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Court of Appeals  
Division II  
State of Washington  
3/6/2019 10:47 AM  
NO. 52120-2

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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL JOSEPH BRADY, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Susan K. Serko

No. 01-1-06116-1

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**Brief of Respondent**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether this court should remand to the trial for consideration of a motion to remit appellate costs under former RCW 10.01.160(4)?
2. Whether the trial court should decline to consider waiver of interest on the defendant's legal financial obligations until he is released from custody?

B. STATEMENT OF THE CASE.

For the purposes of this brief, the State accepts the procedural history as presented in the Appellant's brief.

C. ARGUMENT.

1. THE TRIAL COURT ERRONEOUSLY FAILED TO CONSIDER DEFENDANT'S REQUEST FOR REMISSION BASED ON HIS CUSTODY STATUS.

The State concedes that the trial court erred in concluding it lacked the authority to consider defendant's request to waive appellate costs. Under former RCW 10.01.160(4) the defendant is allowed to file a motion to remit his discretionary LFOs at any time. *State v. Shirts*, 195 Wn. App. 849, 858-859, 381 P.3d 1223 (2016). If the offender has

not contumaciously defaulted, the trial court must determine whether the court's imposition of financial obligations creates a "manifest hardship." RCW 10.01.160(4); *City of Richland v. Wakefield*, 186 Wn.2d 596, 605–06, 380 P.3d 459 (2016); *State v. Wilson*, 198 Wn. App. 632, 634–35, 393 P.3d 892 (2017).

If payment will impose manifest hardship on the defendant or the defendant's immediate family, the court "may" remit all or part of the amount due or modify the method of payment under RCW 10.01.170. RCW 10.01.160(4); *State v. Blank*, 131 Wn.2d 230, 235, 930 P.2d 1213 (1997). RCW 10.73.160(4) and RCW 10.01.160(4), the subsections on remission, are nearly identical in language and are identical in meaning. *State v. Shirts*, 195 Wn. App. 849, 854 n.4, 381 P.3d 1223 (2016), *State v. Sorrell*, 2 Wn. App. 2d 156, 408 P.3d 1100 (2018).

Under former RCW 10.73.160(4), a defendant who is not in contumacious default may at any time petition the sentencing court for remission of the payment of costs. If the trial court is satisfied that payment of the amount due will impose manifest hardship on the defendant or his or her family, the court may remit all or part of the amount due in costs. *See* RCW 10.73.160(4). Mandatory deductions from an inmate's wages by the Department of Corrections is not

considered a collection action. *State v. Crook*, 146 Wn. App. 24, 27-28, 189 P.3d 811 (2008).

The term “manifest hardship” is undefined in RCW 10.01.160(4). *City of Richland v. Wakefield*, 186 Wn.2d at 606, 380 P.3d 459 (2016). One's present inability to provide for one's own basic needs, food, shelter, basic medical expenses, would meet that standard, however. *City of Richland v. Wakefield*, 186 Wn.2d at 606, 380 P.3d 459. Possessing some ability to pay does not necessarily preclude payment from creating a “manifest hardship.” *City of Richland v. Wakefield*, 186 Wn.2d at 605-06, 380 P.3d 459. In determining manifest hardship, the trial court should use GR 34 as a guide. *City of Richland v. Wakefield*, 186 Wn.2d at 606, 380 P.3d 459. GR 34 is a court rule designed to simplify the process for determining whether a person is indigent for purposes of court and clerk's fees and charges in civil cases. *City of Richland v. Wakefield*, 186 W.2d at 606-07, 380 P.3d 459. Under GR 34, courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline. *City of Richland v. Wakefield*, 186 Wn.2d at 607, 380 P.3d 459. If someone meets the GR 34 standard for indigency, courts should seriously question that person's ability to pay financial obligations. *State v. Blazina*, 182 Wn.2d at 839, 344 P.3d 680 (2015); *City of*

*Richland v. Wakefield*, 186 Wn.2d at 607, 380 P.3d 459. *State v. Sorrell*, 2 Wn. App. 2d 156, 408 P.3d 1100 (2018).

Therefore, the trial court erred when it denied defendant's motion to remit the appellate costs on the basis that the defendant remains incarcerated.

2. ON REMAND THE DEFENDANT'S REQUEST TO WAIVE INTEREST SHOULD BE DENIED.

RCW 10.82.090(2) precludes courts from considering a motion to waive interest on financial obligations until the offender is released from total confinement.

Former RCW 10.82.090(2) (2015) allowed a superior court to reduce or waive the interest on LFOs under certain circumstances on motion by the offender. However, the court had this authority only "following the offender's release from total confinement." Former RCW 10.82.090(2).

In 2018, the legislature amended RCW 10.82.090(1) to provide, "As of the effective date of this section, no interest shall accrue on nonrestitution legal financial obligations." The effective date of the amendment was June 7, 2018. LAWS OF 2018, ch. 269, § 1(1). Further, the current version of RCW 10.82.090(2)(a) now provides that the court may waive interest on LFOs that are not restitution that "accrued prior to

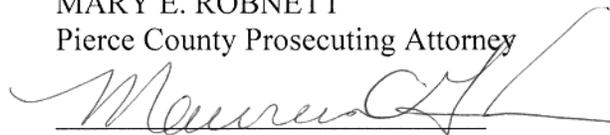
the effective date of this section.” But this waiver still can occur only on the offender's motion “following the offender's release from total confinement.” RCW 10.82.090(2).

D. CONCLUSION.

The State respectfully requests that this case be remanded to the trial court for a decision on whether the appellate costs impose a manifest hardship on the defendant. The trial court should decline to consider the interest costs until the defendant’s release from total confinement.

DATED: March 6, 2019

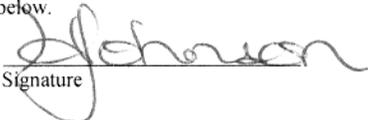
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The undersigned certifies that on this day she delivered by <sup>file</sup> U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is 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.

3/16/19   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**March 06, 2019 - 10:47 AM**

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