

FILED
Court of Appeals
Division III
State of Washington
8/8/2019 11:34 AM
36400-3-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LARRY A. POWELL, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

Gretchen E. Verhoef
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

INDEX

I. APPELLANT’S ASSIGNMENTS OF ERROR 1

II. ISSUES PRESENTED 1

III. STATEMENT OF THE CASE 2

IV. ARGUMENT 5

 A. THE DEFENDANT’S ARGUMENTS ARE NOT PRESERVED BECAUSE HE DID NOT REQUEST REMISSION OF HIS REMAINING LEGAL FINANCIAL OBLIGATIONS..... 5

 B. RCW 10.01.160(4) UNAMBIGUOUSLY REQUIRES A DEFENDANT TO BE RELEASED FROM TOTAL CONFINEMENT BEFORE REQUESTING REMISSION..... 8

 C. RAMIREZ IS NOT APPLICABLE TO POWELL’S CLAIMS BECAUSE HIS LFOS WERE IMPOSED LONG BEFORE THE 2018 LEGISLATIVE CHANGES AND HIS CASE WAS NOT PENDING ON APPEAL. 12

 D. THE DEFENDANT IS FINANCIALLY ABLE TO PAY (AND HAS BEEN PAYING) AND IS UNABLE TO DEMONSTRATE MANIFEST HARDSHIP..... 13

 E. THE DEFENDANT’S EQUAL PROTECTION CLAIM FAILS BECAUSE THERE IS A RATIONAL BASIS FOR TREATING DEFENDANTS WHO HAVE REENTERED SOCIETY DIFFERENT FROM THOSE WHO REMAIN IN TOTAL CONFINEMENT. 16

V. CONCLUSION 18

TABLE OF AUTHORITIES

Washington Cases

<i>City of Richland v. Wakefield</i> , 186 Wn.2d 596, 380 P.3d 459 (2016).....	14
<i>Dep't of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	8, 9
<i>Dep't of Ecology v. City of Spokane Valley</i> , 167 Wn. App. 952, 275 P.3d 367 (2012).....	8
<i>Five Corners Family Farmers v. State</i> , 173 Wn.2d 296, 268 P.3d 892 (2011).....	9
<i>Guillen v. Pierce Cty.</i> , 144 Wn.2d 696, 31 P.3d 628 (2001), <i>opinion modified on denial of reconsideration</i> , 34 P.3d 1218 (Wash. 2001).....	11
<i>In re Det. of Stout</i> , 159 Wn.2d 357, 150 P.3d 86 (2007)	16
<i>State v. Blank</i> , 131 Wn.2d 230, 930 P.2d 1213 (1997).....	12
<i>State v. Blazina</i> , 182 Wn.2d 827, 344 P.3d 680 (2015).....	7, 17
<i>State v. Costich</i> , 152 Wn.2d 463, 98 P.3d 795 (2004).....	11
<i>State v. D.H.</i> , 102 Wn. App. 620, 9 P.3d 253 (2000)	9
<i>State v. Ervin</i> , 169 Wn.2d 815, 239 P.3d 354 (2010)	8, 9
<i>State v. Hirschfelder</i> , 170 Wn.2d 536, 242 P.3d 876 (2010).....	16
<i>State v. J.P.</i> , 149 Wn.2d 444, 69 P.3d 318 (2003).....	9
<i>State v. Manussier</i> , 129 Wn.2d 652, 921 P.2d 473 (1996)	16
<i>State v. Ramirez</i> , 191 Wn.2d 732, 426 P.3d 714 (2018).....	12, 13
<i>State v. Scott</i> , 110 Wn.2d 682, 757 P.2d 492 (1988).....	7
<i>State v. Sorrell</i> , 2 Wn. App. 2d 156, 408 P.3d 1100 (2018).....	13

<i>State v. Strine</i> , 176 Wn.2d 742, 293 P.3d 1177 (2013).....	6
<i>State v. Ward</i> , 123 Wn.2d 488, 869 P.2d 1062 (1994)	17
<i>State v. Wilson</i> , 198 Wn. App. 632, 393 P.3d 892 (2017)	11, 12, 15

Statutes

RCW 10.01.160	10, 14
RCW 10.01.160 (2015).....	11, 12
RCW 10.73.010 (2015).....	12
RCW 10.73.160	5, 10
RCW 10.73.160 (2015).....	11

Rules

RAP 2.5.....	5, 6, 7
--------------	---------

I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court abused its discretion in denying Powell's petition for relief from non-restitution legal financial obligations.
2. The \$3,938 legal fee obligation should be stricken from Powell's judgment and sentence.
3. In the alternative, [the] June 8, 2018 Amendment to RCW 10.73.160(4), which prohibits an offender from petitioning for relief until after release from total confinement violates Powell's right to equal protection under the Fourteenth Amendment and article I, section 12, of the Washington Constitution.

II. ISSUES PRESENTED

1. Whether the defendant preserved his claims of error where his motion below was for a waiver or reduction in interest, rather than for remission?
2. Whether the defendant must wait for his release in order to petition for remission under the current version of the statute, which was in effect at the time he filed his motion?
3. Whether *Ramirez* applies to the defendant's legal financial obligations such that his LFOs should be stricken, where his LFOs were imposed long before *Ramirez* or the 2018 amendments to the

LFO statutes, and where Powell's case was not pending on appeal at the time of the amendments?

4. If the trial court's ruling was viewed as denying remission, did the trial court abuse its discretion where the record demonstrated the defendant has been paying his LFOs for the last 7 years, and he failed to demonstrate either an economic or noneconomic hardship resulting from those LFOs?
5. Does the current remission statute violate the Equal Protection Clause where there is no suspect class involved, and a rational basis exists for permitting remission only after an offender's release from total confinement?

III. STATEMENT OF THE CASE

The defendant was convicted, after a jury trial, of first-degree robbery and second-degree assault. CP 4. On August 19, 2011, the defendant was sentenced as a persistent offender to life in prison without the possibility of parole on both counts, as well as additional 24-month enhancements on each charge. CP 7-8, 13. A total of \$600 in mandatory legal financial obligations was ordered at sentencing. CP 10. The court found the defendant indigent for purposes of his appeal at public expense. CP 20.

After the defendant appealed, and filed two unsuccessful personal restraint petitions, he then moved the superior court, on July 20, 2018, to “waive or reduce interest on legal financial obligations.” CP 22. Specifically, the defendant’s motion asked the court “to waive interest on the non-restitution legal financial obligations that accrued during total confinement because the interest creates a hardship for me or my immediate family.” CP 22. The defendant claimed his outstanding LFOs totaled \$3,938.00 and the interest on those obligations totaled \$633.00. CP 22. The defendant “ask[ed] the court to waive or reduce interest on nonrestitution legal financial obligations because the accrual of interest is causing a significant hardship and [he has] personally made a good faith effort to pay [his] legal financial obligations.” CP 23. Additionally, Mr. Powell claimed “the interest is causing [him] and/or [his] family a significant hardship because ... [of] personal stress and mental anguish of worrying about this and other Court debt that [he has] no ability to pay. The inability to pay at the present time, and in the future, is enhanced by [his] sentence of Life Without Parole.” CP 24.

By a letter ruling, dated August 21, 2018, the Honorable Annette Plese acknowledged receipt of the defendant’s motion. Judge Plese indicated that, according to court clerk’s records, the defendant had paid both his DNA fee and Crime Victim’s compensation fee in full (which

totaled \$600). CP 21, 27. Clerk's records further indicated that, to date, the defendant had paid \$1,167.74. The court calculated, based upon the payments made to date, the defendant owed \$223.59¹ to the prosecutor's office and \$3,085.59 to the Office of Public Defense. CP 21. The court denied the defendant's motion, stating, "it appears that all your living expenses (such as food and housing) are provided for you by the State. Once you have paid off the underlying balances for the costs, the Court would be willing to waive the interest that has incurred [sic] on these amounts." CP 21. The defendant appealed this order on September 17, 2018. CP 28.

On November 21, 2018, Judge Plese reduced her letter ruling to formal order. That order generally repeats the findings made in the letter ruling, and also indicates that "the defendant has continued to make monthly payments each month through 2018 despite stating he has no income."

¹ A supplemental designation of clerk's papers is being filed herewith. The Mandate is estimated to be CP 41-52; the 2013 Certificate of Finality to be 53-65; and the 2017 Certificate of Finality to be 66-71.

In addition to the original \$600 judgment, this Court ordered costs in 2013 after the defendant's direct appeal in the amount of \$26.27 to the prosecutor's office and \$3,500.71 to OPD. CP 41. Then, after the defendant's first unsuccessful personal restraint petition, this Court ordered the defendant to pay costs of \$226.00 to the prosecutor's office in 2015. CP 53. No costs were imposed in 2017 after the defendant's second failed personal restraint petition. CP 66.

CP 38. The court further waived all pending interest on the appellate LFOs stating, “interest will no longer accrue after this order.” CP 39-40.

IV. ARGUMENT

On appeal, the defendant claims that (1) the trial court abused its discretion in denying his “Petition for Relief from Non-Restitution Legal Financial Obligations”; (2) the remaining appellate LFOs should be stricken; and (3) in the alternative, RCW 10.73.160(4) violates the defendant’s right to equal protection because it treats him differently than a defendant who has been released from total confinement. Br. at 1. The defendant does not assign error to any of the court’s findings of fact, nor does he assign error to the court’s ruling ordering that interest will no longer accrue on his appellate LFOs. CP 40.

A. THE DEFENDANT’S ARGUMENTS ARE NOT PRESERVED BECAUSE HE DID NOT REQUEST REMISSION OF HIS REMAINING LEGAL FINANCIAL OBLIGATIONS.

The defendant asserts that “although [he] submitted a form titled Motion for Order Waiving or Reducing Interest on Legal Financial Obligations, it is clear from the information he provided and the Court’s response that Powell *intended* to request relief from the underlying LFOs as well as interest.” Br. at 3 (emphasis added). If an “intent” to make a request were sufficient to preserve an issue for appeal, RAP 2.5 would be rendered meaningless.

Notably, although the superior court’s formal order is captioned “Order Denying Motion for Order Waiving or Reducing Legal Financial Obligations,” that same order indicates that the defendant’s motion was “for an order waiving or reducing interest on legal financial obligations.” CP 37. It was *that* motion that was denied by the court when it offered that “once the underlying balances are paid in full, the Court would be willing to waive the interest that has incurred [sic] on these amounts.” CP 38. Thus, the court understood the defendant’s motion to only involve the interest pending on his LFOs. The Court’s order denied waiver of the interest that had already accrued, but offered to waive that interest once the principle balances were paid, CP 38, and further ordered that interest would no longer accrue after November 16, 2018, CP 40.

A party may not assert a claim on appeal that was not first raised at trial. *State v. Strine*, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013). It is a fundamental principle of appellate jurisprudence in Washington and in the federal system that a party may not assert on appeal a claim that was not first raised at trial. *Id.* at 749. This principle is embodied in Washington under RAP 2.5. RAP 2.5 “affords the trial court an opportunity to rule correctly upon a matter before it can be presented on appeal.” *Strine*, 176 Wn.2d at 749 (quoting *New Meadows Holding Co. by Raugust v. Washington Water Power Co.*, 102 Wn.2d 495, 498, 687 P.2d 212 (1984)).

Although RAP 2.5 permits an appellant to raise for the first time on appeal an issue that involves a manifest error affecting a constitutional right, our courts have indicated that “the constitutional error exception is not intended to afford criminal defendants a means for obtaining new trials whenever they can ‘identify a constitutional issue not litigated below.’” *State v. Scott*, 110 Wn.2d 682, 687, 757 P.2d 492 (1988). It is well settled that “an appellate court may refuse to review any claim of error which was not raised in the trial court,” to include errors pertaining to legal financial obligations. *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015).

This Court should refuse to consider the defendant’s claims under RAP 2.5 notwithstanding his asserted “intent” to raise the issue to the trial court. The defendant never requested the court review or remit his LFO balances – only the interest accruing on those obligations. The court should not be expected, *sua sponte*, to strike a defendant’s LFOs simply because a motion to reduce or waive interest is filed. And, contrary to defendant’s allegation, it is not clear that the court understood the defendant’s motion to be a request for remission, rather than a request for waiver or reduction in interest. At best, the court’s orders are ambiguous as to the court’s understanding of the defendant’s motion.

Additionally, the defendant’s equal protection claim is not manifest – it is not so clear on the record such that the trial court should have

recognized an equal protection violation and remedied it – especially where, as here, the defendant’s motion did not even implicate the application of the statute which now prevents incarcerated individuals from seeking remission until their release. For these reasons, this Court should decline to address the defendant’s claims because they were not properly preserved.²

B. RCW 10.01.160(4) UNAMBIGUOUSLY REQUIRES A DEFENDANT TO BE RELEASED FROM TOTAL CONFINEMENT BEFORE REQUESTING REMISSION.

The meaning of a statute is a question of law reviewed by the court de novo. *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). The court’s purpose in construing statutes is to ascertain and carry out the intent of the legislature. *Id.*; *Dep’t of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 961, 275 P.3d 367 (2012). “The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, [the court] give[s] effect to that plain meaning,” with no portion of the statute rendered useless or meaningless. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010)

² Furthermore, as discussed below, the remission of LFOs is reviewed for an abuse of discretion. The issues presented in the defendant’s appeal should not be reviewed by the court because the defendant complains that the court did not properly exercise its discretion, yet, the court was never requested to do so. The only clear request that the defendant made was for a “waiver or reduction” in the interest that was accruing on the LFOs.

(internal quotation omitted); *State v. J.P.* 149 Wn.2d 444, 450, 69 P.3d 318 (2003).³ In determining a provision’s plain meaning, the court looks to the text of the statutory provision in question, as well as “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Ervin*, 169 Wn.2d at 820.

When a statute is unambiguous, “[t]here is no room for judicial interpretation ... beyond the plain language of the statute.” *State v. D.H.*, 102 Wn. App. 620, 627, 9 P.3d 253 (2000). However, if, after this inquiry, the statute is susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Campbell and Gwinn*, 146 Wn.2d at 11. The fact that two or more interpretations are *conceivable* does not render a statute ambiguous. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011).

³ “Just as we cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language, *State v. Delgado*, 148 W[n].2d 723, 727, 63 P.3d 792 (2003), we may not delete language from an unambiguous statute: Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *J.P.*, 149 Wn.2d at 450 (internal quotations and citations omitted).

RCW 10.01.160(4) provides in pertinent part:

A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time *after release from total confinement* petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that the payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs... Manifest hardship exists where the defendant is indigent as defined in RCW 10.101.010(3) (a) through (c).

(Emphasis added).

Likewise, RCW 10.73.160(4) provides:

A defendant who has been sentenced to pay [appellate] costs and who is not in contumacious default in the payment may at any time *after release from total confinement* petition the court that sentenced the defendant ... for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs... Manifest hardship exists where the defendant or juvenile offender is indigent as defined in RCW 10.101.010(3)(a) through (c).

(Emphasis added).

Former versions of these statutes provided that a defendant who had been sentenced to pay costs and who was not in contumacious default “may *at any time* petition the court that sentenced the defendant ... for remission of the payment of costs or of any unpaid portion.” Former

RCW 10.73.160(4) (2015); former RCW 10.01.160(4) (2015) (emphasis added).

In the absence of an ambiguity, the legislature is presumed to say what it means and mean what it says. *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). In like manner, “where a law is amended, and a material change is made in the wording, it is presumed that the legislature intended a change in the law.” *Guillen v. Pierce Cty.*, 144 Wn.2d 696, 723, 31 P.3d 628 (2001), *opinion modified on denial of reconsideration*, 34 P.3d 1218 (Wash. 2001), and *rev'd in part on other grounds sub nom. Pierce Cty., Wash. v. Guillen*, 537 U.S. 129, 123 S.Ct. 720, 154 L.Ed.2d 610 (2003). By its addition of language requiring a defendant to be released from total confinement before requesting remission and its deletion of language allowing remission “at any time,” the legislature intended such a change, effective June 7, 2018. There is no ambiguity in the current statute – defendants must now wait for release prior to requesting remission.

Even if the defendant’s remission motion had been made under the former statutes, his claim would still fail. Prior to the 2018 amendments, this Court required an incarcerated defendant to demonstrate a noneconomic hardship before it would consider an appeal from a trial court’s denial of a motion to remit LFOs. Otherwise, this Court held, such a request was not ripe for review. *State v. Wilson*, 198 Wn. App. 632, 636-

37, 393 P.3d 892 (2017); *see also State v. Blank*, 131 Wn.2d 230, 241-42, 930 P.2d 1213 (1997). As this Court observed in *Wilson*,⁴ noneconomic harm results from an LFO order if an incarcerated defendant suffers increased security classification or restricted access to transitional classes or programming. *Id.* (citing *State v. Shirts*, 195 Wn. App. 849, 381 P.3d 1223 (2016)). Here, the defendant has failed to demonstrate any such noneconomic harm, other than his bare allegation of personal stress and mental anguish. Thus, even assuming the defendant’s motion for remission were to fall within the ambit of the former statutes, his claim for remission would fail as it would not yet be ripe for review.

C. RAMIREZ IS NOT APPLICABLE TO POWELL’S CLAIMS BECAUSE HIS LFOS WERE IMPOSED LONG BEFORE THE 2018 LEGISLATIVE CHANGES AND HIS CASE WAS NOT PENDING ON APPEAL.

As discussed above, in 2018, the legislature amended various LFO statutes. Our Supreme Court held in *State v. Ramirez*, 191 Wn.2d 732, 749-50, 426 P.3d 714 (2018), that those amendments applied prospectively to cases pending on direct appeal because the *imposition* of LFOs is governed by the statutes in effect at the termination of the case, and cases pending on

⁴ *Wilson* stands for the proposition that, prior to the 2018 amendments, “superior courts [had] no authority to deny a remission petition simply because an individual is in custody,” as former RCW 10.01.160(4) and RCW 10.73.010(4) provided that a motion for remission may be made “at any time.” 198 Wn. App. at 636-37.

appeal at the time of the legislative amendments were not yet final. *Id.* at 749.

Unlike the LFOs in *Ramirez*, Mr. Powell's LFOs were *imposed* years ago – after the mandate issued on his direct appeal in 2013, and after the certificate of finality issued in his personal restraint petition in 2015. The defendant did not appeal the imposition of those legal financial obligations. No aspect of the defendant's case was pending on direct appeal on June 8, 2018, when the legislative amendments took effect. The defendant did not even file his motion until July 20, 2018, a month and a half *after* the legislative amendments took effect. *Ramirez*' prohibition of the imposition of LFOs on indigent defendants is inapplicable to Mr. Powell because his case was not pending on appeal at the time the legislative amendments took effect.

D. THE DEFENDANT IS FINANCIALLY ABLE TO PAY (AND HAS BEEN PAYING) AND IS UNABLE TO DEMONSTRATE MANIFEST HARDSHIP.

A superior court's ruling on a motion for remission is reviewed for an abuse of discretion. *See State v. Sorrell*, 2 Wn. App. 2d 156, 180, 182, 408 P.3d 1100 (2018) (remanding to superior court for a determination of whether the defendant met the "manifest hardship test" and whether the court should have exercised its discretion to remit the financial obligations; this Court also noted that a superior court's discretion is not unlimited and

that the court should “posit a sound reason if it denies the motion for remission”).

RCW 10.01.160(4) does not define “manifest hardship.” Our Supreme Court has held that “[a] person’s present inability to meet their own basic needs is not only relevant, but crucial to determining whether paying LFOs would create a manifest hardship.” *City of Richland v. Wakefield*, 186 Wn.2d 596, 606, 380 P.3d 459 (2016). The *Wakefield* court noted that remission under former RCW 10.01.160(4) is appropriate where the defendant has no present or future ability to pay LFOs that are subject to remission. 186 Wn.2d at 606-07. It also noted sentencing courts should use GR 34’s indigency standards as a guide for determining whether a defendant has a present or future ability to pay LFOs and, thus, whether a defendant’s payment would cause a manifest hardship. *Id.*

Here, the trial court rejected the defendant’s contention that he had no present ability to pay his legal financial obligations because his payment history demonstrated that, even as of the time the court ruled in 2018, the defendant had been paying his LFOs, had made over \$1,000 worth of payments since 2011 when his sentence was imposed (7 years), had been successful in paying off his \$600 of mandatory legal financial obligations, and, despite his assertions to the contrary, all of his basic needs were being met by the State due to his incarceration. The trial court did not find credible

the defendant's claim that he had no income because he had continued to make monthly payments, while incarcerated, despite that claim. Clearly, Mr. Powell must have *some* source of income, yet, his financial statement, declared under penalty of perjury, indicates no source of income whatsoever – no wages and no assets. CP 23; *see also* CP 33 (certifying pursuant to RCW 9A.72.085 that he has “no income from whatever source”).

Further, as his financial declaration establishes, Powell has no spouse, no children, no other dependents, and no housing or food expenses or other debts. CP 23. Based upon that information, the trial court did not abuse its discretion in finding that all of the defendant's basic needs are met during his incarceration. CP 29. Thus, even assuming the current statute did not require the defendant to wait until after his release to request remission, the trial court did not abuse its discretion in finding that, at the time of the motion, the defendant failed to demonstrate that payment of his legal financial obligations presented a manifest hardship to him or his immediate family.

Lastly, and as indicated above, the defendant has not even alleged a noneconomic harm, as required under *Wilson, supra*. Instead, he generally alleged “personal stress and mental anguish of worrying about this and other court debt.” CP 24. He has not explained how this debt causes him any

noneconomic hardship. Therefore, his claim of hardship fails for multiple reasons.

E. THE DEFENDANT’S EQUAL PROTECTION CLAIM FAILS BECAUSE THERE IS A RATIONAL BASIS FOR TREATING DEFENDANTS WHO HAVE REENTERED SOCIETY DIFFERENT FROM THOSE WHO REMAIN IN TOTAL CONFINEMENT.

The appropriate level of review in equal protection claims depends on the nature of the classification or the rights involved. *State v. Hirschfelder*, 170 Wn.2d 536, 550, 242 P.3d 876 (2010). Appellate courts apply a strict scrutiny standard when state action involves suspect classifications like race, alienage and national origin and/or fundamental rights. *Id.* Intermediate scrutiny is applied for semi-suspect classifications and/or important rights. *Id.* Otherwise, courts apply rational basis review. *Id.* Defendant concedes he is not a member of a suspect or semi-suspect class and agrees that rational basis review applies here. Br. at 11.

Rational basis review is a highly deferential standard, and courts will uphold a statute under this standard unless it rests on grounds wholly irrelevant to the achievement of legitimate state objectives. *In re Det. of Stout*, 159 Wn.2d 357, 375, 150 P.3d 86 (2007). The rational basis test requires only that the means employed by the statute be rationally related to a legitimate state goal; the means do not have to be the best way to achieve the goal. *State v. Manussier*, 129 Wn.2d 652, 673, 921 P.2d 473 (1996).

“[T]he Legislature has broad discretion to determine what the public interest demands and what measures are necessary to secure and protect that interest.” *State v. Ward*, 123 Wn.2d 488, 516, 869 P.2d 1062 (1994).

The legislature had a rational basis to enact its 2018 legislation that requires incarcerated individuals to wait until their release to petition for remission. Although the defendant claims that under some unknown circumstances, an incarcerated defendant may suffer manifest hardship though jail account garnishments, he does not explain under what set of circumstances that could occur. Incarcerated defendants, like Mr. Powell, have their basic living expenses paid by the State. They are provided their room and board at no expense to them. The legislature has broad discretion to determine that incarcerated defendants, unlike released defendants, have little chance of suffering a manifest hardship.

It is defendants who are *not* incarcerated who may likely suffer manifest hardship resulting from recurring LFO payments – it is these defendants who are often responsible for the care of minor children or other family members, and who may be responsible for payment of rent, grocery expenses and other life necessities – not only for themselves, but for their dependents. Because of their criminal debt, released defendants may suffer barriers to reentry and rehabilitation. *See Blazina*, 182 Wn.2d at 835-37 (“[t]he court’s long-term involvement in defendants’ lives inhibits reentry:

legal or background checks will show an active record in superior court for individuals who have not fully paid their LFOs... This active record can have serious negative consequences on employment, on housing, and on finances... LFO debt also impacts credit ratings, making it more difficult to find secure housing ... All of these reentry difficulties increase the chances of recidivism.” (internal citations omitted)). That is not to say, however, that the same barriers exist with respect to defendants under total confinement. It is rational that the legislature would allow defendants who have reentered society request remission of LFOs when the repayment of those LFOs presents a manifest hardship to them, but to disallow such a request from defendants who have all of their necessities paid for them by virtue of their incarceration. The defendant’s equal protection claim fails.

V. CONCLUSION

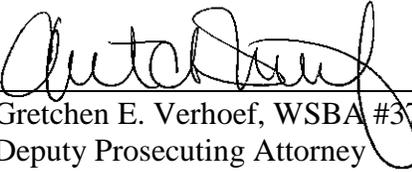
The defendant did not preserve any error with respect to remission of his LFOs because he did not request remission. Even if his motion could be taken as a request for remission, he is ineligible for remission by virtue of the 2018 legislative changes requiring a defendant to be released from total confinement prior to making the request. He has failed to demonstrate any hardship resulting from the repayment of his LFOs. His equal protection claim fails because there is a rational basis to treat defendants

who have reentered society differently from those who remain in custody.

The State respectfully requests this Court affirm the trial court's order.

Dated this 8 day of August, 2019.

LAWRENCE H. HASKELL
Prosecuting Attorney



Gretchen E. Verhoef, WSBA #37938
Deputy Prosecuting Attorney
Attorney for Respondent

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

STATE OF WASHINGTON,

Respondent,

v.

LARRY POWELL,

Appellant.

NO. 36400-3-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on August 8, 2019, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Lise Ellner
liseellnerlaw@comcast.net

Erin Sperger
erin@legalwellspring.com

8/8/2019
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

August 08, 2019 - 11:34 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36400-3
Appellate Court Case Title: State of Washington v. Larry Allen Powell
Superior Court Case Number: 10-1-03146-5

The following documents have been uploaded:

- 364003_Briefs_20190808113143D3115843_9400.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Powell Larry - 364003 - resp br - GEV.pdf
- 364003_Designation_of_Clerks_Papers_20190808113143D3115843_6557.pdf
This File Contains:
Designation of Clerks Papers - Modifier: Supplemental
The Original File Name was Desig CP - 1st Supp 080819 - 364003.pdf

A copy of the uploaded files will be sent to:

- Liseellnerlaw@comcast.net
- erin@legalwellspring.com
- lsteinmetz@spokanecounty.org
- valerie.liseellner@gmail.com

Comments:

Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

Filing on Behalf of: Gretchen Eileen Verhoef - Email: gverhoef@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

Address:
1100 W Mallon Ave
Spokane, WA, 99260-0270
Phone: (509) 477-2873

Note: The Filing Id is 20190808113143D3115843