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NO. 50634-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

MICKEY GUAYANTE,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

Clark County Cause No. 97-1-01748-3

The Honorable Jennifer K. Snider, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ISSUES AND ASSIGNMENTS OF ERROR..... 1

STATEMENT OF FACTS AND PRIOR PROCEEDINGS..... 2

ARGUMENT..... 4

This Court should accept the state’s concession and order the trial court to remit the \$7500 attorney’s fees order and the associated interest because Mr. Guayante’s LFO debt of more than \$25,000 poses a manifest hardship on his ability to reenter society upon his release. 4

A. The barriers that Mr. Guayante’s \$25,000 LFO debt places upon his reentry into society constitute manifest hardship for purposes of remission. 7

B. This Court’s order should direct the trial court to remit the interest due upon the order that Mr. Guayante pay attorney’s fees, in addition to the original \$7500 cost. 10

CONCLUSION 11

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

City of Richland v. Wakefield, 186 Wn.2d 596, 380 P.3d 459 (2016).... 5, 8

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 5, 6, 7, 9

State v. Braa, 2 Wn. App.2d 510, 410 P.3d 1176 (2018) 11

State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (2005) 9

State v. O’Dell, 183 Wn.2d 680, 358 P.3d 359 (2015)..... 9

State v. Shirts, 195 Wn. App. 849, 381 P.3d 1223 (2016)..... 8

State v. Sorrell, 2 Wn. App.2d 156, 408 P.3d 1100 (2018) 5, 7, 8, 9

State v. Wilson, 198 Wn. App. 632, 393 P.3d 892 (2017) 8

STATUTES

RCW 10.01.160 1, 5, 8, 11

RCW 10.82.090 10

RCW 19.52.020 10

RCW 36.18.16 6

RCW 4.56.110 10

RCW 9.94A.760..... 6

RCW 9.94A.780..... 6

OTHER AUTHORITIES

Alicia Bannon, Mitali Nagrecha & Rebekah Diller, Brennan Ctr. for
Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010)..... 7

Katherine A. Beckett, Alexes M. Harris & Heather Evans, Wash. State Minority & Justice Comm'n, The Assessment and consequences of Legal Financial Obligations in Washington State (2008) (Wash. State Minority & Justice Comm'n)	6
LAWS OF 2018	5, 8
RAP 1.2.....	4
www.brennancenter.org	7
www.courts.wa.gov	6
www.dictionary.com	10, 11

ISSUES AND ASSIGNMENTS OF ERROR

1. The trial court erred by denying Mr. Guayante's motion to remit discretionary legal financial obligations.
2. The trial court abused its discretion by failing to consider the hardship that Mr. Guayante's legal debt would pose to his reentry into society.
3. Mr. Guayante was eligible for remission of his legal financial obligations under RCW 10.01.160(4).
4. This Court should accept the state's concession regarding remission of Mr. Guayante's discretionary legal financial obligations.
5. This Court should order the lower court to enter an order remitting Mr. Guayante's \$7500 attorney's-fees debt and all related interest.

ISSUE 1: When Mr. Guayante is released from incarceration at the age of fifty-six, his legal financial obligation debt of more than \$25,000 will make it extremely difficult for him to find housing or employment. Should this Court accept the state's concession that remission of the order for Mr. Guayante to pay \$7500 in attorney's fees is appropriate?

ISSUE 2: The state concedes that remission of "the balance" of Mr. Guayante's attorney's-fees award is appropriate and the remission statute refers to remission of the "amount due." Should this Court order the lower court to remit the interest that has accrued on the order for Mr. Guayante to pay attorney's fees in addition to remission of the original amount ordered?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Mickey Guayante pleaded guilty to first degree felony murder in 1998 after a woman who walked in while he was burglarizing her home died of a heart attack two hours after the encounter. Supp. CP, 2/26/98 PSI, pp. 3, 9. The court sentenced Mr. Guayante to 340 months of confinement. Supp. CP, Judgment & Sentence, p. 7. Accordingly, he is expected to be released from the Department of Corrections (DOC) in 2023, at the age of fifty-six. Supp. CP, 2/26/98 PSI, p. 9.

The 1998 sentencing court ordered Mr. Guayante to pay the following legal financial obligations (LFOs): a \$500 victim assessment, a \$110 filing fee, \$7500 in attorney's fees, and a \$250 fine. Supp. CP, Judgment & Sentence, pp. 4-5. The court entered a boilerplate finding that Mr. Guayante had the present ability to pay those LFOs, even though it had also found him to be indigent. Supp. CP, Judgment & Sentence, p. 4; Supp. CP, 11/5/97 Order Appointing Counsel. The court also ordered that Mr. Guayante would not be eligible for a Certificate of Discharge until all of his LFOs had been paid in full. Supp. CP, Judgment & Sentence, p. 11.

Mr. Guayante earned about \$85 per month while in DOC custody and made monthly payments toward his LFOs out of his DOC account for almost twenty years, paying off the \$500 victim assessment. RP 9; *See*

also Attachment 1 to Reply Brief for Motion for Discretionary Review (filed 09/07/17) (showing no balance on the victim assessment).

Even so, by 2017, his debt had grown to more than \$25,000 because of the accrued interest. *See* Attachment 1 to Reply Brief for Motion for Discretionary Review (filed 09/07/17).

In anticipation of his upcoming release and the burden that this significant debt would pose upon his reentry into society, Mr. Guayante moved the trial court to remit the discretionary portion of his LFOs. CP 21-31. He told the court that he will have extreme difficulty finding employment and housing after his release because he is indigent, has no work experience, and will have a Class A felony conviction. RP 5-9. He argued that he needed his debt to be remitted in order to successfully reenter society. RP 9.

Mr. Guayante offered to pay the entirety of his savings, \$470, toward his remaining LFOs, even if the court granted remission. RP 9.

The trial court denied Mr. Guayante's motion, finding that he was unable to establish manifest hardship because all of his basic necessities were provided by DOC during his incarceration. RP 14; CP 39. At the same time, the court again found Mr. Guayante indigent. CP 45-47.

Mr. Guayante moved for discretionary review in this court. CP 39-41. In its response to Mr. Guayante's motion for discretionary review, the

state provided that it had no objection to remission of the balance of Mr. Guayante's debt for the cost of his public defender. Response for Motion to Discretionary Review (08/25/17), p. 5.

A commissioner of the Court of Appeals denied review. Ruling Denying Review (10/04/17). But a panel of this Court granted Mr. Guayante's motion to modify that order and granted review, citing the interest of justice, RAP 1.2(a), and the state's concession. Order Granting Motion to Modify (02/07/18).

ARGUMENT

THIS COURT SHOULD ACCEPT THE STATE'S CONCESSION AND ORDER THE TRIAL COURT TO REMIT THE \$7500 ATTORNEY'S FEES ORDER AND THE ASSOCIATED INTEREST BECAUSE MR. GUAYANTE'S LFO DEBT OF MORE THAN \$25,000 POSES A MANIFEST HARDSHIP ON HIS ABILITY TO REENTER SOCIETY UPON HIS RELEASE.

The state concedes that Mr. Guayante's order to pay \$7500 toward the cost of his court-appointed attorney should be remitted. Response for Motion to Discretionary Review (08/25/17), p. 5. This court should accept that concession and order the trial court to remit that sum and all interest that has accrued on the attorney's fees award.

At the time of Mr. Guayante's 1998 conviction, Washington trial courts "routinely and rotely" imposed discretionary LFOs on indigent

persons without any consideration of their actual ability to pay those sums. *State v. Sorrell*, 2 Wn. App.2d 156, 161, 408 P.3d 1100 (2018).

Since then, the state Supreme Court and legislature have both taken action to demonstrate that that system is unacceptable. *See Id.*; *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015); *City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016); LAWS OF 2018, ch. 269. These steps were taken, primarily, upon the realization that the Washington LFO scheme “behave[d] as an obsessed and possessed Police Inspector Javert shadowing the offender for this rest of his or her life” and dramatically disabled successful reentry into society after incarceration. *Sorrell*, 2 Wn. App.2d at 161.

If Mr. Guayante were sentenced now, statute would prevent the trial court from ordering him to pay \$7500 – or any sum – toward the cost of his public defense attorney because he is indigent. *See* RCW 10.01.160 (2018); LAWS OF 2018, ch. 269 sec. 6. But the “routine[] and rote[]” system in place at the time he was sentenced commanded not only the imposition of those costs, but also the accrual of thousands of dollars in interest since that time. *Sorrell*, 2 Wn. App.2d at 161; Attachment 1 to Reply Brief for Motion for Discretionary Review (filed 09/07/17).

When Mr. Guayante is released at the age of fifty-six, the trial court will be permitted to enter an order of payroll deduction from any

wages he is able to earn to pay toward is LFO debt of more than \$25,000. RCW 9.94A.760(4). The debt can also be enforced against him as a civil judgment. RCW 9.94A.760(5). In addition to the mounting interest, Mr. Guayante's debt can continue to grow through the addition of collection fees. RCW 36.18.16(29); RCW 9.94A.780(7); RCW 9.94A.760. The sentencing court will retain jurisdiction over Mr. Guayante until he is able to pay off the still-growing sum. Supp. CP, Judgment & Sentence, p. 11.

Mr. Guayante moved to remit his growing LFO debt because it will significantly impair his ability to successfully reenter society upon release. CP 21-31; RP 8-9. Mr. Guayante's ongoing debt will have "serious negative consequences on employment, on housing, and on finance" because it will impact his credit rating, making it more difficult for him to find housing and a job. *Blazina*, 182 Wn.2d at 836–37.

Even without LFOs, reentry after incarceration is difficult because of social stigma. Katherine A. Beckett, Alexes M. Harris & Heather Evans, Wash. State Minority & Justice Comm'n, *The Assessment and consequences of Legal Financial Obligations in Washington State*, 68 (2008) (Wash. State Minority & Justice Comm'n)¹ (*cited in Blazina*, 182 Wn.2d at 836). Research indicates that LFO debt adds to the difficulty by

¹Available at http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.

reducing income and worsening credit ratings, which make it even harder to find stable housing. *Id.* Reduced credit scores resulting from LFO debt also decrease Mr. Guayante’s chances of finding employment because employers regularly use credit scores as a kind of “character screening” in hiring. Alicia Bannon, Mitali Nagrecha & Rebekah Diller, Brennan Ctr. for Justice, *Criminal Justice Debt: A Barrier to Reentry*, 27-28 (2010)²(cited in *Blazina*, 182 Wn.2d at 835).

Finally, the sentencing court’s ongoing jurisdiction over an offender with remaining LFO debt causes him/her to “constantly suffer[] from the collateral consequences of the judgment, including frequent returns to court.” *Sorrell*, 2 Wn. App.2d at 183.

As recognized by the Supreme Court, each of these difficulties would also act to increase Mr. Guayante’s chance of recidivism after his release. *Blazina*, 182 Wn.2d at 837.

A. The barriers that Mr. Guayante’s \$25,000 LFO debt places upon his reentry into society constitute manifest hardship for purposes of remission.

At the time of Mr. Guayante’s motion to remit, statute permitted remission “at any time” if the offender was “not in contumacious default” and the payment of the amount due would “impose a manifest hardship on

² Available at [http://www.brennancenter.org/sites/default/files/legacy/Fees% 20and% 20Fines% 20FINAL.pdf](http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf).

the defendant or the defendant’s immediate family.” RCW 10.01.160(4) (2017).³ The statute does not define the term “manifest hardship.” RCW 10.01.160(4) (2017); *Sorrell*, 2 Wn. App.2d at 181.

Here, the trial court found that Mr. Guayante could not establish manifest hardship because his daily needs were being met by DOC at the time of his motion. RP 14; CP 39. Under the trial court’s reasoning, an offender who was still incarcerated could never demonstrate manifest hardship under RCW 10.01.160(4).⁴

But the Courts of Appeals have held otherwise, explicitly ruling that incarcerated persons are eligible for remission if they meet the statutory requirements. *See State v. Shirts*, 195 Wn. App. 849, 852, 381 P.3d 1223 (2016); *State v. Wilson*, 198 Wn. App. 632, 636, 393 P.3d 892 (2017). *Wilson* explicitly ruled that “superior courts have no authority to deny a remission petition simply because an individual is in custody.”

³ As noted above, RCW 10.01.160 has been amended since the time of Mr. Guayante’s motion to permit an offender to move for remission only after s/he has been released from total confinement. RCW 10.01.160(4) (2018); LAWS OF 2018, ch. 269 sec. 6. But that amendment also prohibits sentencing courts from imposing any discretionary LFOs upon indigent defendants. RCW 10.01.160(3)(2018).

Accordingly, while the newly-amended statute would prohibit Mr. Guayante from making his motion if he brought it now, it would also have prohibited the sentencing court from ordering him to pay LFOs in the first place. Regardless, the amendments are not applicable to this appeal.

⁴ The trial court appears to rely on the reasoning of *Wakefield*, in which the Supreme Court found that an offender who was unable to provide financially for her own basic needs had demonstrated manifest hardship for purposes of remission. RP 14; CP 39; *Wakefield*, 186 Wn.2d at 606. But the *Wakefield* court in no way implies that inability to provide for one’s daily needs is the *only* way to meet the threshold of manifest hardship. *See Id.*

Wilson, 198 Wn. App. at 636. The *Shirts* court, likewise, recognized that incarcerated persons can face manifest hardship in the form of noneconomic harm. *Shirts*, 195 Wn. App. at 852.

The Supreme Court’s primary motivation to ending the “routine[] and rote[]” system under which Mr. Guayante’s attorney’s fees order was entered was to help people in his position successfully reenter society after incarceration. *See Blazina*, 182 Wn.2d at 836–37; *Sorrell*, 2 Wn. App.2d at 161. That was precisely the basis on which Mr. Guayante moved for remission, explaining to the court that his age, lack of work experience, and murder conviction would already make it extremely difficult for him to find housing or a job and that an LFO debt of more than \$25,000 would likely make it impossible. CP 21-31; RP 5-9. But the court did not even consider Mr. Guayante’s arguments, instead relying on reasoning that would prohibit any incarcerated person from successfully moving for remission. RP 14; CP 39.

The trial court in Mr. Guayante’s case abused its discretion by failing to meaningfully consider the barriers that his massive LFO debt would place upon his reentry.⁵ This Court should accept the state’s concession, find that Mr. Guayante has demonstrated manifest hardship,

⁵ *See State v. O’Dell*, 183 Wn.2d 680, 697, 358 P.3d 359 (2015) (*citing State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005)) (a court abuses its discretion by failing to exercise that discretion).

and remand with an instruction for the trial court to remit his \$7500 attorney's fees order and all related interest.

B. This Court's order should direct the trial court to remit the interest due upon the order that Mr. Guayante pay attorney's fees, in addition to the original \$7500 cost.

Mr. Guayante's LFOs have been accruing interest at a rate of 12% since 1998. RCW 10.82.090; RCW 4.56.110(4); RCW 19.52.020(1). The attorney's fees award constituted approximately 90% of the total amount of LFOs ordered in his case. Supp. CP, Judgment & Sentence, pp. 4-5. Accordingly, it can be presumed that more than \$16,000 of the interest balance has accrued as a result of that order, alone. *See* Attachment 1 to Reply Brief for Motion for Discretionary Review (filed 09/07/17).

This Court should order the trial court to remit that portion of the interest on Mr. Guayante's LFOs, in addition to the original \$7500.

The state concedes that remission of "the balance" of Mr. Guayante's \$7500 attorney's fees order is appropriate. Response for Motion to Discretionary Review (08/25/17), p. 5. The relevant accounting-related definition of "balance" is "the difference between the debit total and the credit total of an account" or "unpaid different represented by the excess of debits over credits." "balance." Dictionary.com. 2018. <http://www.dictionary.com/browse/balance?s=t> (15 July 2018). The term

“balance,” in the state’s concession should be taken to include the interest that has accrued on the attorney’s-fees award since its entry in 1998.

The remission statute, likewise, refers to the “amount due in costs,” not the amount originally ordered. RCW 10.01.160(4). The relevant dictionary definition of the term “due” is “owed at present.”⁶ “due.” Dictionary.com. 2018. <http://www.dictionary.com/browse/due?s=t> (15 July 2018). Accordingly, the remission statute also anticipates a court’s consideration of the total balance owed at the time of the time of remission, including interest or any other added fees. RCW 10.01.160(4).

This court should accept the state’s concession and order the trial court to remit the interest that has accrued on Mr. Guayante’s attorney’s fees order, in addition to the original amount ordered. Response for Motion to Discretionary Review (08/25/17), p. 5; RCW 10.01.160(4).

CONCLUSION

In order to permit Mr. Guayante to more successfully reenter society upon his upcoming release, this Court should accept the state’s concession and remit his \$7500 attorney’s-fees award, as well as all related interest.

⁶ Undefined statutory terms should be given their plain meaning, which can be gleaned from a dictionary. *State v. Braa*, 2 Wn. App.2d 510, 518, 410 P.3d 1176 (2018).

Respectfully submitted on July 16, 2018,



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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney
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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Signed at Seattle, Washington on July 16, 2018.



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