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Court of Appeals
Division II
State of Washington
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NO. 50302-6-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JEREME D. NORBERG,

Appellant.

RESPONDENT'S BRIEF

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**HALL OF JUSTICE
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TABLE OF CONTENTS

	PAGE
I. ISSUE.....	1
II. SHORT ANSWER.....	1
III. FACTS	1
IV. ARGUMENT.....	1
RCW 43.43.7541, RCW 7.68.035, AND RCW 36.18.020(2)(h) DO NOT VIOLATE SUBSTANTIVE DUE PROCESS BY MANDATING THAT THE TRIAL COURT IMPOSE LFOs EVEN WHEN THE DEFENDANT IS INDEGENT.	1
V. CONCLUSION	4

TABLE OF AUTHORITIES

	Page
Cases	
<u>Amunrud v. Board of Appeals</u> , 158 Wn.2d 208, 143 P.3d 571 (2006)	3
<u>Nielsen v. Department of Licensing</u> , 177 Wn. App. 45, 309 P.3d 1221 (2013).....	3
<u>State v. Blank</u> , 131 Wn.2d 230, 930 P.2d 1213 (1997)	3
<u>State v. Lundy</u> , 176 Wn.App. 96, 308 P.3d 755 (2013).....	2, 3
<u>State v. Mathers</u> , 193 Wn. App. 913, 376 P.3d 1163, review denied, 186 Wn.2d 1015, 380 P.3d 482 (2016).....	3
<u>State v. McCuiston</u> , 174 Wn.2d 369, 275 P.3d 1092 (2012)	2
<u>State v. Pendell</u> , 2018 WL 287503	1
<u>State v. Seward</u> , 196 Wn. App. 579, 384 P.3d 620 (2016), review denied, 188 Wn.2d 1015, 396 P.3d 349 (2017).....	4
Statutes	
RCW 10.01.160(3).....	2
RCW 36.18.020(2)(h)	i, 1, 2, 4
RCW 43.43.7541	i, 1, 2, 4
RCW 7.68.035	i, 1, 2, 4
Rules	
GR 14.1	1

I. ISSUE

1. DO RCW 43.43.7541, RCW 7.68.035, AND RCW 36.18.020(2)(h) VIOLATE SUBSTANTIVE DUE PROCESS BY MANDATING THAT THE TRIAL COURT IMPOSE LFOs EVEN WHEN THE DEFENDANT IS INDEGENT?

II. SHORT ANSWER

1. NO, RCW 43.43.7541, RCW 7.68.035, AND RCW 36.18.020(2)(h) DO NOT VIOLATE SUBSTANTIVE DUE PROCESS BY MANDATING THAT THE TRIAL COURT IMPOSE LFOs EVEN WHEN THE DEFENDANT IS INDEGENT.

III. FACTS

The State agrees with appellant's summary of the facts.

IV. ARGUMENT

RCW 43.43.7541, RCW 7.68.035, AND RCW 36.18.020(2)(h) DO NOT VIOLATE SUBSTANTIVE DUE PROCESS BY MANDATING THAT THE TRIAL COURT IMPOSE LFOs EVEN WHEN THE DEFENDANT IS INDEGENT.

RCW 43.43.7541, RCW 7.68.035, and RCW 36.18.020(2)(h) do not violate substantive due process. Pursuant to State v. Pendell, 2018 WL 287503, an unpublished opinion filed on or after March 1, 2013, that is not binding authority, but may be accorded such persuasive value as the court deems appropriate under GR 14.1, "[t]he law distinguishes between discretionary and mandatory legal financial obligations. RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 respectively mandate that the court impose a victim assessment fee, a criminal case filing fee, and

the DNA collection fee regardless of the defendant's ability to pay. Trial courts must impose such fees regardless of a defendant's indigency. State v. Lundy, 176 Wn.App. 96, 102, 308 P.3d 755 (2013). Other legal financial obligations imposed by the trial court, besides restitution, are discretionary. By statute, the court is not authorized to order a defendant to pay discretionary fees unless the defendant possesses or will possess the financial ability to pay. RCW 10.01.160(3) reads:

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” Id. at 4.

In this case, the sentencing court only imposed mandatory legal financial obligations. The appellant challenges the constitutionality of RCW 7.68.035; RCW 36.18.020(2)(h); and RCW 43.43.7541 under the substantive sector of the due process clause. “The law presumes statutes constitutional. State v. McCuiston, 174 Wn.2d 369, 387, 275 P.3d 1092 (2012). [Defendant] carries the burden to establish that a due process violation occurred. State v. Blank, 131 Wn.2d 230, 235, 930 P.2d 1213 (1997).

The Fifth and Fourteenth Amendments to the United States Constitution and article I, section 3 of the Washington Constitution mandate that no person may be deprived of life, liberty, or property

without due process of law. We apply the most lenient and deferential standard, the rational basis standard, when the interests at stake are not fundamental rights. Nielsen v. Department of Licensing, 177 Wn. App. 45, 53, 309 P.3d 1221 (2013). Under rational basis review, we determine whether a rational relationship exists only between the challenged law and a legitimate state interest. Nielsen v. Department of Licensing, 177 Wn. App. at 53. In applying this standard, we may assume the existence of any necessary state of facts which we can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest. Amunrud v. Board of Appeals, 158 Wn.2d 208, 222, 143 P.3d 571 (2006). Unlike when we apply strict scrutiny, narrow tailoring is not required under a rational basis review. Nielsen v. Department of Licensing, 177 Wn. App. at 53.

This court has previously rejected due process challenges to mandatory legal financial obligations. In State v. Lundy, 176 Wn. App. 96 (2013), we determined that mandatory obligations survive constitutional scrutiny because the sentencing scheme prevents imprisonment of indigent defendants. In State v. Mathers, 193 Wn. App. 913, 376 P.3d 1163, review denied, 186 Wn.2d 1015, 380 P.3d 482 (2016), we rejected equal protection and substantive due process challenges to the mandatory legal financial obligations. Finally, in State v. Seward, 196 Wn. App. 579, 384

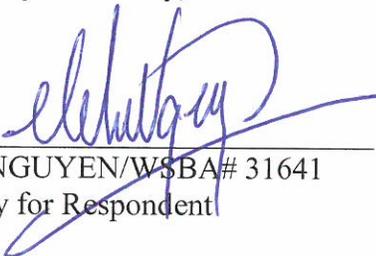
P.3d 620 (2016), review denied, 188 Wn.2d 1015, 396 P.3d 349 (2017), we determined mandatory financial obligations to be rationally related to legitimate state interests.” Id. at p. 4.

Therefore, RCW 43.43.7541, RCW 7.68.035, and RCW 36.18.020(2)(h) do not violate substantive due process.

V. CONCLUSION

The appellant’s appeal should be denied because RCW 43.43.7541, RCW 7.68.035, and RCW 36.18.020(2)(h) do not violate substantive due process.

Respectfully submitted this 24 day of January, 2018.



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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on January 24th, 2018.



Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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