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Court of Appeals
Division II
State of Washington
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No. 52120-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL JOSEPH BRADY

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF PIERCE

REPLY BRIEF OF APPELLANT

KATE BENWARD
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A. ARGUMENT IN REPLY

1. This Court should accept the State's concession and remand to the trial court with an order remitting Mr. Brady's LFOs, or in the alternative, remand for a hearing on whether Mr. Brady's LFOs are a manifest hardship.

The State concedes that the trial court erred in concluding it lacked authority to consider Mr. Brady's motion to remit his remaining legal financial obligations. Brief of Respondent (BOR) at 1. Mr. Brady asks this Court to accept the State's concession.

Ordinarily a court would remand for the sentencing court to consider the motion to remit outstanding legal financial obligations; but here, where Mr. Brady is indigent by virtue of being incarcerated and without a source of income, and the record shows he is not in contumacious default, this court should remand to the trial court with an order remitting the balance of Mr. Brady's legal financial obligations. *See State v. Guayante*, No. 50634-3-II, 2019 WL 1492824 at *3 (Wash. Div. II 2019) (unpublished)¹(court reverses with order terminating discretionary costs based under guidance of GR 34).

¹ Under GR 14.1(a), this is non-binding authority that may be accorded such persuasive value as the court deems appropriate.

The State contends that on remand, the Court should rely on GR 34 and *City of Richland v. Wakefield* to determine whether Mr. Brady's outstanding LFOs constitute a manifest hardship. BOR at 3 (*citing City of Richland v. Wakefield*, 186 Wn.2d 596, 380 P.3d 459 (2016)).

Under GR 34, "courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline." *Wakefield*, 186 Wn.2d at 607 (*citing State v. Blazina*, 182 Wn.2d 827, 838-839, 344 P.3d 680 (2015)). Mr. Brady has no income other than a gratuity while incarcerated, and is clearly indigent under the federal standard cited by GR 34 and approved of by *Blazina* and *Wakefield*. Where the State concedes that Mr. Brady is entitled to seek remission, and he is indigent under the very standard proposed by the State, remand with an order remitting Mr. Brady's legal financial obligations is the appropriate remedy. *Guayante* at *5.

Mr. Brady respectfully asks this Court to accept the State's concession, and either remand with an order remitting his costs or remanding for a hearing to determine that the legal financial obligations pose a manifest hardship.

2. Mr. Brady asks this Court to find that RCW 10.82.090, which requires incarcerated debtors to wait until release before obtaining relief from interest, violates equal protection.

Mr. Brady asks this Court to adopt the argument he advances in his Statement of Additional Grounds (SAG), that RCW 10.82.090's requirement that he wait for release from confinement before obtaining relief from interest on restitution and legal financial obligations violates equal protection. U.S. Const. Amend. XIV; Const. art. §12. SAG at 11.

RCW 10.82.090's requirement that an incarcerated person wait for release before seeking relief from interest on his LFOs does not appear to serve "legitimate state objectives." *State v. T.J.M.*, 139 Wn. App. 845, 849, 162 P.3d 1175 (2007). Nor can it be argued that this classification created by the Legislature is "rationally related to the purpose of the legislation." *Id.* at 850 (*citing State v. Shawn P.*, 122 Wn.2d 553, 563–64, 859 P.2d 1220 (1993)). To the contrary, under RCW 10.82.090(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." RCW 10.82.090(b)(emphasis added). Denying relief from interest on restitution that has been paid in full by

an incarcerated person is not rationally related to the legitimate State goal of encouraging the payment of restitution.

Where an incarcerated person like Mr. Brady has paid off the principal of his restitution balance, there is “no state of facts” that “exists or can be conceived sufficient to justify the challenged classification” in denying him relief from interest until he is released from total confinement. *State v. Lewis*, 194 Wn. App. 709, 716–17, 379 P.3d 129 (2016) (citing *Seeley v. State*, 132 Wn.2d 776, 795–96, 940 P.2d 604 (1997)).

B. CONCLUSION

Mr. Brady asks this Court to accept the State’s concession that he is entitled to seek remittance of his legal financial obligations. Because he qualifies as indigent under GR 34 and is not in contumacious default, he requests an order remitting his remaining LFOs on remand, or in the alternative, remand for a hearing on whether these costs pose a financial hardship. He also asks this Court to find that RCW 10.82.090’s requirement that he wait for release from confinement before obtaining relief from accrued interest violates equal protection.

DATED this 10th day of April, 2019.

Respectfully submitted,

s/ Kate Benward

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Appellant.)	

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