moving violation.

RCW 46.20.289(1) (emphasis added).

Before the Department imposes a mandatory license suspension under RCW 46.20.289, it must notify the driver of the proposed action. RCW 46.20.245(1). A driver has several options: (1) resolve the non-payment with the court of conviction within 45 days; (2) accept the license sanction; or, (3) within 15 days, request "an administrative review before the department" under RCW 46.20.245(3); CP 10.

By statute, the Department's administrative review "shall consist solely of an internal review of documents and records submitted or available to the department," and the "only issues to be addressed" are: "(i) Whether the records relied on by the department identify the correct person; and (ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action

taken by the court or other reporting agency or entity." RCW 46.20.245(3)(a)-(b).

C. Johnson Was Convicted of Driving Under the Influence, the Court Imposed LFOs as Part of the Sentence, and Johnson Did Not Object to or Appeal the LFOs

In May 2014, Johnson pled guilty to Driving Under the Influence in the Kirkland Municipal Court. CP 219. At sentencing, the municipal court imposed jail time and ordered Johnson to pay a total of $4,068.91 in mandatory and discretionary LFOs, payable to the municipal court clerk's office. CP 13, 219-20.

The municipal court advised Johnson of his opportunity to set up a payment plan and that failure to timely pay the fines could result in a bench warrant and/or suspension of his driving privileges by the Department. CP 13, 219-20. Johnson did not object to the imposition of LFOs or request a payment plan. *See* CP 215, 219-20. Johnson also did not move the municipal court to reconsider the imposition of LFOs, nor did he appeal the

municipal court's Judgment and Sentence to superior court. *See* CrRLJ 7.8, CrRLJ 9.1, RALJ 2.2.

Between May 2014 and May 2019, Johnson appeared—and was represented by an attorney—at a number of municipal court review hearings to evaluate his compliance with the sentencing requirements. Johnson did not contest or seek an amendment of his financial obligations with the municipal court until five years after his criminal conviction, in May 2019, when he successfully moved the court to reduce or waive his LFOs. CP 215-16, 224-25; *Johnson*, slip op. at 4.

D. The Department Received the First Notice from the Municipal Court in 2015 That Johnson Failed to Comply With the Court-Imposed LFOs

About a year after Johnson's criminal conviction, in 2015, the municipal court notified the Department that Johnson had failed to make a required payment. CP 2, 222. Per RCW 46.20.289 and RCW 46.20.245, the Department sent Johnson a Notice of Suspension. CP 2, 10. The notice informed Johnson of his pending license suspension, described how to

resolve the payment issue with the municipal court, and offered an opportunity for an administrative review. CP 10-11. Johnson requested an administrative review. CP 2, 11. The Department reviewed the documents it received, confirmed their accuracy, and informed Johnson it was upholding the suspension. CP 2, 12.

Johnson then both appealed the Department's decision to superior court and filed a civil complaint against the Department in federal court, alleging the Department unlawfully suspended his license. CP 23. The federal court dismissed Johnson's case for failure to exhaust state administrative remedies. *Johnson v. Dep't of Licensing*, No. C15-0446MJP, (W.D. Wash. June 22, 2015); CP 23.

Johnson also petitioned for bankruptcy. CP 2, 22, 154. Filing for bankruptcy automatically stayed all collections against Johnson, which in turn stayed the suspension of his license. CP 2, 22; *see also* 11 U.S.C. § 362 (automatic stay). Because of the stay, the Department reissued Johnson's license, and the superior court dismissed his appeal as moot. CP 22, 25-26.

The bankruptcy court later dismissed Johnson's petition, and Johnson once again was required to pay his municipal court LFOs. CP 2, 170.

E. The Department Received a Second Notice That Johnson Failed to Comply With the LFOs, and He Did Not Seek Administrative Review

In late 2017, the municipal court sent the Department notice that Johnson had again fallen out of compliance with his court-imposed LFOs. CP 2, 223. The Department sent Johnson a new Notice of Suspension, which informed him that his license would be suspended if he did not resolve the payment issue with the municipal court or seek an administrative review with the Department. CP 2, 17. This time, Johnson did not request an administrative review. CP 2. As a result, Johnson's license was suspended for a second time in early February 2018. CP 2, 7.

Johnson continued to drive after his license suspension, and he was subsequently charged in March 2019 for driving with a suspended license in the 2nd degree in Mercer Island District Court. CP 224.

F. In 2019, the Municipal Court Relieved Johnson from Having to Pay the Remaining LFOs

In May 2019, for the first time, Johnson moved the municipal court to reduce or waive the remaining LFOs. CP 224-25. The municipal court granted Johnson's motion, removed the LFOs from collections, waived accrued interest and halved the principal, and required Johnson to make $50 monthly payments. CP 225. The court then notified the Department that Johnson was eligible for license reinstatement, and Johnson obtained a new license later that month. CP 3, 225.

G. Johnson Sued the Department in Superior Court, Which Granted Summary Judgment to the Department

In September 2019, Johnson sued the Department in King County Superior Court. CP 50, 271-73. This suit is the subject of this appeal. Johnson alleged the Department unlawfully suspended his driver's license because it failed to offer him a payment plan for his court fines or ensure that the municipal court had offered him an ability to pay hearing. CP 50, 271-73.

The Department moved for summary judgment. CP 50. Johnson filed an untimely response and requested a continuance. CP 52-53. The superior court denied the request and granted the Department summary judgment, and Johnson appealed. CP 52-53. The Court of Appeals held the superior court abused its discretion in denying Johnson's motion to continue in light of the COVID-19 pandemic and reversed and remanded for further proceedings. *Johnson v. Dep't of Licensing*, No. 81646-2-I, 2021 WL 2653012 (Wash. Ct. App. June 28, 2021) (unpublished); CP 46-56.

On remand, Johnson amended his complaint, seeking an additional declaration that RCW 46.20.289 is unconstitutional because it forecloses the Department from offering drivers a payment plan for their criminal court fines. CP 57-64. Both parties moved for summary judgment. CP 76-98, 191-213. The superior court again found RCW 46.20.289 and RCW 46.20.245 were constitutional and the Department's

actions were consistent with due process. CP 238-39. Johnson appealed. CP 264-66.

H. The Court of Appeals Opinion Determined That *Lee* Controls and Affirmed

On appeal, Johnson modified his argument to assert that, before the Department could suspend his license under RCW 46.20.289, due process required the Department to either independently evaluate Johnson's ability to pay the court-imposed fines, or certify that the *court* conducted an ability-to-pay hearing. *Johnson*, slip op. at 6, 11.

In an unpublished decision, the Court of Appeals held that this Court's decision in *City of Bellevue v. Lee* "concerned the same statutory scheme and dictates the outcome of this case." *Id.* at 10. Because this Court had already "addressed the constitutionality of the Department's suspensions procedures as outlined in RCW 46.20.245 and RCW 46.20.289 and concluded they meet due process requirements," the Court upheld the statutes and affirmed the suspension. *Id*. at 7 (citing *Lee*, 166 Wn.2d at 583).

The Court noted that the Department "is not the appropriate entity from which Johnson can pursue the relief he seeks," because it "is not required to provide Johnson another opportunity to assert an inability to pay during an administrative review." *Id.* at 11, 12. Rather, any concerns Johnson had with the process afforded him in the municipal court "would be properly raised only on direct appeal of the municipal court action." *Id.* at 12. But Johnson did not do that, and so the Court held that he "cannot hold the Department accountable for his failure to object to the court's imposition of LFOs." *Id.*

IV. REASONS WHY REVIEW SHOULD BE DENIED

This Court has already reviewed and upheld the sufficiency of the Department's mandatory driver's license suspension procedures. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585, 210 P.3d 1011 (2009). The Court of Appeal's unpublished opinion applied that controlling precedent to the facts of this case. Johnson's failure to object to the LFOs in the criminal proceedings or seek review of the criminal process he claims was

deficient does not make the Department's administrative procedures inadequate, and Johnson offers no compelling reason for the Court to revisit its longstanding precedent.

As the Court of Appeals understood, the Department of Licensing, an administrative agency, is neither required nor equipped to offer a payment plan for criminal fines or evaluate the sufficiency of criminal court proceedings. *See Johnson*, slip op. at 12. Johnson's remedy for any due process objections to his LFO's were always with the municipal court. And, indeed, when he properly sought relief from that court, he immediately received it. *Id*. The Department's mandatory suspension review, in contrast, is purely administrative. *Lee*, 166 Wn.2d at 588. And importantly here, Johnson's delayed relief from the criminal financial obligations "was solely due to Johnson's own inaction." *Johnson*, slip op. at 13. Further review is unwarranted.

A. This Court Has Already Held That the Administrative Review Procedure for a Mandatory Suspension Satisfies Due Process

The Court of Appeals properly rejected Johnson's attempt to challenge the sufficiency of the Department's mandatory review procedures, which this Court has already determined comply with constitutional due process requirements. *Lee*, 166 Wn.2d at 589. And this Court has uniformly upheld other, similar mandatory driver's license suspension statutes as satisfying due process. *State v. Scheffel*, 82 Wn.2d 872, 877-78, 514 P.2d 1052 (1973); *City of Redmond v. Bagby*, 155 Wn.2d 59, 64, 117 P.3d 1126 (2005); *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 218, 143 P.3d 571 (2006). This case does not raise any new issues of constitutional magnitude warranting review. RAP 13.4(b)(3).

1. Further review is unwarranted because *Lee* controls

The Court of Appeals correctly held that *Lee* "dictates the outcome of this case," observing this Court already "addressed the constitutionality of the Department's suspension procedures

as outlined in RCW 46.20.245 and RCW 46.20.289 and concluded they meet due process requirements." *Johnson*, slip op. 10, 7.

Twenty years ago, chapter 46.20 RCW did not afford drivers *any* opportunity to seek review of a mandatory suspension triggered by a driver's failure to comply with a court-imposed sanction. Thus, in *City of Redmond v. Moore*, 151 Wn.2d 664, 667, 91 P.3d 875 (2004), this Court held former RCW 46.20.289 (2002) and RCW 46.20.324(1) (2004) violated due process. Although the Department's "suspension process involves processing paperwork, not fact-finding," *Lee*, 166 Wn.2d at 588, that process lacked adequate procedural safeguards, because there was no ability to correct "ministerial errors that might occur when [the Department] processes information obtained from the courts pertaining to license suspensions and revocations, e.g., misidentification, payments credited to the wrong account, the failure of the

court to provide updated information when fines are paid." *Moore*, 151 Wn.2d at 675.

Following *Moore*, the Legislature amended the statutes to provide drivers with the opportunity to obtain an administrative review under RCW 46.20.245. Laws of 2005, ch. 288, §§ 5-6.

Drivers subsequently challenged the new administrative review statute in *Lee*. Like Johnson, the plaintiffs in *Lee* were individuals whose driver's licenses had been suspended by the Department for nonpayment of court-imposed LFOs. *Lee*, 166 Wn.2d at 583. The drivers argued that RCW 46.20.245 violated due process because it did not provide for an in-person hearing. *Id.* The Court analyzed the *Mathews* factors and held that RCW 46.20.245's administrative review procedure satisfies due process because it affords a driver an adequate opportunity to contest and resolve ministerial errors. *Id.* at 588. The Court explained that additional procedures, such as an in-person hearing, would not lower the risk of erroneous deprivation,

because the Department's mandatory "suspension process involves processing paperwork, not fact-finding[.]" *Id.*

Johnson claims *Lee* did not decide the same issue or address the exact argument he raises here. Pet. for Review at 26-28. But as the Court of Appeals correctly noted, "Johnson offers no compelling argument as to how *Lee* is distinguishable from the present case[.]" *Johnson*, slip op. at 8.

First, *Lee* addressed the issue Johnson now petitions this Court to review: "Do the license suspension procedures outlined in RCW 46.20.245 and RCW 46.20.289 meet due process requirements?" *Lee*, 166 Wn.2d at 585; Pet. for Review at 2. The Court answered that question in the affirmative, and *Lee* controls.

Second, Johnson's argument that *Lee* did not consider the *exact* argument he advances—that the statutes violate due process because they do not allow him to challenge whether the court of conviction provided an ability to pay hearing before imposing LFOs—is also incorrect. Pet. for Review at 26-27. The *Lee* dissent advanced the same overarching argument

Johnson advances here. *Lee*, 166 Wn.2d. at 592 (Sanders, J., dissenting) ("administrative review that gives no opportunity to rebut the basis for the suspension cannot be characterized as meaningful"). Considering these arguments, the majority concluded that the administrative review procedure satisfied due process.

Here, like the drivers and dissent in *Lee*, Johnson seeks to challenge the basis for the suspension—his failure to pay LFOs—within the administrative proceeding. He asks the Court to order the Department to evaluate the sufficiency of the criminal court proceeding and ensure the court considered Johnson's ability to pay fines. Pet. for Review at 26-27. But the Department's role is not to judicially review or second-guess a court-imposed criminal sentence, or evaluate whether the criminal court has afforded a defendant adequate process; it is to "process[] paperwork." *Lee*, 166 Wn.2d at 588.

Rather, it is the *trial court's* role to assess LFOs, consider the defendant's ability to pay the discretionary LFOs, offer a

payment plan, and notify the Department when a driver has failed to pay the court-imposed LFOs. *State v. Smith*, 9 Wn. App. 2d 122, 126, 442 P.3d 265 (2019) ("ultimate decision of whether to impose LFOs" is the role of trial court, subject to review for abuse of discretion); RCW 46.64.025. The court prompts the Department to initiate a license suspension, and the court prompts the Department to rescind a license suspension. RCW 46.20.289. The Legislature tasked the Department only with implementing the required suspension, and releasing it when permitted. *Id.*

It is also central to the judiciary's role of imposing an appropriate sentence to assess the sufficiency of the process afforded by a court of conviction. *See, e.g.*, *State v. Ramirez*, 191 Wn.2d 732, 742-46, 426 P.3d 714 (2018) (evaluating the adequacy of the trial court's inquiry into defendant's ability to pay prior to imposing LFOs); *Smith*, 9 Wn. App. 2d at 126-30 (same); *State v. Lundy,* 176 Wn. App. 96, 102, 308 P.3d 755 (2013) (same). A defendant who disagrees with the municipal

court's disposition of a case, including the imposition of LFOs, can move the court to vacate the Judgment and Sentence. CrRLJ 7.8. If a defendant disagrees with the municipal court, the Legislature has made clear that "[r]eview of the proceedings in a court of limited jurisdiction *shall be by the superior court*[.]" RCW 3.02.020 (emphasis added). Accordingly, a defendant can appeal the municipal court's Judgment and Sentence to superior court. RALJ 2.2, CrRLJ 9.1. It is the superior court—not the Department—who then has the authority to "reverse, affirm, or modify the decision of the [municipal court] or remand the case back to that court for further proceedings." RALJ 9.1(e).

This is why, as the Court of Appeals correctly observed, Johnson's reliance on *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), is misplaced. *Johnson*, slip op. at 12; Pet. for Review at 18-19. In *Blazina*, a defendant successfully challenged the *trial court's* failure to make an individualized inquiry into his ability to pay discretionary LFOs. 182 Wn.2d at 830, 838. *Blazina* makes clear that the imposition

of criminal fines is the province of the trial court. *Id.* at 838. And it is the defendant's burden to timely object to any failure to conduct an ability-to-pay inquiry in order to preserve the issue. *Id.* at 832. Thus, as the Court of Appeals noted, if a defendant wants to challenge the process by which criminal LFOs were imposed, that "would be properly raised only on direct appeal of the municipal court action." *Johnson*, slip op. at 12. *Blazina* does not suggest that the Department's administrative review process violates due process.

Here, Johnson did not object to the municipals court's alleged failure to conduct an ability to pay hearing. *See* CP 219-20. And he did not appeal the sentence. *Id.* Notably, when Johnson eventually "asked the proper entity—the court—to reduce his fees, it did so immediately." *Johnson*, slip op. at 12-13. Johnson cannot now collaterally attack the municipal court's decision by suing the Department and claiming RCW 46.20.289 and RCW 46.20.245 are unconstitutional, when he did not avail himself of the opportunities to challenge the

municipal court's sentence. *Accord*, *Johnson*, slip op. at 13 ("Any delay in receiving relief was solely due to Johnson's own inaction.").

The Court of Appeals properly rejected Johnson's attempts to repackage "a similar argument as the drivers in *Lee*[.]" *Id.* at 8. The same "*Mathews* analysis in *Lee* is still applicable here." *Id.* at 9. Further review is unwarranted.

2. This Court has upheld similar statutes that do not require or authorize the Department to evaluate the underlying merits of a mandatory suspension

Lee is not the only time this Court has rejected due process challenges to mandatory driver's license suspension statutes that do not authorize the Department to review the underlying basis for the suspension. *Scheffel*, 82 Wn.2d at 877; *Bagby*, 155 Wn.2d at 64; *Amunrud*, 158 Wn.2d at 208.

Scheffel involved the mandatory suspension procedures of the habitual traffic offenders act, chapter 46.65 RCW, which requires the Department to suspend the license of a person who has a certain number of driving convictions within a five-year

period. 82 Wn.2d at 874-77. Like RCW 46.20.245, that administrative suspension procedure "limits the hearing to determining whether or not the person named in the complaint is the person named in the transcript and whether or not the person is a habitual offender as defined." *Scheffel*, 82 Wn.2d at 875. This Court held the limited review satisfied due process because the Department's review involves no exercise of discretion; it is the "judicial determination which plays the crucial role in the state's statutory scheme[.]" *Id.* at 877. "Due process is accorded the defendant . . . [because] the defendant may appear in court and contest any of the allegations of the state as to the prior convictions." *Id.* at 877-78.

Bagby involved mandatory license suspensions upon conviction of various criminal traffic offenses. 155 Wn.2d at 61. The drivers argued the mandatory suspension statutes violated due process because they did not afford a pre- or post-suspension hearing before the Department. *Id.* This Court upheld the statutes, noting that there was a minimal risk of erroneous

deprivation because “a criminal proceeding which results in a conviction provides sufficient due process protections.” *Id.* at 64. As in *Scheffel*, the Court noted, “Defendants are required to personally appear in criminal proceedings. They are afforded all constitutional protections in those proceedings, including the right to appeal.” *Id.*

And in *Amunrud*, the Court held that a statute requiring the Department to suspend a driver’s license for failure to pay child support satisfied due process because drivers had a meaningful opportunity to be heard regarding their child support arrearage in the corollary child support proceeding. 158 Wn.2d at 218.

Like the drivers in these cases, Johnson’s mandatory suspension also followed lengthy corollary proceedings. Johnson appeared in Kirkland Municipal Court and pled guilty to DUI. CP 6, 13, 47, 153, 219. When the municipal court imposed the LFOs, Johnson was physically present and represented by counsel, who had the opportunity to object to any alleged deficiencies in the court’s process. CP 219-20. And Johnson had

the right to appeal if he believed the court erred in imposing the LFOs. RALJ 2.2, CrRLJ 7.2, CrRLJ 9.1. As the Court of Appeals aptly noted, because this case—like *Scheffel* and *Bagby*—involves a *criminal* moving violation, the additional procedural safeguards that exist within the criminal process minimize the risk of erroneous deprivation. *Johnson*, slip op. at 9.

It thus makes sense that the administrative review here is limited in scope, because the driver has previously been afforded the opportunity to be heard on the underlying cause of the suspension in the corollary court proceeding. Johnson's meaningful opportunity to be heard regarding his ability to pay the discretionary LFOs was with the municipal court. That forum, not the Department's administrative review process, is the time and place to challenge the validity of the court-imposed sanction, or his ability to pay. The Department is merely the administrative agency that implements the statutorily imposed consequences of the driver's failure to comply with the court-ordered sentence. Johnson "cannot [now] hold the

Department accountable for his failure to object to the court's imposition of LFOs." *Id.* at 12.

This Court has upheld not only the specific administrative review procedure at issue in this case, but also other, similar mandatory suspension statutes, and it consistently has held they satisfy due process. There is no need for this Court to review another due process challenge to the same statutory scheme.

B. A Different Thurston County Superior Court Case Does Not Create an Issue of Substantial Public Interest

In an attempt to manufacture an issue of substantial public interest in this case, Johnson's Petition includes a detailed discussion of a Thurston County Superior Court decision in a different case—*Pierce v. Department of Licensing*, No. 20-2-02149-34 (Thurston Cnty Superior Ct., Wash. April 30, 2021)—which Johnson acknowledges has no precedential value and has been superseded by statute. Pet. for Review at 28-32. The Court of Appeals properly declined to consider *Pierce*, *Johnson*, slip op. at 10, and the case does not create an issue of substantial public interest. RAP 13.4(b)(4).

In *Pierce*, the Thurston County Superior Court found RCW 46.20.289 violated due process as applied to indigent individuals whose licenses were suspended for failure to comply with *non-criminal moving violations*. CP 144-46, 149-52. This includes moving violations that are not punishable by imprisonment, including for example: speeding (RCW 46.61.400 and WAC 308-104-160(2)(i)-(k)); using a cell phone while driving (RCW 46.61.672 and WAC 308-104-160(2)(kkk); and improper lane change or travel (RCW 46.61.140 and WAC 308-104-160(2)(p)).

Notably, even before the superior court's ruling, the Legislature had already amended RCW 46.20.289 in 2021 to remove the Department's authority to suspend licenses for non-payment of *non-criminal moving violations.* ESSB 5226, 67th Leg., Reg. Sess., Laws of 2021, ch. 240. That law became effective January 1, 2023. But neither the statutory amendments nor the superior court's order in *Pierce* applied to mandatory

suspensions stemming from *criminal moving violations*. CP 149-52.

That distinction is important because, as discussed above, the procedural safeguards that exist in the criminal process minimize the risk of erroneous deprivation. And, as this Court has recognized, the State's "interest is significantly higher in cases involving criminal offenses." *Bagby*, 155 Wn.2d at 65.

The Court of Appeals properly declined to consider the reasoning of an unrelated and superseded superior court order. *Johnson*, slip op. at 10. Instead, it properly applied this Court's decisions that have reviewed the particular statute at issue and others like it, which all found the administrative review procedures for mandatory suspensions satisfy due process. *Johnson*, slip op. at 9-10. A superseded order in an unrelated superior court case does not create an issue of substantial public interest warranting this Court's review. RAP 13.4(b)(4).

V. CONCLUSION

The Court should deny the Petition for Review.

CERTIFICATION OF COMPLIANCE

I certify that this document contains 4839 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 13th day of October 2023.

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PROOF OF SERVICE

I, Jeremy Gelms, certify that I caused to be served a copy of **Answer to Petition for Review** on all parties or their counsel of record on the date below as follows:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 13th day of October 2023, in Seattle, Washington.

s/Jeremy Gelms
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AGO/LICENSING AND ADMINISTRATIVE LAW DIV

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