

No. 34852-1-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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State of Washington,

Respondent,

v.

Jason Michael Catling,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SPOKANE COUNTY

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APPELLANT'S OPENING BRIEF

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## **A. INTRODUCTION**

Jason Michael Catling has several mental and physical conditions that render him unable to work. Due to his conditions, he receives social security disability, which is his sole source of income.

Federal law prohibits the State from compelling an individual to satisfy a debt through social security income. Nevertheless, the sentencing court ordered Mr. Catling to pay \$800 in mandatory legal financial obligations. Because Mr. Catling can only pay this debt with his social security income, the court's order is void under federal law. Additionally, as applied to recipients of social security like Mr. Catling, Washington's mandatory legal financial obligation statutes are at odds with the Supremacy Clause.

Mr. Catling asks this court to vacate the order requiring him to pay legal financial obligations.

## **B. ASSIGNMENTS OF ERROR**

1. As applied to social security recipients like Mr. Catling, RCW 7.68.035(1)(a), RCW 36.18.020(2)(h), and RCW 43.43.7541 conflict with 42 U.S.C. § 407 (a) and are therefore in violation of the Supremacy Clause. U.S. Const. art. VI, pt. II.

2. The court order requiring Mr. Catling to pay \$25 a month in legal financial obligations is contrary to 42 U.S.C. § 407 (a) and our

Supreme Court's ruling in *City of Richland v. Wakefield*, 186 Wn.2d 596, 599, 380 P.3d 459 (2016).

3. The trial court erred when it failed to conduct the required inquiry into Mr. Catling's ability to pay under RCW 9.94A.777(1).

4. The trial court erred when it ordered Mr. Catling to pay \$800 in Legal Financial Obligations.

5. The trial court erred when it denied Mr. Catling's motion for reconsideration of the imposition of his LFOs.

### **C. ISSUES**

1. The Social Security Act forbids the State from forcing a social security recipient to utilize social security funds to pay off a debt. Because Mr. Catling has several disabilities that leave him unable to work, his sole source of income derives from social security. Nevertheless, the sentencing court ordered him to pay \$25 a month in mandatory legal financial obligations, which can only be paid through his social security income. Is the court's order requiring Mr. Catling to pay mandatory legal financial obligations void under federal law?

2. The Supremacy Clause invalidates all state laws that conflict or interfere with an act of congress. RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 require courts to impose mandatory legal financial obligations, but the Social Security Act forbids the State from forcing a

social security recipient to utilize social security funds to pay off legal financial obligations. As applied to social security recipients like Mr. Catling, are RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 void under the Supremacy Clause?

3. If a defendant has a mental illness, a court must assess the defendant's ability to pay *all* legal financial obligations (except restitution or the victim penalty assessment) before imposing legal financial obligations. Mr. Catling presented evidence that he was on social security disability in part due to mental illness, but the sentencing court failed to assess Mr. Catling's ability to pay legal financial obligations. Under these circumstances, did the trial court err when it failed to assess Mr. Catling's ability to pay?

#### **D. STATEMENT OF THE CASE**

Jason Michael Catling was born with several birth defects that leave him in constant pain. 2RP 8-9.<sup>1</sup> Mr. Catling also has mental health issues. 2RP 9. Due to his conditions, he receives \$753 a month in social security disability, which is his sole source of income. 2RP 3, 8; CP 38.

The State charged Mr. Catling with two counts of delivery of a controlled substance, and Mr. Catling ultimately pleaded guilty to only

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<sup>1</sup> Two VRPs exist. The first, dated August 18, 2016, will be referred to as 1RP. The second, dated September 23, 2016, will be referred to as 2RP.

one count. CP 1, 4. The sentencing court granted him a Drug Offender Sentencing Alternative (DOSA) in lieu of incarceration. 1RP3; CP 4, 19.

At his sentencing hearing, Mr. Catling informed the court about his source of income and argued the court should not require him to pay mandatory Legal Financial Obligations (LFOs), as this would be contrary to our Supreme Court's ruling in *City of Richmond v. Wakefield*.<sup>2</sup> 2RP 3, 8-9. Although the trial court initially reserved on the issue, it ultimately ruled in favor of ordering Mr. Catling to pay all mandatory LFOs and later commanded him to pay \$25 a month, beginning on January 5, 2017. 2RP 7; CP 80-81.

Mr. Catling appeals.

## **E. ARGUMENT**

**1. The court's order requiring Mr. Catling to pay \$25 a month in mandatory legal financial obligations, which can only be satisfied through his social security income, constitutes "other legal process" under 42 U.S.C. § 407 (a) and is void under federal law.**

**a. The Social Security Act prohibits the State from recovering social security funds through execution, levy, attachment, garnishment, or other legal process.**

Under 42 U.S.C. § 407 (a) of the Social Security Act,

The right of any person to any future payment under this subchapter *shall not* be transferable or assignable, at law or in

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<sup>2</sup> Discussed fully in pt. 1 of the Argument section of this brief.

equity, and *none* of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or *other legal process*, or to the operation of any bankruptcy or insolvency law.

(emphasis added).

The United States Supreme Court determined that this provision of the Social Security Act also applies to states seeking to recoup money from an individual's social security funds. See *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973) (prohibiting New Jersey from suing a social security recipient); see also *Bennet v. Arkansas*, 485 U.S. 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1988) (invalidating a statute that allowed Arkansas to seize an incarcerated person's social security funds to defray the cost of imprisonment).

The United States Supreme Court defined "other legal process" in *Washington State Dep't of Social and Health Services v. Guardianship Estate of Keffeler*. 537 U.S. 371, 385, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). The court defined "other legal process" as follows:

[a] process much like the processes of execution, levy, attachment, and garnishment, and at minimum, [which] would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.

*Id.*

**b. In *City of Richland v. Wakefield*, our Supreme Court vacated a court order requiring the petitioner, a social security recipient, from paying legal financial obligations because the court order constituted “other legal process.”**

The court’s order requiring Mr. Catling to pay \$25 a month in LFOs, which can only be satisfied through his social security income, constitutes “other legal process” and is void under federal law. In *Wakefield*, a court ordered the petitioner to pay \$15 a month toward her outstanding LFOs. 186 Wn.2d 596, 599, 380 P.3d 459 (2016). However, the petitioner’s sole source of income for the preceding ten years of her life derived from social security disability. *Id.* at 599-600. The petitioner argued that the court’s order violated 42 U.S.C. § 407 (a) because it legally required her to make payments from her social security disability benefits. *Id.* at 607-08.

Our Supreme Court vacated the order requiring the petitioner to pay LFOs for a number of reasons; importantly, the Supreme Court concluded the court’s order met the United State Supreme Court’s definition of “other legal process.” *Id.* at 609. Noting that the United States Supreme Court “has already rejected prior state attempts to recoup money from social security recipients,” our Supreme Court turned to

Montana<sup>3</sup> and Michigan<sup>4</sup> caselaw to determine whether the state possessed the ability to reach social security funds to pay off legal financial obligations. *Id.* at 608-09.

In drawing its conclusion, our Supreme Court observed that both the Montana and Michigan courts rejected the view that 42 U.S.C. § 407 (a) prohibited only direct attachment and garnishment and have both instead held that “a court ordering LFO payments from a person who receives social security disability payments is an ‘other legal process’ by which to reach those protected funds.” *Id.* at 609. Our court agreed, noting that this conclusion comported with *Keffeler’s* definition of “other legal process,” which involves “some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.” *Id.* at 609 (quoting *Keffeler*, 537 U.S. at 385).

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<sup>3</sup> *State v. Eaton*, 323 Mont. 287, 99 P.3d 661 (2004) (eliminating a judgment that ordered a social security recipient to pay restitution to his victims because the order constituted “an improper attempt to subject [the defendant’s] social security benefits to ‘other legal process’” under 42 U.S.C. § 407 (a)).

<sup>4</sup> *In re Lampart*, 306 Mich. App. 226, 856 N.W.2d 192 (2014) (holding “when a state court order attaches to social security benefits in contravention of 42 U.S.C. § 407 (a), the attachment amounts to a conflict with federal law, and such a conflict is one ‘that the State cannot win’”).

Our court held, “federal law prohibits courts from *ordering* defendants to pay LFOs if the person’s only source of income is social security disability.” *Id.* (emphasis added).<sup>5</sup>

**c. Reversal is required.**

Like the petitioner in *Wakefield*, Mr. Catling’s income for the past decade derives solely from social security disability benefits. 2RP 3, 8; CP 38. And like the petitioner in *Wakefield*, the only way Mr. Catling can satisfy the court’s order is through his social security income. CP 38. Because the court’s order constitutes “other legal process” per *Keffeler* and *Wakefield*, this court should vacate the order.

**2. The Washington statutes that require a social security recipient to use social security funds to pay off legal financial obligations conflict with 42 U.S.C. § 407 (a) and are therefore in violation of the Supremacy Clause.**

Additionally, “there can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an act of congress.” *Rose v. Arkansas State Police*, 479 U.S. 1, 3, 107 S. Ct. 334, 93 L. Ed. 2d 183 (1986); U.S. Const. art. VI, pt. II. When a court finds that a statute is unconstitutional as applied, the statute no longer remains good law under

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<sup>5</sup> See also *In re Michael S.*, 206 W. Va. 291, 524 S.E.2d 443 (1999) (invalidating a court order requiring a juvenile defendant’s father to pay restitution because the father’s sole source of income derived from social security).

similar circumstances. *State v. Jorgenson*, 179 Wn.2d 145, 151, 312 P.3d 960 (2013). This court reviews constitutional issues de novo. *Id.* at 150.

As applied to social security recipients like Mr. Catling, RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 conflict with 42 U.S.C. § 407 (a) and are therefore in violation of the Supremacy Clause. U.S. Const. art. VI, pt. II. For example, in *Bennet v. Arkansas*, the petitioners challenged a statute that authorized the State to seize upon an incarcerated person's social security benefits. 485 U.S. at 396. The petitioners argued the statute violated the Supremacy Clause of the federal constitution because it explicitly allowed the State to expropriate funds the United States legislature specifically exempted from legal process per 42 U.S.C. § 407 (a). *Id.* The Supreme Court agreed and found that the Arkansas statute conflicted with the Supremacy Clause because "Section 407 (a) unambiguously rules out *any attempt* to attach Social Security Benefits." *Id.* at 397 (emphasis added).

While RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 do not explicitly allow courts to impose mandatory LFOs on defendants whose sole source of income derives from social security, the statutes nevertheless run counter to the Supremacy Clause because they implicitly require courts to impose LFOs on social security recipients.

Because the sentencing court relied on these statutes when it imposed the order requiring Mr. Catling to pay over \$800 in mandatory LFOs, the Supremacy Clause forms another basis for reversing the order. CP 70. This court should hold that, as applied to Mr. Catling, RCW 7.68.035, RCW 36.18.020(2)(h), and RCW 43.43.7541 are void under the Supremacy Clause.

**3. The sentencing court failed to make the required inquiry as to Mr. Catling's ability to pay under RCW 9.94A.777.**

Despite evidence that Mr. Catling has a mental illness, the sentencing court failed to determine whether Mr. Catling possessed the ability to pay legal financial obligations, which requires reversal. If a defendant has a mental illness, a court must assess the defendant's ability to pay *all* LFOs (except restitution or the victim penalty assessment) before imposing LFOs. RCW 9.94A.777(1); accord *State v. Tedder*, 194 Wn. App. 753, 758, 378 P.3d 246 (2016). RCW 9.94A.777(1)'s analyzes a defendant's current ability to pay rather than his future ability to pay. Additionally, "[a] defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment." RCW 9.94A.777(1). The statute further provides that a person "suffers from a mental health condition" under numerous circumstances, including the person's

enrollment in public assistance due to their condition. RCW 9.94A.777(2).

Here, the trial court knew that Mr. Catling had mental health issues that rendered him unable to work and yet failed to undergo the required analysis under RCW 9.94A.777(1). At the time of sentencing, Mr. Catling's mother informed the court that her son receives social security disability in part due to his mental health issues. 2RP 9. Because social security is a public assistance program, this satisfies RCW 9.94A.777(2)'s definition of a "mental health condition," which triggers an assessment of the defendant's ability to pay. RCW 9.94A.777(1); 1RP 4, 8.

Since the sentencing court failed to make the required assessment, this court, at minimum, should remand with instructions for the sentencing court to make the required individualized inquiry into Mr. Catling's ability to pay.

## **F. CONCLUSION**

The order requiring Mr. Catling to pay LFOs is void under federal law, and the statutes that force courts to impose mandatory LFOs on social security recipients are also void under the Supremacy Clause.

Additionally, the sentencing court, at minimum, erred when it failed to assess Mr. Catling's ability to pay LFOs under RCW 9.94A.777(1).

For these reasons, Mr. Catling asks this court to vacate the order requiring him to pay LFOs.

DATED this 12<sup>th</sup> day of June, 2017.

Respectfully submitted,

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DIVISION THREE**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 34852-1-III
	)	
JASON CATLING,	)	
	)	
APPELLANT.	)	

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**SIGNED** IN SEATTLE, WASHINGTON THIS 12<sup>TH</sup> DAY OF JUNE, 2017.

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