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NO. 50738-2-II

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON,

Appellant and Cross-Respondent.

v.

KATRINA LACY,

Respondent and Cross-Appellant.

BRIEF OF RESPONDENT/CROSS-APPELLANT

NORTHWEST JUSTICE PROJECT
Luanne Serafin, WSBA #47834
711 Capitol Way S., Ste 704
Olympia, WA 98501
206-707-0841, luannem@nwjustice.org

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I. INTRODUCTION

This case presents the issue of whether an individual who is unable to pay fines and fees associated with a criminal conviction should nevertheless continue to have unending debt. On May 26, 2010, Pierce County Superior Court imposed several legal financial obligations (LFOs) against Katrina Lacy in conjunction with a criminal conviction. This included both LFOs that the court had discretion to impose, and those for which imposition at sentencing was mandatory. The court imposed the following mandatory LFOs: restitution, DNA database fee, victim penalty assessment, and criminal filing fee.

Since 2010, Ms. Lacy has desired to make payments on the LFOs, but she has not had the ability to make these payments and still provide for her basic necessities and for those of her son. It is now seven years later, and Ms. Lacy has only been able to make payments when the income she needs to provide for her basic needs has been garnished. Ms. Lacy, therefore, asked the court in 2017 to waive the discretionary and mandatory LFOs and the interest that had accumulated as a result of the outstanding balance.

Since Ms. Lacy had not willfully failed to pay her LFOs, she is indigent, and she does not have the ability to pay, the trial court waived the outstanding LFO principal balance, including discretionary LFOs and

those that were mandatorily imposed at sentencing. The court did not waive the interest that had accumulated. The Prosecuting Attorney has appealed the waiver of the mandatory LFOs. Ms. Lacy has cross-appealed on the failure to waive the accumulated interest.

This case requires the Court to determine whether the trial court had authority to waive LFOs that it was statutorily mandated to impose at sentencing. This case also requires the Court to determine whether the statute under which the court can waive interest is unconstitutional as applied to Ms. Lacy. These issues are raised because Ms. Lacy is indigent and does not have the ability to pay the outstanding LFOs from her 2010 conviction or the accumulated interest.

Ms. Lacy is entitled to waiver of the mandatory LFOs and the accumulated interest under the applicable statutes and the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, sections 3 and 12 of the Washington State Constitution because she is indigent and making payments on these LFOs would impose a financial hardship on her.

Ms. Lacy, therefore, asks this Court to uphold the Pierce County Superior Court ruling that waived the mandatory LFOs. She also requests that this Court vacate the ruling as to the interest and remand with instruction to waive the accumulated interest.

II. COUNTERSTATEMENT OF THE ISSUES

1. The trial court did not err in remitting the restitution imposed in the judgment and sentence issued on May 26, 2010. The issue is whether the trial court had statutory and/or constitutional authority to waive the restitution and whether continued collection under RCW 9.94A.753 is unconstitutional as applied to Ms. Lacy.

2. The trial court did not err in remitting the DNA database fee, victim penalty assessment, and criminal filing fee imposed in the judgment and sentence issued on May 26, 2010. The issue is whether the trial court had statutory and/or constitutional authority to waive these LFOs.

III. COUNTERSTATEMENT OF THE CASE

A. THE DISCRETIONARY AND MANDATORY LFOS ASSESSED AGAINST MS. LACY IN 2010 WERE ASSIGNED TO A COLLECTION AGENCY, WHICH INITIATED GARNISHMENT PROCEEDINGS

On May 26, 2010, Ms. Lacy entered a plea of guilty to one count of burglary in the second degree. *See* CP 17-28. Ms. Lacy was sentenced to 30 days in jail, and she completed the required time. *Id.* The Court also imposed a number of LFOs, including the following mandatory LFOs: \$580.52 in restitution (RCW 9.94A.753), \$100 DNA database fee (RCW 43.43.7541), \$200 criminal filing fee (RCW 36.18.020), and a \$500 victim penalty assessment (RCW 7.68.035). CP 21, 154. The restitution was assessed jointly and severally against Ms. Lacy and her co-defendant. CP

29-30. The Court also imposed discretionary LFOs, which are not the subject of this appeal.

On October 8, 2013, the Pierce County Superior Court assigned the outstanding balance on all of the LFOs in this case to AllianceOne Receivables Management, Inc. (AllianceOne), a professional debt collection agency. CP 33. AllianceOne initiated garnishment proceedings against Ms. Lacy from November 18, 2013 through March 19, 2014. CP 34-35, 43. The amounts garnished were applied to the restitution portion of the LFOs. CP 158.

Ms. Lacy has been working with the Community Housing Resource Center (HRC) in Clark County, Washington to resolve her outstanding debts. AllianceOne had offered to settle the debt if Ms. Lacy paid approximately \$3,500.00. Ms. Lacy was financially unable to pay this amount.

At one time, Ms. Lacy owed a substantial amount (\$14,866.34) to various courts. CP 47. Several of these courts granted Ms. Lacy's motions to remit LFOs due to her indigence and the financial hardship that paying the LFOs was causing her. *Id.* Many of the courts converted the fines and fees to community service, allowing Ms. Lacy to pay off the fines and fees in a non-monetary manner. *Id.*

B. MS. LACY FILED A MOTION TO REMIT THE LFOs THAT WAS GRANTED, IN PART, BY THE PIERCE COUNTY SUPERIOR COURT

Ms. Lacy filed a Motion to Remit the LFOs from her May 26, 2010 conviction in Pierce County Superior Court on May 19, 2017. CP 70-80. The Court held a hearing on the motion, and representatives from both the Pierce County prosecutor's office and AllianceOne appeared to respond and contest the motion. *See* RP 1.

The basis of Ms. Lacy's motion was that she is indigent and cannot afford to pay the remaining LFOs. CP 70-80. Ms. Lacy is at 129% of the Federal Poverty Level based on her net income, and her basic living expenses exceed her income. *Id.* If she does not resolve her debt by 2020, she could lose her housing voucher because of her inability to comply with the Family Self-Sufficiency program of the Vancouver Housing Program. *See* CP 155. No evidence or arguments have been presented to refute Ms. Lacy's indigence or ability to pay.

On July 26, 2017, the Pierce County Superior Court issued a letter ruling waiving the outstanding balance on the discretionary and mandatory LFOs, including restitution. CP 154-158. In doing so, the court cited to RCW 9.94A.760 and RCW 9.94B.040 as authority for its decision. *Id.* The court determined that Ms. Lacy is indigent, and not in willful default, findings that were not disputed. *Id.* at 157. Because of this, the court

determined that it could waive Ms. Lacy's outstanding LFOs, including all of the mandatory LFOs.

The court did not believe it had authority to waive the accumulated interest under RCW 10.82.090. CP 158. The court determined that the terms of the statute did not allow it to waive the interest, and it noted that this result is incongruous with its finding of indigence. *Id.*

On August 16, 2017, the Pierce County Prosecutor's Office filed a Notice of Appeal. Ms. Lacy filed a Notice of Cross-Appeal on August 29, 2017. Appellant submitted its Opening Brief on November 28, 2017, and Respondent received an extension of time to file her responsive brief by January 31, 2018. Appellant has alleged that the trial court erroneously remitted Ms. Lacy's restitution and lacked legal authority to remit the remaining mandatory LFOs. Br. of App. 3-4. Respondent has Cross-Appealed on the issue of whether the court should have also waived the accumulated interest.

IV. ARGUMENT

A. STANDARD OF REVIEW

Generally, appellate courts review a decision on whether to impose LFOs for abuse of discretion. *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991). A trial court's ruling on whether to grant or deny a motion to remit is similarly reviewed for abuse of discretion. *See State v.*

Rankin, No. 33857-6-III (December 20, 2016)(unpublished). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

This case primarily involves the interpretation of statutory provisions, including their application, and the application of constitutional principles. Both questions are reviewed de novo. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010); *State v. Vance*, 168 Wn.2d 754, 759, 230 P.3d 1055 (2010); *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

The court looks to the statute's plain language in order to give effect to legislative intent, giving statutory terms their plain and ordinary meaning. *Id.*; *In re Det. of Rogers*, 117 Wn. App. 270, 274, 71 P.3d 220 (2003). Courts do not engage in judicial interpretation of an unambiguous statute. *State v. Thorne*, 129 Wn.2d 736, 762–63, 921 P.2d 514 (1996). A statute is ambiguous when the language is susceptible to more than one reasonable interpretation. *Jacobs*, 154 Wn.2d at 600–01. Whenever possible, statutes are read in harmony and in such manner as to give each effect. *State v. Bays*, 90 Wn. App. 731, 735, 954 P.2d 301 (1998).

B. THE TRIAL COURT HAD STATUTORY AUTHORITY TO WAIVE THE MANDATORY LFOS

The State does not contest the trial court's authority to rule on Ms. Lacy's motion to remit legal financial obligations filed in Pierce County Superior Court, the timeliness of the motion, or the trial court's waiver of

the discretionary legal financial obligations. Br. of App. 1-3. Likewise, the State does not contest that Ms. Lacy is indigent or assert that she has the ability to pay the LFOs. *Id.*

Thus, the first issue before this Court is whether the trial court had statutory authority to waive the mandatory LFOs.

The statutes under which the fees were assessed in this case mandate imposition of the fees at sentencing. Under RCW 43.43.7541, the court *must* include a fee of one hundred dollars for collection of DNA (emphasis added). Similarly, under RCW 7.68.035, when a person is found guilty in superior court of having committed a crime, the court *shall impose* a penalty assessment (emphasis added). Finally, under RCW 36.18.020(2)(h), the clerk *shall collect* specific fees for their official services, and this includes the following: an individual who is convicted or pleads guilty shall be liable for a fee of two hundred dollars (emphasis added).

Although these mandatory LFOs must be imposed at sentencing, several statutes give trial courts broad discretion to modify a previously-imposed LFO order post-sentencing. In order to survive constitutional scrutiny, Washington's statutory LFO scheme must be interpreted as requiring this relief.

This necessarily includes the restitution statute cited by Appellant as prohibiting the court from reducing the total amount of restitution based on the individual's ability to pay *the total amount*. Br. of App. 3; RCW 9.94A.753(4)(emphasis added). Appellant is correct that the statute includes this language; in situations where an individual can make payments on the restitution, but might not be able to pay the total amount at one time or even at a later time, the court cannot reduce the total amount.

However, in this case, the trial court did not reduce the total amount of restitution because Ms. Lacy cannot pay *the total amount*. The trial court waived restitution because Ms. Lacy is indigent, her expenses exceed her income, and since she has to be able to provide for her basic needs, it is a hardship for her to pay *any amount*. See CP 157.

A reading of the statute that leads to the result that a court cannot waive restitution even if the individual cannot pay any amount without sacrificing the basic needs of herself and her family does not comport with the LFO statutory scheme.

1. RCW 9.94B.040 applies in this case

The trial court did not err in waiving the mandatory LFOs under RCW 9.94B.040.

Appellant asserts that RCW 9.94B.040 does not apply to this case and only applies to cases with convictions prior to 2000. Appellant cites to RCW 9.94B.010(1), which states that chapter 9.94B RCW codifies sentencing provisions that *may be applicable* to crimes committed prior to July 1, 2000 (emphasis added). Br. of App. 3-4. Additionally, though not cited by Appellant, RCW 9.94B.010(2) states that chapter 9.94B supplements and should be read in conjunction with chapter 9.94A.

The trial court in this case cited to RCW 9.94A.760 because it governs the ordering and collection of mandatory LFOs, and is applicable in this case. CP 157.

As stated in RCW 9.94A.760(10), the requirement that an offender pay a monthly sum towards a legal financial obligation, which Ms. Lacy was required to do, constitutes a condition or requirement of a sentence, and the offender is subject to penalties for noncompliance *as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740* (emphasis added). *See* CP 17-28. Thus, noncompliance with a condition or requirement of a sentence will be dealt with as provided in one of those sections.

RCW sections 9.94A.737 and 9.94A.740 apply to sanctions for violations of community custody, including arrest and detention. Under 9.94A.030(5), community custody is defined as that portion of an offender's sentence of confinement in lieu of earned release time or

imposed as part of a sentence and served in the community subject to controls placed on the offender's movement and activities by the department of corrections. Neither of these statutes is applicable here as Ms. Lacy did not serve or violate community custody. *See* CP 17-28.

Therefore, RCW 9.94B.040 applies in this case. This statute applies to noncompliance with a condition or requirement of a sentence. Since the requirement to pay a monthly sum on a legal financial obligation is a condition or requirement of the sentence, RCW 9.94B.040 specifically applies when discussing penalties for noncompliance under 9.94A.760(10), as the court stated in this case. RCW 9.94A.760(10) specifically directs the court to RCW 9.94B.040 in cases like Ms. Lacy's, and these two statutes should be read in conjunction with each other. *See* RCW 9.94B.010(2).

The Washington Supreme Court addressed the issue of whether RCW 9.94B.040 gives a court authority to sanction an individual for violating requirements of community custody in *State v. Bigsby*.¹ 198 Wn.2d 210, 299 P.3d 540 (2017). The Court determined that the trial court

¹ Mr. Bigsby failed to undergo a chemical dependency evaluation after he was released from jail on community custody as ordered by the trial court. *Id.* at 211. Both the Department of Corrections (DOC) and the trial court sanctioned him for failing to comply with the court's order. *Id.* At issue was whether the trial court had statutory authorization under RCW 9.94B.040 to sanction Mr. Bigsby for sentence violations committed while he was on community custody under DOC's supervision for a 2014 crime. *Id.* The Court held that it did not. *Id.*

did not have statutory authority under RCW 9.94B.040 to sanction Mr. Bigsby. This is distinguishable from the instant case because the *Bigsby* Court did not address the statute's applicability to legal financial obligations or its relation to RCW 9.94A.760(10). The court specifically reviewed the statutory history related to community custody and post-release supervision as it relates to authority to sanction an individual for violating any requirements thereof. Ms. Lacy was not in community custody or post-release supervision, and the trial court had not attempted to sanction her for any violation thereof. Thus, RCW 9.94B.040 can apply in this case.

Since RCW 9.94A.760(10) specifically refers the trial court to RCW 9.94B.040, in this situation, it is applicable, and the trial court did not err in waiving the mandatory LFOs pursuant to that section.

2. Even if RCW 9.94B.040 does not apply, the court had authority under RCW 9.94A.6333 and RCW 10.01.180 to remit the mandatory LFOs

RCW 9.94A.6333 applies to sanctions and modifications of sentences for offenders not on Department of Corrections (DOC) supervision, which is directly applicable to Ms. Lacy. RCW 9.94A.6333(1). Additionally, the legislature provided that RCW 9.94A.6333 applies to sentences imposed or re-imposed after August 1, 2009 for any crime committed on or after this date. Laws of 2008, ch. 231,

§ 55. Ms. Lacy was convicted of a crime committed in 2010, which also makes RCW 9.94A.6333 directly applicable in this case.

Ms. Lacy has not been able to pay the legal financial obligations assessed in this case, which is a condition or requirement of her sentence. RCW 9.94A.6333(2) gives the trial court several options when an offender fails to comply with any of the conditions or requirements of her sentence.²

Under RCW 9.94A.6333(2)(d), if an offender fails to comply with any of the conditions or requirements of a sentence and the failure is not willful, “the court may modify its previous order regarding payment of legal financial obligations....”

The term “modify” is not defined by statute or case law. If a statute provides no definition for a term, courts may look to the standard dictionary definition. *State v. Stratton*, 130 Wn. App. 760, 124 P.3d 660 (2005). The word “modify” is defined in the dictionary as: “to change somewhat the form or qualities of, alter partially, amend, to reduce in

² The trial court noted that it could have authority under RCW 9.94A.6333 to modify Ms. Lacy’s sentence if the prosecutor had brought a motion alleging violation of a condition or requirement of a sentence for failure to pay the LFOs, but the court did not specifically make its ruling under that section. *See* CP 157 n.2. RCW 9.94A.6333 does not require that the prosecutor bring a motion alleging a violation. The court determined that Ms. Lacy’s indigence caused her to failure to pay, and this was not a willful violation of a condition or requirement of her sentence. CP 157. The lack of a motion by the prosecutor does not divest the court of authority to modify a sentencing order under this section, and the review of whether this statute applies is a de novo review.

degree or extent.” Random House Webster’s College Dictionary 851 (1999). This definition is broad and necessarily includes complete waiver.

Additionally, RCW 10.01.180 sets forth procedures for an individual who defaults on an LFO payment. Waiving the remaining balance of fines and costs is also a remedy allowed under RCW 10.01.180(4) if it appears to the satisfaction of the court that the default is not contempt. *See Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983)(an individual who cannot pay fines due to his or her indigence is not willfully defaulting or in contempt).

A plain reading of these statutes compels the conclusion that the trial court had authority to waive the mandatory LFOs. The meaning of these statutes is clear and can be determined from the wording of the statutes themselves. The language of the statutes evidences that the legislature intended to exempt indigent defendants who do not have the ability to pay from paying mandatory LFOs if they can satisfy the requirements of RCW 10.01.180(4) (i.e., their default in payment is not willful or contempt).

In addition, the rule of lenity supports a finding that the trial court had authority to waive the mandatory fines imposed in this case. This rule applies to the Sentencing Reform Act (SRA), which is chapter 9.94A RCW, and operates to resolve statutory ambiguities in favor of a criminal

defendant. *See In re Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1994)(finding that the statute at issue included an ambiguous term, the court applied the rule of lenity and interpreted the statute in a way that was most favorable to the defendant); *State v. Roberts*, 117 Wn.2d 576, 586, 817 P.2d 855 (1991); *State v. Lively*, 130 Wn.2d 1, 14, 921 P.2d 1035 (1996); *State v. Gore*, 101 Wn.2d 481, 486, 681 P.2d 227 (1984). If this Court finds that ambiguity exists as to whether the trial court had statutory authority to waive the mandatory fines imposed in this case, including restitution, the rule of lenity requires a finding that it did.

These statutes support the conclusion that the legislature made a reasonable and calculated decision to have the court, who imposes and owns the debt, to have control over any modification of that debt, including that of mandatory LFOs.

The trial court determined that Ms. Lacy was not in willful contempt, and she is indigent, and therefore waived the balance on the outstanding mandatory LFOs. CP 154-158. This was not error.

3. The court also has inherent authority under its general jurisdiction powers

The trial court had authority under the statutes discussed above, but even if it did not, this Court must nevertheless find that the trial court had inherent authority to waive the mandatory LFOs under the superior

court's general jurisdiction powers. In *State v. Johnson*, Division One held that, in the absence of statutory language indicating otherwise, a sentencing court has jurisdiction to enforce the requirements of a sentence imposed until those requirements are met or completed. 54 Wn. App. 489, 491, 774 P.2d 526 (1989). In *State v. Gamble*, the Court applied *Johnson*, and held that the legislature did not, by authorizing DOC to punish community custody violations, divest the superior courts of the authority to do so as well. *Gamble*, 146 Wn. App. 813, 820 (2008).

Likewise, there are no statements in any of the SRA provisions relating to LFOs that completely divest superior courts of jurisdiction to modify an LFO order post-sentencing. In fact, as demonstrated above, the opposite is true. There are many statutes giving the trial court broad authority to modify an LFO order post-sentencing.

Superior courts are courts of "general jurisdiction" and can hear all legal and equitable matters unless those "powers have been expressly denied." *In re Marriage of Major*, 71 Wn. App. 531, 533, 859 P.2d 1262 (1993)(quoting *State ex rel Martin v. Superior Court*, 101 Wash. 81, 94, 172 P. 257 (1918)). Therefore, the superior court retains the authority to modify an LFO order post-sentencing under its "general jurisdiction" powers because the legislature has not said otherwise. The power to

enforce an LFO assessment necessarily includes the discretion to waive the obligations under the appropriate facts.

Under the facts of this case, the trial court exercised its discretion and waived the mandatory LFOs pursuant to statutory authority. The court could have also waived the mandatory LFOs based on a superior court's inherent power to act pursuant to its general jurisdiction powers. The court, therefore, did not err in waiving the mandatory LFOs.

C. THE COURT HAD CONSTITUTIONAL AUTHORITY TO WAIVE MS. LACY'S MANDATORY LFOS

1. The issues in this case relate to the post-sentencing waiver of fines and fees and not to whether the fines and fees were properly imposed at sentencing

Appellant cited to *State v. Mathers*, *State v. Lundy*, and *State v. Seward* for the proposition that the court was statutorily mandated to impose the LFOs at issue in this case. Br. of App. 3, 4; *Mathers*, 193 Wn. App. 913, 376 P.3d 1163 (2016); *Lundy*, 176 Wn. App. 96, 308 P.3d 755 (2013); *Seward*, 196 Wn. App. 579, 384 P.3d 620 (2016). This is not contested.

Appellate courts have held that a trial court is not required to conduct an inquiry into ability to pay **mandatory fines before sentencing**. See *Mathers*, 193 Wn. App. at 921; *Seward*, 196 Wn. App. at 585-586 (emphasis added.) However, none of these cases addressed the issue of

whether the mandatory fines can be waived when requested by a post-sentencing remission motion showing that the defendant lacks the ability to pay.

In *Blank*, the Washington Supreme Court held that monetary assessments which are mandatory *may be imposed* against defendants without a per se constitutional violation. 131 Wn.2d 230, 930 P.2d 1213 (1997)(emphasis added). The court reasoned that fundamental fairness concerns only arise if the government seeks to enforce collection of the assessment and the defendant is unable, though not fault of her own, to comply. *Id.* at 241 (citing *Curry*, 118 Wn.2d 911, 917-18, 829 P.2d 166 (1992)).

The law is well-settled that the defendant's ability to pay LFOs must be assessed before the state can begin the collection process. *State v. Bertrand*, 165 Wn. App. 393, 405, 267 P.3d 511 (2011)(citing *State v. Baldwin*, 63 Wn. App. 303, 310, 818 P.2d 1116 (1991), *State v. Curry*, 62 Wn. App 676, 680, 814 P.2d 1252 (1991)).

Under *Blank*, post-sentencing waiver is constitutionally required when an offender lacks the ability to pay. The Washington Supreme Court established that the constitutionality of Washington's LFO statutes depends on the trial court conducting an ability to pay inquiry at certain key points. 131 Wn.2d at 242. One of these points is before enforced

collection or any sanction is imposed for nonpayment. *Id.*

In *Seward*, the Court stated that *Blank* does not require that the inquiry into ability to pay take place before the LFOs are imposed in a judgment and sentence. 196 Wn. App. at 586. In so finding, the Court reiterated that there must be an inquiry into ability to pay before enforced collection. *Id.* (citing *Blank*, 131 Wn.2d at 242).

Ms. Lacy demonstrated that the Clerk's office was enforcing collection of the debt against her. The trial court in this case had retained the services of a collection agency who commenced a garnishment proceeding against Ms. Lacy and continued to seek collection. CP 32, 36-39. The collection agency opposed Ms. Lacy's Motion to Remit as it desired to continue collecting on these LFOs. *See* RP 1, 9-12.

Mathers, *Lundy*, and *Seward*, therefore, do not address Ms. Lacy's case, in which she asked the court to remit the fines and fees post-sentencing because of the continued enforced collection, and these cases did not prohibit the court from waiving the mandatory LFOs.

2. Constitutional protections must be in place at the time of enforced collection of LFOs and these protections gave the court authority to waive the mandatory LFOs in this case

As stated above, constitutional protections from the enforced collection of LFOs are triggered at the time the state seeks to collect the fines. *Bertrand*, 165 Wn. App. at 405 (citing *Baldwin*, 63 Wn. App. at

310, *Curry*, 62 Wn. App. at 676). No defendant may be required to pay costs as part of a criminal sentence except through compliance with all of the constitutional criteria identified by the U.S. Supreme Court in *Fuller v. Oregon*. 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974). These criteria are as follows:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on a convicted defendant;
3. Repayment may only be ordered if the defendant is or will be able to pay;
4. The court must take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose;
5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigence will end;
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and
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.

Fuller, 417 U.S. at 44-46; *see also Curry*, 118 Wn.2d at 915-16.

As stated above, the *Blank* Court stated that fundamental fairness concerns only arise if the government seeks to enforce collection of the fines and fees, and the defendant is unable, through no fault of her own, to comply. 131 Wn.2d at 241 (citing *Curry*, 118 Wn.2d at 917-18). *Blank* did not set forth the remedy available once the inquiry into ability to pay takes

place. However, *Blank* implies that waiver must be available post-sentencing if the defendant lacks the ability to pay the LFOs. Otherwise, the system would be unconstitutional.

Under *Blank*, the constitutionality of Washington's LFO statutes was dependent on trial courts conducting an ability-to-pay inquiry at certain key times, including before enforced collection or any sanction is imposed for nonpayment. *Id.* at 242.

RCW 9.94A.760 authorizes the Superior Court Clerk's Office to employ a variety of tools to collect LFOs. This includes setting the monthly payment amount, issuing notice of payroll deductions, making recommendations regarding modifying payment plans, and utilizing a collection company. *See, e.g.*, RCW 9.94A.760(12).

In this case, the trial court used a collection agency to collect the outstanding LFOs. AllianceOne obtained a judgment against Ms. Lacy and initiated garnishment proceedings against her to automatically deduct money from the paycheck that she needed (and continues to need) to provide for herself and her 10-year-old son. A representative from the collection agency appeared to respond to Ms. Lacy's request to remit the LFOs. RP 1. The court was enforcing the order against Ms. Lacy through the civil collections process, and AllianceOne was seeking to continue that enforcement. The trial court determined that Ms. Lacy was at the point of

enforced collection, and this has not been challenged. CP 156.

Therefore, the constitutional protections set forth in *Fuller* were triggered. *See also Bertrand*, 165 Wn. App. at 405 (citing *Baldwin*, 63 Wn. App. at 310; *Curry*, 62 Wn. App. at 676)(DOC could not collect the LFOs until there was a determination of the defendant's ability to pay)). Accordingly, the trial court was constitutionally required to determine Ms. Lacy's ability to pay the mandatory LFOs. Since the trial court determined that Ms. Lacy does not have the ability to pay, it would have been a constitutional violation for the court to deny Ms. Lacy's motion and allow the enforced collection to continue.

Failure to waive the mandatory LFOs would have had serious consequences for Ms. Lacy, consequences she would not face but for the fact that she is poor. Mandatory LFOs raise the same concerns as discretionary obligations with regard to their impact on indigent defendants. Most importantly, as in the instant case, the barrier to reentry and rehabilitation. *See State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015)(it has been found that the most notable problem with criminal debt is the impediment it creates to reentry and rehabilitation)(citation omitted).

Division Three recently addressed this barrier created by legal financial obligations, stating the following:

The trial court's lengthy involvement in collecting obligations inhibits reentry of the offender to society regardless of whether the State actively seeks to collect the judgment. Legal or background checks will show an active criminal record in superior court for individuals who have not fully paid their financial obligations. The active record impairs the defendant's access to employment, housing, and credit. Reentry obstacles increase the chances of recidivism. *State v. Sorrell*, No 33032-0-III, 2018 WL 546688, 19 (Jan. 25, 2018).

Ms. Lacy was and is taking all of the steps necessary to successfully reenter society. Leaving her burdened with debt she cannot afford would significantly affect her chances of success. Because Ms. Lacy demonstrated that she is indigent, a fact that has not been disputed, the court had constitutional authority to waive the mandatory LFOs.

3. Continued collection of any of the LFOs in this case would violate due process as applied to Ms. Lacy

a. There is no rational basis for collecting the DNA database fee, victim penalty assessment, and filing fee from Ms. Lacy

Both the Washington and United States constitutions mandate that no person may be deprived of life, liberty, or property without due process. U.S. Const. amend V, § 1; Const. art. I, § 3. "The due process clause of the Fourteenth Amendment confers both procedural and substantive protections." *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216, 143 P.3d 571 (2006).

“Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” *Id.* at 218-19. It requires that “deprivations of life, liberty, or property be substantively reasonable:” in other words, such deprivations are constitutionally infirm if not “supported by some legitimate justification.” *Nielsen v. Washington State Dep’t of Licensing*, 177 Wn. App. 45, 52-53, 309 P.3d 1221 (2013)(citing Russell W. Galloway, Jr., *Basic Substantive Due Process Analysis*, 26 U.S.F.L.Rev. 625, 625-26 (1992)).

The level of review applied to a substantive due process challenge depends on the nature of the right affected. *Johnson v. Washington Dep’t of Fish & Wildlife*, 175 Wn. App. 765, 305 P.3d 1130 (2013). Where a fundamental right is not at issue, as is the case here, the rational basis standard applies. *Nielsen*, 177 Wn. App. at 53-54. To survive rational basis scrutiny, and a constitutional challenge, the action must be rationally related to a legitimate state interest. *Id.*

Although the rational basis standard is a deferential one, it is not meaningless. Indeed, the United States Supreme Court has cautioned that the rational basis test “is not a toothless one.” *Mathews v. DeCastro*, 429 U.S. 181, 185, 97 S. Ct. 431, 50 L. Ed. 2d 389 (1976). The court’s role is to assure that, even under this deferential standard of review, the

constitution has not been violated. *See DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998).

As the Washington Supreme Court has emphasized, “the state cannot collect money from defendants who cannot pay.” *Blazina*, 182 Wn.2d at 827. In *Seward*, this Court recently examined the issue of whether the failure to conduct a *Blazina* analysis before imposing mandatory LFOs at sentencing violated substantive due process. 196 Wn. App. at 579; *Blazina*, 182 Wn.2d at 827. This Court held that it did not. *Seward*, 196 Wn. App. at 585. In reaching its decision, this Court engaged in extensive discussion of the rational basis test. This Court found that imposing mandatory fines on offenders who may be indigent at the time of sentencing was rationally related to the legitimate state interest of funding the various state programs supported by the mandatory fees because some defendants will be able to pay, and even those who cannot pay at sentencing, might be able to pay in the future. *Id.*

Chief Judge Bjogern dissented in *Seward*. The dissent found that there is no legitimate state interest in imposing LFOs on individuals who cannot pay them, stating:

“In those instances, the only consequence of mandatory LFOs is to harness those assessed them to a growing debt that they realistically have no ability to pay, keeping them in the orbit of the criminal justice system and within the

gravity of temptations to reoffend that our system is designed to still. Levying mandatory LFOs against those who cannot pay them thus increases the system costs they were designed to relieve. In those instances, the assessment of mandatory LFOs not only fails wholly to serve its purpose, but actively contradicts that purpose. The self-contradiction in such a system crosses into an arbitrariness that not even the rational basis test can tolerate.” *Id.* at 589.

In reaching its decision, the dissent observed that, “Although rational basis review is highly deferential, courts have invalidated legislation under it where the purported rationale for the challenged legislation is too attenuated or irrational in light of the legislation’s effect. *Id.* at 590 (citing *Turner v Fouche*, 396 U.S. 346, 361-62, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970)).

The *Seward* dissent further stated:

“... [I]f the hypothesizing [regarding an individual’s future ability to pay] of the majority approach is sufficient to relieve the contradictions in assessing mandatory LFOs with no consideration of ability to pay, then the rational basis test must tolerate the irrationality of clearly antagonistic purpose and effect. That irrationality itself contradicts the core of the rational basis test.” *Id.* at 591.

Division Three, in a recent case, stated that the law does not commit to the speculation that an individual might one day have the ability to pay LFOs, particularly since the speculation could also be that the individual

will incur more debt that would make it even more difficult for her to pay. *Sorrell*, 2018 WL 546688 at 29.

As stated above, the statutes under which the fees were assessed in this case mandate imposition of the fees at sentencing. Under RCW 43.43.7541, the court must include a fee of one hundred dollars for collection of DNA (DNA database fee). Similarly, under RCW 7.68.035, when any person is found guilty in superior court of having committed a crime, the court shall impose a penalty assessment (victim penalty assessment or VPA). The prosecuting attorney is expected to insure that these assessments are imposed and collected. RCW 7.68.035(6). Finally, under RCW 36.18.020(2)(h), the clerk shall collect specific fees for their official services, and this includes the following: an individual who is convicted or pleads guilty shall be liable for a fee of two hundred dollars. None of these statutes explicitly prohibits waiver of any of these fees.

The fees assessed in this case are meant to fund the collection of biological samples and the maintenance and operation of DNA databases (DNA fee), increase funding for victim programs (VPA), and provide funds for the costs of the case and collection of LFOs (filing fee). *See Mathers*, 193 Wn. App. at 926. These are legitimate interests.

However, continued collection of the mandatory LFOs would fail to meet the rational basis test in this case. Failing to waive these mandatory

fees when Ms. Lacy still has no ability to pay them, even seven years after her conviction, is so far attenuated from the goal of ultimately collecting these fees, it is arbitrary and irrational. Ms. Lacy demonstrated that she is indigent and unable to pay her LFOs, and this was not disputed.

Continuing to enforce collection of these LFOs through a collection agency when Ms. Lacy cannot pay wastes judicial resources. There are increased costs to continuing to collect from an individual who cannot make any payments. As discussed by the *Seward* dissent, this increases the system costs that LFOs were designed to relieve. 196 Wn. App at 589. In other words, when engaging in a costs-benefit analysis, the costs of contracting with a collection agency to collect money that Ms. Lacy cannot pay because she needs the money to provide basic necessities for herself and her child outweighs the advantages of expending staff resources on such an endeavor. Thus, the purported goals of ultimately collecting the fines from Ms. Lacy are arbitrary and irrational.

The trial court, therefore, did not err in waiving the mandatory LFOs because continued collection *against Ms. Lacy* would violate due process.

b. Enforced collection of restitution under RCW 9.94A.753 would also be unconstitutional as applied to Ms. Lacy under the due process standard

Appellant asserts that the trial court did not have authority to modify the sentencing order imposing restitution based on RCW 9.94A.753(4).

Br. of App. 3. Under that subsection, the court may not modify the total amount of restitution based on the defendant's ability to pay the total amount. If this statute is read as not permitting reduction or waiver in any instance, including when an individual cannot pay *any amount*, this expressly prohibits the court from following the constitutional protections discussed above that have been triggered in this case (e.g., that repayment is not mandatory and that individuals who lack the ability to pay cannot be ordered to do so). This is unconstitutional as applied to Ms. Lacy.

The purpose of this statute is to make victims whole after a crime has been committed against them and they have suffered injury or property loss or damage. This is a legitimate interest.

However, the imposition of restitution upon defendants who cannot pay it does not rationally serve that interest. Ms. Lacy has shown that, even seven years after the conviction, she is indigent and cannot pay these LFOs. There is nothing reasonable or rational about requiring the court to collect restitution upon Ms. Lacy regardless of whether she has the ability to pay. This does not further the State's interest in making victims whole and has the same negative effect on resources as discussed above.

Even if assessment of restitution is constitutionally imposed, it does not follow that collection is also constitutional. Ms. Lacy has shown that

she does not have the ability to pay, and the continued collection of restitution no longer rationally relates to the legitimate state interest.

Additionally, enforced collection from an individual who cannot pay can impede rehabilitation, and the imposition of mounting debt upon people who cannot pay actually works against another important State interest — reducing recidivism. *See Blazina*, 182 Wn.2d at 836.

In sum, when applied to Ms. Lacy, who does not have the ability to pay, the mandatory collection of restitution does not rationally relate to the State's interest. Hence, this Court should additionally find that RCW 9.94A.953 violates substantive due process as applied to Ms. Lacy, and find that the trial court did not err in waiving restitution.

4. Continued collection of the mandatory LFOs in this case would violate equal protection as applied to Ms. Lacy

a. There is no rational basis for collecting the DNA database fee, victim penalty assessment, and filing fee from Ms. Lacy

The equal protection clauses under the United States and Washington constitutions require that similarly-situated persons receive similar treatment under the law. U.S. Const. amend XIV, § 1; Const. art. I, § 12; *Mathers*, 193 Wn. App. at 925. Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is

made. *Mathers*, 193 Wn. App. at 925.

Similar to the substantive due process analysis, where the challenge does not involve a suspect class and the right at issue is not a fundamental right, as is the case here, courts must use the rational basis test. *Id.* Rational basis review requires the existence of a legitimate governmental objective and a rational means of achieving it. *Id.*

Under rational basis scrutiny, a government action that, in effect, creates different classes, will survive an equal protection challenge only if: (1) the legislation applies alike to all members within the designated class, (2) there are reasonable grounds to distinguish between different classes of affected individuals, and (3) the classification has a rational relationship to the proper purpose. *DeYoung*, 136 Wn.2d at 144. Where an action fails to meet these standards, it is unconstitutional. *Id.*

Ms. Lacy is similarly situated to other individuals affected by mandatory LFOs because these LFOs are assessed against all defendants convicted of certain felonies. However, the statutes imposing the mandatory LFOs do not apply equally to all felony defendants because those who are able to pay are not straddled with often unending debt that affects their employment, credit, and housing. There are no reasonable grounds to create a class of people who are affected in this way simply because they are poor.

The purpose of the statutes under which the DNA database fee, VPA, and filing fee were assessed is as discussed above, and as also stated above, this purpose is not rationally related to enforced collection of these fees from an individual who cannot pay.

As such, continued collection of these LFOs *from Ms. Lacy* would violate equal protection, and the court did not err in waiving the DNA database fee, victim penalty assessment, and filing fee.

b. Enforced collection under RCW 9.94A.753 would also be unconstitutional as applied to Ms. Lacy under the equal protection standard

As a felony defendant convicted of a certain crime, Ms. Lacy is similarly situated to other persons affected by RCW 9.94A.753. When an individual is convicted of an offense that results in injury to any person or damage to or loss of property, restitution shall be ordered. RCW 9.94A.753(5). Again, this statute expressly prohibits the court from making sure that the above-discussed constitutional protections are in place if it is determined that the statute explicitly prohibits any reduction based on inability to pay, even for those who cannot make any payments. This makes repayment mandatory and results in ordering payment from an individual who cannot pay, thereby eroding the constitutional protections.

RCW 9.94A.753 does not apply equally to all felony defendants because those who cannot pay will find themselves falling further into

debt, and this reduces their ability to successfully reenter society. Distinguishing between people in this way is unreasonable.

Collecting restitution from individuals who cannot pay results in continued costs to the court for collection of funds it will not ultimately receive. Enforcing collection against an individual who cannot pay is, therefore, not rationally related to the legitimate purpose of the law. The court should not continue attempting collection, hoping that Ms. Lacy might one day be able to pay, because just having this on her record contributes to her continuing debt and inability to successfully reenter society. Therefore, RCW 9.94A.753 violates equal protection as applied to Ms. Lacy, and the court did not err in waiving restitution.

IV. CROSS-APPEAL

I. ASSIGNMENT OF ERROR ON CROSS-APPEAL

RCW 10.82.090 is unconstitutional as applied to Ms. Lacy. The issue is whether RCW 10.82.090 violates the due process and equal protection clauses of the U.S. and Washington state constitutions.

II. ARGUMENT ON CROSS-APPEAL

A. STANDARD OF REVIEW

Under RAP 2.5(a)(3), an appellate court may review an error for the first time on appeal if it is a manifest error affecting a constitutional right. This is applicable here.

This issue involves the interpretation of statutory provisions, including their application, and the application of constitutional principles. Both questions are reviewed de novo. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010); *State v. Vance*, 168 Wn.2d 754, 759, 230 P.3d 1055 (2010); *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

B. THE STATUTE UNDER WHICH A TRIAL COURT HAS AUTHORITY TO WAIVE INTEREST IS UNCONSTITUTIONAL BECAUSE IT VIOLATES DUE PROCESS AS APPLIED TO MS. LACY

As discussed above, both the United States and Washington state constitutions mandate that no person may be deprived of life, liberty, or property without due process. U.S. Const. amend V, § 1; Const. art. I, § 3.

“Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” *Amunrud*, 158 Wn.2d at 218-19. It requires that “deprivations of life, liberty, or property be substantively reasonable:” in other words, such deprivations are constitutionally infirm if not “supported by some legitimate justification.” *Nielsen v. Washington State Dep’t of Licensing*, 177 Wn. App. 45, 52-53, 309 P.3d 1221 (2013)(citing Russell W. Galloway, Jr., *Basic Substantive Due Process Analysis*, 26 U.S.F.L.Rev. 625, 625-26 (1992)).

The level of review applied to a substantive due process challenge depends on the nature of the right affected. *Johnson v. Washington Dep't of Fish & Wildlife*, 175 Wn. App. 765, 305 P.3d 1130 (2013). Where a fundamental right is not at issue, as is the case here, the rational basis standard applies. *Nielsen*, 177 Wn. App. at 53-54. To survive rational basis scrutiny, and a constitutional challenge, the legislation must be rationally related to a legitimate state interest. *Id.*

Under RCW 10.82.090(1), legal financial obligations *shall* bear interest until paid (emphasis added). Courts are permitted to assess interest on outstanding LFO balances at a rate of 12 percent per year. *See* RCW 4.56.110; RCW 19.52.020. The collection of interest has the same effect as the original assessment of LFOs of pushing Ms. Lacy further into poverty.

RCW 10.82.090(2)(b) allows the court to reduce interest on the restitution portion of LFOs only if the principal balance has been paid in full.

RCW 10.82.090(2)(c) allows the court to reduce or waive interest on non-restitution LFOs if the offender shows that she has personally made a good faith effort to pay and that the interest accrual is causing a manifest hardship. A “good faith effort” means that the individual has either paid

the principal in full or has made at least 15 monthly payments within an 18-month period.

As stated above, the Washington Supreme Court has held that monetary assessments may be imposed against defendants without a per se constitutional violation. *Blank*, 131 Wn.2d at 240. This, presumably, includes the accrual of interest.

However, fairness concerns arise when the government seeks to enforce collection and the defendant is unable, through no fault of her own, to comply. *Id.* at 241 (citing *Curry*, 118 Wn.2d at 917-18). Statutes assessing LFOs have been found constitutional, in part, because of the protections that come into play when a court reviews whether it should continue to collect on the LFOs. These protections, which are not encompassed in RCW 10.82.090, include that repayment must not be mandatory and repayment may only be ordered if the defendant is or will be able to pay. *See Fuller*, 417 U.S. at 45-46; *Curry*, 118 Wn.2d at 915-16.

The analysis that imposition of a fine or fee is constitutional because a defendant might one day be able to pay has received recent scrutiny. In *Seward*, the dissent disagreed with the majority opinion that statutes imposing LFOs can meet the rational basis test because defendants might one day have the ability to pay, stating:

“... [I]f the hypothesizing [regarding an individual’s future ability to pay] of the majority approach is sufficient to relieve the contradictions in assessing mandatory LFOs with no consideration of ability to pay, then the rational basis test must tolerate the irrationality of clearly antagonistic purpose and effect. That irrationality itself contradicts the core of the rational basis test.”
196 Wn. App. at 591.

In a recent case, Division Three stated that the law does not commit to the speculation that an individual might one day have the ability to pay LFOs, particularly since the speculation could also be that the individual will incur more debt that would make it even more difficult for her to pay. *Sorrell*, 2018 WL 546688 at 29.

Even if a statute permitting imposition of interest 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.

RCW 10.82.090 allows for a financial hardship analysis, but only on non-restitution interest, and only if the individual has paid the principal in full or made 15 payments in the last 18 months. This applies to all defendants, even those who are indigent and do not have the ability to make the payments required by the statute.

This statute serves the State’s interest in funding the court system and providing for the clerk’s office to monitor payments of fines and fees. This is a legitimate interest.

However, the accrual and collection of interest for an individual who cannot pay it does not rationally serve the legitimate state purpose. Ms. Lacy demonstrated that requiring her to pay the accumulated interest would constitute a financial hardship, and this was not disputed. *See* CP 154-58. This was determined seven years after Ms. Lacy's conviction, and she continues to lack the ability to pay.

It is irrational for the State to mandate that trial courts collect this debt from individuals who cannot pay. Indeed, it actually can impede rehabilitation, and the imposition of mounting debt upon people who cannot pay actually works against that important State interest. *See Blazina*, 182 Wn.2d at 684 (discussing the cascading effect of LFOs with an accompanying 12 percent interest rate and examining the detrimental impact to rehabilitation that comes with ordering fees that cannot be paid).

Not waiving interest has serious consequences for Ms. Lacy, consequences she would not face but for the fact that she is poor. The accumulated interest raises the same concerns as mandatory LFOs.

As noted above, Division Three recently addressed these concerns and barriers created by legal financial obligations, stating the following:

The trial court's lengthy involvement in collecting obligations inhibits reentry of the offender to society regardless of whether the State actively seeks to collect the judgment. Legal or background checks will show an active criminal record in superior court for individuals who have not fully paid their financial obligations. The

active record impairs the defendant's access to employment, housing, and credit. Reentry obstacles increase the chances of recidivism. *State v. Sorrell*, 2018 WL 546688 at 19.

Requiring sentencing courts to attempt to collect interest upon felony defendants who cannot pay it is so far attenuated from the purpose of funding the court system and clerk's office, that it is not rational. It only succeeds in contributing to Ms. Lacy's mounting debt, further prohibiting her successful reentry into society, and wasting judicial resources in attempting to collect money that Ms. Lacy cannot pay.

In sum, when applied to Ms. Lacy, who does not have the ability to pay, the mandatory collection of interest does not rationally relate to the State's interest. Hence, this Court should find RCW 10.82.090 violates substantive due process as applied to Ms. Lacy. This Court should vacate the trial court's ruling on whether to remit the interest and remand for entry of an order consistent with this opinion.

C. THE STATUTE UNDER WHICH A TRIAL COURT HAS AUTHORITY TO WAIVE INTEREST IS UNCONSTITUTIONAL BECAUSE IT VIOLATES EQUAL PROTECTION AS APPLIED TO MS. LACY

As stated above, under the equal protection clause, persons similarly situated with respect to the legitimate purpose of a government action must receive like treatment. U.S. Const. amend XIV, § 1; Const. art. 1, § 12.

Similar to the substantive due process analysis, where the challenge does not involve a suspect class and the right at issue is not a fundamental right, as is the case here, courts must use the rational basis test. *Mathers*, 193 Wn. App. at 925. Rational basis review requires the existence of a legitimate governmental objective and a rational means of achieving it. *Id.*

Under rational basis scrutiny, a government action that, in effect, creates different classes, will survive an equal protection challenge only if: (1) the legislation applies alike to all members within the designated class, (2) there are reasonable grounds to distinguish between different classes of affected individuals, and (3) the classification has a rational relationship to the proper purpose. *DeYoung*, 136 Wn.2d at 144. Where legislation fails to meet these standards, it is unconstitutional. *Id.*

Again, the purpose of RCW 10.82.090 is funding the court system and providing for the clerk's office to monitor payments of fines and fees. This is a legitimate state interest.

The relevant group in this case is all defendants subject to the mandatory interest. Having been convicted of a felony and assessed LFOs that will accrue interest, Ms. Lacy is similarly situated to other affected persons within this affected group.

RCW 10.82.090 does not apply equally to all felony defendants, however, because those who cannot pay their fines will be assessed higher

interest over time. Those who can pay in full, or even in a short amount of time, will either be assessed no interest or a much smaller amount. This effectively results in a fee on the poor. Ms. Lacy is being punished because she is in poverty and has been assessed additional fees simply because she has not been able to pay her LFOs.

This classification is unreasonable because those who cannot pay will be penalized more and pushed further into debt and poverty. This works against the important state interests in rehabilitation and reducing recidivism. It also creates further costs to the state in attempting to collect this additional fee.

The mandatory requirement that interest be collected from individuals who cannot pay is, therefore, not rationally related to the legitimate purpose of the law. Therefore, RCW 10.82.090 violates equal protection as applied to Ms. Lacy. This Court should vacate the trial court ruling on interest and remand for entry of an order consistent with this opinion.

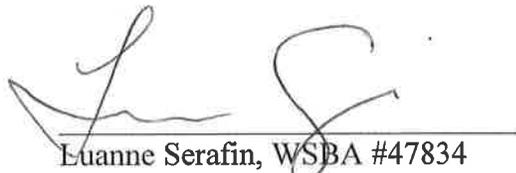
V. CONCLUSION

Ms. Lacy respectfully requests that this Court rule as follows: (1) the trial court did not err in remitting the restitution assessed in this case, (2) the trial court did not err in remitting the DNA database fee, victim penalty assessment, and filing fee, (3) RCW 9.94A.753 is unconstitutional

as applied to Ms. Lacy, and (4) RCW 10.82.090 is unconstitutional as applied to Ms. Lacy.

Respectfully submitted this 30th day of January, 2018.

NORTHWEST JUSTICE PROJECT



Luanne Serafin, WSBA #47834
Attorney for Respondent

CERTIFICATE OF SERVICE

Luanne M. Serafin declares as follows:

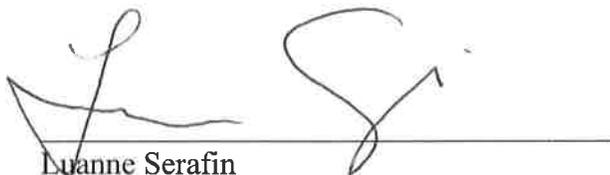
I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein.

I certify that on January 30, 2018, I served a true and correct copy of this RESPONSE BRIEF and this CERTIFICATE OF SERVICE for delivery to the persons indicated below via the appellate court portal and first class mail as follows:

Mark von Wahlde
Pierce County Prosecutor's Office
930 Tacoma Ave. S, Room 946
Tacoma, WA 98402

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

Dated this 30th day of January, 2018 at Olympia, Washington



Luanne Serafin

January 30, 2018 - 10:30 AM

Transmittal Information

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Appellate Court Case Title: State of Washington, Appellant/Cross-Respondent v. Katrina Lacy,
Respondent/Cross-Appellant
Superior Court Case Number: 10-1-00479-5

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