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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

KATRINA LACY, RESPONDENT

Appeal from the Superior Court of Pierce County
The Honorable Shelly K. Speir

No. 10-1-00479-5

Appellant's Reply Brief

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A. STATEMENT OF THE CASE.

Defendant asked the trial court to remit legal financial obligations. CP 70-80; CP 119-129; 7/21/17 VRP; 6/16/17 VRP. The record is devoid of any indication that a collection action was pending against respondent / cross-appellant (hereinafter defendant) when she made her motion to remit the legal financial obligations imposed in this case. CP 70-129; 6/16/17 VRP; 7/21 VRP.¹

B. ARGUMENT.

1. THE SUPERIOR COURT'S REDUCTION OF RESTITUTION VIOLATED RCW 9.94A.753(4).

RCW 9.94A.753 specifically addresses restitution. RCW 9.94A.753(4) specifically addresses attempts at restitution modification:

The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount.

RCW 9.94A.753(4). "When statutes irreconcilably conflict, the more specific statute will prevail, unless there is legislative intent that the more general statute controls." (internal quotation omitted) *State v. Hirschfelder*, 170 Wn.2d 536, 546, 242 P.3d 876, 881 (2010) (quoting *Hallauer v. Spectrum Properties, Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540

¹ A garnishment judgment entered without defendant's participation on March 19, 2014. CP 44-45. The record reflects no subsequent garnishment.

(2001)). In RCW 9.94A.753(4) the legislature expresses the primacy of restitution in no uncertain terms.²

2. RCW 9.94B DOES NOT APPLY TO THE MOTION TO REMIT RESTITUTION IN THIS CASE. IT ONLY APPLIES TO CRIMES COMMITTED PRIOR TO JULY 1, 2000.

In *State v. Bigsby*, 189 Wn.2d 210, 399 P.3d 540 (2017), the State attempted to use RCW 9.94B.040 to sanction Mr. Bigsby following non-compliance with the terms of his sentence for a 2014 offense. *Bigsby*, 189 Wn.2d at 211-12. Mr. Bigsby thought that was wrong:

Bigsby argues the Court of Appeals erroneously relied on RCW 9.94B.040 because that statute, in his opinion, applies only to ““crimes committed prior to July 1, 2000.”” Reply Br. of Appellant at 1-2 (quoting RCW 9.94B.010(1)). The Court of Appeals rejected Bigsby's assessment, concluding that “while the statute refers to pre-2000 offenses, it does not state that the chapter applies only to those offenses.”

Bigsby, 189 Wn.2d at 213. The Supreme Court agreed with Mr. Bigsby:

We granted review to determine whether RCW 9.94B.040 applies to Bigsby's 2014 offense. As explained below, we hold RCW 9.94B.040 applies only to crimes committed prior to July 1, 2000 and therefore reverse the Court of Appeals.

² “As this court has consistently recognized, ‘The authority to impose restitution is not an inherent power of the court, but is derived from statutes.’” *Seattle v. Fuller*, 177 Wn.2d 263, 283, 300 P.3d 340, 349 (2013) (quoting *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991)).

(internal citation omitted) *Bigby*, 189 Wn.2d at 213–14. *Bigby*, based on the statutory interpretation of RCW Chapter 9.94B, controls the outcome of this case. RCW Chapter 9.94B does not apply in this case.

3. RCW 9.94A.6333 IS INAPPLICABLE TO THIS CASE.

Defendant argues that RCW 9.94A.6333 applies to her motion to remit restitution that was made in this case. Brief of Respondent / Cross-Appellant at 12-15. However, RCW 9.94A.6333, by its own terms only applies to violation hearings. RCW 9.94A.6333(1). Defendant was not subject to a violation hearing in this case—defendant moved the trial court to waive legal financial obligations. CP 70-80; CP 119-129; 7/21/17 VRP; 6/16/17 VRP. Accordingly, RCW 9.94A.6333 did not apply to her motion. The particular section cited by defendant—RCW 9.94A.6333(2)(d) states

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations...

(emphasis added) RCW 9.94A.6333(2)(d). In this case, there was no violation hearing, and therefore no finding that a violation was willful. RCW 9.94A.6333(2)(d) does not apply to this case.

4. RCW 10.01.180 IS INAPPLICABLE TO THIS CASE.

Defendant argues that RCW 10.01.180 applies to this case. Brief of Respondent / Cross-Appellant at 12-15. However, RCW 10.01.180(4) provides:

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

RCW 10.01.180(4), by its own terms, does not apply to restitution because it only applies to “a fine or costs.” *Id.*

Furthermore, this case does not involve a hearing pursuant to RCW 10.01.180. “RCW 10.01.180 is explicitly couched in terms of contempt.” *State v. Nason*, 168 Wn.2d 936, 947, 233 P.3d 848, 852 (2010). “The contempt proceeding authorized by RCW 10.01.180 is civil.”³ *Smith v. Whatcom County District Court*, 147 Wn.2d 98, 105, 52 P.3d 485, 489 (2002). Furthermore, other collection efforts authorized by law (such as garnishment), are permitted by RCW 10.01.180(5). “RCW 9.94A.760 governs LFOs . . .” *Nason*, 168 Wn.2d at 944. RCW 10.01.180 does not

³ “In a contempt proceeding of this character, the object of which is to coerce the payment of money, the lack of ability to pay, on the part of the defendant is always a complete defense against enforcing payment from the defendant by imprisonment. In harmony with the law on that subject in most of the jurisdictions of this country, this court has repeatedly so held.” *Snook v. Snook*, 110 Wn. 310, 314–15, 188 P. 502, 503 (1920).

apply to this case because (a) RCW 9.94A.760—not RCW 10.01.180—governs legal financial obligations, (b) no claim of contempt was before the superior court below, and (c) the superior court was never called upon to conduct a RCW 10.01.180(5) hearing.⁴

5. COURTS HAVE NO INHERENT OR GENERAL
AUTHORITY TO MODIFY CRIMINAL
JUDGMENTS.

It is very well settled that a trial court has no inherent sentencing authority in criminal cases. *State v. Hall*, 35 Wn. App. 302, 305, 666 P.2d 930 (1983); *State v. Bird*, 95 Wn.2d 83, 85, 622 P.2d 1262 (1980); *State ex rel. Woodhouse v. Dore*, 69 Wn.2d 64, 69, 416 P.2d 670 (1966). The Supreme Court “has consistently held that the fixing of legal punishments for criminal offenses is a legislative function.” *State v. Pillatos*, 159 Wn.2d 459, 469, 150 P.3d 1130, 1134 (2007) (quoting *State v. Hughes*, 154 Wn.2d 118, 149, 110 P.3d 192 (2005)). A trial court may only impose a sentence which is authorized by statute. *State v. Barnett*, 139 Wn.2d 462, 464, 987 P.2d 626, 628 (1999) (citing *In re Personal Restraint of Carle*, 93 Wn.2d 31, 604 P.2d 1293 (1980)).

“[E]ven superior courts do not have inherent power to suspend a sentence.” *City of Spokane v. Marquette*, 146 Wn.2d 124, 132, 43 P.3d

⁴ It should be noted that “fine or costs” excludes restitution.

502, 506 (2002); *State v. King County Superior Court*, 102 Wash. 600, 602, 174 P. 473, 474 (1918).

That a trial court has no power to vacate or modify its final judgment after the announcement and the proper final entry thereof, in the absence of a showing of some statutory ground for such vacation or modification, has been determined by numerous decisions of this court. (Citing cases.)

State v. Sampson, 82 Wn.2d 663, 666–67, 513 P.2d 60, 62–63 (1973) (quoting *State ex rel. Lundin v. Superior Court*, 90 Wash. 299, 302, 155 P. 1041, 1042 (1916) and citing *State ex rel. McConihe v. Steiner*, 58 Wash. 578, 109 P. 57 (1910); *McCaffrey v. Snapp*, 95 Wash. 202, 163 P. 406 (1917); P. Trautman, *Vacation and Correction of Judgments in Washington*, 35 Wash.L.Rev. 505, 508 (1960)). The trial court in this case had no inherent authority to remit the mandatory legal financial obligations imposed in this case.

6. NOTHING IN THE CONSTITUTION GIVES COURTS THE AUTHORITY TO ELIMINATE MANDATORY LEGAL FINANCIAL OBLIGATIONS.

“The 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.” (emphasis added) *State v. Catling*, ____ Wn. App. ____, 413 P.3d 27, 29 (2018) (citing *Fuller v. Oregon*, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d

642 (1974); *State v. Blank*, 131 Wn.2d 230, 237–38, 930 P.2d 1213 (1997); *State v. Curry*, 118 Wn.2d 911, 915–16, 829 P.2d 166 (1992); and *State v. Barklind*, 87 Wn.2d 814, 817–18, 557 P.2d 314 (1976)).

A trial court undoubtedly has the power to halt the unconstitutional collection of legal financial obligations. A trial court can exercise that power by stopping the unconstitutional collection of legal financial obligations. In this case, the trial court extinguished mandatory legal financial obligations without authority of law. No collection action was before the trial court. CP 70-129; 6/16/17 VRP; 7/21 VRP.⁵ Defendant’s only request in these proceedings has been for remission/revocation of the legal financial obligations imposed in this case. *Id.*

Alternatively, defendant’s Due Process and Equal Protection based claims are not ripe for constitutional adjudication. “It is at the point of enforced collection ..., where an indigent may be faced with the alternatives of payment or imprisonment, that he may assert a constitutional objection on the ground of his indigency.” *State v. Shelton*, 194 Wn. App. 660, 672, 378 P.3d 230, 237 (2016), *review denied*, 187 Wn.2d 1002, 386 P.3d 1088 (2017) (quoting *State v. Curry*, 118 Wn.2d at 917).

⁵ A garnishment judgment entered without defendant’s participation on March 19, 2014. CP 44-45. The record reflects no subsequent garnishment.

7. THE SUPERIOR COURT PROPERLY
RECOGNIZED THAT IT LACKED AUTHORITY
TO WAIVE STATUTORY INTEREST IN THIS
CASE (RESPONSE TO CROSS APPEAL).

Defendant apparently concedes that a criminal judgment may constitutionally accrue judgment interest at the statutory rate. Appellant's Brief at 36. Defendant also states:

Even if a statute permitting imposition is constitutional because there is a rational basis for *imposing* the interest, it does not follow that *collection* from an individual who cannot pay is also constitutional.

Appellant's Brief at 37. Each of these two points is noncontroversial. However, in presenting her substantive due process claim, defendant asserts "[i]t is irrational for the State to mandate that trial courts collect this debt from individuals who cannot pay." Appellant's Brief at 38. Appellant repeats the claim under an equal protection rubric: "The mandatory requirement that interest be collected from individuals who cannot pay is, therefore, not rationally related to the legitimate purpose of the law." Appellant's Brief at 41. The fault in this argument is that RCW 10.82.090 does not mandate collection from individuals who cannot pay,⁶ it only addresses the imposition, reduction and waiver of statutory judgment interest. RCW 10.82.090. Appellant's substantive due process and equal protection claims should be denied.

⁶ RCW 10.82.090 only addresses the accrual, reduction and waiver of interest.

No constitutional question is presented in this case because no act to collect legal financial obligations is challenged. *State v. Catling*, *Fuller v. Oregon*, *State v. Blank*, *State v. Curry*, *State v. Barklind*. “A statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving its unconstitutionality beyond a reasonable doubt.” *State v. Thorne*, 129 Wn.2d 736, 769–770, 921 P.2d 514 (1996). “[U]nder the rational basis standard the law must be rationally related to a legitimate state interest, and will be upheld unless the classification rests on grounds wholly irrelevant to the achievement of a legitimate state objective.” *DeYoung v. Providence Medical Center*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998). This standard “is the most relaxed and tolerant form of judicial scrutiny under the equal protection clause.” *Id.* (quoting *State v. Heiskell*, 129 Wn.2d 113, 124, 916 P.2d 366 (1996)). Appellant has not established the unconstitutionality of RCW 10.82.090.

C. CONCLUSION.

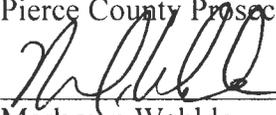
Despite explicit statutory language to the contrary, the trial court extinguished a valid and constitutionally obtained judgment debt. That was error. The Constitution prohibits the collection of criminal judgments from people who are unable to pay. It does not shield convicted persons from the imposition and maintenance of statutorily imposed judgments. Mandatory legal financial obligations, clearly expressed by the legislature,

should be respected. This Court should reverse the superior court's letter ruling on Defendant's Motion to Remit/Revoke Fines, entered on July 26, 2017 insofar as that Order altered the restitution, crime victim penalty assessment, DNA database fee, and criminal filing fee imposed in this case. The court-appointed attorney fee remission should remain undisturbed.

Defendant argues that the appropriate remedy for an unconstitutional collection action is the extinguishment of the underlying (constitutionally obtained) judgment debt. That argument does not fit the facts of this case because no claim of unconstitutional collection was before the superior court. Furthermore, the assertion itself is untenable because the remedy for an unconstitutional collection action is the termination of the unconstitutional collection action, not the extinguishment of a valid and constitutionally obtained judgment.

DATED: April 20, 2018.

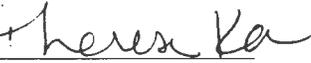
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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

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PIERCE COUNTY PROSECUTING ATTORNEY

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