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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

Supreme Court No.

Court of Appeals Division III No. 35759-7

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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JUSTIN WELKER

Appellant

v.

STATE OF WASHINGTON

Respondent

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**PETITION FOR REVIEW**

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## **I. IDENTITY OF THE PETITIONER**

Appellant, Justin Alan Welker, seeks discretionary review of the Division III Court of Appeals decision designated below. Mr. Welker is a 38-year-old person living with disabilities that prevent him from engaging in gainful employment. His only income is Supplemental Security Income (SSI) and before that Aging, Blind, and Disabled (ABD). Mr. Welker has never been able to support himself through employment.

In 2016, after being arrested on a failure to pay warrant, Mr. Welker moved the court to remit his remaining legal financial obligations (LFOs). Mr. Welker does not now, nor will he in the future, have the ability to pay any LFOs. Despite this, the trial court failed to remit all of his LFOs. The Court of Appeals Division III, relying on *State v. Catling*, 193 Wn.2d 252, 438 P.3d 1174 (2019), affirmed the trial court's decision.

## **II. DECISION BELOW**

Under RAP 13.4(b)(3) and (4), Mr. Welker requests this Court grant Discretionary Review of the recent unpublished decision by the Washington Court of Appeals, Division III, *State v. Welker*, 2019 WL 3564054 (2019). Appendix A. In *Welker*, the Court of Appeals affirmed the trial court's partial denial of Mr. Welker's request to remit and his motion for reconsideration.

### III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err by *sub silentio* rejecting Mr. Welker's constitutional challenges to the LFO enforcement system when *Fuller v. Oregon* prohibits mandatory repayment and *James v. Strange* prohibits the collection of state debt through tactics that are harsher and more punitive than those permitted to private debt collectors?

2. Did the Court of Appeals err when it found that Spokane County did not take enforcement action against Mr. Welker, despite the County taking repeated, coercive steps to collect the debt, including incarcerating Mr. Welker?

3. Did the Court of Appeals err by holding that the SSI act did not prohibit the enforced collection of LFOs against Mr. Welker's SSI?

### IV. STATEMENT OF THE CASE

On June 23, 2008, Justin Welker pled guilty to a felony. (Clerk's Papers (CP) 2-16.) As a condition of his sentence, Mr. Welker received \$900.00 in legal financial obligations, including both mandatory and discretionary LFOs. (CP 6.) Mr. Welker was not ordered to pay restitution. He was sentenced to incarceration, and ordered to make monthly LFO payments of \$25.00 to the clerk beginning June 1, 2010. (CP 7.) The trial court instructed the clerk to issue a payroll deduction, and advised Welker that he would be arrested, if he did not make payments as instructed. *Id.* On

the same day, the court ordered him to keep the clerk advised of his current address at all times and to pay legal obligations as directed by the clerk. (CP 1.) Mr. Welker was sentenced to 26 months incarceration with credit for time served. (CP 9.)

Mr. Welker has relied on disability income for the entirety of his adult life. Nevertheless, the State immediately began collection on his LFOs. The trial court has, in the past, characterized Mr. Welker's disability benefits as "income" payable to his LFOs. On March 6, 2009, while incarcerated, Welker wrote to the court to ask whether it would waive his LFOs because he could not pay them as his only income was GA-U<sup>1</sup>, and he would soon be on SSI. (CP 19.) The court denied his motion, issuing an order on May 12, 2009, stating that though, "he has very minimal, if any income [he] also has no living expenses." (CP 21.)

The Spokane County Clerk took over collection of Mr. Welker's LFOs on August 2, 2012, shortly after the department of corrections closed its supervision. (CP 32.) The clerk issued a collection notice to him on August 3, 2012, stating, in pertinent part:

"You are required to contact the Superior Court Clerk's office to fill out the Financial Declaration<sup>111</sup> and notify this office of any changes to your current mailing address."

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<sup>1</sup> General Assistance for Unemployable Adults



(CP 38.) There is no proof in the court's file showing the clerk sent this notice to the correct address, or that Welker received it.

On May 31, 2013, Welker signed an, "Order Enforcing LFO." (CP 39.) A deputy prosecutor presented it to the court for entry on June 3, 2013. (CP 40.) At this time, Mr. Welker was receiving SSI. He made some payments out of his benefits, but was unable to pay more. On July 24, 2014, the clerk filed a, "Non-Compliance with LFO Order" with the court. (CP 41.) On September 11, 2014, the Spokane County Prosecuting Attorney presented an *ex parte* motion for a bench warrant to the court. (CP 42.) The prosecuting attorney did not give Welker notice of their intent to seek a bench warrant for his arrest. The prosecuting attorney did not inform the court about Welker's receipt of GA-U and SSI. Nor did they provide any financial information to the court. That same day, the court ordered a, "no bail" warrant. (CP 47.) The clerk issued it that same day. (CP 48.)

On or about March 20, 2017, law enforcement came to Welker's home and arrested him based on the bench warrant issued September 11, 2014. (CP 47.) The State subsequently incarcerated Welker for non-payment of this debt. (CP 50.) The clerk and the court were on notice that the bench warrant to arrest Welker was invalid. (*See State v. Sleater*, 194 Wn. App. 470, 474, 378 P.3d 218 (2016)).

After holding Welker overnight, the court released Welker and ordered him to report to the Spokane County Clerk's Office within 24 hours. He was also ordered to appear at an "LFO Hearing" on April 4, 2017. (CP 50-52.) At the April 4, 2017, hearing, an attorney appeared for Welker and the court scheduled a hearing on the "LFO Motion" for May 12, 2017. (CP 54.)

Welker moved to waive or reduce his LFOs and the State objected, arguing his LFOs were "mandatory" and could not be waived. (CP 57, 79.) Welker's attorney responded that Welker's motion to remit LFOs in their entirety, was properly before the court because of the State's attempts to enforce collection, including incarceration for non-payment. (Verbatim Report of Proceedings (VRP) June 2, 2017, at 6.) The court heard oral argument on June 2, 2017. (VRP 1.) The evidence was consistent, and undisputed that Welker was disabled. (VRP 2.) The record established that Welker's only cash income was \$612.25 in monthly, federally-protected SSI benefits. (CP 57.) The court, however, chose not to waive Welker's remaining LFOs. (CP 88-90). Instead, the court reallocated payments among "mandatory" and "discretionary" LFOs and suspended payment, required Welker to report to the clerk every April (presumably for the rest of his life) to provide proof that he continues to be disabled. *Id.* The court entered its written opinion on August 24, 2017. (CP 83.) Without notice to

Welker, the court clarified its decision on August 29, 2017. (CP 92.) The only remaining LFO in this case is the victim penalty assessment (VPA). (CP 83, 92.)

On September 1, 2017, Welker timely moved for reconsideration arguing that it was constitutionally impermissible to place him in a state of permanent debt supervision, simply because he is indigent and disabled. (CP 93.) On November 21, 2017, the court denied Welker's motion for reconsideration. (CP 159.) Welker timely filed a notice of discretionary review on December 18, 2017, to the Court of Appeals Division III. The Court of Appeals granted review to Welker's appeal as a matter of right on February 21, 2018. (CP 185.) On August 6, 2019, the Court of Appeals issued an unpublished decision affirming the trial court relying almost exclusively on *State v. Catling*, 193 Wn.2d 252, 438 P.3d 1174 (2019). Welker now requests this Court review his case and grant him relief from this unconstitutional debt.

## V. ARGUMENT

Since the outset of this case in 2008, Mr. Welker has only ever received state and federal disability benefits: GA-U, ABD, and SSI. The Court of Appeals concluded that because Mr. Welker had made payments, he must have had other income at some point; however, this reasoning is

flawed. Despite disability and indigence, Mr. Welker has paid thousands of dollars of state and federal benefits to the Spokane County Superior Court.

The Appellate Court decision leaves Mr. Welker on permanent debt supervision. This Court should accept review of this case because (1) the petition involves an issue of substantial public interest, and (2) it presents a significant question of law under both the Constitution of the State of Washington and the United States Constitution. RAP 13.4(b)(4) and (b)(3).

**A. THIS COURT SHOULD ACCEPT REVIEW BECAUSE, LFO COLLECTION PRACTICES THAT CREATE ENFORCED PAYMENT OUT OF SOCIAL SECURITY DISABILITY, ARE A QUESTION OF SUBSTANTIAL PUBLIC INTEREST.**

Pursuant to RAP 13.4(b)(4), Mr. Welker’s “petition involves an issue of substantial public interest that should be determined by the Supreme Court.” LFO debt affects anyone with a criminal conviction, however, it disproportionately impacts low-income, limited resourced individuals. That disproportionate impact is greater on people with disabilities. In 2016, there were 19,019 individuals incarcerated in Washington prisons.<sup>2</sup> In 2018, the average LFO debt on a single case was

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<sup>2</sup> *The Facts: State by State Data (Washington)*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/the-facts/#map.#map> (last visited Aug. 29, 2019).

\$1,128.<sup>3</sup> Nearly one million people in Washington live with disabilities.<sup>4</sup> 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.<sup>5</sup> Mr. Welker receives SSI, which means that his disabilities result in the inability to engage in any substantial gainful activity, and have lasted, or are expected to last, for a continuous period of 12 months, or result in death. 42 U.S.C. §1382c(3)(A).

The Court of Appeals addressed only one of Mr. Welker's arguments, finding that the Court's decision in *Catling* mandated they affirm the Superior Court. *Welker* at \*7. This decision ignored the scope of *Catling*: "The court granted review only on the issue whether the *imposition* of mandatory [LFOs] on the Petitioner violates the Social Security Act's antiattachment provision." *Catling*, 193 Wn.2d at 257 (emphasis added) (internal quotations omitted).

Mr. Welker is not arguing against the *imposition* of LFOs. These LFOs were imposed in 2008. The State then began a campaign of

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3 Press Release, ACLU of Washington (Mar. 6, 2018), <https://www.aclu-wa.org/news/legislature-passes-bill-bring-fairness-washington%E2%80%99s-system-legal-financial-obligations>.

4 *Wash. St. Division of Vocational Rehabilitation, Disability DVR Statistics Report*, 1 (July 2017) available at <https://www.dshs.wa.gov/sites/default/files/JJRA/dvr/pdf/2017%20Disability%20%26%20DVR%20Statistics%20Report.pdf>

5 *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](https://www.ssa.gov/policy/docs/statcomps/di_asr/2017/sect03g.html#table56).

enforcement action against what they knew to be protected income. Most recently, Mr. Welker was arrested on or about March 20, 2017, at his home on a failure to pay warrant. This arrest is a mechanism of the State's enforcement process and is what precipitated the instant matter.

The Court of Appeals also erroneously found that this was not an enforcement action. *State v. Welker* at \*7. This is inconsistent with *City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016). In *Wakefield*, this Court determined that the attempts to collect were enforcement. *Id* at 605. Mr. Welker was arrested, incarcerated, and subsequently released with an order to appear and show cause as to why he should not be re-incarcerated. At the show cause hearing, Mr. Welker, through counsel, requested a waiver of all legal financial obligations.<sup>6</sup> The hearing on that request, a defense to the enforcement action, occurred June 2, 2017. This appeal followed the denial of Mr. Welker's request and a timely motion for reconsideration. This appeal is a direct result of the State's LFO enforcement action.

Mr. Welker is currently subject to enforcement activities by the Spokane County Clerk, an entity that has initiated his incarceration for his inability to pay. Mr. Welker has been forced into the impossible decision

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<sup>6</sup> Under former RCW 10.01.180(5), at a contempt hearing the debtor can request waiver of unpaid LFOs.

of paying Spokane County out of his SSI check or remaining permanently under the supervision of an entity that has incarcerated him for being poor.<sup>7</sup> The record in this case shows the collection supervision and enforcement has become burdensome to Mr. Welker. Mr. Welker was arrested at his home and incarcerated solely for being too poor to pay his LFOs. Mr. Welker remains under court order to comply with the orders of the Spokane County Clerk, which has the unique ability to jail, and threaten jail, for failure to comply with its orders. If Mr. Welker misses a court date, or a summons from the clerk to report income, he faces the issuance of a warrant and his subsequent arrest. Mr. Welker's LFO debt acts as a constant threat of jail that he can lift only if he pays his LFOs from his only source of income, disability income. This is "burdensome," *Catling*, 193 Wn.2d at 265 n.6, and constitutes "other legal process" under 42 U.S.C. 407. *Wakefield*, 186 Wn.2d at 609 ("Accordingly, we hold that federal law prohibits courts from ordering defendants to pay LFOs if the person's only source of income is social security disability.").

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<sup>7</sup> This Court has held that there are sufficient procedural safeguards in the Washington LFO system to prevent incarceration for poverty; however, the facts do not bear out this conclusion. *State v. Curry*, 118 Wn.2d 911, 918, 829 P.2d 166 (1992). In this case alone, Mr. Welker was incarcerated at least once while living on subsistence assistance due to debilitating disability.

**B. THIS COURT SHOULD ACCEPT REVIEW BECAUSE THE LFO SYSTEM IN WASHINGTON IS UNCONSTITUTIONAL AS INTERPRETED BY THE COURT OF APPEALS.**

Pursuant to RAP 13.4(b)(3), this Court should accept review because Mr. Welker's petition addresses, "a significant question of law under the Constitution of the State of Washington or of the United States is involved." First, interpreting the LFO system to bar waiver renders it unconstitutional under *State v. Curry*, 118 Wn.2d 911, 829 P.2d 166 (1992) and *Fuller v. Oregon*, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974). Second, such LFO enforcement process violates substantive due process and equal protection.

For the Washington LFO system to be constitutional there must be a procedure to waive LFOs. On multiple occasions, the United States Supreme Court has examined fine and fee structures. See e.g., *Fuller*, 417 U.S. 40 (1974); *James v. Strange*, 407 U.S. 128, 92 S. Ct. 2027, 32 L. Ed. 2d 600 (1972); *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983). In doing so, the Court has laid the requirements of a constitutional LFO system. Citing to *Fuller*, 417 U.S. 40 (1974), this Court has articulated seven features of a constitutional LFO system:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. Repayment may only be ordered if the defendant is or will be able to pay;



4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion;
7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

*State v. Curry*, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

Essential to a constitutional system, is that the convicted person must be permitted to petition the court for remission of the payment of costs *or any unpaid portion*. Relying on *Catling* and RCW 9.94A.6333(3)(f), the Court determined that Mr. Welker had no right to waive LFOs despite the fact that there is no reason to believe Mr. Welker will ever be able to pay these fees, through no fault of his own. *Welker* \*5-6. Yet, *Catling* only addresses imposition, not enforcement of LFO debt. This case concerns the continued enforcement of that debt.

Spokane County's persistent enforcement of Washington's LFO statutory scheme against Mr. Welker, despite his demonstrated inability to pay, violates substantive due process and equal protection<sup>8</sup>. Both the

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<sup>8</sup> Though this argument was not fully raised on appeal, it is related to the constitutional challenges raised and briefed in the trial and appellate court. See *State Farm Mut. Auto. Ins. Co. v. Amirpanahi*, 50 Wn. App. 869, 751 P.2d 329 (1988). Specifically, Mr. Welker

Washington and United States constitutions mandate due process and equal protection before the government deprives a person of 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).

Mr. Welker is indigent, as conceded by the State, and has a disability for which he receives SSI as his sole source of income. This Court evaluates Mr. Welker’s claims of class and disability discrimination, and violation of substantive due process under rational basis. *See e.g., City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 442-44, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); *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. Statutes that do not rationally relate to a legitimate state interest must be struck down as unconstitutional. *Id* at 60-61.

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raised *Fuller v. Oregon* and *James v. Strange*, U.S. Supreme Court cases interpreting equal protection and substantive due process clauses.

There is no rational basis to conclude that continued enforcement action against Mr. Welker will ever serve a legitimate state interest. There is no realistic basis to believe that Mr. Welker will ever have funds other than protected disability benefits. He pled guilty in 2008, and has since then relied solely on state and federal disability benefits (GA-U, ABD, or SSI) to meet his basic needs. To the extent that Washington's laws mandate imposition of LFOs, permit enforced collection, and prohibit waiver by a person who lacks the present and future ability to pay, the statutes serve no rational basis, and effectuate discrimination on the basis of poverty and disability.

## VI. CONCLUSION

The enforcement actions taken against Mr. Welker in this case constitute other legal process for the purposes of the anti-attachment provisions of the SSI act; Mr. Welker's disability benefits are protected, and the State should waive his LFO debts and cease his debt probation. This Court has already deemed waiver of debt as a necessary component of a constitutional LFO system. *See e.g. State v. Curry*, 118 Wn.2d 911, 918, 829 P.2d 166 (1992) and *State v. Blank*, 131 Wn.2d 230, 930 P.2d 1213 (1997).

Mr. Welker asks this Court to end his debt probation; given his disability and ongoing indigence, the constitution demands he be afforded

a meaningful right to request remission of the remaining unpaid portion of his LFOs. This Court should accept review of this case, as it raises issues impacting thousands of Washington residents and important constitutional questions.

Respectfully submitted on this 4<sup>th</sup> day of September, 2019.

NORTHWEST JUSTICE PROJECT



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Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of September, 2019 I served via First Class U.S. mail, postage prepaid, and email transmission said copies of the - PETITION FOR REVIEW - to the party(ies) listed below. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

BRETT PEARCE, WSBA# 51819  
Deputy Prosecuting Attorney  
1100 West Mallon  
Spokane, WA 99260  
scpaappeals@spokanecounty.org

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 4<sup>th</sup> day of September, 2019.

  
\_\_\_\_\_  
MARCY CHICKS, Legal Assistant

# APPENDIX A

Renee S. Townsley  
Clerk/Administrator

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*The Court of Appeals  
of the  
State of Washington  
Division III*



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CASE # 357597  
State of Washington v. Justin A. Welker  
SPOKANE COUNTY SUPERIOR COURT No. 071028057

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley  
Clerk/Administrator

RST:jab  
Enclosure

c: **E-mail**—Hon. Annette S. Plese  
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FILED  
AUGUST 6, 2019  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	
	)	No. 35759-7-III
Respondent,	)	
	)	
v.	)	
	)	
JUSTIN A. WELKER,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	

SIDDOWAY, J. — Justin Welker moved the trial court for remission or termination of legal financial obligations (LFOs) that remained payable under his criminal convictions dating back to 2006 and 2007. Although the superior court provided some relief, it ruled that a single crime victim penalty assessment remained payable and, while the LFO could not be collected from Mr. Welker’s Social Security disability benefits, he would be required to report to the clerk’s office annually on whether he was receiving income from other sources. He appeals.

Following the Supreme Court’s decision in *State v. Catling*, 193 Wn.2d 252, 438 P.3d 1174 (2019) (*Catling II*), it is clear the trial court’s order is valid. We affirm.



## FACTS AND PROCEDURAL BACKGROUND

In April 2017, at a time when Justin Welker owed amounts for LFOs imposed on him in 2006 and 2007, he moved the Spokane County Superior Court to remit his LFOs because he lacked the ability to pay, or alternatively, deem his LFOs uncollectable. He argued that since his only income was \$616.25 a month from SSI<sup>1</sup> and food stamps, he did not have income with which to make payments toward his LFOs. He argued that *City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016), mandated the relief he was requesting.

The State argued that because Mr. Welker's LFO balance was for mandatory LFOs, the trial court lacked authority to reduce or waive it.

At the hearing on Mr. Welker's motion, he argued that the Social Security Act "prohibit[ed] courts from ordering defendants to pay LFOs if the person's only source of income is Social Security Disability." Report of Proceedings (June 2, 2017) at 2. The State agreed that it could not *collect* LFOs from a defendant whose only source of income was Social Security disability benefits, but argued remission was not available because Mr. Welker's remaining LFO balance was for mandatory LFOs. The State conceded that because SSI was then Mr. Welker's only income source, the trial court should suspend collection efforts.

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<sup>1</sup> Supplemental Security Income.

The trial court took the matter under advisement, later issuing a memorandum opinion and order. The trial court's opinion concluded that *Wakefield* did not apply because it involved discretionary LFOs, while Mr. Welker's remaining LFOs were mandatory.<sup>2</sup> The trial court also noted that "at some time during the pendency Welker had the ability to make the payments and did, in fact, make payments toward his LFOs." Clerk's Papers (CP) at 86.

The trial court granted some relief to Mr. Welker, ordering the clerk's office to reverse the application of amounts earlier collected to discretionary LFOs that the court found could have been waived or reduced. It ordered the clerk to apply those amounts to mandatory LFOs, with the result that the LFOs imposed by Mr. Welker's 2006 judgment would be completely satisfied and he would only have a single mandatory LFO remaining from his 2007 judgment: the balance owed on the \$500 crime victim penalty assessment. The trial court also suspended further collection efforts until the next annual review hearing, which would take place in April 2018.

The court's order stated that Mr. Welker would be required to demonstrate annually, in April, that he continues to qualify for suspension of collection efforts. The

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<sup>2</sup> The trial court also distinguished *Wakefield* as involving a different type of Social Security disability benefit than the one at issue in *Wakefield*. In fact, Ms. Wakefield received SSI, the same type of benefit received by Mr. Welker. *Wakefield*, 186 Wn.2d at 603.

court waived any outstanding *court* interest on Mr. Welker's mandatory LFOs. While it observed that the victim penalty assessment would continue to accrue interest until paid in full, it added that "[a]t the time of full payment of the principal, Welker can motion the Court to waive this interest also." CP at 90.

Mr. Welker moved for reconsideration, which was denied. He sought discretionary review by this court of the superior court's August 2017 opinion and order and its November 2017 denial of reconsideration.<sup>3</sup> Our commissioner determined that the two decisions were appealable as a matter of right.

At the time of oral argument of the appeal, this court's decision in *State v. Catling*, 2 Wn. App. 2d 819, 413 P.3d 27 (2018) (*Catling* I), had been accepted for review by the Washington Supreme Court. This court held in *Catling* I that "[t]he Constitution does not limit the ability of the states to impose financial obligations on convicted offenders; it only prohibits the enforced collection of financial obligations from those who cannot pay them." *Id.* at 823. It further held that while mandatory LFOs could not be enforced against a defendant's Social Security disability benefits, the Social Security anti-attachment statute, 42 U.S.C. § 407(a), did not operate to invalidate the LFOs, which could be satisfied out of any funds not subject to the statute. This court remanded the

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<sup>3</sup> Mr. Welker's opening brief complains of actions taken in the superior court preceding these rulings on his remission request. Those actions were not timely appealed and will not be addressed.

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case to the sentencing court “to amend its judgment and sentence to indicate that the LFOs may not be satisfied out of any funds subject to 42 U.S.C. § 407(a).” *Id.* at 826.

At oral argument the parties agreed that Mr. Welker’s appeal should be stayed pending a decision from the Supreme Court in *Catling II*. Following issuance of the Supreme Court’s decision, the stay was lifted.

#### ANALYSIS

The Supreme Court’s decision in *Catling II* resolves the issues on appeal. The Supreme Court held in *Catling II* that this court’s decision had

appropriately applie[d] the plain language of 42 U.S.C. § 407(a). The remedy employed adheres to § 407(a)’s mandate that no Social Security disability benefits are available to satisfy a debt, while at the same time recognizes that nothing in § 407(a) immunizes criminal defendants receiving Social Security benefits from the imposition of mandatory LFOs—here, the crime victim fund assessment.

193 Wn.2d at 264.

The Supreme Court reversed this court in part because its own intervening decision in *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018), afforded Mr. Catling relief from the criminal filing fee and possibly the DNA<sup>4</sup> collection fee, which are no longer mandatory in all cases. *Catling II*, 193 Wn.2d at 257-59. As for the \$500 crime victim penalty assessment however—the only LFO remaining payable by Mr. Welker—the Supreme Court recognized that it continued to be mandatory under RCW

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<sup>4</sup> Deoxyribonucleic acid.

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7.68.035(1)(a). *Id.* at 259. The court observed that in overhauling Washington’s LFO provisions in 2018, the legislature was explicit about the mandatory character of the crime victim penalty assessment, stating, in House Bill 1783:

“The crime victim penalty assessment under RCW 7.68.035 may not be reduced, revoked, or converted to community restitution hours.”

*Id.* at 259-60 (quoting LAWS OF 2018, ch. 269, §§ 8(5), 13(3)(f)). Elsewhere, it stated,

“An offender being indigent . . . is not grounds for failing to impose . . . the crime victim penalty assessment under RCW 7.68.035.”

*Id.* at 260 (quoting LAWS OF 2018, ch. 269, § 14(1)).

The Supreme Court held that this court’s remand order in *Catling I* “does not leave Catling in legal limbo, that is, with a mandatory LFO imposed but with no directive from the court on how to properly resolve it,” explaining, “Washington’s LFO provisions address this possibility, authorizing the county clerk to monitor a defendant’s changing circumstances and to alter the defendant’s payment schedule as needed.” *Catling II*, at 265 (citing RCW 9.94A.760(8)(b)). It characterized RCW 9.94A.760(8)(b) as “authoriz[ing] the clerk of the court to require the defendant to report to the clerk’s office to provide periodic updates regarding his financial status, and here, that would include whether the defendant has any assets other than his Social Security disability benefits.” *Id.* It rejected the suggestion that the requirement that Mr. Catling report periodically was overly burdensome. *Id.* at n.6.

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The trial court's order requiring Mr. Welker to present a financial declaration and any supporting documentation to the superior court LFO clerk annually in order to qualify for continuing suspension of collection is consistent with the procedure that the Supreme Court agreed could be required of Mr. Catling.

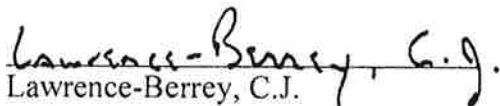
Mr. Welker requests an award of attorney fees under RCW 9.94A.7709, which provides for such an award to an LFO obligor if he or she prevails, in an action to enforce an LFO, where the obligee has acted in bad faith in connection with the proceeding in question. This appeal does not involve an action to enforce an LFO and Mr. Welker has not prevailed.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
Siddoway, J.

WE CONCUR:

  
Lawrence-Berrey, C.J.

  
Korsmo, J.

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