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Division II
State of Washington
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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.

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

NORTHWEST JUSTICE PROJECT
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I. INTRODUCTION

The State contends that the trial judge properly recognized that it lacked authority to waive the interest that had accrued as a result of Ms. Lacy's outstanding Legal Financial Obligations (LFOs). This contention is a legal error that this Court should address, particularly in light of newly enacted legislation that applies to Ms. Lacy's case. The Respondent/Cross-Appellant submits this Reply Brief on the issues raised in the cross-appeal and addressed in Appellant's Reply Brief pursuant to RAP 10.1(f). This Court should vacate the Order regarding interest and remand for an entry consistent with this opinion.

II. ARGUMENT

A. **The State mischaracterizes Ms. Lacy's cross-appeal in its Reply Brief**

As the State concedes in its Reply Brief, a statute can be constitutional as applied to the *imposition* of LFOs and unconstitutional as applied to the *collection* of LFOs from a particular individual (emphasis added). App. Rep. Br. at 9.

The State, however, argues that the interest statute in question, RCW 10.82.090, only relates to imposition, reduction, and waiver of interest. This is a semantic distinction that is not relevant. Ms. Lacy asked the trial court to *waive* her LFOs and the accrued interest. Failure to *waive* this

interest results in *continued collection* of the accrued interest. This is directly addressed by RCW 10.82.090.

The State also argues that no act to collect LFOs is challenged. App. Rep. Br. at 9. This is incorrect. The entire basis of Ms. Lacy's Motion to Remit and Cross-Appeal is specifically related to the court's enforced collection of LFOs through a collections company. The court has contracted with a collections company, AllianceOne, to enforce the order assessing the LFOs. AllianceOne opposed Ms. Lacy's Motion to Remit as it was seeking to continue that enforcement through collection. RP 1. The trial court determined that Ms. Lacy was at the point of enforced collection, and this was not contested. CP 156.

Additionally, the State argues that RCW 10.82.090 is not unconstitutional without specifically discussing Ms. Lacy and her inability to pay. App. Rep. Br. at 9. It appears that the State is addressing an argument that RCW 10.82.090 is unconstitutional on its face. However, Ms. Lacy has not made a facial challenge to the statute; Ms. Lacy has made a challenge that the statute is unconstitutional *as applied to her*, an individual who cannot pay. This is an important distinction, as Ms. Lacy is asking this Court to address whether RCW 10.82.090 is unconstitutional *as applied to Ms. Lacy* and not whether RCW 10.82.090 is unconstitutional on its face.

B. Newly enacted legislation prohibits courts from collecting interest on nonrestitution LFOs

The State did not address 2018 legislation that is directly applicable to Ms. Lacy's cross-appeal. As of June 7, 2018, RCW 10.82.090 will read as follows:

(1) Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of the effective date of this section, no interest shall accrue on nonrestitution legal financial obligations....

(2) The court may, on motion by the offender, following the offender's release from total confinement, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction as follows:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued prior to the effective date of this section;

(b) The court may reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full and as an incentive for the offender to meet his or her other legal financial obligations. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest.

Laws of 2018, ch. 269, § 1.

This is directly applicable to this cross-appeal, as the statute will direct courts to waive all interest on nonrestitution LFOs on motion of the offender. This legislation will not be in effect until June 7, 2018, but it specifically addresses waiver of interest that has accrued on LFOs *prior to*

the effective date of the section. This case should be remanded for an order consistent with the 2018 legislation as this demonstrates the Legislature's intent on interest accrued on LFOs.

C. Even with the 2018 legislation, RCW 10.82.090 would deprive Ms. Lacy of due process of law and equal protection as it applies to the restitution interest

RCW 10.82.090 deprives Ms. Lacy of due process of law and equal protection. *See* U.S. Const. amend V, XIV § 1; Const. art. I, §§ 3, 12.

Under the current RCW 10.82.090(1), legal financial obligations *shall* bear interest until paid (emphasis added). The 2018 legislation will change this so that interest shall only accrue on restitution. 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. However, the collection of interest through a collections company on *any* of the legal financial obligations has the same effect as the original assessment of LFOs of pushing Ms. Lacy further into poverty.

Fairness concerns arise when the government seeks to enforce collection of LFOs through a collections company and the defendant is unable, through no fault of her own, to comply. *State v. Blank*, 131 Wn.2d 230, 241, 930 P.2d 1213 (1997) (citing *State v. Curry*, 118 Wn.2d 911, 917-18, 829 P.2d 166 (1992)). 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. *See Fuller v. Oregon*, 417 U.S. 40, 45-46, 40 L. Ed. 2d, 94 S. Ct. 2116 (1974); *Curry*, 118 Wn.2d at 915-16. These protections include that repayment must not be mandatory and repayment may only be ordered if the defendant is or will be able to pay. *Id.*

With regard to due process, RCW 10.82.090 serves the legitimate State interest of funding the court system and providing for the clerk's office to monitor payments of fines and fees. However, the accrual and collection of *any* interest for an individual who cannot pay 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.

It is irrational for the State to mandate that trial courts continue to collect this debt from individuals who cannot pay. Indeed, it can and does impede rehabilitation. *See State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015)(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 all of the interest has serious consequences for Ms. Lacy, consequences she would not face but for the fact that she is poor.

Requiring sentencing courts to attempt to collect interest, even on restitution, from individuals who cannot pay is so far attenuated from the purpose of funding the court system and clerk's office that it is not rational and it violates due process as applied to Ms. Lacy.

Similarly, with regard to equal protection, RCW 10.82.090 does not apply equally to all felony defendants because those who cannot pay their LFOs 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, even for restitution interest. 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 interest of rehabilitation, and it creates further costs to the state in attempting to collect this additional fee.

The mandatory requirement that *any* interest be collected from individuals who cannot pay is, therefore, not rationally related to the legitimate purpose of the law. The Legislature has eliminated interest on nonrestitution LFOs. *See* Laws of 2018, ch. 269, § 1 (effective June 7, 2018). The Legislature should have also included a waiver option for

restitution interest for individuals who cannot pay. Those individuals will not be able to pay the principal in full, which is a prerequisite for waiver or reduction of restitution interest. This will result in continued unconstitutional application of the statute on individuals who cannot pay.

RCW 10.82.090, even as it relates to restitution interest, violates due process and 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 its opinion.

III. CONCLUSION

Ms. Lacy respectfully requests that this Court rule on the cross-appeal as follows: (1) RCW 10.82.090 is unconstitutional as applied to Ms. Lacy, and (2) all of the interest that has accrued on her outstanding LFOs should be waived. The Court should reverse the decision not to waive the interest and remand for an order consistent with its opinion.

Respectfully submitted this 14th day of May, 2018.

NORTHWEST JUSTICE PROJECT



Luanne Serafin, WSBA #47834
Attorney for Respondent/Cross-Appellant

CERTIFICATE OF SERVICE

Luanne M. Serafin declares as follows:

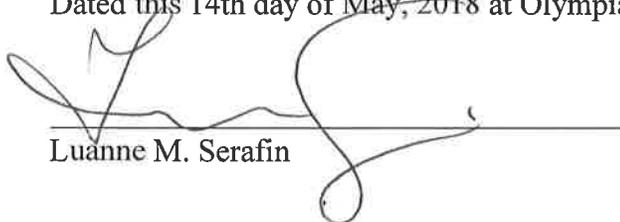
I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein.

I certify that on May 14, 2018, I served a true and correct copy of this REPLY 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 14th day of May, 2018 at Olympia, Washington



Luanne M. Serafin

May 14, 2018 - 11:50 AM

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