

FILED
September 26, 2016
Court of Appeals
Division I NO. 73852-6-I
State of Washington
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

LISA MUNRO,

Appellant.

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

The Honorable Suzanne Parisien, Judge

BRIEF OF APPELLANT

KEVIN A. MARCH
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. <u>Guilty plea and restitution order</u>	2
2. <u>Notices of sentencing violations for nonpayment of restitution and pre-appeal review hearings</u>	3
3. <u>Appeal and State’s motion to dismiss</u>	13
4. <u>Post-appeal review hearings and notices of sentencing violations</u>	14
C. <u>ARGUMENT</u>	18
1. THE TRIAL COURT ARBITRARILY IMPOSED \$500 PER MONTH RESTITUTION PAYMENTS EVEN THOUGH NO EVIDENCE BEFORE IT SHOWED MUNRO HAD THE ABILITY TO MAKE THESE PAYMENTS	18
a. <u>The pertinent restitution statutes require the trial court take account of a defendant’s financial resources in establishing the monthly payment amount and the trial court failed to heed this requirement</u>	19
b. <u>It is unlawful to force an offender to apply state cash assistance toward unpaid LFOs given that public assistance is subject to anti-attachment protections</u>	24
2. THE TRIAL COURT’S PAYMENT ORDERS WERE ENTERED UNDER THE SENTENCING REFORM ACT, NOT THE CONTEMPT STATUTES	27

TABLE OF CONTENTS (CONT'D)

	Page
3. THE TRIAL COURT'S ERRONEOUS MONTHLY PAYMENT ORDER IS APPEALABLE	29
a. <u>RAP 2.2(a)(9) permits this appeal</u>	29
b. <u>There must be a right to appeal to address the trial court's legal errors and abuses of discretion</u>	31
4. MUNRO IS AGGRIEVED BY THE IMPOSITION OF AN UNATTAINABLE PAYMENT AMOUNT	33
5. DISCRETIONARY REVIEW IS ALSO WARRANTED UNDER RAP 2.3(b)	34
6. APPELLATE COSTS SHOULD BE DENIED	36
D. <u>CONCLUSION</u>	38

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>Anthis v. Copeland</u> 173 Wn.2d 752, 270 P.3d 574 (2012).....	26
<u>Richland/Kennewick v. Wakefield</u> ___ Wn.2d ___, ___ P.3d ___, No. 92594-1 (Sept. 22, 2016)	22, 37
<u>State v. Ammons</u> 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986).....	31
<u>State v. Blazina</u> 182 Wn.2d 827, 344 P.3d 680 (2015).....	22, 33, 37
<u>State v. Kinneman</u> 155 Wn.2d 272, 119 P.3d 350 (2005).....	31, 32
<u>State v. Mahone</u> 98 Wn. App. 342, 989 P.2d 583 (1999).....	33, 34
<u>State v. Mail</u> 121 Wn.2d 707, 854 P.2d 1042 (1993).....	31
<u>State v. Munro</u> noted at 104 Wn. App. 1017, 2001 WL 76328 (2001)	1, 2, 3, 4, 5, 7, 14
<u>State v. Nason</u> 168 Wn.2d 936, 233 P.3d 848 (2010).....	28, 29, 30
<u>State v. Prado</u> 86 Wn. App. 573, 937 P.2d 636 (1997).....	28, 30
<u>State v. Shirts</u> ___ Wn. App. ___, ___ P.3d ___, 2016 WL 4533751 (Aug. 30, 2016).....	33
<u>State v. Sinclair</u> 192 Wn. App. 380, 367 P.3d 612 <u>review denied</u> , 185 Wn.2d 1034, 377 P.3d 733 (2016)	36, 37

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Stone</u> 165 Wn. App. 796, 268 P.3d 226 (2012).....	28
<u>State v. Theobald</u> 78 Wn.2d 184, 470 P.2d 188 (1970).....	3
<u>State v. Watson</u> 160 Wn.2d 1, 154 P.3d 909 (2007).....	28
<u>State v. Williams</u> 149 Wn.2d 143, 65 P.3d 1214 (2003).....	32
<u>Tinker v. Kent Gypsum Supply, Inc.</u> 95 Wn. App. 761, 977 P.2d 672 (1999).....	33

FEDERAL CASES

<u>Anders v. California</u> 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).....	3
---	---

RULES, STATUTES AND OTHER AUTHORITIES

DSHS, Econ. Servs. Admin. <u>Program Briefing Book for State Fiscal Year 2015 (Jan. 11, 2016)</u>	25
GR 34.....	22, 37
RAP 2.2.....	2, 29, 30, 31
RAP 2.3.....	2, 34, 35, 36
RAP 3.1.....	2, 33
RCW 7.21.020	27, 28
RCW 9.94A	2, 31
RCW 9.94A.753	1, 3, 5, 19, 20, 22, 23, 28, 29, 30, 32, 34, 35

TABLE OF AUTHORITIES (CONT'D)

	Page
RCW 9.94A.760	4, 27, 29, 30
RCW 9.94A.7603	21
RCW 9.94B.040.....	28, 30
RCW 10.01.180	27, 28
RCW 10.73.160	36
RCW 74.04.050	25
RCW 74.04.280	26
RCW 74.04.510	25
RCW 74.04.770	25
RCW 74.08.210	26
RCW 74.08A.100	25
RCW 74.12.03	25
RCW 74.12.260	25
RCW 74.62.030	25
WAC 388-444.....	15
WAC 388-478-0005	25
WAC 388-478-0015	26
WAC 388-478-0020 to -0055	26

A. ASSIGNMENTS OF ERROR

1a. The trial court erred in ordering Lisa Lynn Munro to pay \$500 per month toward restitution without considering her present, past, and future ability to pay.

1b. The trial court erred in ordering Munro to pay \$500 per month toward restitution when Munro could only make these payments or a portion thereof by using state cash assistance benefits.

Issues pertaining to Assignments of Error

1a. Although RCW 9.94A.753(1) directed the trial court to consider Munro's ability to pay in setting a minimum monthly restitution payment amount, the trial court imposed \$500 without engaging in any inquiry into Munro's finances. Munro established she was not employed and received state public assistance benefits. Did the trial court err in ordering \$500 monthly payments amounts given that Munro had no ability to pay this monthly amount?

1b. Under Washington law, funds obtained through a public cash assistance program cannot be attached to satisfy legal financial obligations (LFOs). By imposing a \$500 monthly payment amount despite Munro's only income coming from public cash assistance programs, did the trial court require the unlawful attachment of public benefits to satisfy LFOs?

2. When the trial court changes restitution monthly payments, does it act exclusively under the chapter 9.94A RCW rather than under its civil contempt authority?

3a. Is this case appealable pursuant to RAP 2.2(a)(9)?

3b. Must there be appellate review to address abuses of discretion and legal errors by a sentencing court?

4. Is Munro an aggrieved party under RAP 3.1?

5. If this matter is not appealable, should discretionary review nevertheless be granted pursuant to RAP 2.3(b)(2) and (3)?

6. Should appellate costs be denied?

B. STATEMENT OF THE CASE

1. Guilty plea and restitution order

Munro pleaded guilty to one count of first degree theft in August 2006. CP 6-16, 20. As part of the plea, she agreed to pay restitution “to victims Gallagher, Trepanier and their respective creditors.” CP 20 (capitalization omitted).

In March 2007, the trial court ordered restitution in the amount of \$58,560.97, the sum of \$700 for Ronald Trepanier, \$39,671.16 for David Gallagher, \$8,154.81 for Discovery Financial Services, and \$10,035 for American Express. CP 34-35. Munro lodged several objections to the

restitution order and timely appealed it.¹ CP 36-47. The appeal was assigned case number 59831-7-I, but was dismissed on August 22, 2007 for failure to file a statement of arrangements or designation of clerk's papers. CP 49-50.

In violation of the pertinent restitution statute, the trial court never "set a minimum monthly payment that the offender is required to make towards the restitution that is ordered." RCW 9.94A.753(1). Because it never set a minimum monthly payment, the trial court also failed to take into consideration the "total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have." Id. Because Munro was not initially directed to make any monthly payment amount, she did not make any monthly payment amount.

2. Notices of sentencing violations for nonpayment of restitution and pre-appeal review hearings

In January 2009, the State filed a notice of sentencing violation. Supp. CP ____ (sub no. 29). King County LFO officer, Alycia Luke, reported Munro had paid nothing towards restitution since it was ordered. Supp. CP ____ (sub no. 29). Luke also indicated Munro had been mailed statements to her last known address. Supp. CP ____ (sub no. 29). Despite the clerk's

¹ Munro also appealed her judgment and sentence. Her appellate counsel was permitted to withdraw pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and State v. Theobald, 78 Wn.2d 184, 470 P.2d 188 (1970), and the appeal mandated in October 2007. State v. Munro, noted at 104 Wn. App. 1017, 2001 WL 76328, at *1 (2001).

statutory authority to obtain employment and income information through the Department of Employment Security, see RCW 9.94A.760(13), Luke stated, “We are unable at this time to ascertain if [Munro] is employed or otherwise discover an asset to garnish.” Supp. CP ____ (sub no. 29). Munro currently owed \$72,179.69 given accrued interest.

The trial court issued a bench warrant for Munro’s arrest in February 2009 and again in March 2010. Supp. CP ____ (sub nos. 30 & 35). In April 2010, the trial court issued an order for Munro’s immediate release and/or to quash the bench warrant because Munro “made a restitution payment and both parties agree.” Supp. CP ____ (sub no. 36). No monthly payment amount was established, however.

The State again filed a notice of sentencing violation in July 2010. Munro had paid \$1,000 toward her restitution but now owed \$81,770.84 given that more than \$23,400 had compounded in interest. Supp. CP ____ (sub no. 39). The notice stated, “Instructions were given to defense counsel ... that the defendant was to pay each month. Over three months have passed and there have been no payments. The defendant’s lack of cooperation is obvious.” Supp. CP ____ (sub no. 39). The LFO officer requested that the court order Munro to complete a financial declaration to determine her ability to pay and recommended periodic review to ensure compliance with a payment schedule. Supp. CP ____ (sub no. 39). However,

at the time of the notice, the trial court still had not set a monthly restitution payment amount pursuant RCW 9.94A.753(1).

On October 12, 2010, the trial court ordered Munro to produce income tax returns, bank statements, and child support statements for herself and her husband as well as documentation pertaining to her husband's property and income. Supp. CP ____ (sub no. 45). The order also required "A letter from medical doctor explaining why defendant cannot travel." Supp. CP ____ (sub no. 45).

At the next review hearing on December 1, 2010, the court noted Munro had "provided some documentation regarding ability to pay." CP 51 (capitalization omitted). The court, for the first time, set a monthly payment amount of \$200 to be due on "Dec[ember] 1, 2010 and 1st of each month thereafter." CP 52 (capitalization omitted). The order indicated victim Gallagher could note another hearing in six months to "readdress and increase monthly payment amount." CP 52 (capitalization omitted).

On October 19, 2011, the State filed another notice of sentencing violation for unpaid restitution. Munro had paid \$2,000 toward restitution but now owed \$88,357.28. Supp. CP ____ (sub no. 52). The violation notice stated Munro had not responded or contacted the clerk's office. Supp. CP ____ (sub no. 52). The LFO officer also stated, "We are unable at this time to ascertain if she is employed or otherwise discover an asset to garnish."

Supp. CP ____ (sub no. 52). The notice of violation was re-noted in November 2011 to correct a mistaken address. Supp. CP ____ (sub no. 54). The court issued bench warrants in the few months that followed when Munro did not appear at the review hearing. Supp. CP ____ (sub nos. 55 & 60).

At the next review hearing on March 9, 2012, the trial court determined Munro had willfully failed to pay restitution. CP 55. The court ordered Munro to update the clerk's office within 48 hours of receiving any funds from her pending divorce or from other business dealings. CP 55. The court also required Munro to complete 16 hours of community service. CP 55. The court maintained the monthly payment amount at \$200. CP 55.

In June 2012, the State filed another notice of violation, asserting Munro had not completed her community service, and the trial court ordered her to complete 32 hours of community service. Supp. CP ____ (sub nos. 70 & 72). The court determined Munro's failure to complete community service hours was not willful. Supp. CP ____ (sub no. 73). Munro timely completed the community service ordered. Supp. CP ____ (sub no. 79).

The State next filed a notice of violation on June 24, 2013. Supp. CP ____ (sub no. 81). Automatic payments that had been scheduled were declined due to insufficient funds. Supp. CP ____ (sub no. 81). Munro had

paid \$6,425 in restitution; her total unpaid obligation was \$95,875.58. Supp. CP ____ (sub no. 81).

At a hearing on September 10, 2013, Munro's attorney produced a doctor's note indicating she could not travel from Spokane to attend the hearing in person. Supp. CP ____ (sub no. 83). The court nonetheless issued a bench warrant for Munro's arrest. Supp. CP ____ (sub no. 84)

On October 17, 2013, the trial court ordered Munro to provide an updated financial declaration and to attach a copy of her 2012 federal income tax return. CP 57. The declaration stated under penalty of perjury that Munro last worked in the summer of 2011. CP 59. Munro reported a monthly income of \$1,067, including \$200 in child support, \$367 in food stamps, and \$500 from a Buck Hottell. CP 60. She reported expenses of \$1,257 for housing, food, clothing, transportation, healthcare, and personal expenses. CP 61-62. Munro indicated she had medical debt of about \$25,000, but was not making any medical payments until after her divorce was finalized. CP 62. She also stated she owed more than \$30,000 in legal fees. CP 63.

Despite filing the financial declaration, the State moved again for a notice of sentence violation on January 14, 2014, asserting the "[f]inancial declaration ordered [i]n November was not received by the clerk's office." Supp. CP ____ (sub no. 91). The LFO officer noted again that automatic

payments had returned with insufficient funds and that the automatic withdrawal account had been deleted. Supp. CP ____ (sub no. 91). By this point, Munro had paid \$7,400 in total toward restitution. Her unpaid balance was \$98,023.71.

The State again filed a notice of violation on June 5, 2014. Supp. CP ____ (sub no. 92). The LFO officer repeated that Munro's automatic payments had not gone through and that the payment account had been deleted. Supp. CP ____ (sub no. 92). The LFO officer also stated, "Financial assessment was conducted and lowered payment to fit defendant's ability to pay." Supp. CP ____ (sub no. 92). Munro had paid \$8,300 towards restitution; she carried an unpaid balance of \$99,652.10. Supp. CP ____ (sub no. 92).

At the financial review hearing on July 10, 2014, the State complained Munro had not attached her 2012 tax return to her financial declaration as ordered. RP 5. However, Munro did not attach the tax return because she did not file one. RP 7-8. Neither had Munro filed a 2013 tax return. RP 19.

Munro testified that she did not find out that, based on the financial declaration she provided, her monthly payment amount was reduced from \$200 to \$25 until the end of June 2014 even though the reduction occurred in

February 2014. RP 12-13, 25. Munro had last paid \$400 in February 2014 and testified she sent another \$200 in to cover the arrears. RP 8, 13.

Even though Munro was up-to-date in payments, the trial court found “it’s about as close to [a violation] as it can be.” RP 30. The trial court also expressed incredulity that Munro had not filed tax returns: “It is this Court’s usual observation that parents, even if they’re not employed, will file tax returns to get the exemption for children that they may have. So I don’t understand why there would be no tax returns filed for two years in a row.” RP 30. The court ordered Munro to continue making \$25 monthly payments and set another review hearing in November 2014. Supp. CP ____ (sub no. 92B).

The court and parties reconvened on December 1, 2014 for another review hearing. The State acknowledged Munro was in compliance with \$25 monthly payments but asked the court to monitor Munro closely and require her to provide additional financial documentation. RP 43, 46-47. The State also requested that Munro submit documents pertaining to Munro’s disability and receipt of food stamp benefits. RP 53. In addition to these financial documents, the court also ordered Munro to provide a copy of her Spokane County divorce decree when it became available. Supp. CP ____ (sub no. 95A); RP 53-56. Despite Munro’s request to appear telephonically from Spokane at future review hearings, the court required her

to appear in person. RP 57. Munro indicated travel in the winter months would be burdensome, noting she would need “to start saving [her] money for gas, and the weather over the passes and all of that.” RP 57-58.

The next review hearing was held March 4, 2015. Defense counsel provided documentation, albeit belatedly, of Munro’s disability and receipt of state assistance. RP 63-64, 70-71. However, the State and collections officer Alycia Luke complained that the numbers in the documents differed from the numbers provided in Munro’s November 2013 financial declaration. RP 64-66, 68-69. Ultimately, however, the State conceded Munro was in full compliance with payments. RP 71-72. The court ordered Munro to provide additional doctor’s documentation regarding her disability, a 2014 tax return, an application for all state benefits and supporting documentation, and a copy of her divorce decree’s property distribution. Supp. CP ____ (sub no. 99); RP 72-73.

Munro did not provide documents and did not appear for the June 3, 2015 review hearing, prompting the trial court to issue a bench warrant. RP 85. The court again ordered Munro to provide disability documentation, a copy of her 2014 tax return, and any and all state and federal applications for benefits. CP 65. The trial court also stated, “If the Defendant does not provide the requested information and/or does not appear at the July 24th review hearing, the Court will re-instate without further notice or an

opportunity to be heard, the original monthly restitution amount effective August 1, 2015.” CP 65-66. This order did not specify what the original monthly restitution amount was, given that the trial court failed to ever set one.

At the July 24, 2015 hearing, the court determined Munro failed to provide the requested documents. CP 67; RP 97-99. However, counsel for Munro represented that Munro had sent seven e-mails directly to the court clerk. RP 94, 96-97. The LFO collection officer stated the clerk’s office was “still working on getting it And they’re going to forward it on to the Court when they find it.” RP 99, 102-03. Defense counsel also provided financial documentation from Munro’s recent Spokane County dissolution proceeding. RP 94-95.

At the same hearing, defense counsel recounted that the trial court, via e-mail, had refused to strike the hearing if Munro agreed to the \$200 monthly amount. RP 93. The trial court’s refusal was based on an e-mail from the victim, David Gallagher, whom the court had permitted to make legal arguments at the March 4, 2015 and June 3, 2015 hearings. RP 66-68, 86, 93-94. Defense counsel also noted Munro “had no opportunity to testify on her own behalf at the last hearing.” RP 94.

The trial court, somehow, determined “the original amount that was to be paid was [\$]700. Subsequently it was reduced in December 2010 to

[\$]200, and then again in March 2014 reduced to \$[25] per month.” RP 99. To make this determination, the trial court relied on the Spokane County dissolution judgment, noting “the court there imputed income at minimum wage, and this Court has also adopted that, having received no information to the contrary with regard to employment. And certainly don’t have any tax returns or anything else to go on.” RP 98. The court continued, “My order specifically states that in the absence of the documentation that I requested . . . I would order the original amount to be resumed, and I’m going to do that. The original amount was [\$]700 per month, and that will be effective next month.” RP 99.

Defense counsel continued to object to the court’s refusal to swear in Munro and permit her to testify, and made an offer of proof:

And she would tell the Court that she has not been working the jobs that they have indicated or making the amounts that they have indicated, that the amount of money which she had paid for her litigation, the divorce case, was a loan. I mean, there have been all kinds of things stated like this as income to her, and somehow she should be paying -- because somebody is paying for her divorce case, she should be then paying the full amount on this case. And just things that don’t make sense at all.

She would testify that she has been debilitated by her autoimmune diseases, that she hasn’t been able to work, and that she is trying to get a job that she will be able to do, and then that she hopes to be able to pay back debts when she is employed after . . . finishing her (inaudible).

RP 101. Defense counsel also stated, “the Court using the family court standards, I have to object to this Court in a restitution hearing using the same standard as family court judge and imputing income. Completely different practice. Not something that is done in the criminal practice.” RP 102. Defense counsel also asked the trial court to recuse itself based on a lack of objectivity. RP 102.

Following a recess, the court, the LFO collection officer, and the prosecutor all acknowledged there was no order setting restitution payments at \$700 per month. RP 105-07. Thus, the court stated, “Not having information on that, I’m going to set it for [\$]500 a month starting August 1st.” RP 108. Munro responded, “It’s only ever been \$200. It was never more than 200.” RP 109. The court stated “that’s not my information,” and set restitution payments at \$500 per month to begin August 1, 2015. RP 109; CP 67.

3. Appeal and State’s motion to dismiss

Munro timely appealed this order. CP 75. Based on Munro’s declaration of indigency, the trial court ironically permitted Munro to appeal at public expense. CP 71-74. In her declaration in support of appeal at public expense, Munro stated under penalty of perjury that she had \$13 in cash, had no real or personal property assets, had significant medical debts,

received \$357 per month in food stamps, and \$252 per month in TANF benefits. CP 69-70.

The State moved to dismiss Munro's appeal, claiming that the trial court's order was not appealable and that Munro was not aggrieved by being ordered to pay \$500 per month toward restitution. Commissioner Neel passed the issue of appealability to the merits.

4. Post-appeal review hearings and notices of sentencing violations

Despite the appeal, the State continued to file notices of sentencing violations for Munro's failure to pay \$500 per month toward restitution. Supp. CP ____ (sub no. 113). According to the supporting report of the LFO officer, Munro had paid \$8,800 in restitution and carried an unpaid balance of more than \$106,000. Supp. CP ____ (sub no. 113).

Munro moved to stay all violation hearings pending this appeal. CP 76-78. At an October 8, 2015 review hearing, the court denied the motion to stay. RP 125; CP 81.

At the same hearing, Munro admitted the State's allegation that she "ha[d] failed to pay legal financial obligations as required." RP 126. Munro argued that the violation was not willful, however, because she was unable to pay more than \$25 per month. RP 126-27. Defense counsel provided documentation that Munro was on TANF and food stamps. RP 118-19, 127.

Counsel also represented that Munro did not “have enough money to rent a place for herself and her daughters. She has had to stay with sister, friends. They . . . move around. Whoever can keep them for a while. They’re basically homeless.” RP 127. Defense counsel explained Munro had enrolled in an education program to become a technician in orthotics and prosthetics, the tuition for which was paid through a state assistance program.² RP 127-28.

The court indicated it did not have sufficient information to determine Munro was not able to work. RP 128-29. Defense counsel asserted, “she has two small school-age children, that she’s in school full-time, getting his assistance is certainly evidence that she is not at this point able to work, go to school, raise the children . . . because they wouldn’t be giving her this if she could do that.” RP 130. The court stated, “I simply don’t know that,” and, although it acknowledged a letter stating, ““Medical conditions prevent [Munro] from participating in WorkFirst activities,”” it nonetheless stated, “I don’t know what WorkFirst activities are” and “[t]his is not sufficient information.” RP 130.

The State did not request any sanction be imposed due to the documentation Munro had provided. RP 132. The court ordered Munro to

² Chapter 388-444 WAC governs eligibility and benefits available under Washington’s Basic Food employment and training programming. Additional information is available at <https://www.dshs.wa.gov/esa/eligibility-z-manual-ea-z/basic-food-employment-and-training-bfet-program>.

“continue payments at \$500 a month until the Court receives the information it is seeking to modify the payment amount,” and set another hearing. CP 79; RP 135-36.

At the next hearing held on November 19, 2015, the State again requested no additional sanction, noting that punishing somebody who has no ability to pay “borders on unethical.” RP 146-47. The State indicated it might seek additional sanctions in the future, however. RP 145-47. The State also misrepresented Munro’s payment efforts to day, stating, “I mean, if she had paid, you know, something, you know, then I think we’d be in a different situation. But I think that throughout, what she has demonstrated is a complete disregard for the Court, an unwillingness to abide by her obligations.” RP 145. Contrary to the State’s position, Munro had paid at least \$8,800 toward restitution as of August 18, 2015. Supp. CP ____ (sub no. 113). The court did not impose additional sanctions against Munro but instead ordered counsel to submit a formal plan for “what Ms. Munro proposes to do since she’s indicated she can’t pay this . . . large \$108,000 judgment now with interest.” RP 152-53. The court maintained monthly payments at \$500 per month. CP 83.

A few days after the hearing, Munro submitted proof that she had submitted an application for federal Supplemental Security Income in 2014, as she previously indicated to the court. CP 85-87. Munro also submitted

additional documentation regarding her other applications for state public assistance benefits. CP 88-89.

At the next review hearing in February 2016, Munro proposed paying \$30 per month until she completed her educational program. RP 167-68. Counsel stated that once the schooling was completed, “we anticipate that [the monthly payment amount] will be set considerably higher than [\$30], since she’ll be hopefully employed at that point. And I expect that the payments would then rise to at least 200 a month and perhaps higher than that, depending.” RP 167-68.

In addition to testifying in detail about her educational program, Munro also gave significant information regarding her debilitating medical conditions and treatment. RP 166-67.

The State had not filed a notice of violation, so the trial court declined to impose any additional sanction on Munro. RP 176-77. However, the trial court refused to change “the amount that is currently due. It still continues to be [\$]500 [per month] for the sole reason that this Court has not received any of the requested information indicating an inability of Ms. Munro to work. I understand she’s in school.” RP 177-78; see also CP 90 (“The monthly payments shall remain at \$500.” (capitalization omitted)).

In March 2016, the State filed another notice of sentencing violation. Supp. CP ____ (sub no. 126). The LFO collection officer noted Munro was

failing to make consistent restitution payments. Supp. CP ____ (sub no. 126).

At this point, Munro had paid \$8,965 toward restitution and had an outstanding balance of \$109,564.84.³ Supp. CP ____ (sub no. 126).

C. ARGUMENT

1. THE TRIAL COURT ARBITRARILY IMPOSED \$500 PER MONTH RESTITUTION PAYMENTS EVEN THOUGH NO EVIDENCE BEFORE IT SHOWED MUNRO HAD THE ABILITY TO MAKE THESE PAYMENTS

Munro does not dispute that she owes a significant amount in restitution or that she agreed to pay this restitution as part of her guilty plea. But, in July 2015, the trial court ordered Munro to pay \$500 per month without any evidence that Munro is financially capable of paying this amount. The evidence available to the trial court before, during, and after the July 2015 hearing demonstrated Munro was indigent and struggled to make even \$25 monthly payments. Munro also showed she qualified for and was receiving state benefits, including Temporary Assistance for Needy Families, WorkFirst, and food stamps. The trial court erred in failing to take into account Munro's financial circumstances when arbitrarily setting a monthly payment amount of \$500. Munro asks that this court reverse.

³ This is the most up-to-date financial information currently available in the superior court file.

- a. The pertinent restitution statutes require the trial court take account of a defendant's financial resources in establishing the monthly payment amount and the trial court failed to heed this requirement

RCW 9.94A.753(1) provides that the court "shall determine the amount of restitution due at the sentencing hearing or within [180] days," subject to an exception not applicable here. RCW 9.94A.753(1) continues,

The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

This statute's meaning is clear and unambiguous. The trial court is required to set a minimum monthly payment amount and, when it does so, it needs to consider the offender's ability to pay and financial circumstances. The trial court here failed to comply with the statute in several respects.

Although the trial court imposed restitution in the amount of \$58,560.97 in March 2007, it never set a minimum monthly payment amount as RCW 9.94A.753(1) requires. CP 34-35. In fact, no monthly payment amount was set until December 2010, when the trial court required Munro to pay \$200 per month. CP 52. Thus, from the beginning, the trial court has failed to comply with clear statutory requirements.

The \$500 monthly payments the trial court imposed in July 2015 likewise fell short of statutory compliance. The trial court did not come up

with \$500 per month payments based on Munro's past, present, and future ability to pay as the statute directs. Instead, the trial court planned to impose \$700 monthly payments because, for whatever reason, the trial court believed that was "the original amount that was to be paid" RP 99. When neither the trial court nor the prosecutor nor the King County clerk's office could substantiate this mistaken belief, the trial court stated, "Not having information on that, I'm going to set it for 500 a month starting August 1st." RP 108. This was not a valid exercise of judicial discretion under RCW 9.94A.753(1), but an unreasonable and random amount based on no information whatsoever. The legislature could not have intended the trial court to set very high monthly payment amounts that an offender clearly is not capable of paying based on a trial court's arbitrary whims.

The reasons the trial court gave for imposing such a high monthly payment amount also illustrate an arbitrary and unreasonable abuse of discretion. The trial court "adopted" Munro's Spokane County dissolution decree in which Spokane County Superior Court apparently "imputed income at minimum wage" to Munro. RP 98. As defense counsel argued below, family court standards regarding imputed income should not be applied in the restitution context, where the statute directs the court to take account of actual ability to pay. RP 102. By imputing income in the same manner as a civil court, the trial court presumed Munro capable of paying

rather than engaging in the appropriate statutory inquiry. This was an invalid exercise of discretion.

And even if minimum wage were imputed in this case, the court would nonetheless err by requiring Munro to pay \$500 per month. Washington's current minimum wage is \$9.47 per hour.⁴ Assuming Munro worked full-time at 40 hours per week, her gross income would be \$378.80. It follows that Munro would make a gross monthly wage of around \$1,600. After taxes, Munro's disposable earnings would be at least a few hundred dollars less. Under RCW 9.94A.7603(1), "[t]he total amount to be withheld from the offender/employee's earnings each month . . . shall not exceed [25] percent of the disposable earnings of the offender." Thus, even if the trial court could correctly impute minimum wage income to Munro, the imposition of \$500 monthly payments would still violate RCW 9.94A.7603(1). The trial court's baseless and arbitrary orders setting \$500 monthly restitution payments cannot stand.

Although the trial court was perpetually unsatisfied with the documentation Munro provided, it accepted and considered documentation that Munro was receiving state benefits in the form of TANF and food

⁴ Washington State Department of Labor and Industries provides notification of the minimum wage to Washington's workers. Munro's assertion that \$9.47 is the current minimum wage is based on the Department's announcement contained on its website: <http://www.lni.wa.gov/workplacerrights/files/2016MinimumWageAnnouncement.pdf>.

stamps. See RP 63-64, 70-71, 118-19, 127-28; CP 58-64, 85-89. When defense counsel argued that Munro’s receipt of state assistance “is certainly evidence that she is not at this point able to work, go to school, raise the children . . . because they wouldn’t be giving her this if she could do that,” that court responded, “I simply don’t know that.”⁵ RP 130. The trial court chose to blind itself to clear evidence Munro received assistance through needs-based, means-tested programs, rather than engage in an ability to pay inquiry as RCW 9.94A.753 directs. The trial court did not validly exercise its discretion.

Quite recently, our supreme court eschewed the trial court’s faulty reasoning. The Washington Supreme Court held that “[u]nder GR 34, ‘courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps.’” In Richland/Kennewick v. Wakefield, ___ Wn.2d ___, ___ P.3d ___, No. 92594-1, slip op. at 11 (Sept. 22, 2016) (quoting State v. Blazina, 182 Wn.2d 827, 838, 344 P.3d 680 (2015)). “[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person’s ability to pay LFOs.” Id. (alteration

⁵ Although the trial court had documentary evidence, it refused to permit Munro to testify. RP 101 (defense counsel’s offer of proof based on trial court’s refusal to swear Munro and place her on the witness stand). Had Munro been permitted to testify, her testimony would also have established she received state assistance.

in original) (quoting Blazina, 182 Wn.2d at 839). “This is true for both the imposition and enforcement of LFOs.” Id. (emphasis added). Just as the district court in Wakefield “should not have disregarded Wakefield’s eligibility for needs-based, means-tested assistance when evaluating her ability to pay LFOs,” neither should have the trial court here. Id. “[C]ourts should regard such eligibility as strong evidence of indigency.” Id. (emphasis added). In light of Munro’s proven receipt of state assistance, it is deeply troubling that the trial court would nonetheless impose \$500 monthly restitution payments. The arbitrary and harmful actions of the trial court and require reversal.

In addition to already qualifying for public assistance programs, Munro repeatedly indicated she was in the process of applying for federal disability through the Social Security Administration given her significant medical issues. RP 63-64, 70-71, 130, 166-67; CP 85-87. Munro was also homeless, moving between relatives and friends who could provide shelter for short periods of time. RP 127. Yet the trial court continued imposing \$500 monthly payments, refusing to acknowledge Munro’s circumstances. In so refusing, the trial court again failed to comply with RCW 9.94A.753(1)’s direction to consider an offender’s financial circumstances and ability to pay.

Finally, it is telling that after imposing \$500 payments for the past year, which Munro has not paid and cannot pay, the State has not sought any additional sanctions against Munro for nonpayment. See RP 132, 146-47, 176-77. The State's decision not to seek additional sanctions against Munro for failing to pay \$500 per month is a virtual concession that the State knows full well that \$500 per month is not a viable, reasonable place to set Munro's monthly restitution payment. The State's actions (or inactions) provide additional verification that the trial court abused its discretion by arbitrarily imposing an unattainable monthly payment amount without regard to Munro's financial circumstances.

Munro asks that this court reverse the trial court's orders imposing monthly restitution payments of \$500 and remand so that the trial court can set a payment amount based on Munro's actual and documented ability to pay.

- b. It is unlawful to force an offender to apply state cash assistance toward unpaid LFOs given that public assistance is subject to anti-attachment protections

Because Munro receives state assistance, the trial court's imposition of an amount she cannot pay (such as \$500 per month) requires her to make payments out of the state assistance she receives. This violates Washington law that prohibits the attachment of government cash assistance.

The Department of Social and Health Services (DSHS) operates cash assistance programs for needy families and individuals. RCW 74.04.050; DSHS, Econ. Servs. Admin., Program Briefing Book for State Fiscal Year 2015 (Jan. 11, 2016) (Briefing Book).⁶ DSHS administers several programs, including Temporary Assistance for Needy Families, RCW 74.12.260; food stamps, RCW 74.04.510; State Family Assistance, RCW 74.08A.100, RCW 74.12.035; and Aged, Blind, or Disabled Cash Assistance Program, RCW 74.62.030(1), among others. See also Briefing Book (containing various program descriptions and data).

Each of these programs is means-tested and needs-based: eligibility is conditioned on income and asset limitations. See id. DSHS provides “need standards” for its cash programs that determine eligibility. WAC 388-478-0005(1). These standards “represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living.” Id.; see also RCW 74.04.770 (directing that need standards be based on “actual living costs”). The need standards are intended to address “basic requirements,” defined as “food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.” WAC 388-478-0005(1). The

⁶ The Briefing Book is available at <https://www.dshs.wa.gov/esa/manuals/briefing-book>.

administrative provisions also give a “payment standard,” which is the amount actually paid to beneficiaries, and is typically less than the need standard, given it is dependent on legislative appropriations. RCW 74.04.770; WAC 388-478-0015 (2015 need standards); WAC 388-478-0020 to -0055 (2015 payment standards).

Washington law prohibits the assignment of cash assistance to pay for legal financial obligations or other debts. RCW 74.04.280 provides, “Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.” Likewise, RCW 74.08.210 states, “Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or insolvency law.” The restrictions provided in RCW 74.04.280 and RCW 74.08.210 apply to all cash assistance DSHS administers and continue to apply after disbursement to the beneficiary. See Anthis v. Copeland, 173 Wn.2d 752, 760, 270 P.3d 574 (2012) (explaining such funds “retain their exempt status post distribution” because statute makes “unambiguous reference to money actually paid”).

The trial court's orders requiring \$500 monthly restitution payments violate these anti-attachment provisions. The trial court knew Munro received state cash assistance in the form of TANF and food stamps, and had no other income given that she was not working. It was thus amply clear to the trial court that Munro, assuming she could pay any amount at all, could only pay from the state benefits she received.

Under the pertinent anti-attachment statutes and case law cited above, the trial court exceeded its authority by ordering that restitution be paid even where the only possible payment source is means-tested, needs-based public assistance. For this reason as well, this court must reverse and remand so that the monthly restitution payments, if there are to be any at all, do not subject Munro's public assistance benefits to unlawful attachment.

2. THE TRIAL COURT'S PAYMENT ORDERS WERE ENTERED UNDER THE SENTENCING REFORM ACT, NOT THE CONTEMPT STATUTES

In response, the State might attempt to argue that the trial court acted under its RCW 7.21.020 or RCW 10.01.180 contempt powers by sanctioning Munro with \$500 per month payments in an attempt to coerce her to provide additional documentation regarding her finances and medical condition. This court should reject any such argument.

RCW 9.94A.760(10) provides that the "requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a

condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040” Penalties imposed under RCW 9.94B.040, by their own terms, qualify as modifications to the original judgment. RCW 9.94B.040(1). Such “[m]odifications are similar to probation revocation, which [courts] have recognized ‘should be deemed punishment for the original crime.’” State v. Nason, 168 Wn.2d 936, 947, 233 P.3d 848 (2010) (internal quotation marks omitted) (quoting State v. Watson, 160 Wn.2d 1, 8-9, 154 P.3d 909 (2007) (quoting State v. Prado, 86 Wn. App. 573, 578, 937 P.2d 636 (1997))); see also State v. Stone, 165 Wn. App. 796, 806-09, 268 P.3d 226 (2012) (discussing trial court’s erroneous conflation of RCW 9.94B.040 sanctions and civil contempt sanctions).

Here, the court modified Munro’s monthly payment amount under RCW 9.94A.753(1). It did not act under its contempt power pursuant to chapter 7.21 RCW or RCW 10.01.180. The trial court never invoked its contempt power and therefore did not exercise this power.

The State also argued in its appealability briefing that “there has been no order of contempt pursuant to RCW 7.21.020” and that the contempt statutes “simply [did] not apply.” State’s Reply in Support of Motion to Dismiss Appeal at 3. The State thus should not be permitted to take an inconsistent position now.

Munro agrees with the State that there has not been any contempt order and therefore withdraws her previously submitted appealability arguments likening the trial court's actions to civil contempt. There was no civil contempt found here, but instead a modification to Munro's monthly restitution payment amounts pursuant to RCW 9.94A.753(1).

3. THE TRIAL COURT'S ERRONEOUS MONTHLY PAYMENT ORDER IS APPEALABLE

a. RAP 2.2(a)(9) permits this appeal

The imposition of the unattainable \$500 monthly payment amount places Munro in constant violation for nonpayment of her LFOs. Munro has established she cannot pay this amount, yet it is still being levied against her. Because she is under continuous threat of sanction for not being able to pay the amount she has been ordered to pay, the trial court's modification to the requirements of Munro's sentence entitles her to an appeal.

Under RCW 9.94A.760(1), the monthly LFO payment amount "constitutes a condition or requirement of a sentence" and subjects an offender to penalties for noncompliance. See Nason, 168 Wn.2d at 946-47. By amending the payment amount, the trial court amends the offender's judgment and sentence by imposing a different condition upon that judgment and sentence. RAP 2.2(a)(9) provides that a party may appeal an "order granting or denying . . . an amendment of judgment." Because the trial

court's order qualifies as an amendment to Munro's sentence, she is entitled to appeal it under RAP 2.2(a)(9)'s plain terms.

The Washington Supreme Court, albeit addressing sanctions imposed under RCW 9.94B.040,⁷ has analogously held that modifications to the judgment and sentence are akin to probation revocation, which qualify as punishment for the original crime. Nason, 168 Wn.2d at 947. Thus, the court held the legislature “intend[ed] the violation of the condition to relate to the original prosecution” Id. (quoting Prado, 86 Wn. App. at 577). The court made clear that RCW 9.94B.040 sanctions “are criminal sanctions added to the original sentence.” Id.

Based on Nason, modifications to the monthly payment amounts relate back to the original judgment and sentence that required restitution payments in the first place. As discussed, RCW 9.94A.753(1) requires monthly restitution payment to be set. These monthly payments are conditions of the original sentence. RCW 9.94A.760(10). Thus, when the condition of sentence is modified—such as by increasing the monthly payment amount by 2,000 percent—the modification amends the original judgment and sentence. Under RAP 2.2(a)(9), this type of amendment to the original judgment and sentence is appealable as a matter of right.

⁷ RCW 9.94B.040(1) provides, “If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.”

b. There must be a right to appeal to address the trial court's legal errors and abuses of discretion

When a trial court abuses its discretion under chapter 9.94A RCW in determining the appropriate sentence, appellate review is necessary to correct such abuses of discretion. Were it otherwise, a party would have no recourse to redress significant sentencing errors.

Recognizing these principles, Washington courts have permitted the State to appeal restitution orders for abuse of discretion under RAP 2.2(b)(6). RAP 2.2(b)(6)(C) permits the state to appeal sentences that include “provisions that are unauthorized by law.”

In State v. Kinneman, 155 Wn.2d 272, 283, 119 P.3d 350 (2005), the Washington Supreme Court recognized that RAP 2.2(b)(6) did not expressly give the State the ability to appeal a restitution order. However, citing State v. Mail, 121 Wn.2d 707, 712, 854 P.2d 1042 (1993), the court “reasoned that the State may appeal where the sentencing court had a duty to follow a specific procedure under the SRA and failed to carry out that duty.” Kinneman, 155 Wn.2d at 283. The court explained that the length of a standard range sentence is not appealable because ““as a matter of law there can be no abuse of discretion.”” Id. (internal quotation marks omitted) (quoting Mail, 121 Wn.2d at 710) (quoting State v. Ammons, 105 Wn.2d 175, 183, 713 P.2d 719, 718 P.2d 796 (1986))). “In contrast, ‘it is well

established that appellate review is still available for the correction of legal errors or abuses of discretion in the determination of what sentence applies.” Id. (quoting State v. Williams, 149 Wn.2d 143, 147, 65 P.3d 1214 (2003)). Thus, “a party may ‘challenge the underlying legal conclusions and determinations by which a court comes to apply a particular sentencing provision’” Id. The court determined restitution decisions were not entitled to a presumption that there can be no abuse of discretion as a matter of law and therefore held the “Court of Appeals did not err in allowing the State to appeal the restitution order.” Id. at 284.

Kinneman’s reasoning also permits the instant appeal. The trial court can abuse its discretion by awarding restitution or in modifying its amount by failing to comply with statutory directives. The trial court abused its discretion here by imposing a monthly payment amount without considering Munro’s ability to pay as directed by RCW 9.94A.753(1). The trial court also erroneously ordered a monthly payment amount that requires attachment of Munro’s public assistance benefits. In such circumstances, consistent with Kinneman, appellate review must be available to correct the trial court’s legal errors or abuses of discretion in setting the restitution payment amounts. 155 Wn.2d at 283-84. This court should allow this appeal.

4. MUNRO IS AGGRIEVED BY THE IMPOSITION OF AN UNATTAINABLE PAYMENT AMOUNT

RAP 3.1 provides, “Only an aggrieved party may seek review by the appellate court.” “An aggrieved party is one who has a present, substantial interest, as distinguished from a mere expectancy, or . . . contingent interest in the subject matter.” State v. Mahone, 98 Wn. App. 342, 347, 989 P.2d 583 (1999) (quoting Tinker v. Kent Gypsum Supply, Inc., 95 Wn. App. 761, 764, 977 P.2d 672 (1999)).

According to Mahone, to be aggrieved per RAP 3.1,

two things must happen. It must be determined that [Mahone] has the ability to pay and the State must proceed to enforce the judgment for costs. Until such time as the State determines he has the ability to pay and enforces payment of the costs assessed against him, any attempt to determine whether payment will create a hardship is mere speculation.

98 Wn. App. at 348.⁸

Here, both things have happened. The State has attempted to enforce Munro’s obligation to pay restitution by filing several notices of sentencing violation. The trial court, although it failed to comply with its obligation to consider Munro’s financial circumstances in setting the monthly restitution payment amount, actually set payments at \$500. Thus, the two things that

⁸ Mahone’s continued precedential value, post-Blazina, has recently been called into question. State v. Shirts, ___ Wn. App. ___, ___ P.3d ___, 2016 WL 4533751, at *3 (Aug. 30, 2016). The Shirts court held Shirts was aggrieved by the impacts of LFOs “even if the State does not attempt to enforce payment.” Id. Because the State has attempted to enforce payment here, Munro is aggrieved regardless of Shirts’s analysis.

need to happen under Mahone have happened here: (1) the State sought to enforce restitution payments and (2) a court ordered specific monthly payments pursuant to the State's enforcement efforts. Munro is aggrieved.

Munro is also aggrieved as a matter of common sense because she is currently in constant violation of her judgment and sentence. Indeed, the trial court has ordered her to pay \$500 per month toward her restitution even though she is plainly unable to make these payments. The trial court, by requiring the impossible of Munro and placing her in constant threat of serious sanctions, has aggrieved her.

5. DISCRETIONARY REVIEW IS ALSO WARRANTED UNDER RAP 2.3(b)

If this court disagrees Munro has the right to appeal, it should nonetheless grant discretionary review under RAP 2.3(b)(2) and (3).

RAP 2.3(b)(2) permits discretionary review where the "superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act." As discussed, the trial court set \$500 monthly payments without taking into consideration Munro's past, present, and future ability to pay as RCW 9.94A.753(1) directs. The trial court's order also means that Munro must make payments from her governmental cash assistance benefits. Because it failed to follow statutory directives in setting monthly restitution

payments and because it required unlawful attachment of public assistance benefits, the trial court erred.

This error substantially alters the status quo and limits Munro's freedom to act. Munro had struggled but managed to make \$25 monthly restitution payments, consistent with her financial declaration. CP 58-64. The trial court's orders have increased the monthly payment amount 20 times over. This sudden increase to a monthly amount that Munro is incapable of paying substantially alters the status quo and limits Munro's freedom. This is especially true given that Munro is indigent and receives public assistance to meet her basic needs. In light of the documented negligible amount of disposable funds Munro has, the trial court's error in failing to take Munro's financial circumstances into account meets RAP 2.3(b)(2)'s effect prong.

RAP 2.3(b)(3) provides for discretionary review where the "superior court has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review by the appellate court" Here, the usual course of judicial proceedings in restitution matters consists of the trial court applying the restitution statutes. As discussed, RCW 9.94A.753(1) directs the trial court to "take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have" in setting the minimum

monthly restitution payment amount. The trial court, by imposing \$500 monthly payments without considering Munro's financial circumstances and documented inability to pay, ignored these statutory directives. The trial court's refusal to comply with a controlling statute and decision to impose a clearly unattainable monthly payment amount far departs from the ordinary course of judicial proceedings, necessitating review by this court pursuant to RAP 2.3(b)(3).

6. APPELLATE COSTS SHOULD BE DENIED

In the event Munro does not prevail on appeal, any request by the State for appellate costs should be denied.

This court indisputably has discretion to deny appellate costs. RCW 10.73.160(1) ("The court of appeals . . . may require an adult offender convicted of an offense to pay appellate costs." (emphasis added)); State v. Sinclair, 192 Wn. App. 380, 388, 367 P.3d 612, review denied, 185 Wn.2d 1034, 377 P.3d 733 (2016) (holding RCW 10.73.160 "vests the appellate court with discretion to deny or approve a request for an award of costs").

There are several reasons this court should exercise discretion to deny appellate costs. The trial court determined Munro was indigent and authorized her to seek review at public expense with appointed counsel. CP 72-74. In her motion for an indigency order, Munro stated she had no personal or real property assets or income. CP 69. She received public

assistance benefits and indicated she was unable to work due to physical disability. CP 70. She owes a significant amount in restitution and other debts. CP 70.

Given Munro's receipt of assistance from needs-based, means-tested programs, lack of income or assets, and significant criminal and noncriminal debt, Munro amply meets the GR 34 standard for indigency. In Wakefield, the Washington Supreme Court reiterated that all courts in considering whether to impose discretionary LFOs should look to GR 34 for guidance: "[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs." Wakefield, supra, slip op. at 11 (quoting Blazina, 182 Wn.2d at 839). This court held in Sinclair that it was "entirely appropriate for an appellate court to be mindful of the[] concerns" identified in Blazina." 192 Wn. App. at 391. This court should thus apply the GR 34 standard and deny any request by the State for appellate costs in the event Munro does not substantially prevail on appeal.

D. CONCLUSION

Because the trial court arbitrarily imposed a \$500 per month payment without regard to Munro's financial circumstances, Munro asks this court to reverse and remand for the imposition of a monthly amount she is capable of paying and does not require unlawful attachment of her state benefits.

DATED this 26th day of September, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "K. March", written over a horizontal line.

KEVIN A. MARCH

WSBA No. 45397

Office ID No. 91051

Attorneys for Appellant