

NO. 47740-8-II  
NO. 47742-4-II (consolidated)  
NO. 47743-2-II (consolidated)  
NO. 47745-9-II (consolidated)

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

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STATE OF WASHINGTON.

Respondent,

v.

JASON SHIRTS,

Petitioner.

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

The Honorable Jennifer Snider, Commissioner  
The Honorable Daniel L. Stahnke, Judge

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REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u> .....	1
1. THE TRIAL COURT HAS DISCRETION TO DETERMINE WHETHER LFOs IMPOSE MANIFEST HARDSHIP, BUT THE TRIAL COURT FAILED TO EXERCISE THIS DISCRETION HERE.....	1
2. SHIRTS IS AGGRIEVED BY COMPOUNDING INTEREST AND DOC'S DENIAL OF REENTRY PROGRAMMING .....	4
B. <u>CONCLUSION</u> .....	6

TABLE OF AUTHORITITES

Page

WASHINGTON CASES

State v. Blank  
131 Wn.2d 230, 930 P.2d 1213 (1997)..... 3

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

State v. Crook  
146 Wn. App. 24, 189 P.3d 811 (2008)..... 2, 3

State v. Mahone  
98 Wn. App. 342, 989 P.2d 583 (1999)..... 4

State v. Sinclair  
\_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2016 WL 3937196 (Jan. 27, 2016) ..... 5

State v. Smits  
152 Wn. App. 514, 216 P.3d 1097 (2009)..... 4, 5

RULES, STATUTES AND AUTHORITITES

RCW 10.73.160 ..... 1, 2

RCW 72.09.015 ..... 3

RCW 72.09.110 ..... 3

RCW 72.11.020 ..... 3

A. ARGUMENT IN REPLY

1. THE TRIAL COURT HAS DISCRETION TO DETERMINE WHETHER LFOs IMPOSE MANIFEST HARDSHIP, BUT THE TRIAL COURT FAILED TO EXERCISE THIS DISCRETION HERE

Shirts does not disagree with the State that the trial court has discretion to determine whether to remit some or all of a litigant's outstanding LFOs. See Br. of Resp't at 4-5. Indeed, the statute states that the trial "court may remit all or part of the amount due in costs" "[i]f 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[.]" RCW 10.73.160(4) (emphasis added).

The point the State misses is that the object of the trial court's discretion under RCW 10.73.160(4) is whether LFOs impose manifest hardship. It is this discretion that must be exercised; it is this discretion that the trial court failed to exercise here.

The trial court did not answer the only question RCW 10.73.160(4) asks: does it appear to my satisfaction that payment of the amount due in LFOs will impose manifest hardship, and, if so, should I remit all or part of those LFOs? The trial court made no manifest hardship determination. Denying Shirts's motions to remit without making any determination under RCW 10.73.160(4) renders RCW 10.73.160(4) a nullity. The language of

the statute as well as the case law applying it plainly indicates that, when faced with a remission motion, the trial court must actually exercise the discretion RCW 10.73.160(4) provides. Br. of Pet'r at 12-13. The proper exercise of discretion is what ensures that Washington's remissions process comports with due process. Br. of Pet'r at 15-18.

Rather than address these points, the State relies on State v. Crook, 146 Wn. App. 24, 189 P.3d 811 (2008), for the proposition that the trial court need not exercise RCW 10.73.160(4) discretion and may deny a remission motion without any process whatsoever. Crook, however, involved DOC-enforced LFO collections from an inmate's institutional account. Crook, 146 Wn. App. at 27. As Shirts pointed out in his motion for discretionary review, Shirts has not alleged DOC is deducting his inmate wages, so Crook is not on point. Mot. for Discr. Rev. at 13-14 & n.4.

In any event, Crook's reasoning is unsound. The Crook court held that "[m]andatory [DOC] deductions from inmate wages for payment of LFOs are not collection actions by the State requiring inquiry into a defendant's financial status." Crook, 146 Wn. App. at 27-28. To support this assertion, the Crook court offered one sentence of analysis: "Statutory guidelines set forth specific formulas allowing for fluctuating amounts to be withheld, based on designated percentages and inmate account balances, assuring inmate accounts are not reduced below indigency levels." Id. at 28.

Crook is incorrect. As a matter of common sense, DOC deductions are not somehow exempted from qualifying as enforced State collections simply because the deductions are based on statutes that provide deduction ratios from inmate accounts. See RCW 72.11.020 (DOC secretary is custodian of inmate's funds and may disburse money from inmate account to satisfy LFOs); RCW 72.09.110 (requiring inmates working in prison industries to "participate in the cost of corrections"); RCW 72.09.111 (enumerating deduction schedules and formulas for various wage classes). DOC deductions, albeit authorized by statute, are forced State collections. What else could they be? Our supreme court requires that a court must conduct an ability-to-pay inquiry "before enforced collection" of an LFO as a matter of due process. State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997). Crook conflicts with this rule and is therefore incorrect.

In addition, Crook's assurance that "inmate accounts are not reduced below indigency levels" rings completely hollow. The "indigency level" the Crook court refers to is defined in RCW 72.09.015(15), and means "an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made . . . ." Ten dollars is not a meaningful place to draw the line for ability to pay LFOs. Crook does not apply to Shirts's circumstances; even if it did, this court should not apply Crook because it is poorly reasoned.

When faced with a remission motion, the trial court must ask the right question—do the LFOs cause manifest hardship.<sup>1</sup> The trial court failed to do so here. This court should remand for a fair manifest hardship determination.

2. SHIRTS IS AGGRIEVED BY COMPOUNDING INTEREST AND DOC'S DENIAL OF REENTRY PROGRAMMING

The State contends Shirts is not aggrieved. The State relies on State v. Smits, 152 Wn. App. 514, 216 P.3d 1097 (2009), and State v. Mahone, 98 Wn. App. 342, 989 P.2d 583 (1999), but fails to respond to Shirts's point that in both Mahone and Smits, the defendants were provided with the precise remedy Shirts seeks—a meaningful hearing on whether remission is appropriate due to manifest hardship. Compare Br. of Resp't at 8-9 with Br. of Pet'r at 20-21.

The State also fails to recognize how the accrual of interest on LFOs at a compounding rate of 12 percent is particularly harmful to indigent litigants. See State v. Blazina, 182 Wn.2d 827, 836, 344 P.3d 680 (2015); Br. of Pet'r at 23-24. Because of compounding, exorbitantly high interest, Shirts estimates he owes nearly \$45,000 in LFOs. If he cannot seek remission, he will owe thousands of dollars more by the time he exits prison.

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<sup>1</sup> The more important question in this case is how courts should make a manifest hardship determination. As Porter proposed in his opening brief, this court should adopt GR 34 as the standard for trial courts to assess whether LFOs impose manifest hardship. Br. of Pet'r at 26-29.

As Division One recently acknowledged, “Carrying an obligation to pay a bill of \$6,983.19 plus accumulated interest can be quite a millstone around the neck of an indigent offender.” State v. Sinclair, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2016 WL 393719, at \*6 (Jan. 27, 2016). Shirts owes more than six times what Sinclair does. To avoid the further compounding of interest, Shirts would need to pay more than \$5,000 in LFOs in 2016, and this would still have no effect on the underlying principal. No court ever determined Shirts could pay any amount in LFOs, let alone any interest. Cf. Smits, 152 Wn. App. at 523 (noting Smits was not aggrieved in part because “[t]he initial imposition of court costs at sentence [wa]s predicated on the determination that the defendant either has or will have the ability to pay”). Shirts is aggrieved by the harmful accrual of interest.

Nor does the State provide any response to Shirts’s claim that DOC classifies him differently and denies him the opportunity to participate in rehabilitative programming while incarcerated. App. 54-55, 138-39, 228-29, 307-08; Br. of Pet’r at 25-26. Shirts’s allegations distinguish his case from other cases that rotely apply the time-of-enforcement rationale to deny relief. See Br. of Pet’r at 22-23. Shirts is aggrieved.

B. CONCLUSION

Shirts asks that this court remand his remission motions so that he may receive fair consideration of whether \$45,000 in LFOs (and counting) imposes a manifest hardship on Shirts and his family.

DATED this 22<sup>nd</sup> day of February, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

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

KEVIN A. MARCH

WSBA No. 45397

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Attorneys for Petitioner

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 22<sup>ND</sup> DAY OF FEBRUAY 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JASON SHIRTS  
DOC NO. 839134  
WASHINGTON STATE PENITENTIARY  
1313 N. 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA 99362

**SIGNED** IN SEATTLE WASHINGTON, THIS 22<sup>ND</sup> DAY OF FEBRUAY 2016.

X *Patrick Mayovsky*

**NIELSEN, BROMAN & KOCH, PLLC**

**February 22, 2016 - 2:10 PM**

**Transmittal Letter**

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Court of Appeals Case Number: 47740-8

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