

**FILED**

JUN 02, 2016

Court of Appeals  
Division III  
State of Washington

No. 33707-3-III (consolidated)  
IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,  
Plaintiff/Respondent,

vs.

JAMES EDWARD BOYD,  
Defendant/Appellant.

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT  
Honorable Gregory Sypolt, Judge

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REPLY BRIEF OF APPELLANT

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**A. ARGUMENT IN REPLY TO STATE’S RESPONSE**

**1. RCW 10.01.160(4) explicitly permits Boyd to move for remission of LFOs at any time for manifest hardship and the failure to hold a fact hearing on whether there is manifest hardship would render RCW 10.01.160(4)’s remissions process a nullity and violate due process.**

Boyd relies upon his Brief of Appellant to address this issue. Brief of Appellant at 10–21; *cf.* Brief of Respondent at 13–14.

**2. Boyd is aggrieved by compounding interest and the complete denial of consideration of his LFO remission motions on their merits.**

The State contends Boyd is not aggrieved. The State relies on *State v. Smits*, 152 Wn. App. 514, 216 P. 3d 1097 (2009), but fails to respond to Boyd’s point that in both *Smits* and *State v. Mahone*, 98 Wn. App. 342, 989 P.2d 583 (1999), the defendants were provided by the trial court with the precise remedy Boyd seeks— a meaningful hearing on whether remission is appropriate due to manifest hardship. Compare Brief of Respondent at 9–11 with Brief of Appellant at 22–25.

The State also fails to recognize how the accrual of interest on LFOs at a compounding rate of 12 percent is particularly harmful to

indigent litigants. *See State v. Blazina*, 182 Wn.2d 827, 836, 344 P.3d 680 (2015); Brief of Appellant at 25–26. Because of compounding, exorbitantly high interest, Boyd estimates he owes nearly \$22, 000 in LFOs. If he cannot seek remission, he will owe thousands of dollars more by the time he exits prison.

As Division One recently acknowledged, "Carrying an obligation to pay a bill of \$6,983.19 plus accumulated interest can be quite a millstone around the neck of an indigent offender." *State v. Sinclair*, \_\_\_ P.3d \_\_\_, 2016 WL 393719 at \*6 (Wash. Ct. App. Jan. 27, 2016), petition for review filed February 18, 2016 (No. 92796-1). Boyd owes more than three times what Sinclair does. To avoid the further compounding of interest, Boyd would need to pay more than \$2,354<sup>1</sup> in LFOs in 2016 and this would still have no effect on the underlying principal. No court ever determined Boyd could pay any amount in LFOs, let alone any interest. Cf., *Smits*, 152 Wn. App. at 523 (noting Smits was not aggrieved in part because "[t]he initial imposition of court costs at sentence [wa]s predicated on the determination that the defendant either has or will have the ability to pay"). Boyd is aggrieved by the harmful accrual of interest,

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<sup>1</sup> One year's worth of compounded interest at 12 per cent.

as well as the complete denial of consideration of his LFO remission motions on their merits. *See* Brief of Appellant at 22–28.

**3. This appeal is not moot because the issues presented remain unresolved.**

Due process and the plain language of RCW 10.01.160(4) require that defendants must be given a fair hearing of the subject of their LFO remission motions so that trial courts can make a manifest hardship determination based on the facts of their individual circumstances and then maintain, reduce or eliminate all or some of the LFOs. The State incongruously responds this relief has somehow been provided because warrants were recalled, Boyd agreed he had failed to make payments in the past and agreed to try in the future to make the same monthly payments as before. Brief of Respondent at 11–13; CP 712–739. But payment amounts are not the issue.

This appeal squarely raises due process and statutory interpretation issues as matters of first impression. A decision from this Court will provide guidance to trial judges, prosecutors, and the defense bar regarding what process is constitutionally required to satisfy the legislature’s provision of the motion for remission process and what the process should look like. *See, e.g., State v. G.A.H.*, 133 Wn. App. 567, 573, 137 P.3d 66

(2006) and *In re Pers. Restraint of Mines*, 146 Wn.2d 279, 285, 45 P.3d 535 (2002).

Given the number of offenders subject to legal financial obligations now and in the future, it is more than likely this issue will reoccur in Spokane County and throughout the state.<sup>2</sup> *Cf. City of Yakima v. Mollett*, 115 Wn. App. 604, 606–07, 63 P.3d 177 (2003) (moot case reviewed due to absence of applicable case law interpreting court rule and corresponding need to provide judicial guidance; problem likely to recur given busy criminal docket). The likelihood of recurrence factor is not limited to the questions of whether Boyd himself would be subjected to the same lack of a fair hearing on a future motion to remit. Likelihood of recurrence includes whether the issue would recur for *others* in the future. *In re Pers. Restraint of Myers*, 105 Wn.2d 257, 261, 714 P.2d 303 (1986); *State v. Sansone*, 127 Wn. App. 630, 637, 111 P.3d 1251 (2005). Review is warranted.

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<sup>2</sup> A high number of offenders in Washington State are bound by LFOs. “In total, approximately 114,000 Washingtonians owe LFOs to the state. Collectively, those individuals are responsible for 450,792 LFO accounts. King County alone holds 116,498 LFO accounts, whereas Pierce County holds 73,314 and Spokane County holds 33,331. In dollar amounts, King County residents owe an estimated \$500 million compared to the \$125.5 million Spokane County residents owe.” Michael L. Vander Giessen, Note, LEGISLATIVE REFORMS FOR WASHINGTON STATE’S CRIMINAL MONETARY PENALTIES, 47 Gonz. L. Rev. 547, 551–52 (2011–2012).

