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Supreme Court No. 100044-8

No. 37093-3-III
37238-3-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EDWARD NELSON,

Petitioner.

PETITION FOR REVIEW

JAN TRASEN
Attorney for Petitioner
WSBA # 41177

WASHINGTON APPELLATE PROJECT
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TABLE OF CONTENTS

A. IDENTITY OF PETITIONER..... 1

B. ISSUE PRESENTED FOR REVIEW..... 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED 2

This Court should grant review because Mr. Nelson had a due process right to be present and a right to the assistance of counsel at resentencing..... 2

1. Mr. Nelson had a due process right to be present at sentencing. 3

2. Mr. Nelson had the right to counsel at sentencing..... 6

E. CONCLUSION 7

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 4, 7

State v. Nelson, 191 Wn.2d 61, 419 P.3d 410 (2018)..... 1

State v. Ramos, 171 Wn.2d 46, 246 P.3d 811 (2011)..... 4, 5

State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, Rupe v. Washington, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988) 3, 6

State v. Templeton, 148 Wn.2d 193, 59 P.3d 623 (2002)..... 6

Washington Court of Appeals

Dependency of Lee, 200 Wn. App. 414, 404 P.3d 575 (2017)..... 7

In re Matter of Personal Restraint of Rowley, 12 Wn. App.2d 1031 (2020)... 5

United States Supreme Court

Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965) .3

Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) ...3

United States v. Cronin, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)..... 6, 7

United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 119 (1967)..... 6

Federal Courts

United States v. Johnson, 315 F.2d 714 (2d Cir. 1963) 4

United States v. Villano, 816 F.2d 1448 (10th Cir. 1987) 3

Washington Constitution

Const. art. I, § 3.....5
Const. art. I, § 22.....6

United States Constitution

U.S. Const. amend. V.....5
U.S. Const. amend. VI.....6
U.S. Const. amend. XIV5

Statutes

RCW 43.43.75415, 6
RCW 9.94A.500(1).....4

Rules

GR 14.1(a).....5
GR 345
RAP 13.4(b)(1), (3), (4)..... 1, 2, 3, 5, 7

A. IDENTITY OF PETITIONER

Edward Nelson asks this Court to grant review of the Court of Appeals decision affirming the entry of the order correcting his judgment and sentence (J & S), but finding he was not entitled to a hearing or to counsel.

B. ISSUE PRESENTED FOR REVIEW

The rights to due process and the assistance of counsel require a defendant be present and represented by counsel at a criminal sentencing hearing. Where Mr. Nelson moved for his discretionary DNA sample fee to be stricken and the trial court exercised its discretion do so, yet did not appoint counsel nor conduct a hearing at which Mr. Nelson was present, did the court deny Mr. Nelson's rights to counsel and to due process of law, and does the Court of Appeals decision thus merit this Court's review?

RAP 13.4(b)(1), (3), (4).

C. STATEMENT OF THE CASE

Edward Nelson is serving a life sentence following his direct appeal for 2016 Yakima convictions that mandated in 2018. State v. Nelson, 198 Wn. App. 1067 (2017), aff'd, 191 Wn.2d 61, 419 P.3d 410 (2018).

Subsequently, Mr. Nelson filed a motion to strike DNA collection fees. CP 57-59. The Yakima County Superior Court granted this motion, striking the \$100 DNA collection fee. CP 60. However, the court entered

this order without providing Mr. Nelson the right to appear and without appointing him counsel. CP 60.

On appeal, Mr. Nelson argued his right to due process was violated because the court decided his motion to strike the DNA fee without appointing him counsel and without conducting a hearing at which he could be present. Mr. Nelson also argued that under RCW 10.82.090(1) and RCW 3.50.100(4)(b), no interest may accrue on non-restitution LFOs.

The Court of Appeals affirmed the entry of the order correcting the judgment to remove the DNA fee noting no due process error, but remanded solely to strike the interest on the non-restitution LFOs.¹ Slip op. at 10-11.

Mr. Nelson asks this Court to grant review on the due process issue because he was not present or appointed counsel when the superior court exercised its discretion in deciding his motion regarding DNA fees. RAP 13.4(b)(1), (3), (4).

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Court should grant review because Mr. Nelson had a due process right to be present and a right to the assistance of counsel at resentencing.

This Court should grant review because when Mr. Nelson's motion to

¹ In light the Court of Appeals' remand to strike the interest provision on the non-restitution LFO's, Mr. Nelson does not seek further review of this issue. Slip op. at 10-11.

correct his J & S was before the superior court – a form of resentencing – he was not afforded even the most basic of constitutional protections – notice of the resentencing hearing and an opportunity to be heard. RAP 13.4(b)(1), (3), (4).

1. Mr. Nelson had a due process right to be present at sentencing.

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)).

A review of the Mathews factors² reveals that no government interest justifies resentencing Mr. Nelson without a hearing at which he is present and represented by counsel. Likewise, the private interests at stake here are significant. Mr. Nelson has a constitutional right to be present at his sentencing. State v. Rupe, 108 Wn.2d 734, 741, 743 P.2d 210 (1987), cert. denied, Rupe v. Washington, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988); United States v. Villano, 816 F.2d 1448, 1452 (10th Cir. 1987).

² Under Mathews, the following must be balanced: 1) the private interest at stake; 2) the risk of error in the event of an erroneous deprivation, as well as the value of procedural safeguards; and 3) the government interest and administrative burden of additional procedural safeguards. 424 U.S. at 333.

A defendant also has a right to be present when his judgment and sentence is amended. United States v. Johnson, 315 F.2d 714, 716-17 (2d Cir. 1963) (defendant entitled to be present at sentencing hearing even where court merely “affirms” sentence imposed at earlier hearing). Additionally, RCW 9.94A.500(1), which details the procedures for a sentencing hearing, specifies a defendant has a right to be heard prior to sentencing.

In State v. Ramos, this Court emphasized that the constitutional right to be present at sentencing extends to the right to be present at resentencing. 171 Wn.2d 46, 48, 246 P.3d 811 (2011) (citing Rupe, 108 Wn.2d at 743). Where a trial court must exercise discretion at resentencing, “the trial court’s duty on remand is not merely ministerial,” and the defendant therefore “has a right to be present and heard at resentencing.” Ramos, 171 Wn.2d at 49 (remanding for court to modify conditions of community placement).

Here, Mr. Nelson moved for DNA costs to be stricken pursuant to RCW 43.43.7541. CP 57-58. This Court determined in State v. Blazina that DNA costs are among the discretionary legal financial obligations that may no longer be imposed on indigent criminal defendants without an individualized inquiry into indigency at sentencing. 182 Wn.2d 827, 839, 344 P.3d 680 (2015). The Blazina Court held that that a sentencing court must consider factors such as incarceration and a defendant’s other debts, such as restitution, when determining the ability to pay. Id.

The sentencing court here was required to make individual determinations at Mr. Nelson's resentencing regarding both his indigency under the standards set forth in GR 34 and his ability to pay, as well as whether he is exempted from payment as a previous offender under RCW 43.43.7541. Each of these determinations required the court to exercise judicial discretion.

Because the trial court's duty on remand was not merely ministerial, Mr. Nelson had a right to be present and to be heard at the resentencing proceeding. U.S. Const. amends. V, XIV; Const. art. I, § 3. This Court should grant review, because the Court of Appeals should have reversed the trial court's order, as even though the trial court struck the DNA costs as Mr. Nelson requested, it denied him procedural due process. The Court of Appeals decision is therefore in conflict with decisions of this Court, it raises a significant question of law under the Washington and United States constitutions, and it also involves an issue of substantial public interest. RAP 13.4(b)(1), (3), (4).³

³ But see In re Matter of Personal Restraint of Rowley, 12 Wn. App. 2d 1031, *1 (2020) (finding no right to be present for entry of agreed order where this Court specifically limited scope of remand); GR 14.1(a) (unpublished opinion cited as persuasive authority). Mr. Nelson's case is different, as this Court did not remand the case, and as such, did not limit the scope of remand.

2. Mr. Nelson had the right to counsel at sentencing.

A defendant has a Sixth Amendment right to counsel at every critical stage of the case, and sentencing is such a stage. United States v. Wade, 388 U.S. 218, 224-27, 87 S. Ct. 1926, 18 L. Ed. 2d 119 (1967); State v. Bandura, 85 Wn. App. 87, 97, 931 P.2d 174 (1997). Sentencing is a critical stage at which the right to meaningful assistance of counsel applies. United States v. Cronin, 466 U.S. 648, 659, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984); U.S. Const. Amend. VI; Const. Art. I, § 22. “Sentencing is a critical stage of the proceedings, at which a defendant is constitutionally entitled to be represented by counsel.” Rupe, 108 Wn.2d at 741 (internal citations omitted).

Even when appointment of counsel is required only by court rules, counsel’s appointment serves as “an integral part of the judicial process.” State v. Templeton, 148 Wn.2d 193, 216, 59 P.3d 623 (2002). This integral part was missing in Mr. Nelson’s case.

As discussed above, the sentencing court necessarily exercised its discretion when determining whether RCW 43.43.7541 applied to Mr. Nelson’s circumstances and whether he had previously paid the DNA sample collection fee. The court also exercised its discretion when applying the criteria discussed in Blazina, in making an independent inquiry into Mr. Nelson’s finances, and determining whether the DNA fee

should be waived as a discretionary legal financial obligation. 182 Wn.2d at 839. If the court failed to adequately engage in this inquiry – by depriving Mr. Nelson of the right to be present and of the opportunity to be heard through counsel – this deprived Mr. Nelson of the meaningful assistance of counsel at resentencing. See Cronin, 466 U.S. at 659.

This Court should grant review because Mr. Nelson was denied a constitutionally sufficient resentencing proceeding, satisfying due process. The Court of Appeals opined that the proceeding was “merely clerical.” Slip op. at 5. However, had Mr. Nelson been afforded counsel, “[t]he ways that an attorney can assist a person in need ... are sometimes limited only by the imagination, intellectual dexterity, and assertiveness of the lawyer.” Dependency of Lee, 200 Wn. App. 414, 454, 404 P.3d 575 (2017).

This Court should grant review to remedy the constitutional deficiencies of the process Mr. Nelson was afforded.

E. CONCLUSION

For the above reasons, the Court of Appeals decision should be reviewed. RAP 13.4(b)(1), (3), (4).

DATED this 2nd day of August, 2021.

Respectfully submitted,

s/ Jan Trasen

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Washington Appellate Project
Attorneys for Petitioner

APPENDIX

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

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 37093-3-III
)	(Consolidated with
)	No. 37238-3-III)
v.)	
)	
EDWARD LEON NELSON,)	UNPUBLISHED OPINION
)	
Appellant.)	

STAAB, J. — Edward Nelson filed a post-conviction motion to remove the DNA¹ fee from his judgment and sentence. The State agreed and presented an order correcting his judgment and sentence. Mr. Nelson appeals, arguing that he had the right to be present for entry of the agreed order, and the proceedings violated his right to counsel. For the first time on appeal, he also argues that the judgment and sentence should be corrected to remove any interest on non-restitution obligations. We disagree with his substantive claims, but remand to correct the judgment and sentence to remove interest on non-restitution obligations.

FACTS

Mr. Nelson was convicted of first degree robbery. On January 22, 2016, the trial court sentenced him to life in prison without the possibility of parole. The court imposed

¹ Deoxyribonucleic acid.

the mandatory crime penalty assessment of \$500 under RCW 7.68.035 and a \$100 DNA fee under RCW 43.43.7541, along with interest. At Mr. Nelson's request in light of his indigent status, the court waived all other restitution, costs, assessments, and fines.

Paragraph 4.D.9 of the judgment and sentence (J&S) established that financial obligations "shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments." RCW 10.82.090. Mr. Nelson did not object to any of the imposed fees or interest. His criminal history included prior convictions requiring the collection of DNA.

Mr. Nelson filed a direct appeal challenging the "to convict" portion of the jury instructions. Ultimately, on June 14, 2018, the Supreme Court upheld the trial court and issued a mandate terminating appellate review on July 12, 2018.

On September 4, 2019, Mr. Nelson filed a CrR 7.8 motion to collaterally attack the J&S, alleging that the inclusion of the DNA fee was a mistake. While acknowledging that the trial court imposed only mandatory costs at the time of sentencing, he argued that the DNA fee had been previously collected in a prior conviction and was now barred as a duplicate under the newly revised RCW 43.43.7541 effective June 7, 2018. *Id.* Mr. Nelson requested a show cause hearing.

On September 10, 2019, the State conceded to Mr. Nelson's September 4, 2019 CrR 7.8 motion by presenting an order striking the DNA fee from the J&S and the trial court entered the order. The record does not reflect whether a show cause hearing was

ever scheduled on this issue, whether this order was presented ex parte on the record or resolved entirely off the docket. The record also does not indicate whether Mr. Nelson ever made a motion to the trial court addressing the issue of interest.

Mr. Nelson appeals entry of this order, arguing that the court denied him a due process right to be present and to the assistance of counsel at resentencing. We disagree.

ANALYSIS

1. DID THE ENTRY OF AN AGREED ORDER STRIKING THE DNA FEE VIOLATE MR. NELSON'S RIGHT TO BE PRESENT AND RIGHT TO AN ATTORNEY?

At the time of Mr. Nelson's sentencing on this case in 2016, the sentencing court was statutorily required and did impose certain mandatory LFOs as part of Mr. Nelson's sentence: (1) a \$500 crime victim penalty assessment pursuant to former RCW 7.68.035(1)(a) (2009), (2) a \$100 DNA collection fee pursuant to former RCW 43.43.7541 (2008), and (3) interest on these imposed mandatory fees pursuant to former RCW 10.82.090(1) (2015). None of those statutes required that the sentencing court consider the defendant's ability to pay these mandatory fees. *State v. Seward*, 196 Wn. App. 579, 587, 384 P.3d 620 (2016).

Effective June 7, 2018, the legislature amended the LFO² statutes pertinent to the issues before the court. LAWS OF 2018, ch. 269, § 1. The Supreme Court in *State v. Ramirez* held that the 2018 amendments to the LFO statute apply prospectively to cases

² Legal Financial Obligations.

pending direct appeal from the judgment and sentence when the amendments took effect. 191 Wn.2d 732, 747-49, 426 P.3d 714 (2018) (precipitating event for the imposition of LFOs is the termination of a defendant’s case). The 2018 amendments modified RCW 43.43.7541 to its current language: “Every sentence imposed for a crime specified in RCW 43.43.754 *must* include a fee of one hundred dollars *unless* the State has previously collected the offender’s DNA as a result of a prior conviction.” (Emphasis added.) The DNA collection fee statute by itself does not grant the trial court any discretion to impose or waive the fee for indigent offenders but remains a mandatory fee subject to pre-condition. *State v. Catling*, 193 Wn.2d 252, 259, 438 P.3d 1174 (2019). The mandatory fee must be imposed unless the DNA was previously collected, in which case imposition would be error.³ *State v. Blazina* is distinguishable where it dealt with failure to evaluate a defendant’s income for the purpose of waiving discretionary fees. 182 Wn.2d 827, 839, 344 P.3d 680 (2015).

In 2016 at sentencing, the trial court performed an individual inquiry and found Mr. Nelson indigent. The trial court waived all fees within its discretion at that time. However, Mr. Nelson’s case was not finalized for another two years. On June 7, 2018, Mr. Nelson’s primary direct appeal was still pending (mandate issued a month later) and

³ In case a DNA fee is imposed and a non-payment show cause occurs, RCW 9.94A.6333(3)(f) authorizes a court to waive non-restitution LFOs, not including the crime assessment, if the offender is indigent. However, that situation is distinguishable from the present motion to vacate.

thus the 2018 LFO amendments apply prospectively. The amendment rendered the imposed DNA fee void by removing the court's statutory authority to impose the fee in duplicate. *Doe v. Fife Mun. Court*, 74 Wn. App. 444, 450-51, 874 P.2d 182 (1994).

The correct mechanism to fix void fees on judgments is CrR 7.8. *Id.* at 451. A trial court may also correct a clerical error in the judgment and sentence document. *State v. Klump*, 80 Wn. App. 391, 397, 909 P.2d 317 (1996). To determine whether an error is clerical or judicial, we look to "whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial." *Presidential Estates Apartment Assoc. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996). Correcting an erroneous sentence amends a judgment. *State v. Hardesty*, 129 Wn.2d 303, 315, 915 P.2d 1080 (1996) (a court has jurisdiction to amend a judgment to correct an erroneous sentence under CrR 7.8). Because the trial court's original intent here was to waive all fees that it had the authority to waive, the later removal of the DNA fee is merely clerical.

RIGHT TO COUNSEL

Under the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution, "a criminal defendant is entitled to the assistance of counsel at critical stages in the litigation." *State v. Heddrick*, 166 Wn.2d 898, 909-10, 215 P.3d 201 (2009). The core of the constitutional right to be present is the right to be present when evidence is being presented. *In re Pers. Restraint of Lord*, 123

Wn.2d 296, 306, 868 P.2d 835 (1994). Accordingly, it appears that any proceeding where the trial court is dealing with evidence is a critical stage.⁴ *Id.* This includes a proceeding involving “a resolution of disputed facts.” *Id.* CrR 3.1(b)(2) broadly describes the various stages of a criminal proceeding to which the right of counsel attaches, including sentencing, appeal, and post-conviction review, but the right is not limitless. *State v. Robinson*, 153 Wn.2d 689, 693-94, 107 P.3d 90 (2005) (failure to appoint counsel at a motion to withdraw plea deemed harmless). CrR 7.8 motions are equated to personal restraint petitions to determine the right to counsel and do not constitute resentencing. *Id.* at 696-97. For CrR 7.8, like personal restraint petitions, the appointment of counsel may be provided after an initial determination that the petition is not frivolous. *Id.* at 695; RAP 16.11. Failure to appoint counsel for a motion to vacate is a violation of a court rule and not a constitutional violation; thus the harmless error test applies. *Id.* at 697. The appellate court reviews a CrR 7.8 motion for abuse of discretion. *State v. Larranaga*, 126 Wn. App. 505, 509, 108 P.3d 833 (2005).

In September 2019, Mr. Nelson filed his CrR 7.8(b)⁵ motion to vacate his judgment based on mistake, alleging that the DNA fee was a duplicate under the new

⁴ *State v. Rupe*, 108 Wn.2d 734, 743 P.2d 210 (1987) (Defense counsel’s failure to attend continuance hearing did not prejudice right to counsel).

⁵ CrR 7.8(b): “On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order.”

statute. He requested a show-cause hearing under CrR 7.8(c)(3). Even though technically, the DNA fee was not a mistake under CrR 7.8(b)(1), it was subject to correction by the trial court under CrR 7.8(b)(4) as a void provision.

A motion to vacate a void judgment must be filed “‘within a reasonable time.’” CrR 7.8(b); *State v. Olivera-Avila*, 89 Wn. App. 313, 319, 949 P.2d 824 (1997). The trial court did not transfer the motion as a personal restraint petition under CrR 7.8(c)(2) where (1) the original J&S supported the motion where it documented numerous other convictions that had previously required DNA collection, and (2) the one year time bar under RCW 10.73.090 did not apply because of the 2018 LFO amendments which constituted a significant, intervening change in the law.⁶ RCW 10.73.100(6); *In re Pers. Restraint of Crabtree*, 141 Wn.2d 577, 9 P.3d 814 (2000). One of the tests for determining whether a new law represents a significant, material change is applied by asking if the defendant could have argued the same issue before the new law was decided. *In re Pers. Restraint of Holmes*, 121 Wn.2d 327, 332, 849 P.2d 1221 (1993). Mr. Nelson could not have, so the trial court properly resolved his CrR 7.8 motion.

Instead of a hearing, the State presented an order agreeing to strike the DNA fee, and the court entered an order. Nothing was disputed, so no hearing was required.

⁶ *State v. Blazina* does not constitute a significant change in the law exempt from the one year time bar. *In re Pers. Restraint of Flipppo*, 187 Wn.2d 106, 111, 385 P.3d 128 (2016).

Where the motion had merit, the court could have appointed counsel. However, since the motion was both ministerial to remove a void provision and not opposed, Mr. Nelson was likely not denied the assistance of counsel. *State v. Heddrick*, 166 Wn.2d 898 (presentation of agreed withdrawal of competency challenge did not constitute a denial of assistance of counsel even where competency hearing is a critical state of litigation). Alternatively, even if Mr. Nelson was improperly denied counsel, it is harmless where his motion was granted in its entirety, and the outcome would not change on remand. *State v. Robinson*, 153 Wn.2d at 699-700.

RIGHT TO BE PRESENT

“[T]he due process right to be present is not absolute.” *State v. Irby*, 170 Wn.2d 874, 881, 246 P.3d 796 (2011). “‘[T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence.’” *Id.* (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 107-08, 54 S. Ct. 330, L. Ed. 674 (1934)). Under this standard, a defendant has the right to be present at a proceeding only when there is a “‘reasonably substantial’” relationship between his/her presence and the “‘opportunity to defend’” against a charge. *Id.* Conversely, a defendant does not have the right to be present if his/her presence “‘would be useless, or the benefit but a shadow.’” *Id.* A defendant has no right to be present at proceedings involving legal or “‘ministerial’” matters. *State v. Ramos*, 171 Wn.2d 46, 48, 246 P.3d 811 (2011). The

defendant's presence is not required at in-chambers or bench conferences (as long as they do not involve the resolution of disputed facts). *Lord*, 123 Wn.2d at 306.

Notably, Mr. Nelson acknowledges *Rowley*, which involves an identical circumstance to the matter here. In *Rowley*, the defendant argued that he had the right to be present during entry of an agreed order removing discretionary LFOs from the J&S pursuant to a Court of Appeals remand, however, the Court of Appeals denied his personal restraint petition finding that he did not have the right to be present where the trial court did not "exercise its independent judgment to review and reconsider" the LFOs. *In re Pers. Restraint of Rowley*, No. 53702-8-II (Wash. Ct. App. Feb. 25, 2020) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2053702-8-II%20Unpublished%20Opinion.pdf> (citing *State v. Barberio*, 121 Wn.2d 48, 51, 846 P.2d 519 (1993)) (Supreme Court refused to revisit the issue of an exceptional sentence imposed by the trial court on remand from the Court of Appeals where the trial court only made corrective changes to the J&S but did not exercise discretion to reconsider the sentence affirmed by the Court of Appeals).

Where the removal of the void provision was merely ministerial, and even clerical, with no discretionary potential for a different result, Mr. Nelson did not have a right to be present, especially where the State did not oppose the motion and an agreed order was presented (likely off docket). Since the purpose of a CrR 7.8(c)(3) show cause hearing is

to allow the adverse party (here the State) to oppose the requested relief, any hearing setting would have been moot and Mr. Nelson's presence unnecessary.

2. DID THE TRIAL COURT ERR BY FAILING TO WAIVE INTEREST ON MR. NELSON'S NON-RESTITUTION LEGAL FINANCIAL OBLIGATIONS (LFOs)?

On appeal, Mr. Nelson challenges the imposition of interest on his non-restitution LFOs. This issue was not raised with the trial court or in Mr. Nelson's first appeal. However, this court may consider it pursuant to RAP 2.5. Mr. Nelson argues that the interest provision must be struck. He is correct in light of *State v. Ramirez*, 191 Wn.2d at 747; RCW 10.82.090(1), (2)(a). The State does not respond to this issue.⁷

Former RCW 10.82.090(1) required that interest accrues on all LFOs imposed in the judgment and sentence. Former RCW 10.82.090(2)(c) allowed the trial court to reduce or waive interest on non-restitution LFOs if the offender "has personally made a good faith effort to pay" and "the interest accrual is causing a significant hardship." Former RCW 10.82.090(2)(a) also required the trial court to waive interest on non-restitution LFOs that accrued during the term of total confinement upon a showing of hardship.

⁷ "[I]f a party does not provide a citation to support an asserted proposition, the court may 'assume that counsel, after diligent search, has found [no supporting authority].'" *State v. Arredondo*, 188 Wn.2d 244, 262, 394 P.3d 348 (2017) (alteration in original).

In 2018, the legislature amended RCW 10.82.090(2)(a) to provide that the trial court shall waive non-restitution interest that had accrued before June 7, 2018. LAWS OF 2018, ch. 269, § 1. In addition, RCW 10.82.090(1) now provides that no interest will accrue on non-restitution LFOs after June 7, 2018. *Id.* Due to the prospective application of the amended LFO statute as noted above, all interest on Mr. Nelson’s non-restitution LFO obligations must be waived. It is uncontested that Mr. Nelson was indigent, and restitution was not ordered. The interest provision should be struck.

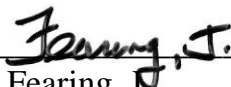
We affirm entry of the order correcting Mr. Nelson’s judgment to remove the DNA fee. We remand to correct the judgment and sentence and strike interest on non-restitution legal financial obligations, noting that Mr. Nelson does not have a right to be present and does not have a right to an attorney when the court corrects the judgment and sentence.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Staab, J.

WE CONCUR:



Fearing, J.



Pennell, C.J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.) COA NO. 37093-3-III
)
 EDWARD NELSON,)
)
 Petitioner.)

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WASHINGTON APPELLATE PROJECT

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