97374-1

Court of Appeals No. 50032-9-II

Supreme Court No.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KAREN CONWAY,

Appellant,

vs.

STATE OF WASHINGTON

Respondent

PETITION FOR REVIEW

Timothy J. Murphy
Attorney for Karen Conway
Northwest Justice Project
500 W 8th, Suite 275
Vancouver, WA 98660
(360) 693-6130

Table of Contents

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Digital

Constitutional Provisions

Regulations

Other Authorities

I. IDENTITY OF PETITIONER

Appellant, Karen Conway, seeks discretionary review of the Division II Court of Appeals decision designated below. Ms. Conway is 62 years old and has a disability. Her only income for the past 28 years has been Supplemental Security Income (SSI). In 2016, Ms. Conway filed a motion to remit all legal financial obligations (LFOs) imposed from a 2007 felony drug conviction. Despite Ms. Conway's uncontested inability to pay the LFOs, the trial court denied her motion and the Court of Appeals affirmed the trial court's decision.

II. DECISION BELOW

Under RAP 13.4(b)(3) and (4), Ms. Conway requests this Court grant discretionary review of the recent decision by the Washington State Court of Appeals, Division II, *State v. Conway*, 438 P.3d 1235 (2019). Appendix A. In *Conway*, the Court of Appeals affirmed the superior court's findings and denied Ms. Conway's motion to reconsider.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err when it held that constitutional guarantees of equal protection and substantive due process do not require waiving LFOs for a person who is and will remain unable to pay?
2. Did the Court of Appeals err where it found Clark County did not

enforce the LFOs against Ms. Conway, despite the county taking repeated, coercive steps to collect the debt?

3. Did the Court of Appeals err in its constitutional analysis when it upheld LFO laws mandating repayment regardless of ability to pay?

IV. STATEMENT OF CASE

On March 26, 2007, Ms. Conway plead guilty to a Class C drug felony, and was assessed $3,100 in LFOs.[1] CP 1-8. Her sentence was prior to *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), and the judgement contained boiler plate language finding Ms. Conway had the ability to pay, even though the court did not conduct an actual ability to pay analysis of any kind. CP 171-178; Initial Order, Finding of Fact 3; CP 308, 328, 376; CP 17, 145. Ms. Conway was sentenced to 366 days in prison and post-release supervision for up to 24 months. CP 20, 162.

On June 18, 2007, while in custody, Ms. Conway filed a motion to remit her LFOs because her only income was SSI and she was unable to pay. CP 32-35, 64-67, 87-90; Initial Order, Finding of Fact 6; CP 308, 328, 376. The court denied her motion. CP 36, 63, 68-71, 91-94; Initial Order, Finding of Fact 6, CP 308, 328, 376.

---

[1] The LFOs imposed were as follows: $500 Victim Penalty Assessment (VPA), $200 filing fee, $700 court appointed attorney fee, $1,000 Drug Fund fee, $100 Crime Lab fee, $500 fine, and $100 DNA fee. CP 327; CP 38.

On November 5, 2007, Clark County began collecting LFOs from Ms. Conway. CP 51, 95, 181; Initial Order, Finding of Fact 6, CP 308, 328, 376. Ms. Conway made monthly payments, ranging from $5 to $25, and to date, she has paid $1,105 towards her LFOs. CP 51-58, 95-102, 181-191. During that entire period, her sole income was SSI.

In March 2009, March 2014, and August 2014 Clark County sent Ms. Conway three different citations. All three mandated her appearance in court, required payment, and threatened arrest and jail for failure to comply. CP 42, 204; CP 43, 217; 45, 221. Clark County authorized two warrants for Ms. Conway's arrest. CP 219; CP 223.

Throughout Clark County's persistent attempts to coerce payment from Ms. Conway's SSI, Ms. Conway has struggled to find stable housing. CP 227, 229. She has worked with a local non-profit to seek housing, but her felony conviction the LFOs stem from poses a significant barrier. CP 227, 229.

Seeking relief from this longstanding debt, Ms. Conway filed a motion to remit LFOs on February18, 2016. CP 73-79. On that same day, she also moved for a certificate of discharge pursuant to RCW 9.94A.637, seeking to vacate her felony conviction. CP 37-40. Clark County corrections closed supervision on Ms. Conway's felony case on October 14, 2008, because she had completed all non-LFO sentencing conditions.

CP 37-40, 103-106; CP 107-109. Her LFOs, however, prevent her from vacating the conviction.

On October 26, 2016, a Clark County Superior Court Commissioner, ruling on Ms. Conway's motion to remit, waived the collection fees, fines, DNA fee, court appointed attorney fee, and interest. CP 330. The Commissioner, however, suspended the Crime Lab fee and Drug Fund fee and did not waive the filing fee and VPA. CP 310, 330. The court held that – pursuant to *City of Richland v. Wakefield*, 186 Wn.2d 596, 609, 380 P.3d 459 (2016) – it could not require her to pay the remaining balance because her only income was SSI. CP 310, 330.

On December 9, 2016, Ms. Conway moved to reconsider, requesting waiver of her remaining LFOs. CP 365-374. On reconsideration, the trial court concluded Clark County had not "enforced" Ms. Conway's LFOs, and justified denying remission because it "could conceive of circumstances" where Ms. Conway could pay. Finding of Fact 5, CP 400.

Ms. Conway then appealed to the Court of Appeals, Division II. In a published opinion, the Court of Appeals affirmed the superior court's findings and rejected all of Ms. Conway's statutory and constitutional claims. *Conway*, 438 P.3d at 1242-1243.

V. ARGUMENT

A. This Court should accept review because the published opinion in *State v. Conway* presents significant questions of law under state and federal constitutions.

Pursuant to RAP 13.4(b)(3), Ms. Conway's petition presents significant questions of law under the Washington and United States Constitutions. The language in RCW 9.94A.6333(3)(f) prohibiting post-sentencing waiver, as applied to Ms. Conway through Clark County's coercive collection practices, violates equal protection and substantive due process. U.S. CONST. AMEND. V, XIV, § 1; WASH. CONST. ART. I §§ 3 and 12.

1. Perpetual LFO Enforcement Against Ms. Conway, Who Solely Relies on SSI, Violates Substantive Due Process and Equal Protection.

Clark County's persistent enforcement of Washington's LFO statutory scheme, despite Ms. Conway's demonstrated inability to pay, violates her substantive due process and equal protection rights. Both the Washington and United States constitutions mandate due process and equal protection before the government deprives life, liberty, or property. *See* U.S. CONST. AMEND. V, XIV, § 1; WASH. CONST. ART. I §§ 3 and 12.

Equal protection prohibits the state from invidiously discriminating against a class of individuals. U.S. CONST. AMEND. XIV; *Fell v. Spokane Transit Authority*, 128 Wn.2d 618, 635, 911 P.2d 1319 (1996). Substantive

due process "protects against arbitrary and capricious actions..." *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 218-19, 143 P.3d 571 (2006).

Ms. Conway is indigent, as conceded by the State, and has a disability for which she receives SSI as her only income. CP 209-10, 214-15. Under equal protection, Ms. Conway's claim of class and disability discrimination is evaluated under the rational basis standard, as she is not a member of a suspect class. *See e.g., City to Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). Similarly, the rational basis standard applies to Ms. Conway's substantive due process claim, as a fundamental right is not at issue. *Nielsen v. Washington State Dep't of Licensing*, 177 Wn. App. 45, 53-54, 309 P.3d 1221 (2013).

The rational basis standard, while deferential to the state, "is not a toothless one." *Nielsen*, 177 Wn. App at 53 (quoting *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976)). Statutes that do not rationally relate to a legitimate state interest must be struck down as unconstitutional. *See e.g., Nielsen*, 177 Wn. App at 60-61. Rational basis review is "indispensable to ensuring that the 'constitutional conception of equal protection of the law means anything.'" *Robinson v. Purkey*, Case No. 3:17-cv-01263, 2018 WL 5023330, at *10 (M.D. Tenn. Oct. 16 2018) (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

As *Purkey* highlighted, courts must seriously question laws that, in

practice, penalize poverty: "...a statute that penalizes or withholds relief from a defendant in a criminal or quasi-criminal case, based solely on his nonpayment of a particular sum of money and without providing for an exception if he is willing but unable to pay, is the constitutional equivalent of a statute that specifically imposes a harsher sanction on indigent defendants than on non-indigent defendants." *Purkey*, WL 5023330, at *4 (citing *Bearden v. Georgia*, 461 U.S. 660 (1983); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970); *Roberts v. LaVallee*, 389 U.S. 40 (1967); *Douglas v. California*, 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956).

In others words, the constitution "addresses itself to actualities." *Purkey*, WL 5023330, at 4 (quoting *Griffin,* 351 U.S. at 22). *Purkey* stressed that courts must recognize that if an individual is forced to choose "between paying a sum of money or suffering a harsh, non-monetary penalty, then the government is, in effect, propounding a harsher rule for defendants who cannot pay the sum than for those who can." Purkey, WL 5023330, at *4.

Here, RCW 9.94A.6333(3)(f)'s express prohibition on waiving the VPA is unconstitutional. *See* RCW 9.94A.6333(3)(f) (the VPA "*may not be reduced, waived, or converted to community restitution hours.*")

(emphasis added). Like *Purkey* and the cases it relied upon, Washington's LFO statutory scheme punishes Ms. Conway's poverty. From arrest warrants and jail-threatening letters, to preventing her from vacating her felony conviction, Ms. Conway has repeatedly been penalized for being poor and disabled. Moreover, the inability to vacate her conviction has jeopardized stable housing. CP 227, 229. These are the "actualities" this Court must confront in evaluating this case. *Griffin*, 351 U.S. at 22

Clark County's continued enforcement of Ms. Conway's debt is simply irrational. The County has spent over twelve years and expended tremendous prosecutorial, clerical, and judicial resources to collect from an individual all parties concede cannot pay. And, importantly, contrary to the Court of Appeals decision and cases it relied upon, Ms. Conway is not disputing the *imposition* of LFOs. Rather, in a case of first impression, she is requesting a post-sentencing waiver. *State v. Seward* illustrates the distinction. 196 Wn. App. 576, 384 P.3d 620 (2017).

In *Seward*, the court upheld the rationality of *imposing* mandatory LFOs without a finding of ability to pay because the defendant's indigence *may not always exist. Seward*, 196 Wn. App at 585 (emphasis added). Here, unlike in *Seward*, there are no contingencies to justify continued collection: Ms. Conway inarguably cannot pay. Therefore, the rationale behind imposing LFOs does not apply to Ms. Conway's circumstances or

her request for a post-sentencing waiver.[2] Further collection efforts are futile and irrational.

According to the Social Security Administration, about one percent of SSI recipients are terminated annually because they return to work or otherwise become income ineligible.[3] Despite the overwhelming statistical improbability that Ms. Conway will become independently wealthy and not need SSI, Clark County Superior Court determined it could "conceive of circumstances" where Ms. Conway could pay.

Ms. Conway maintaining SSI for the last 28 years directly undermines the Commissioner's conclusion. Nothing in the record indicates Ms. Conway's long-standing, debilitating physical and mental disabilities will ever allow her to work. The Commissioner's ruling improperly requires Ms. Conway and other similarly situated Washingtonians to prove a negative: they must show they cannot obtain income that would disqualify them from SSI, even though to qualify for and maintain SSI, the federal government has already determined they

---

[2] *State v. Catling*, 193 Wn.2d 252, 438 P.3d 1174 (2019), similarly does not resolve this issue, because Conway's case is readily distinguishable from *Catling*. While *Catling* also involved an individual solely reliant on social security disability, the court recognized the distinction between imposition and ordering a defendant to pay, and it only addressed imposition. *Id.* at 261. Here, Ms. Conway is only asking the court to address the constitutionality of denying a post-sentencing waiver; she is not challenging imposition.

[3] *See Annual Statistics on the Social Security Disability Insurance Program, 2017*, Social Security Administration, https://www.ssa.gov/policy/docs/statcomps/di_asr/2017/sect03g.html#table56

cannot earn substantial income. *See* 20 C.F.R. § 416.905(a).

Statistic-defying speculation does not constitute ability to pay. Courts have rejected similar guesswork. *See e.g., State v. Sorrell* 2 Wn.App. 2d 156, 183-184, 408 P.3d 1100 (2018).[4] Because such speculation comprises the remaining "rational basis" to collect from Ms. Conway and RCW 9.94A.6333(3)(f) penalizes Ms. Conway for her disability and poverty, this statute – as applied – violates equal protection and substantive due process.

2. *State v. Blank* requires waiving Ms. Conway's LFOs because Clark County enforced collection despite Ms. Conway's inability to pay.

State v. Blank requires waiving Ms. Conway's LFOs. 131 Wn.2d 230, 930 P.2d 1213 (1997). Washington's LFO laws must be read to allow a post-sentencing waiver for inability to pay. To the extent such a waiver is barred, the law violates Ms. Conway's constitutional rights under *Blank.*

Blank held that "[b]efore enforced collection or any sanction is imposed for nonpayment, there must be an inquiry into ability to pay." *Blank*, 131 Wn.2d at 242. After enforced collection, if someone cannot pay the LFOs due to indigence, "constitutional fairness principles are implicated." *Id.* Laws requiring repayment are only constitutional if they

contain "sufficient safeguards" that consider ability to pay prior to sanctions. *Id.* at 241 (citing *State v. Curry*, 118 Wn.2d 911, 829 P.2d 166, 169 (1992)); *see also State v. Bertrand*, 165 Wn. App. 393, 405, 367 P.3d 511 (2011) (the court foreclosed collection of discretionary and mandatory LFOs because ability to pay was not considered).

Clark County has enforced collection of the LFOs against Ms. Conway for over a decade, all while she has been demonstrably unable to pay. This triggers *Blank*'s protections. The Court of Appeals erred in finding there has not been enforcement, because Clark County has extensively sought to collect against Ms. Conway:

1. The clerk's office began collecting the LFOs from Ms. Conway on November 5, 2007;

2. The clerk's office sent Ms. Conway numerous letters, over a five-year period, threatening her with arrest and/or jail if she did not pay the LFOs;

3. The clerk's office paid itself with $790.00 of Ms. Conway's payments in for the form of collection fees;

4. The clerk's office is currently requiring Ms. Conway to provide proof of her annual income in the form of an annual SSI award letter;

5. Bench warrants were authorized for Ms. Conway's arrest.

CP 308, 328, 376; CP 42, 204; CP 43, 217; CP 225.

---

[4] *Sorrell*, 1 Wn. App. 2d at 183-84 ("The law does not commit to speculation. If we wish to speculate, we could also speculate that Ernest Sorrell will incur substantial medical bills for which he cannot pay. Actually, such a large unaffordable debt may be more of a

Blank did not define "enforced collection," nor is the exact term defined in the Sentencing Reform Act (SRA).[5] The Court, however, may consider the dictionary definition of enforcement:[6] "compel obedience to: to enforce a law, to obtain by force or compulsion: compel: to enforce obedience." RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, 435 (1999).

Clark County issued letters and warrants solely to collect LFOs – despite *Bearden*'s clear bar on jailing people for non-payment of LFOs they cannot afford. *See Bearden v. Georgia*, 461 U.S. 660, 667-68 (1983). Moreover, Clark County currently uses another enforcement tool granted to it in RCW 9.94A.760(7)(b) by requiring proof of annual income. Therefore, the clerk's actions constitute enforcement under even the narrowest interpretation. Ms. Conway asks this Court to call this what it is: Clark County taking multiple steps to enforce and collect a/ debt.[7]

After House Bill 1783 passed in 2018, Washington's statutes allow courts to waive most LFOs. *See* RCW 9.94A.6333(3)(f) (permits waiver of "…non-restitution legal financial obligations…" for indigent

---

probability than speculation.").

[5] The SRA does define "collect" as "monitoring and enforcing the offender's sentence with regard to the legal financial obligation." RCW 9.94A.030(4).

[6] *See State v. Stratton*, 130 Wn.App. 760, 764, 124 P.3d 660 (2005).

[7] The published Division II opinion here grants a permission slip to local courts; it signals that as long as courts do not seek enforcement under a narrow list of motions, they may collect LFOs in any way they deem fit – and that, in response, courts will simply call enforcement by another name. This Court should correct this precarious precedent.

defendants). Washington's LFO laws, however, also expressly forbid waiving the VPA. *See* RCW 9.94A.6333(3)(f) (the VPA "...may not be reduced, waived, or converted to community restitution hours.").

Under existing LFO laws, the filing fee should be waived because it is subject to waiver. *See* RCW 9.94A.6333(3)(f). The VPA also must be waived. By not allowing waiver, regardless of someone's ability to pay, the section of RCW 9.94A.6333(3)(f) prohibiting waiver lacks *Blank*'s constitutional safeguards. Therefore, RCW 9.94A.6333(3)(f)'s blanket ban on waiving the VPA is unconstitutional as applied to Ms. Conway.

3. *Oregon v. Fuller* requires waiving Ms. Conway's LFOs because she is unable to pay.

Washington's LFO scheme violates *Fuller v. Oregon,* 417 U.S. 40 (1974). The Court of Appeals held *Fuller* does not apply to mandatory LFOs. *See Conway*, 438 P.3d at 1241; *see also State v. Mathers*, 193 Wn. App. 913, 926 376 P.3d 1163 (2016). However, the legislature deeming an LFO "mandatory" does not absolve it from constitutional scrutiny. Washington's LFO laws that mandate payment, regardless of ability to pay, are unconstitutional under *Fuller*.

Fuller articulated seven features an LFO law must comply with to survive constitutional scrutiny. Three factors apply to Ms. Conway:

1. Repayment must not be mandatory;

.....

3. Repayment may only be ordered if the defendant is or will be able to pay;

6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and

See Fuller, 417 U.S. at 43-44.

Similar to the statutory analysis under *Blank*, to the extent Washington's LFO laws prohibit waiver for inability to pay, they violate *Fuller*, as applied to Ms. Conway. Under RCW 9.94A.6333(3)(f), the filing fee must be waived. For the VPA, because RCW 9.94A.6333(3)(f) prohibits waiver, regardless of ability to pay, it violates *Fuller* factors one, three, and six. It mandates repayment without considering someone's ability to afford the LFOs and does not allow a process for petitioning the court to remit, contravening *Fuller*'s requirements. *See Fuller*, 417 at 43-44.

B. This Court should accept review because *State v. Conway* presents an issue of substantial public interest.

Pursuant to RAP 13.4(b)(4), Ms. Conway raises an issue of substantial public interest that should be decided by the Supreme Court: how justice-involved people with disabilities living in poverty are inordinately burdened by Washington's LFO system.

1. Merely suspending LFOs disparately impacts people with disabilities who live in poverty and subjects them to debt probation until death.

As this Court discussed in *Catling*, *Wakefield* barred courts from ordering defendants solely reliant on social security disability to pay LFOs. *See Catling*, 193 Wn.2d, at 261 (citing *Wakefield*, 186 Wn.2d at 609). However, since *Catling* only addressed LFO *imposition*, the availability of a post-sentencing waiver under *Wakefield*, *Blank,* and *Fuller* is a critical, unresolved issue impacting low-income people with disabilities like Ms. Conway.[8]

After *Wakefield* barred courts from ordering certain people with disabilities to pay LFOs, rather than waive the debts these individuals cannot pay (i.e., one form of not collecting the LFOs), many counties – including Clark County here – indefinitely suspended the remaining LFOs. This further traps low-income people with disabilities in poverty and subjects them to debt probation until death.

[8] Nearly one million people in Washington have a disability, highlighting this case's widespread importance. *See Wash. St. Division of Vocational Rehabilitation, Disability & DVR Statistics Report*, 1 (July 2017), https://www.dshs.wa.gov/sites/default/files/JJRA/dvr/pdf/2017%20Disability%20%26%20DVR%20Statistics%20Report.pdf.

Ms. Conway has paid her debts to society – both monetarily and through incarceration, but also in immeasurable human capital. Yet Washington's courts currently leave thousands of people like Ms. Conway chasing a figment of the state's imagination in which she *might*, someday, be able to pay, despite *all* evidence pointing sharply to the contrary. This practice exacerbates existing barriers faced by people with disabilities.[9]

The purgatory of debt probation until death is a harsh extension of mass incarceration.[10] Like many who encounter the world's largest criminal justice system, the ripple effects of Ms. Conway's guilty plea reverberate long after prison. Due to these LFOs, Ms. Conway cannot vacate the drug conviction from which this debt originates.[11] In turn, this destabilized efforts to find and maintain housing. CP 227, 229. Moreover,

---

[9] *See Catling*, 193 Wn.2d at 269 (Gonzalez, J. dissenting) (citing Rebecca Vallas, CTR. FOR AM. PROGRESS, DISABLED BEHIND BARS: THE MASS INCARCERATION OF PEOPLE WITH DISABILITIES IN AMERICA'S JAILS AND PRISONS 3 (2016), https://www.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf [https://perma.cc/GJ89-T7M8]

[10] In the words of civil rights activist and political commentator, Van Jones: "You talk about that revolving door back to prison. Well, the hinge on that revolving door is a broken, dysfunctional, hyper-punitive, irrational probation and parole system… When people are trying to turn their lives around, we should throw them a lifeline, and not an anvil." *Criminal justice reform needs lifelines, not anvils*, Quinnipiac (March 21, 2019), https://www.qu.edu/life/now/criminal-justice-reform-needs-lifelines-not-anvils.html

[11] *See State v. Catling*, 193 Wn.2d at 268 (Gonzalez, J., dissenting). Importantly, the barriers LFOs pose for people solely reliant on SSI discussed by Justice Gonzalez in *Catling* have already significantly impacted – and continue to impact – Ms. Conway.

longstanding debt significantly harms credit scores,[12] which "compounds existing vulnerabilities" and "...leads to a loss of wealth building opportunities."[13] Uniquely, Ms. Conway's felony LFOs also do not expire,[14] nor are they subject to Chapter 7 or Chapter 13 bankruptcy. *See* U.S.C. § 523(b)(7); 11 U.S.C. § 1328(a)(3).[15]

Washington forces a false dichotomy upon people like Ms. Conway: succumb to coercive realities and pay out of SSI's sheltered income, or remain forever bound to the criminal justice system. Here, Justice Gonzalez[16] and Judge Fearing's[17] concerns about compelling LFO payment from SSI income were realized. Ms. Conway indeed paid over $1,100 directly out of her fixed income – a mere $771 per month designed solely to provide for her basic needs. This injustice must be addressed by allowing Ms. Conway, at some point, to move on from her conviction.

Ultimately, this case hinges on whether Washington is devoted to

---

[12] *How debts in collections affect your credit,* Credit Karma (Jan. 24, 2017) https://www.creditkarma.com/advice/i/accounts-in-collections/ ("If you have an account reported as in collections, your credit score may drop by a substantial amount').

[13] *The Use (and Overuse) of Credit History*, National Immigration Law Center (August 2014), https://www.nilc.org/wp-content/uploads/2015/11/Credit-Use-and-Overuse-NILC-CFED-2014-08.pdf

[14] *See* RCW 9.94A.760(5) ("All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction.").

[15] *See also James v. Strange*, 407 U.S. 128 (1972) (rejecting LFO practices that result in public debtors using unduly harsh collections practices not available to private creditors). Clark County collection practices violate *Strange*'s holding, as its coercive enforcement improperly provides the state far greater rights than private debtors.

[16] *See Catling*, 193 Wn.2d at 267 (Gonzalez, J., dissenting)

[17] *State v. Catling*, 2 Wn. App. 2d 819, 845-847 (Fearing, C.J., dissenting).

fully recognizing the immense burdens our criminal justice system places on low-income people with disabilities. University of Washington scholar, Dr. Alexes Harris, captured court debt's suffocating reality in a way that mirrors Ms. Conway's experience, finding that LFOs: "reinforce poverty, destabilize community reentry, and relegate impoverished debtors to a lifetime of punishment because their poverty leaves them unable to fulfill expectations of accountability."[18] Dr. Harris added: "…people are permanently tethered to the criminal-justice system, are being issued warrants and summons to court, and *are being held accountable for their poverty, essentially.*"[19]

Washington's LFO system further marginalizes low-income people with disabilities like Ms. Conway. People in disability-caused poverty will continue spinning in an endless, punitive cycle unless this Court fully recognizes and addresses the unforgiving realities of LFOs and their disparate impact. This Court should accept review of this case and find

---

[18] Alana Semuels, *The Fines and Fees That Keep People Poor*, The Atlantic (July 5, 2016) https://www.theatlantic.com/business/archive/2016/07/the-cost-of-monetary-sanctions-for-prisoners/489026/. Additionally, Ms. Conway is a person of color, and studies indicate LFOs disparately impact people of color. *See e.g.*, Marc Meredith and Michael Morse, *Discretionary Disenfranchisement: The Case of Legal Financial Obligations*, Appendix-5 (January 18, 2017), https://www.sas.upenn.edu/~marcmere/workingpapers/DiscretionaryLFOs.pdf. Ms. Conway's burdens are compounded by race, gender, disability, poverty, and seniority. All of these factors should be considered in assessing the hardships imposed by LFOs.

[19] Juleyka Lantigua-Williams, *How Prison Debt Ensnares Offenders*, The Atlantic (June 2, 2016), https://www.theatlantic.com/politics/archive/2016/06/how-prison-debt-ensnares-offenders/484826/ (emphasis added).

that Ms. Conway – an individual solely reliant on SSI with a demonstrated inability to pay – is entitled to a post-sentencing waiver.

VI. CONCLUSION

For the reasons argued above, this Court should accept review of Ms. Conway's case.

Submitted this 1st day of July, 2019.

Timothy J. Murphy, WSBA #49979
Attorney for Karen Conway
Northwest Justice Project
500 W 8th, Suite 275
Vancouver, WA 98660

APPENDIX

A

Washington State Court of Appeals Division II Published opinion: State of Washington v. Karen Ann Conway, Cause No. 50032-9-II, April 9, 2019

Filed
Washington State
Court of Appeals
Division Two

April 9, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KAREN ANN CONWAY, Appellant.	No. 50032-9-II PUBLISHED OPINION

SUTTON, J. — Karen Ann Conway appeals a superior court commissioner's[1] order denying her motion to remit mandatory legal financial obligations (LFOs) and her motion to reconsider.[2] She argues that (1) the superior court has broad authority to remit mandatory LFOs under three statutes and its inherent authority, (2) we should extend the holding in *Fuller v. Oregon*[3] to mandatory LFOs, (3) the Clark County Court Clerk's office took enforcement action against her without conducting an inquiry into her ability to pay under *State v. Blank*,[4] (4) the superior court's findings of fact 1, 5, and 6 are clearly erroneous, and (5) the superior court's failure to remit the

[1] For ease of reference, this opinion refers to the court commissioner as the court.

[2] Both parties agree that the statutory amendments enacted by ENGROSSED SECOND SUBSTITUTE H.B. 1783, § 18, 65th Leg., Reg. Sess. (Wash. 2017) do not apply in these circumstances. As a result, we do not further address this issue.

[3] 417 U.S. 40, 43, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974). *Fuller* upheld as constitutional an Oregon recoupment statute requiring a convicted defendant on probation to repay defense costs when he was indigent during the criminal proceedings, but subsequently acquired the ability to pay.

[4] 131 Wn.2d. 230, 242, 930 P.2d 1213 (1997).

mandatory LFOs violates her equal protection and substantive due process rights. Conway requests that we vacate the superior court's orders and remand for entry of an order striking the victim penalty assessment fee and the criminal filing fee. We reject all of her arguments and affirm.

FACTS

In March 2007, Conway pleaded guilty in the Clark County Superior Court to one count of maintaining a dwelling for controlled substances. The superior court sentenced her and ordered her to pay various LFOs, including two mandatory LFOs: a $500 victim penalty assessment fee (VPA) under former RCW 7.68.035 (2000) and a $200 criminal filing fee under former RCW 9.94A.505 (2002).

Conway, who was receiving Supplemental Security Income (SSI) due to a disability, made some, but not all, of the ordered payments toward the judgment and sentence. The Clark County Superior Court's Collections Unit periodically sent Conway notices to appear for a payment review and either make a payment or explain why she could not do so. These notices stated that if she failed to pay or appear, she could be placed in custody. At one point, the clerk's office e-mailed Conway, explaining that she would be required to provide an annual letter to verify her SSI status.

In 2016, Conway filed a motion to remit all LFOs except the VPA fee and the criminal filing fee based on her indigency and SSI status. The superior court conducted a hearing and entered written findings of fact and conclusions of law. The court found that Conway was indigent and had been on SSI for 27 years.

In its order, the superior court remitted the balance of interest owing, the criminal fine, the court appointed attorney fee, the deoxyribonucleic acid (DNA) fee (which was discretionary at the

time), the crime lab fee, the drug fund fee, and the balance of collection fees. As to the two remaining mandatory LFOs, the VPA fee and the criminal filing fee, the court ruled that Conway owed a balance of $493.55 for the VPA fee and $197.41 for the criminal filing fee, but it ordered that "the court cannot require her to pay on the remaining mandatory LFOs at this time." Clerk's Papers (CP) at 378.

Conway filed a motion to reconsider in December 2016, arguing for the first time that the imposition of the two mandatory LFOs violated her equal protection and substantive due process rights. The superior court denied the motion and entered the following additional relevant findings:

> 1. . . . [T]he Clark County Clerk's office did not unlawfully collect statutorily authorized collection fees and that the [c]ourt has no authority to direct the [c]ounty [c]lerk as to application of payments received from Ms. Conway.
>
> . . . .
>
> 5. . . . [T]his [c]ourt can conceive of circumstances wherein Ms. Conway may be able to pay the fees and assessments in the future.
>
> 6. . . . The [c]ourt finds that there has never been enforcement in Ms. Conway's case. Ms. Conway has never been brought to court on a [m]otion for nonpayment. Sanctions have never been sought or imposed against her for nonpayment. The [c]ourt declines to find, as requested by Ms. Conway, that the State/Clark County Clerk's office was on notice and therefore required to conduct an inquiry regarding payment of LFO's when Ms. Conway was brought to court on probation violations unrelated to LFO's. Again, no enforcement sanctions were sought against Ms. Conway to trigger a *Blank* inquiry.

CP at 399-400.

Conway appeals both orders; a commissioner of this court granted discretionary review.

ANALYSIS

I. LEGAL PRINCIPLES

Our court has recognized that the effects on an indigent defendant remain the same whether the LFOs are mandatory or discretionary. *State v. Mathers*, 193 Wn. App. 913, 916, 376 P.3d 1163 (2016). "However, until there are legislative amendments or Supreme Court changes in precedent, we must recognize these distinctions and adhere to the principles of *stare decisis.*" *Mathers*, 193 Wn. App. at 916. The court's authority to impose LFOs is statutory. *Mathers*, 193 Wn. App. at 917 (citing RCW 10.01.160(3)). The legislature has authorized the courts to impose a VPA fee and a criminal filing fee as mandatory LFOs.

The VPA fee is authorized under former RCW 7.68.035(1)(a) (2000) which states:

> When any person is found guilty in any superior court of having committed a crime . . . there *shall be imposed by the court* upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(Emphasis added).

The criminal filing fee is authorized under former RCW 36.18.020(2)(h) (2005) which states:

> Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case *shall be liable* for a fee of two hundred dollars.

(Emphasis added).

II. Legislative Intent

Washington courts have consistently held that a trial court need not consider a defendant's past, present, or future ability to pay when it imposes either the VPA fee or the criminal filing fee. *See State v. Curry,* 118 Wn.2d 911, 917-18, 829 P.2d 166 (1992) (VPA fees are mandatory notwithstanding defendant's ability to pay); *see also State v. Clark,* 191 Wn. App. 369, 374, 362 P.3d 309 (2015) (VPA fees and criminal filing fees are mandatory obligations not subject to a defendant's ability to pay); *State v. Lundy,* 176 Wn. App. 96, 102, 308 P.3d 755 (2013); *State v. Kuster,* 175 Wn. App. 420, 424-25, 306 P.3d 1022 (2013); *State v. Thompson,* 153 Wn. App. 325, 337, 223 P.3d 1165 (2009); *State v. Williams,* 65 Wn. App. 456, 460, 828 P.2d 1158, 840 P.2d 902 (1992).

"Washington courts consistently treat the [mandatory LFO] statutes as separate and distinct from the discretionary LFO statute and the restitution statute." *Mathers*, 193 Wn. App. at 919. "Where the legislature has had time to correct a court's interpretation of a statute and has not done so, we presume the legislature approves of our interpretation." *Mathers*, 193 Wn. App. at 918.

III. Authority To Remit Mandatory LFOs

A. Statutory Authority To Remit Mandatory LFOs

Conway argues that the superior court has discretion and broad statutory authority to remit the mandatory LFOs at issue and erred by refusing to do so. She cites former RCW 9.94A.6333 (2008), former RCW 9.94A.634 (2002)[5], and former RCW 10.01.180(4) (2010). We disagree

[5] This statute was recodified as RCW 9.94B.040 by Laws 2008, ch. 231, § 56, effective Aug. 1, 2009.

because none of the statutes Conway cites authorize the superior court to remit the mandatory LFOs. Thus, her claim fails.

"Statutory interpretation is a question of law that we review de novo." *State v. Van Noy*, 3 Wn. App. 2d 494, 497, 416 P.3d 751 (2018). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *Van Noy*, 3 Wn. App. 2d at 498. To determine the legislature's intent, we first look to the plain language of the statute, consider the language of the provisions in question, and determine how the provisions fit within the context of the statute and the statutory scheme as a whole. *Van Noy*, 3 Wn. App. 2d at 498. We attempt to harmonize the provisions within a statute so that no portion is rendered superfluous or meaningless. *State v. LaPointe*, 1 Wn. App. 2d 261, 269, 404 P.3d 610 (2017). "If the plain language of the statute is unambiguous, then [our] inquiry is at an end." *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Former RCW 9.94A.6333 states,

> (2) If an offender fails to comply with any of the conditions or requirements of a sentence the following provisions apply:
>
> . . . .
>
> (d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations[.]

Former RCW 9.94A.634 states,

> (3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:
>
> . . . .
>
> (d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations.

Former RCW 10.01.180(4) states that "[i]f it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part."

None of these statutes authorize the superior court to remit the VPA fee or the criminal filing fee here. Former RCW 9.94A.6333 and former RCW 9.94A.634 are general statutes that apply when defendants fail to comply with conditions or requirements of their sentences but the violations are not willful and relate to community restitution obligations. Neither of these statutes authorize a court to remit the VPA fee and the criminal filing fee. Thus, neither former RCW 9.94A.6333 nor former RCW 9.94A.634 apply.

Former RCW 10.01.180(4) applies if a defendant is in default, but not in contempt, for nonpayment of fines or costs and grants the court discretion to allow a defendant additional time to pay, reduce the amount of fines or costs, or revoke the fines or costs. The VPA fee and the criminal filing fee are not "fines" or "costs" as defined in RCW 10.01.180(4). Nor does Conway argue that they are fines or costs. Thus, former RCW 10.01.180(4) does not apply.

We also note that Conway's original motion to remit was filed under former RCW 10.01.160(4) (2015), the statute in effect at the time applicable to discretionary costs. That statute authorizes a superior court to remit certain LFOs, "[i]f 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." Former RCW 10.01.160(4).

On appeal, Conway does not argue that former RCW 10.01.160(4) applies here. As discussed, she argues that other statutes apply to authorize the court to remit the mandatory LFOs at issue. Because we adhere to the statutory principle that a specific statute controls over a general statute, we hold that the more specific remittance statute, RCW 10.01.160(4), controls, but that it does not authorize the court to remit the mandatory LFOs at issue here. *See State v. Flores*, 194 Wn. App. 29, 36-37, 374 P.3d 222 (2016). Because the statutory authority Conway cites does not authorize the court to remit the two mandatory LFOs at issue, her argument fails.

B. THE COURT'S INHERENT AUTHORITY TO REMIT

Conway also argues that the superior court has the inherent authority to remit mandatory LFOs under *State v. Johnson*, 54 Wn. App. 489, 491, 774 P.2d 526 (1989). Because *State v. Johnson* does not apply, Conway's argument fails.

Division I of this court held in *Johnson*, that "in the absence of statutory language indicating otherwise, a sentencing court has jurisdiction to enforce the requirements of a sentence imposed until those requirements are met and/or a certificate of discharge is [issued] upon completion of [the] sentence." *Johnson*, 54 Wn. App. at 491. *Johnson* addressed a court's enforcement of a sentence, not a court's remittance of mandatory LFOs. *Johnson*, 54 Wn. App. at 490. Thus, *Johnson* does not apply here.

Conway does not provide any other authority to support her claim that the court has inherent authority to remit mandatory LFOs. "If a party does not provide a citation to support an asserted proposition, the court may 'assume that counsel, after diligent search, has found [no supporting authority].'" *State v. Arredondo*, 188 Wn.2d 244, 262, 394 P.3d 348 (2017) (citing *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (quoting *DeHeer v. Seattle Post-*

Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). Thus, we hold that Conway's argument fails.

C. *FULLER V. OREGON*

Conway argues that enforcement of the mandatory LFOs would infringe on her constitutional rights under *Fuller v. Oregon* and asks us to extend *Fuller* to mandatory LFOs. *Fuller* concerned an Oregon recoupment statute requiring a defendant on probation to reimburse the cost of appointed counsel. *Fuller*, 417 U.S. 40, 54, 94 S. Ct. 2166, 40 L. Ed. 2d 642 (1974). The United States Supreme Court upheld the statute as constitutional because it contained sufficient procedural safeguards to protect against oppressive application. *Fuller*, 417 U.S. at 54. In *Fuller*, the trial court found the defendant indigent at the time of the criminal proceedings, but imposed discretionary costs after he subsequently acquired the ability to pay. *Fuller,* 417 U.S. at 42. In discussing the defendant's obligation to repay defense costs under the statute, the Court observed that the Oregon statute was never mandatory, "[r]ather, several conditions must be satisfied," and one of the conditions was that the defendant was convicted. *Fuller*, 417 U.S. at 44-45.

Conway's arguments related to *Fuller* have been previously rejected. *See Mathers*, 193 Wn. App. at 926 (rejecting equal protection and Fourteenth Amendment arguments against imposition of mandatory LFOs). Therefore, we decline to extend *Fuller* to mandatory LFOs, and thus, we hold that Conway's argument fails.

IV. Enforcement Action

Conway next argues that the county clerk took enforcement action against her without lawful authority and without conducting an inquiry into her ability to pay under *State v. Blank*.[6,7] She also argues that findings of fact 1 and 6 relating to the clerk's actions are "clearly erroneous," and finding of fact 5, that the court can conceive of circumstances where Conway would be able to pay and no enforcement action is taken, is also "clearly erroneous." Br. of Appellant at 17, 23. We disagree.

A. Clerk's Authority

RCW 9.94A.760(5) authorizes the county clerk "to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations." RCW 9.94A.760(14) also states that "[t]he county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations."

Conway appears to argue that the county clerk did not have the authority to require her to verify annually her SSI status. This argument fails because the county clerk has statutory authority under RCW 9.94A.760(14) to verify income as necessary for the collection of LFOs. Under RCW 9.94A.760(14), the clerk's office has the authority to require Conway to verify her SSI status annually. Thus, her argument fails.

---

[6] 131 Wn.2d. 230, 242, 930 P.2d 1213 (1997).

[7] We note that her arguments here do not relate to whether a court has the authority to remit the two mandatory LFOs at issue.

B. *STATE V. BLANK* INQUIRY

Conway next argues that, "the [c]lerk's office continues to enforce the mandatory LFOs against Ms. Conway by requiring her to submit yearly proof of her SSI income. Under *Blank*, this is unconstitutional because [she] lacks the present and future ability to pay due to her enduring indigency." Br. of Appellant at 21. We disagree because no enforcement action has been taken against Conway related to the mandatory LFOs at issue to trigger an inquiry into her ability to pay under *State v. Blank*.

"[T]he Constitution does not require an inquiry into ability to pay at the time of sentencing. Instead the relevant time is the point of collection and when sanctions are sought for nonpayment." *Blank*, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997). "It is at the point of enforced collection . . . , where an indigent 'may be faced with the alternatives of payment or imprisonment, that he may assert a constitutional objection on the ground of his indigency.'" *Curry*, 118 Wn.2d at 917 (alternation in original) (quoting *State v. Curry,* 62 Wn. App. 676, 681-82, 814 P.2d 1252 (1991)).

Here, there is no evidence that Conway was ever subject to a motion for nonpayment, motion for default, motion for sanctions for nonpayment, or motion for imprisonment for nonpayment of the two mandatory LFOs. Thus, because there was no enforcement action taken against Conway, the court was not required at this stage to conduct an inquiry into Conway's ability to pay under *State v. Blank*. Thus, her argument fails.

C. FINDINGS OF FACT 1 AND 6

Conway argues that the superior court's findings of fact 1 and 6 are clearly erroneous. We disagree.

Generally, we review a court's findings of fact for substantial evidence. *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244 (2015). However, a court's "factual determination concerning a defendant's resources and ability to pay is reviewed under the clearly erroneous standard." *State v. Clark*, 191 Wn. App. at 372 (internal quotation marks omitted). Under a clearly erroneous standard, an application of law to facts is "clearly erroneous" if, after reviewing all evidence, we are left with the definite and firm conviction that a mistake has been committed. *Whatcom County Fire Dist. No. 21 v. Whatcom County*, 171 Wn.2d 421, 427, 256 P.3d 295 (2011).

The court's finding of fact 1 stated:

> [T]he Clark County Clerk's office did not unlawfully collect statutorily authorized collection fees and that the [c]ourt has no authority to direct the [c]ounty [c]lerk as to application of payments received from Ms. Conway.

CP at 399.

The court's finding of fact 6 stated:

> The [c]ourt finds that there has never been enforcement in Ms. Conway's case. Ms. Conway has never been brought to court on a [m]otion for nonpayment. Sanctions have never been sought or imposed against her for nonpayment. The [c]ourt declines to find, as requested by Ms. Conway, that the State/Clark County Clerk's office was on notice and therefore required to conduct an inquiry regarding payment of LFO's when Ms. Conway was brought to court on probation violations unrelated to LFO's. Again, no enforcement sanctions were sought against Ms. Conway to trigger a *Blank* inquiry.

CP at 400.

As discussed above, there is no evidence in the record that the clerk's office took enforcement action against Conway. There is no evidence that Conway was ever subject to a motion for nonpayment, motion for default, motion or for sanctions for nonpayment, or motion for

imprisonment for nonpayment of the two mandatory LFOs. We hold that Findings of fact 1 and 6 are not clearly erroneous and Conway's argument fails.

D. COURT'S STATEMENT – FINDING OF FACT 5

> Conway next challenges the following portion of finding of fact 5:[8]
>
> Like the majority [in *State v. Seward*[9]], this [c]ourt can conceive of circumstances wherein Ms. Conway may be able to pay the fees and assessment in the future.

CP at 400. Conway argues that the superior court's "finding," that it "could conceive of circumstances" regarding her future ability to pay, is clearly erroneous. Br. of Appellant at 17.

The superior court's statement is not a finding of fact that we review. Instead, the court's statement is a legal holding mirroring language from the majority in *State v. Seward* holding that the court may assume the existence of any necessary state of facts which it can reasonable conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest. 196 Wn. App. at 585. Thus, we hold that Conway's argument fails.

V. CONSTITUTIONAL ISSUES

A. EQUAL PROTECTION

Conway argues that her equal protection rights were violated because the superior court failed to remit the mandatory LFOs even though she lacks the present and future ability to pay. However, Conway fails to adequately brief the equal protection issue. *Peste v. Mason County*,

---

[8] This portion of finding of fact 5 is mislabeled as a finding of fact. We treat mislabeled findings of fact or conclusions of law as what they actually are, and review them accordingly. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

[9] 196 Wn. App. 579, 384 P.3d 620 (2016), *review denied*, 188 Wn.2d 1015, 396 P.3d 349 (2017).

133 Wn. App. 456, 469 n.10, 136 P.3d 140 (2006) (We do not address constitutional arguments that are not supported by adequate briefing.). Thus, we decline to review this argument.

B. SUBSTANTIVE DUE PROCESS

Conway next argues that her substantive due process rights were violated because the superior court failed to remit the mandatory LFOs at issue when she lacks the present and future ability to pay. We disagree because there is a rational basis for imposing the mandatory costs.

"We review constitutional challenges de novo." *State v. Beaver*, 184 Wn.2d 321, 331, 358 P.3d 385 (2015). A person claiming a due process violation has the burden of proof. *See Seward*, 196 Wn. App. at 584. "Statutes are presumed to be constitutional." *Blank*, 131 Wn.2d at 235.

Our federal and state constitutions prohibit the deprivation of life, liberty, or property without due process of law. U.S. CONST. amends. V, XIV; WASH. CONST. art I, § 3. The due process clause of the federal constitution confers both procedural and substantive protections. *Beaver*, 184 Wn.2d at 332. Substantive due process "bars wrongful and arbitrary government conduct." *Beaver*, 184 Wn.2d at 332. Government action violates substantive due process if a deprivation of life, liberty, or property is substantively unreasonable or is not supported by a legitimate justification. *Nielsen v. Dep't of Licensing*, 177 Wn. App. 45, 53, 309 P.3d 1221 (2013).

Where, as here, the government's action does not interfere with a fundamental right, we apply a highly deferential rational basis standard. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 222, 143 P.3d 571 (2006). Under a rational basis review, we determine whether a rational relationship exists between the challenged law and a legitimate state interest. *Amunrud*, 158 Wn.2d at 222. In making this determination, we "may assume the existence of any necessary state

of facts which [we] can reasonably conceive." *Amunrud,* 158 Wn.2d at 222. The rational basis standard is highly deferential to the challenged action. *Nielsen*, 177 Wn. App. at 53.

Washington courts have consistently rejected identical arguments that the imposition of mandatory LFOs violate substantive due process. *Mathers* held that the imposition of the VPA fee and the DNA fee did not violate substantive due process, following *Curry.* 193 Wn. App. at 928. Our Supreme Court held in *Curry*, "that the VPA statute did not violate due process because 'no defendant will be incarcerated for his or her inability to pay the penalty assessment unless the violation is willful.'" *Mathers*, 193 Wn. App. at 928 (quoting *Curry*, 118 Wn.2d at 918).

In *Seward*, we held that imposing mandatory LFOs, the VPA fee and the criminal filing fee, were rationally related to legitimate state interests because (1) "the VPA serves the legitimate state interest of funding comprehensive programs to encourage and facilitate testimony by victims and witnesses of crimes," and (2) "the [criminal] filing fee serves the legitimate state interest in compensating the court clerks for their official services." *Seward*, 196 Wn. App. at 584-85. Thus, Conway's substantive due process claim fails.

We reject all of Conway's arguments and affirm.

Sutton, J.
SUTTON, J.

We concur:

J., A.C.J.
J., A.C.J.

Worswick J.
WORSWICK, J.

APPENDIX

B

RCW 9.94A.6333

RCW 9.94A.6333

Sanctions—Modification of sentence—Noncompliance hearing.

(1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the nonfinancial conditions or requirements of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in RCW **9.94A.633**(1). Alternatively, the court may:

(i) Convert a term of partial confinement to total confinement; or

(ii) Convert community restitution obligation to total or partial confinement;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with a mental health status evaluation and/or outpatient mental health treatment, the court shall seek a recommendation from the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter **71.05** RCW shall be considered in preference to incarceration in a local or state correctional facility.

(3) If an offender fails to pay legal financial obligations as a requirement of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i) The offender's income and assets; (ii) the offender's basic living costs as defined by RCW **10.101.010** and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW **10.101.010**(3) (a) through (c) is presumed to lack the current ability to pay;

(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW **71.24.025**, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties;

(e) If the court finds that a failure to pay is willful noncompliance, it may impose the sanctions specified in RCW **9.94A.633**(1); and

(f) If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW **10.101.010**(3) (a) through (c), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW **49.46.020** for each hour of community restitution. The crime victim penalty assessment under RCW **7.68.035** may not be reduced, waived, or converted to community restitution hours.

(4) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

(5) Nothing in this section prohibits the filing of escape charges if appropriate.

[**2018 c 269 § 13; 2008 c 231 § 19.**]

NOTES:

Construction—2018 c 269: See note following RCW **10.82.090**.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW **9.94A.701**.

Severability—2008 c 231: See note following RCW **9.94A.500**.

CERTIFICATE OF SERVICE

I, TIMOTHY J. MUPRHY, hereby certify under penalty of perjury under the laws of the State of Washington that on July 1, 2019, I served a copy of this Motion for Reconsideration on the Clark County Prosecutor's Office by U.S mail, first-class postage prepaid addressed as follows:

Aaron Bartlett
Clark County Prosecutor's Office
1013 Franklin St
Vancouver, WA 98660

DATED this 1st day of July 2019.

Timothy J. Murphy
WSBA# 49979

NORTHWEST JUSTICE PROJECT

July 01, 2019 - 3:14 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	State of Washington, Respondent v. Karen A. Conway, Appellant (500329)

The following documents have been uploaded:

- PRV_Cert_of_Service_20190701151156SC863133_9260.pdf
  This File Contains:
  Certificate of Service
  The Original File Name was Conway Certificate of Service.pdf
- PRV_Petition_for_Review_20190701151156SC863133_1456.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Conway Petition for Review.pdf

A copy of the uploaded files will be sent to:

- CntyPA.GeneralDelivery@clark.wa.gov
- aaron.bartlett@clark.wa.gov
- rachael.rogers@clark.wa.gov

Comments:

Sender Name: Ronda Dumais - Email: rondag@nwjustice.org
Filing on Behalf of: Timothy John Murphy - Email: timothy.murphy@nwjustice.org (Alternate Email: Timothy.murphy@nwjustice.org)

Address:
500 W. 8th Street, Suite 275
Vancouver, WA, 98660
Phone: (360) 693-6130

Note: The Filing Id is 20190701151156SC863133