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Division II
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ALEXANDER HUCKINS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 16-1-00519-4

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court abused its discretion by requiring \$1000 bail as a pre-trial condition of release when the defendant was charged with Assault in the Second Degree with a deadly weapon and a domestic violence allegation?
2. Whether the court erred by declining to exercise discretion regarding whether to order or waive the requirement that Huckins pay supervision fees as determined by the Dept. of Corrections such that the case should be remanded for resentencing on this issue?

II. STATEMENT OF THE CASE

On Nov. 15, 2016, Alex Evans was at his residence when his roommate, Huckins, produced a knife and threatened Evans with it. CP 43. Evans told officers that Huckins threatened to stab Evans with the knife. *Id.* Evans reported that Huckins was upset about his Facebook account being hacked and that Huckins, thinking Evans was involved, was telling Evans to tell the truth while threatening him with the knife. *Id.* Evans stated that the knife was a fixed blade and that Evans was cowering in an effort to calm Huckins down and to avoid getting stabbed. *Id.*

Officers interviewed Huckins and Huckins admitted that he had been upset all day as his Facebook account had been hacked and that he was raging

mad and “in the black” all day. *Id.* Huckins was so angry that he could not remember anything that day. *Id.* Huckins tried to calm himself with meditation but he kept getting interrupted. *Id.* Officers recovered a knife with a four-inch fixed blade that Huckins kept on his person in a nylon sheath. *Id.*

On Nov. 16, 2016, the State filed a motion for an order determining probable cause and an information charging the defendant with Assault in the Second Degree with a deadly weapon and a Domestic Violence allegation. CP 39, 41, 42. The motion was supported by the certified statement of Port Angeles Police Dept. Officer Luke Brown. CP 43. The trial court found probable cause for the arrest of Huckins and for the filing of the information and continued cognizance of the defendant. CP 41.

On Nov. 16, 2016, the parties addressed conditions of release at Huckins first appearance on the charges. RP 3. The State requested the trial court impose a \$5,000.00 bail requirement. RP 3. In addition to the statement by Officer Brown, the court was presented with information Huckins was recently convicted of Assault in the Fourth Degree with Domestic Violence within the past year. RP 11. Huckins was the respondent of a number of no contact orders as both a juvenile and an adult. RP 8–9. There was also a current no contact order in effect against Huckins. RP 9. Defense counsel was of the opinion that mental health court would be a good condition for pre-trial release. RP 8–9.

The court voiced concern regarding the recent assault with domestic violence conviction and the current domestic violence nature of the new felony assault charge. RP 11, 13. The trial court inquired regarding Huckins' financial ability to post bail (RP 10) and then expressed its concerns and imposed a \$1,000.00 bail requirement:

No it's really not that, it's just the actual, the fact that he was convicted of a domestic violence assault last year and this year he's charged with another domestic violence assault, a more serious one, again, is the Court's concern, and I'm a little bit nervous about just releasing him because I don't really understand this whole thing and it did involve, allegedly, somebody being told that he was going to get stabbed in the gut with a knife that was pulled on him, which does not sound good to the Court. I think what I'm going to do is, I may change my mind on this but at this point I'm going to set a small amount of bail. I know it's less than the State is seeking but I'm going to set bail at \$1,000.00. I think to Mr. Huckins that would be a lot of money and I might give some thought to the special report calendar, especially if I knew a little more about what Mr. Huckins was doing, if he's actively engaged in some sort of treatment or counseling and I guess I'm a little bit concerned about what his relationship is with this house and what he has there, if his possessions are there and that kind of thing and I don't need to know all that right today but it just seems like those are the kind of the issues that I would –

RP 14.

On Jan. 3, 2017, Huckins accepted a plea offer and entered a plea of guilty to an amended and reduced charge of Harassment, a class C felony. CP 26, 29; RP 22, 27. The agreed recommendation was that Huckins would serve 54 days jail and receive credit for 54 days served and be released. CP 28; RP 27.

The trial court declined to waive the cost of supervision fees and then declined to impose any legal financial obligations including those that are statutorily mandatory. RP 34–35; CP 20.

I don't know if I even have the ability to say that DOC, or that I can waive the DOCs supervision cost. I haven't even seen anything like that so here's what I'm going to do. I'm not going to waive his DOC supervision costs. If they want to impose them they can.

RP 34.

III. ARGUMENT

A. THIS COURT SHOULD DECLINE TO CONSIDER THE TRIAL COURT'S DECISION ON CONDITIONS OF RELEASE BECAUSE THE ISSUE IS MOOT.

“A case or an issue is moot when the court can no longer provide effective relief.” *State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995) (citing *Washam v. Pierce Cy. Democratic Cent. Comm.*, 69 Wn. App. 453, 457, 849 P.2d 1229 (1993), *review denied*, 123 Wn.2d 1006 (1994)).

Here, Huckins was released after he was sentenced as he received credit for his entire sentence of 54 days. Therefore, this Court can no longer provide any relief as Huckins was released from custody on or about Jan. 3, 2017. Nevertheless, Huckins argues that the Court should accept review of this issue on the basis that the trial court failed to follow the presumption of release under CrR 3.2 when requiring him to post \$1000.00 bail and that the bail requirement was unconstitutionally excessive because he could not post

it. Huckins argues that this is an issue of continuing and substantial public interest and is likely to evade review.

This Court may still reach the merits of a moot issue if it involves matters of a continuing and substantial public interest. *In re Det. of W.R.G.*, 110 Wn. App. 318, 322, 40 P.3d 1177 (2002). “But challenges that turn on facts unique to a particular case and that are unlikely to recur will not support review.” *Id.* (citing *In the Detention of R.A.W.*, 104 Wn. App. 215, 221, 15 P.3d 705 (2001) (whether trial court had good cause to continue detainee's hearing involved facts unique to detainee's case and was unlikely to recur)).

First, Huckins' claim fails to present an issue of continuing and substantial public interest as it has already been determined that the mere fact a person cannot post bail does not make bail unconstitutionally excessive and that \$5000 bail for a violent class B felony punishable up to 10 years is not excessive based upon the nature of the offense alone. *See Ex Parte Rainey*, 59 Wash. 529, 110 P. 7 (1910) (The \$5000 bail requirement set in *Rainey*, adjusted for inflation, would be more than \$123,000 in 2017. *See Inflation Calculator available at <http://www.usinflationcalculator.com/>*); *see also State v. Montague*, 73 Wn.2d 381, 392, 438 P.2d 571 (1968) (finding that \$5000 bail requirement pending appeal of a possession of marijuana case not excessive).

Furthermore, the \$1000.00 bail requirement in this case was a

discretionary figure arrived at by a review of facts and circumstances that are unique to Huckins' history and this case alone and they are not likely to recur. In fact, discretionary matters often center on facts that are unique to a particular case and are determined to be unlikely to recur and therefore moot. *See, e.g., In re W.R.G.*, 110 Wn. App. at 322 ("W.R.G.'s challenges to the sufficiency of the evidence turns on facts unique to his particular cases and the trial court's discretionary decision to give the case to the jury. Thus, these claims do not involve matters of continuing and substantial public interest justifying review." (citing *See, e.g., In the Detention of R.W.*, 98 Wn. App. 140, 143–44, 988 P.2d 1034 (1999) (issue of admissibility of transcript testimony was moot because it involved private question, would not likely recur, and was a matter of discretion))).

Moreover, there is a remedy available when an accused believes that bail was set in an amount which violates his rights under CrR 3.2. In such cases, the defendant may file a motion to reduce bail or for release on personal recognizance and the court's decision on that motion will be a final decision which is subject to discretionary review. *See* CrR 3.2 (j)(1) and (2); *see also Stack v. Boyle*, 342 U.S. 1, 3, 76 S.Ct. 1, 96 L.Ed. 3 (1951) ("Relief in this type of case must be speedy if it is to be effective.") "The proper procedure for challenging bail as unlawfully fixed is by motion for reduction of bail and appeal to the Court of Appeals from an order denying such

motion.” *Id.* at 4.

When a defendant files a motion for release or reduction of bail, the Superior Court shall hold a hearing on the matter within a reasonable amount of time. CrR 3.2(j)(2). The Superior Court must ensure that a record is made and may allow additional testimony and must make findings on the record if it decides to maintain or impose bail. *Id.* This process ensures that the matter will be properly reviewable. A Superior Court’s denial of a motion for reduction of bail is an act which is then reviewable as a matter of discretion under RAP 2.3(a).

Here, Huckins is no longer in custody on pre-trial release making it impossible for this Court to grant relief. Furthermore, the trial court’s discretionary decision to require \$1000.00 bail was based upon facts and circumstances unique to Huckins’ history and this case which are not likely to recur. Finally, Huckins never filed a motion to reduce bail and seek review in a more timely and effective manner although such procedure is readily available in all cases under CrR 3.2(j). This mitigates any need to accept review of this moot issue.

Therefore, the issue of bail in this case is moot and this Court should decline to review.

B. THE COURT PROPERLY EXERCISED DISCRETION WHEN IMPOSING A BAIL REQUIREMENT ON CONDITIONS OF RELEASE.

“We review application of court rules to particular facts de novo.”

State v. Rose, 146 Wn. App. 439, 445, 191 P.3d 83 (2008) (citing *Butler v. Kato*, 137 Wn. App. 515, 521, 154 P.3d 259 (2007)). “Pretrial release decisions are reviewed for an abuse of discretion.” *State v. Kelly*, 60 Wn. App. 921, 928, 808 P.2d 1150 (1991) (citing *State v. Johnson*, 105 Wn.2d 92, 96, 711 P.2d 1017 (1986)).

The determination of whether the defendant is likely to flee the state or pose a substantial danger to the community is a factual determination involving the exercise of sound discretion of the trial judge. We have repeatedly stated that we will not substitute our judgment for that of the trial judge when there is substantial evidence to support his findings.

State v. Smith, 84 Wn.2d 498, 505, 527 P.2d 674 (1974) (citations omitted).

1. The Court should leave undisturbed the trial court’s exercise of discretion requiring bail as a condition of release because there was substantial evidence supporting the trial court’s finding that there was a danger that the defendant would commit a violent crime.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused’s personal recognizance pending trial unless: . . .

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, “violent crimes” are not limited to crimes defined as violent offenses in RCW 9.94A.030.

CrR 3.2(a) (emphasis added).

Upon a showing that there is a substantial danger that the defendant will commit a violent crime, seek to intimidate witnesses, or interfere with the administration of justice, CrR 3.2(d) allows the trial court to require the defendant to post a secured or unsecured bond or cash as a condition of release. The requirement of bail may only be imposed if there are no lesser restrictive conditions which would reasonably assure the safety of the community and the court must consider the defendant’s financial resources in determining an adequate amount for that purpose. CrR 3.2(d).

In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

- (1) The accused's criminal record;
- (2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- (3) The nature of the charge;
- (4) The accused's reputation, character and mental condition;
- (5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;
- (6) Whether or not there is evidence of present threats or intimidation directed to witnesses;
- (7) The accused's past record of committing offenses while on pretrial release, probation or parole; and
- (8) The accused's past record of use of or threatened use of deadly

weapons or firearms, especially to victim's or witnesses.

CrR 3.2(e) (Relevant Factors-Showing of Substantial Danger).

Here, there was substantial evidence supporting a determination that Huckins posed a substantial danger to the community and that some bail, although minimal, should be required.

Huckins' alleged actions of pulling a knife out and threatening to kill his roommate by stabbing him was an extreme response over mere suspicion that his roommate had hacked into his Facebook account. It appeared that Huckins was not capable of acting either reasonably or rationally as the victim tried to calm Huckins down while cowering before him in fear for his life. Huckins was in such a rage that he claimed he blacked out for half the day and did not remember anything; including pulling a knife from a sheath on his belt and threatening to stab his roommate in the gut. Huckins actions may have stemmed from his mental health issues, but that is a relevant factor for the court to consider. CrR 3.2(e)(4).

Moreover, the court was presented with information that Huckins had just, within the past year, been convicted for Assault in the Fourth Degree, Domestic Violence. RP 11. The court also considered the escalation from the recent assault conviction to the new felony domestic violence assault charge and that Huckins produced a knife with a fixed 4 inch blade and threatened to stab another person in the gut. CP 43. The court was also concerned about

what other possessions Huckins might have in his home. RP 14. Additionally, Huckins was restrained by a number of no contact orders through his juvenile and adult life.

These facts show a problematic and violent past in which no contact orders were repeatedly imposed against Huckins, and there was evidence of repetition and escalation of such events. The facts before the court were alarming at a minimum and the court was not comfortable just releasing Huckins with no bail requirement. RP 13.

Furthermore, the court followed CrR 3.2(d) to the letter and offered to consider lesser alternatives to bail if more information was provided about whether Huckins was involved in treatment or counseling for his mental illness. RP 14. The court also considered Huckins' financial conditions and imposed \$1000.00 when the State asked for \$5,000.00.

Therefore, the court's determination that some bail was necessary was supported by substantial evidence and the court properly exercised its discretion.

Huckins argues that the court failed to apply the presumption of release required under CrR 3.2 and that there was insufficient evidence to rebut that presumption because the order did not expressly make a finding of "substantial danger" that the accused will commit a violent crime. Appellant's Br. at 15.

This argument fails in part because CrR 3.2(d) requires a *showing* of substantial danger; it does not require the court to make an express written finding of substantial danger or the state to prove it. *See* Appellant Br. at 16; CrR 3.2(d). Moreover, the facts on record support such a finding although it is not required and there is no evidence in the record that the court did not adhere to such a standard although the boilerplate in the Conditions of Release do not use the term “substantial.”

Further, Huckins cites to *State v. Rose* for the proposition that the court declined to find evidence sufficient to prove a “substantial danger” (of something unspecified) despite the defendant Wilson’s charges of unlawful possession of a firearm, a previous kidnapping conviction, and a prior bail jump. *See* Appellant’s Br. at 16; *see also Rose*, 146 Wn. App. at 451.

This argument fails because pre-trial bail due to a showing the defendant posed a substantial danger of committing a violent offense was not at issue in *Rose*. The State, not requesting bail, recommended weekly UAs to ensure Wilson’s appearance rather than to address any danger to the community. *Rose*, 146 Wn. App. at 453. Thus the issue in *Rose* was whether the court abused its discretion by requiring weekly UAs *to ensure Wilson would appear in court*. *Id.* (“But no evidence supports that the trial court considered [whether Wilson posed a substantial danger] as a basis for imposing the weekly UAs.”).

Here, unlike in *Rose*, the concern of the State and the trial court was whether Huckins presented a danger to the community. RP 11. Therefore, *Rose* does not apply.

Huckins also cites to *Butler v. Kato*, 137 Wn. App. 515, 154 P.3d 259 (2007). *Butler v. Kato* was also not a case where a pre-trial bail requirement was at issue. *Kato* was about whether the trial court abused its discretion by requiring the defendant, charged with DUI, to obtain an evaluation for alcohol dependency, follow any recommended treatment, and attend three weekly self-help meetings as a pre-trial release condition *to ensure the appearance of the defendant*. *Id.* at 260–62. (holding there was no information showing Butler was a risk to not appear as required as “Neither the district nor the superior court cited to any criminal history, a history of nonappearance, or disregard for court orders. Indeed the superior court noted that Butler had no history.”)

Therefore, *Butler v. Kato* also does not apply to this case where bail was imposed due to a substantial danger Huckins would commit a violent crime rather than to ensure his appearance for court.

CrR 3.2(d) only requires that there be a showing of substantial danger that Huckins would engage in a violent crime or interfere with the administration of justice and it does not require that the trial court make an express finding as Huckins suggests. *See* Appellant Br. at 16; CrR 3.2(d).

Furthermore, substantial evidence supports the trial court's determination that Huckins presented a danger to the community which in turn supports the pre-trial release condition requiring \$1000.00 bail. *See Smith*, 84 Wn.2d at 505.

Therefore, this Court should find that the trial court's pretrial release decision requiring \$1000.00 bail was not an abuse of discretion.

2. The court properly exercised its discretion in determining the amount of bail to impose and the \$1000.00 bail amount was not excessive.

"Having found that bail was necessary, the amount was a matter within court discretion to be reversed on appeal only for manifest abuse." *State v. Reese*, 15 Wn. App. 619, 620, 550 P.2d 1179 (1976).

"Under a manifest abuse of discretion standard, "[t]he trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion." *In re Welfare of N.M.*, 184 Wn. App. 665, 673, 346 P.3d 762 (2014) (citing *In re Marriage of Landry*, 103 Wn.2d 807, 809–10, 699 P.2d 214 (1985)). Abuse is manifest when "it cannot be justified by any reasonable view which may be taken of the record." *See State v. P.*, 37 Wn. App. 773, 779, 686 P.2d 488 (1984) (citing *State v. Strong*, 23 Wn. App. 789, 795, 599 P.2d 20 (1979)).

Huckins argues that the \$1000.00 bail requirement was unconstitutionally excessive because he could not post it. *See Appellant's Br.*

at 21. This claim fails.

Although excessive bail may not be required, Const. art. I, sec. 14, a trial court may constitutionally set bail in an amount that the person cannot post. *See, e.g., Ex Parte Rainey*, 59 Wash. at 110 (bail of \$5000 imposed upon a laboring man accused of a felony described as atrocious and unprovoked, and which resulted in injury to the victim is not so unreasonable or excessive in amount as to require reduction); *see also Montague*, 73 Wn.2d at 392 (finding a \$5000 bail requirement pending appeal of a possession of marijuana conviction was not excessive).

The \$5000.00 bail set in *Rainey*, adjusted for inflation, would be more than \$123,000.00 in 2017. *See Inflation Calculator available at <http://www.usinflationcalculator.com/>*. Viewed another way, the \$5000.00 imposed in 1910 is about *123 times more* than the \$1,000.00 bail imposed in this case in 2017.

Here, the trial court, in compliance with CrR 3.2(d) asked Huckins about his source of income. The court considered Huckins' claim that his only source of income was from social security disability and imposed a \$1000.00 bondable bail requirement rather than \$5000.00 recommended by the State.

Furthermore, it is well established that "a bail setting is not constitutionally excessive merely because a defendant is financially unable to

satisfy the requirement.” *U.S. v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988) (citing *Pugh v. Rainwater*, 572 F.2d 1053 (5th Cir.1978); *States v. James*, 674 F.2d 886 (11th Cir.1982); *United States v. Beaman*, 631 F.2d 85 (6th Cir.1980); *Williams v. Farrior*, 626 F.Supp. 983 (S.D.Miss.1986)); *See also Hodgdon v. U.S.*, 365 F.2d 679, 687 (8th Cir. 1966) (citing *White v. United States*, 330 F.2d 811 (8th Cir.), *cert. denied* 379 U.S. 855 (1964); *Pilkinton v. Circuit Court*, 324 F.2d 45 (9th Cir. 1963) (“[B]ail is not excessive merely because the defendant is unable to pay it.”).

‘The purpose for bail cannot in all instances be served by only accommodating the defendant's pocketbook and his desire to be free pending possible conviction.’ *Hodgdon*, 365 at 687 (citing *White v. United States*, *supra*, 330 F.2d at 814).

A reasonable judge based on the circumstances in this case could easily determine that more than \$1000.00 bondable bail would be appropriate to assure the safety of the community. Therefore, the court did not abuse its discretion.

Huckins also claims that under, *Stack v. Boyle*, it is improper to rely on the nature of the charge as the primary or sole basis for determining issues of pretrial release. Appellant Br. at 17 (citing *Stack v. Boyle*, 342 U.S. 1, 5–6, 76 S.Ct. 1, 96 L.Ed. 3 (1951)). *Boyle* does not support such a sweeping proposition.

The *Boyle* Court specifically pointed out that it was the *unusually* high amount of bail which created the problem: “To infer from the fact of indictment alone a need for bail *in an unusually high amount* is an arbitrary act.” *Boyle*, 342 U.S. at 6 (emphasis added).

If bail in an amount greater than that *usually fixed* for serious charges of crimes is required in the case of any of the petitioners, that is a matter to which evidence should be directed in a hearing so that the constitutional rights of each petitioner may be preserved.

Id. (emphasis added).

[E]ach petitioner has been fixed in a sum *much higher* than that usually imposed for offenses with like penalties and yet there has been no factual showing to justify such action in this case.

Id. at 5 (emphasis added).

Here, there has been no showing that the \$1000.00 bail requirement was an unusually high amount for Assault in the Second Degree charges. In fact, Washington law has already established that \$5000.00 in 1910 was not excessive although the only consideration before the court was the “atrociousness of the offense” or in other words, the nature of the crime. *See, e.g., Ex Parte Rainey*, 59 Wash. at 110.

Although the victim in this case was not physically injured, Assault in the Second Degree with a deadly weapon is a serious charge and \$1,000.00 in 2017 is so far removed from the \$5,000.00 amount in *Rainey* in 1910 or *Montague* in 1968, that the claim of excessiveness fails. At best, reasonable

minds may differ as to whether the \$1000.00 bail was warranted in this case.

Therefore, this Court should find that the trial court did not abuse its discretion and that the \$1000.00 bail requirement was not excessive.

3. Huckins' equal protection and due process violations claims lack merit.

Huckins essentially argues that his \$1000 bail requirement violated his equal protection and due process rights because he could not afford to post bail. In support of his argument, Huckins cites to *State v. Simmons*, 152 Wn.2d 450, 458, 98 P.3d 789 (2004) stating that, "Equal Protections requires that similarly situated individuals receive similar treatment under the law." Huckins also cites to *Reanier v. Smith* for the proposition that the state violates due process when it discriminates on the basis of wealth. 83 Wn.2d 342, 517 P.2d 949 (1974) (requiring that defendants held in custody pre-trial due to their inability to post bail be given credit for all pre-trial detention time toward their sentences).

"Liberty interests come under the due process clause, while classification or differing treatment based on status implicate the equal protection clause. Where liberty interests and such classifications converge, as in the present situation, most of the decisions in this area rest on an equal protection framework." *Matter of Mota*, 114 Wn.2d 465, 474, n.1, 788 P.2d 538 (1990) (citing *Bearden v. Georgia*, 461 U.S. 660, 665, 103 S.Ct. 2064, 2068, 76 L.Ed.2d 221 (1983)).

“[T]he denial of a liberty interest due to a classification based on wealth is subject to intermediate scrutiny. Under intermediate scrutiny, the state must prove the law furthers a substantial interest of the state.” *Matter of Mota*, 114 Wn.2d at 474 (citing *Plyler v. Doe*, 457 U.S. 202, 217–18, 102 S.Ct. 2382, 2395, 72 L.Ed.2d 786 (1982); *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987)).

“The government has compelling interests in preventing crime and ensuring that those accused of crimes are available for trial and to serve their sentences if convicted.” *Westerman v. Cary*, 125 Wn.2d 277, 293, 892 P.2d 1067 (1994); *see also U.S. v. Salerno*, 481 U.S. 739, 749, 107 S.Ct. 2095, 2103, 95 L.Ed.2d 697 (1987) (citing *De Veau v. Braisted*, 363 U.S. 144, 155, 80 S.Ct. 1146, 1152, 4 L.Ed.2d 1109 (1960)) (“The government’s interest in preventing crime by arrestees is both legitimate and compelling.”).

While the primary function of bail is to ensure an accused’s appearance at court, courts are allowed to pursue other compelling interests through regulation of pretrial release. *United States v. Salerno*, 481 U.S. 739, 753, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987); *In re Habeas Corpus of York*, 9 Cal.4th 1133, 1145, 892 P.2d 804, 40 Cal.Rptr.2d 308 (1995). Public safety is one such compelling interest.

Blomstrom v. Tripp, 402 P.3d 831, 849 (Wash., 2017) (Gonzalez dissenting in part).

“Because pretrial restrictions on liberty pending a judicial determination of probable cause do not violate the Fourth Amendment, the

Court has determined that such detention does not violate substantive due process unless it constitutes impermissible punishment. *Bell*, at 535, 99 S.Ct. at 1872; *see also United States v. Salerno*, 481 U.S. 739, 748, 107 S.Ct. 2095, 2102, 95 L.Ed.2d 697 (1987) (recognizing that the “Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest” and finding that detention until trial on the basis of future dangerousness under the Bail Reform Act of 1984 does not violate substantive due process).” *Westerman*, 125 Wn.2d at 293.

Here, as argued above, it is clear that the court’s decision on bail was based upon concern was that Huckins posed a danger to the community which is a compelling state interest. RP 11, 13–14. Under the lesser intermediate scrutiny standard, this action by the court clearly passes muster because a \$1000.00 bail requirement furthers the state’s interest in community safety. Furthermore, the \$1000.00 bail requirement was not excessive and was reduced in such fashion from the \$5000.00 recommended bail as to be narrowly tailored when all that is required is that the action further a legitimate interest of the state.

Furthermore, Huckins provides no authority which states that the mere inability to post bail due to lack of financial ability necessarily equates to a violation of equal rights protections or due process. Such an argument would lead to absurd results. Huckins argument leads to a conclusion that if a

defendant had no money or job or other financial resources, then the court could not require any bail despite a showing of substantial danger to the community or even a defendant's outright refusal to appear in court as required. Huckins argument also ignores the foundations of due process and equal protections law where a State has a compelling interest.

Finally, it is clear under Washington Law that the rules on release of the accused and the setting of bail under CrR 3.2 are not intended to punish. *Harris v. Charles*, 171 Wn.2d 455, 468, 256 P.3d 328 (2011) (“The history of CrR 3.2, a rule originally drafted to overhaul the monetary bail system, confirms that conditions of pretrial release were not intended to be punitive.”).

Huckins refers to the widespread concern regarding persons presumed innocent yet await trial in custody because they have not been able to post bail. This has always been of great concern to our courts and will continue to be. *See generally, Reanier v. Smith*, 83 Wn.2d at 349; *see also Bearden v. Georgia*, 461 U.S. 660, 664, 103 S.Ct. 2064, 2068, 76 L.Ed.2d 221 (1983) (“This Court has long been sensitive to the treatment of indigents in our criminal justice system.”).

However, that is precisely why our court rules are carefully written to address these concerns while at the same time balancing the interests involved. *See CrR 3.2(d)(6)* (requiring that bail be the least restrictive

measure and for the court to consider financial ability to make sure the bail requirement would reasonably assure the safety of the community); *see also Harris*, 171 Wn.2d at 468.

Furthermore, our court system requires due process before a person's liberty may be restrained while awaiting trial in the first place. *See Westerman*, 125 Wn.2d at 293 (citing *Gerstein v. Pugh*, 420 U.S. 103, 124–25, 95 S.Ct. 854, 868–69, 43 L.Ed.2d 54 (1975) (“To justify further pretrial detention, a fair and reliable determination of probable cause must be made by a judicial officer promptly following the arrest.”)).

Ultimately, a bail requirement pending trial is not necessarily an unconstitutional violation of due process or equal protections merely because a defendant may not be able to post it or doesn't have the resources or personal connections to have it posted on the defendant's behalf. *See Petition of Fogle*, 128 Wn.2d 56, 63, 904 P.2d 722 (1995) (“[W]e note failure to pay set bail does not necessarily represent a wealth-based classification to merit semi-suspect status. The determination of bail may depend on many factors beyond wealth, such as perceived dangerousness and likelihood of flight. *See CrR 3.2(b)*. Moreover, a prisoner may elect not to pay bail for reasons other than financial condition.”); *see also Petition of Cromeenes*, 72 Wn. App. 353, 358, 864 P.2d 423 (1993) (citing *Matter of Williams*, 121 Wn.2d 665, 853 P.2d 444 (1993) (citing *Bell v. Wolfish*, 441 U.S. 520, 534, 99 S.Ct. 1861,

1871, 60 L.Ed.2d 447 (1979))) (“[T]he needs of the justice system in assuring the presence of the defendant at trial are deemed sufficient to justify the application of bail and presentence incarceration, even if equal protection concerns are raised by the inability of an indigent to post bail.”)).

Here, the court considered Huckins financial ability in addition to other factors showing a substantial danger to the community and lowered the recommended bail. This action by the court does not violate due process or equal protections because it furthers a legitimate state interest in protecting the public, preventing crime, protecting the judicial process, and it is not intended to be punitive. Therefore, Huckins claim that his equal protections and due process rights were violated fails.

C. THIS STATE CONCEDES THAT THE COURT HAS DISCRETION TO WAIVE SUPERVISION FEES AND THAT PARAGRAPH 4.2.1 SHOULD BE STRICKEN FROM THE JUDGMENT AND SENTENCE.

“Unless waived by the court, as part of any term of community custody, the court shall order an offender to: . . . (d) Pay supervision fees as determined by the department[.]” RCW 9.94A.703(2) (Waivable conditions).

“When a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law.” *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017) (citing *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005)).

Where a sentencing court errs with respect to a statutory sentencing provision by failing to exercise discretion, the proper remedy is for remand for resentencing to amend the judgment. *See McFarland*, 189 Wn.2d at 58; *see also State v. Broadaway*, 133 Wn.2d 118, 136, 942 P.2d 363 (1997) (citing *Cf. In re Habbitt*, 96 Wn.2d 500, 636 P.2d 1098 (1981) (where the trial court improperly applied firearm findings to enhance first degree robbery convictions, remand for resentencing, rather than simply striking firearm enhancements, is the appropriate remedy)).

The State concedes that the trial court may waive a condition that the defendant pay supervisions fees as determined by the department under RCW 9.94A.703(2)(d). The court did not waive this condition, but the court did not order it either. The court admitted that it did not know if it had the authority to waive the supervision fees. RP 34. Therefore the court failed to exercise its discretion and erred by doing nothing where the statute requires the court to either waive or order payment of supervision fees.

Therefore, the State moves this Court to remand this cause to the trial court for resentencing on this issue. The State also concedes that the provision relating to RCW 9.94A.120 is a scrivener's error and may be stricken from the judgment and sentence.

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IV. CONCLUSION

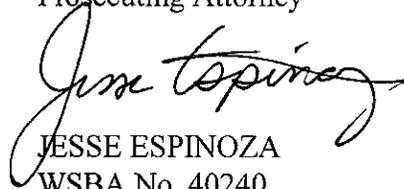
The Court should decline to review the issue of whether bail was excessive and violated Huckins right to due process and equal protections because the issue is moot. Further, the exception to the mootness doctrine does not apply because the trial court, in its bail determination, carefully exercised its discretion in accordance with CrR 3.2 based on the facts and circumstances unique to this particular case and the situation is not likely to recur. Thus, this issue is not of substantial public interest.

Furthermore, Huckins' due process and equal protection claims fail because the mere inability to post bail does not establish such violations per se. The State has at least a legitimate interest in protecting the community from danger and preventing crime as well as maintaining the integrity of the judicial process. This interest is furthered by the bail requirement in this case which the court set only after considering Huckins' danger to the community, danger of committing a violent crime, criminal history, mental health, the facts and nature of the case, and Huckins' financial ability.

Finally, the State concedes that the case should be remanded to address the issue of whether the court will impose or waive the condition that the defendant pay supervision fees as determined by the department and to strike the provision relating to RCW 9.94A.120.

Respectfully submitted this 1st day of December, 2017.

MARK B. NICHOLS
Prosecuting Attorney

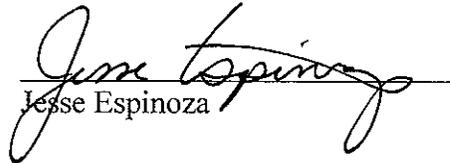
A handwritten signature in cursive script, appearing to read "Jesse Espinoza", written in black ink.

JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Kathryn Russell Selk on December 1, 2017.

MARK B. NICHOLS, Prosecutor


Jesse Espinoza

CLALLAM COUNTY PROSECUTING ATTORNEY'S OFFICE

December 01, 2017 - 4:10 PM

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