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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 331008

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

**Briana Wakefield,
Appellant,**

v.

**City of Kennewick,
Respondent,**

and

**City of Richland,
Respondent.**

APPELLANT'S BRIEF

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I. INTRODUCTION

Appellant, Briana Wakefield (“Ms. Wakefield”), appeals from the orders entered by the Benton County District Court on August 20, 2013 after a court-scheduled “fine review” hearing. At the time of the hearing, Ms. Wakefield was a mother of four minor children and was permanently disabled, living on social security supplemental income (“SSI”) of around \$700 a month and supplemental food assistance program (“SNAP”) benefit. The Benton County District Court ordered Ms. Wakefield to pay \$15 per month from her federal SSI benefits towards legal financial obligations (“LFOs”) imposed by the City of Kennewick and to work crew to pay off LFOs imposed by the City of Richland. Neither the City of Kennewick nor the City of Richland requested a fine review hearing.

Ms. Wakefield’s LFOs consist of mandatory and discretionary court costs and fines. Certain court costs are mandatory and the sentencing court must impose them regardless of a defendant’s ability to pay. Other LFOs are discretionary and may not be imposed unless a defendant is or will have the ability to pay them. More importantly, a court cannot incarcerate a defendant if they are unable to pay court costs and fines—including mandatory and discretionary courts costs, restitution, and fines. At all times during Ms. Wakefield’s criminal proceedings, she was unable to pay LFOs due to her indigency.

On August 20, 2013, Ms. Wakefield owed the Benton District Court about \$1,345 in discretionary court costs she could not pay. She filed a motion to have those costs remitted due to her indigency, but the court denied her motion.

On September 18, 2013, Ms. Wakefield appealed the Benton County District Court orders requiring her to pay and work off LFOs to the Benton County Superior Court. The superior court reversed the district court's order for Ms. Wakefield to work off LFOs at work crew, but upheld the order for Ms. Wakefield to pay \$15 a month from her SSI benefits towards her LFOs. In essence, the superior court ruled that the district court could, in exercising its discretion, make a determination that a permanently disabled individual—whose only sources of income are needs-based public benefits—could be ordered to pay funds from those benefits to satisfy LFOs. Ms. Wakefield filed a motion for discretionary review to this Court. This Court granted that motion and this appeal follows.

II. ASSIGNMENTS OF ERROR

1. The courts below erred when they denied Ms. Wakefield's motion to reduce or eliminate court costs, and lacked substantial evidence for that decision.
2. The courts below erred when they ordered Ms. Wakefield to pay \$15.00 each month from her federally protected SSI benefits, and lacked substantial evidence for finding that this destitute and disabled woman had an ability to pay her legal financial obligations.
3. The courts below erred when they failed to give Ms. Wakefield the proper notice for the August 20, 2013 "fine review hearing" and allowed the judge to act as both the prosecutor and judge during that hearing.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the courts below err when they denied Ms. Wakefield's motion to reduce or eliminate court costs?
2. Did substantial evidence at the August 20, 2013 hearing establish that Ms. Wakefield was indigent and therefore lacked the ability to pay?
3. Did substantial evidence at the August 20, 2013 hearing establish that requiring Ms. Wakefield to pay costs did not impose a manifest hardship upon her and her family?
4. Did substantial evidence at the August 20, 2013 hearing establish that because of Ms. Wakefield's permanent and total disability, there is no likelihood that her indigency will end?
5. Did the lack of substantial evidence of Ms. Wakefield's ability to pay make the ruling that Ms. Wakefield had the ability to pay \$15.00 per month towards her legal financial obligations an error of law, arbitrary and capricious and/or an abuse of discretion?
6. Did the court's ruling ordering Ms. Wakefield to pay \$15.00 a month from her SSI benefits constitute "other legal process" prohibited by the anti-alienation provisions of the Social Security Act, 42 U.S.C. § 407(a)?
7. Did the district court violate Ms. Wakefield's right to procedural due process when it acted as both prosecutor and judge on August 20, 2013?
8. Did the district court violate Ms. Wakefield's right to procedural due process when it failed to follow the civil show cause procedures when scheduling the "fine review" hearing?

IV. STATEMENT OF THE CASE

In 2013, Ms. Wakefield sought help regarding outstanding warrants for her unpaid LFOs issued by the Benton County District Court.¹ Ms. Wakefield filed a motion to quash those warrants and to schedule a hearing on the matter in the Benton County District Court on July 24, 2013. CP 711-724 and CP 889-893. The district court denied that motion and stated that Ms. Wakefield could either turn herself in or pay \$100 per warrant to quash them. CP 709 and CP 886. A petition for a writ of habeas corpus was then filed in Benton County Superior Court seeking to stay the warrants issued in district court until a return hearing on the matter could take place.² The Benton County Superior Court granted a temporary order staying Ms. Wakefield's warrants. CP 162-163 and CP 884-885. Soon after that temporary order was entered by the superior court, the Benton County District Court quashed the warrants and set a "fine review" hearing for Ms. Wakefield. CP 706 and CP 883.

On August 20, 2013, the Benton County District Court held the "fine review" hearing for Ms. Wakefield's outstanding LFOs in her Richland and Kennewick cases. At that time, Ms. Wakefield was a disabled mother of four minor children. CP 717-719 and CP 833-853. Her

¹ Neither the City of Kennewick nor the City of Richland was seeking to enforce payment of the LFOs against Ms. Wakefield.

² See Benton County Superior Court Case 13-2-01874-5 *Wakefield v. Benton County District Court*.

only income was from SSI and Supplemental Nutrition Assistance Program (“SNAP”). CP 717-719 and CP 833-853. The fine review hearing was scheduled by the district court on its own initiative; neither the City of Kennewick nor the City of Richland sought the review. Prior to the “fine review” hearing, Ms. Wakefield filed a motion to reduce or eliminate (“remit”) court costs pursuant to RCW 10.01.160. CP 669-678 and CP 826-832.

Ms. Wakefield’s motion to remit costs was heard by the district court on August 20, 2013. In support of her motion, Ms. Wakefield personally testified, and presented expert witness testimony from Dr. Diana Pearce, Director of the University of Washington’s Center for Women and Welfare and a Senior Lecturer at the University of Washington School of Social Work. CP 31-131 and CP 416-516. The district court entered into the hearing record the sworn declarations with exhibits that Ms. Wakefield and Dr. Pearce had filed in preparation for the hearing. CP 635 -665, CP 791-825, and CP 833-853.

Ms. Wakefield’s evidence was uncontroverted. No lawyer appeared on behalf of the prosecuting authorities, the City of Kennewick and the City of Richland. The cities presented no witnesses and offered no exhibits into evidence. CP 31-131 and CP 416-516. There was *no* other evidence presented during the hearing on Ms. Wakefield’s motion to remit

costs. No evidence that she does, or will ever, have the ability to pay without suffering manifest hardship was entered into evidence. On August 20, 2013, the Benton County District Court ordered Ms. Wakefield to pay \$15 a month towards LFOs to the City of Kennewick and ordered her to work crew to discharge LFOs to the City of Richland. CP 610 and CP 771.

Ms. Wakefield timely filed her notice of appeal under RALJ 2.4 on September 18, 2013 with the Benton County Superior Court. CP 608 and CP 764. The superior court heard the matter on February 13, 2014. CP 237. The superior court remanded the case back to district court to enter written findings of fact and conclusions of law. CP 237 -238 and CP 537-538. The district court filed its written findings of fact and conclusions of law on April 15, 2014. CP 239-242 and CP 539-542. The district court's findings did not address its denial of Ms. Wakefield's motion to remit the LFO's per RCW 10.01.160(4). CP 239-242, CP 669-678, CP 539-542, and CP 826-832.

The superior court appeal was heard on September 25, 2014. CP 274-279 and CP 577-582. On December 4, 2014, the superior court affirmed the district court decision but reversed the order requiring Ms. Wakefield to work off her fines and fees at work crew. CP 274-279 and CP 577-582. A motion for reconsideration was timely filed on December 15, 2014 to request that the superior court clarify its ruling to make a

specific finding pursuant to RCW 10.01.160(4) on whether or not the imposition of court costs on Ms. Wakefield would impose manifest hardship on her and/or her family. CP 281-286 and CP 584-589. On December 18, 2014 the superior court denied the motion for reconsideration. CP 287-291 and CP 590-594. A notice of discretionary review was timely filed on January 20, 2015. CP 292-301 and CP 595-604. The motion for discretionary review was granted on April 16, 2015.

V. SUMMARY OF ARGUMENT

Ms. Wakefield asks this Court to find that the Benton County District Court committed numerous errors of law by (1) issuing findings of facts and conclusions of law that are not supported by substantial evidence in the record³, (2) failing to find Ms. Wakefield indigent and unable to pay her LFOs and remitting discretionary court costs accordingly, (3) failing to properly conduct the hearing in violation of Ms. Wakefield's procedural due process rights, and (4) violating the social security anti-alienation statute when it ordered Ms. Wakefield to pay \$15 a month towards LFOs from her SSI benefits.

Ms. Wakefield should never have been found able or ordered to pay discretionary LFOs at sentencing. After the court began collecting Ms. Wakefield's LFOs, the court refused to give Ms. Wakefield's motion

³ Appellant objects to Findings of Fact 4,8,11,12,14, and 16 and Conclusions of Law 1-5.

to remit discretionary court costs any meaningful consideration as constitutionally required. On August 20, 2013, Ms. Wakefield owed approximately \$1,345 in discretionary LFOs that she was unable to pay. Regardless of Ms. Wakefield's indigency, the district court refused to remit her discretionary costs. This refusal is an error of law and abuse of discretion. This Court should find that Ms. Wakefield is indigent, unable to pay LFOs, and grant Ms. Wakefield's motion to remit discretionary court costs she cannot pay. Poverty should never be criminalized, but this is exactly what the Benton County District Court is doing in its unyielding practice of collecting LFOs.

VI. ARGUMENT

RALJ 9.1 governs appellate review by a superior court of a decision of a district court. *State v. Ford*, 110 Wn.2d. 827, 829-830, 755 P.2d 806 (1998); *State v. Brokman*, 84 Wn. App. 848, 850, 930 P.2d 354 (1997). RALJ 9.1 likewise applies to appellate courts that grant discretionary review of a superior court's RALJ decision. *State v. Weber*, 159 Wn. App. 9, 786, 247 P.3d 782 (2011). This Court reviews the district court's orders for errors of law. RALJ 9.1(a). In the course of that review, this Court may accept factual determinations (1) expressly made by the district court or (2) reasonably inferred from the judgment of the district court, but only if those determinations are supported by substantial evidence in the record.

RALJ 9.1(b). “Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Bering v. Share*, 106 Wn.2d 212, 220; cert. dismd., 479 U.S. 1050 (1987).

A. The Benton County District Court did not follow the controlling law when it sentenced Ms. Wakefield to pay discretionary LFOs.

Constitutionally, the state may not incarcerate an indigent defendant because of her inability to pay legal financial obligations imposed as part of a criminal sentence. *See Bearden v. Georgia*, 461 U.S. 660, 667-68, 103 S. Ct. 2064, 76 L. Ed. 2d 221(1983) (fines); *Fuller v. Oregon*, 417 U.S. 40, 54, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974) (costs); *State v. Barklind*, 87 Wn.2d 814, 557 P.2d 314 (1977) (costs); *State v. Smits*, 152 Wn. App. 514, 216 P.3d 1097 (Div. 1 2009) (costs). No defendant may be required to pay costs as part of a criminal sentence except through compliance with the constitutional criteria identified by the Supreme Court in *Fuller v. Oregon*:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on a convicted defendant;
3. Repayment may only be ordered if the defendant is or will be able to pay;

4. The court must take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose;
5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and
7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

Fuller v. Oregon, 417 U.S. 40, 44, 94 S. Ct. 2116, 40 L. Ed. 2d 642

(1974); *See also State v. Curry*, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

Ms. Wakefield's LFOs consist of mandatory and discretionary court costs and fines. Certain court costs are mandatory and the sentencing court must impose them regardless of a defendant's ability to pay (e.g. DNA collection fee, criminal conviction fee, public safety and educational assessments, and other offense specific mandatory penalties). See RCW 43.43.7541, RCW 3.62.085, and RCW 3.62.090. Discretionary court costs should not be ordered unless a defendant is or will have the ability to pay them. RCW 10.01.160(3). Discretionary court costs include expenses specifically incurred by the state in prosecuting the defendant (e.g. costs of

incarceration, probation fees, warrant fees, and attorney fees). *See State v. Bertrand*, 165 Wn. App. 393, 267 P.3d 511 (2011). The law allows sentencing courts to order restitution, but it is not mandatory. *See* RCW 9.92.060, RCW 9.95.210; *Seattle v. Fuller*, 177 Wn.2d 263, 300 P.3d 340 (2013). As for fines, sentencing courts have discretion to waive or suspend particular fines at sentencing. *See* RCW 3.62.010, RCW 3.50.320, RCW 35.20.255; *see e.g.* RCW 69.50.430 (VUCSA fines waivable upon a finding of indigency). Fines and mandatory court costs do not qualify for remission pursuant to a motion filed under RCW 10.01.160(4), only discretionary court costs do. A court cannot incarcerate a defendant if they are unable to pay court costs and fines (including mandatory and discretionary courts costs, restitution, and fines).

Although, Ms. Wakefield is unable to challenge the imposition of discretionary LFOs in her sentencing judgment at this time, it is important for this Court to review the history in this case. At all times relevant in both Ms. Wakefield's Kennewick and Richland cases, she has been indigent and disabled with her sole source of cash income from SSI of around \$700 a month.

RCW 10.01.160(3) states a court cannot order a defendant to pay discretionary court costs unless a court determines the defendant will be able to pay them. The Washington Supreme Court recently affirmed the

requirement of this determination in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). RCW 10.01.160(3) and the criteria identified in *Fuller v. Oregon*, *State v. Curry*, and *State v. Barklind* summarize the legal authority the district court was required to follow throughout Ms. Wakefield's criminal proceedings, but did not.

The evidence shows that from the entry of the judgments in both cases (2010 and 2012) to the August 20, 2013 hearing that Ms. Wakefield was indigent and unable to pay discretionary LFOs. CP 635-655, CP 725, CP 732, CP 733, CP 735, CP 738, CP 760-761, CP 833-853, CP 902, CP 907-908, CP 913-914. Ms. Wakefield filed an application for appointed counsel declaring her sole source of income as SSI. CP 732-733, CP 760-761, CP 908, CP 914. Further, the court was on notice from the beginning that Ms. Wakefield was disabled by her receipt of SSI benefits. CP 760-761 and CP 914. Thus, the court may not compel repayment of discretionary LFOs if the facts show no likelihood that a defendant's indigency will end. *State v. Barklind*, 87 Wn.2d at 817. At all relevant times herein, the district court was on notice that Ms. Wakefield receives benefits under the SSI program. SSI provides a minimum, subsistence-level monthly payment to persons who are elderly or disabled without relevant work history who lack significant assets and have no other means of support. SSI currently only provides approximately 74 percent of the

federal poverty standard for a single person. Eligibility requires not only proof of indigency but also medical proof—to a standard specified and accepted by the Social Security Administration—establishing that the applicant is permanently and totally disabled from being able to perform any substantial gainful activity. *See* 42 U.S.C. § 1382 – 1382b.

Ms. Wakefield was medically proven to be permanently and totally disabled under this standard at age 18. CP 54 and CP 439. Although aware of Ms. Wakefield’s SSI eligibility—and what that status proved about the nature and extent of her permanent disability—the district court’s July 18, 2012 and December 8, 2010 judgments did not address or assess whether there was any likelihood that her indigency would ever end. *Cf., State v. Bertrand*, 165 Wn. App. 393, 404, fn. 14, 267 P.3d 511 (defendant’s disability alone created arguable question as to any ability to pay “now or in the near future”). CP 744-745 and CP 904-905.

Even after Ms. Wakefield testified to her disability and receipt of SSI benefits at the August 20, 2013 “fine review” hearing, the Benton County District Court ignored the testimony and issued a finding of fact that there was no evidence presented that Ms. Wakefield had a permanent disability that prevents her from working. *See* Findings of Fact #4, CP 240 and CP 540. This determination by the district court is without basis in light of the clear evidence, as acknowledged by the court, that Ms.

Wakefield has received SSI due to her disability since age 18. *See* Findings of Fact No. 3, CP 240 and CP 540. The fact is that the district court ignored the evidence of Ms. Wakefield's disability and indigency at sentencing, and then again, at the hearing on August 20, 2013. This Court should reverse and find that because her only income is SSI Ms.

Wakefield is indigent as a matter of law as proven by the evidence of record. *See* GR 34(3)(A)(iii).

B. The Benton County District Court erred when it denied Ms. Wakefield's motion to remit costs.

Pursuant to RCW 10.01.160(4), a defendant not willfully disobeying a court order may move the court at any time to remit the discretionary cost obligation, including for the reason that the amount assessed imposes "manifest hardship" on the defendant or her family. While "ability to pay" and "manifest hardship" may at first blush appear to mean the same thing, in fact they are different. Even if a person has some minimal or theoretical ability to pay discretionary court costs from subsistence income, the court must determine if such payment or *any* payment would result in "manifest hardship" when deciding a motion to remit discretionary court costs. "Manifest hardship" exists when an indigent person is forced to make difficult choices between hunger or housing, medical care or children's shoes, food or medicine, gas or rent.

The foregoing of any of these necessities in order to pay LFOs to avoid incarceration or other sanction, regardless of how small, creates manifest hardship and should not be compelled as a matter of law. See *Jafar v. Webb*, 177 Wn.2d 520, 303 P.3d 104 (2013).

When the district court began collecting LFOs from Ms. Wakefield, she filed a motion to remit discretionary court costs pursuant to RCW 10.01.160(4). CP 669-678 and CP 826-832. Ms. Wakefield's motion to remit costs was heard by the district court on August 20, 2013. In support of her motion, Ms. Wakefield personally testified, and presented expert witness testimony from Dr. Diana Pearce, Director of the University of Washington's Center for Women and Welfare and a Senior Lecturer of the School of Social Work at the University of Washington. CP 31-131 and CP 416-516. The district court entered into the hearing record the sworn declarations with exhibits which Ms. Wakefield and Dr. Pearce had earlier filed in preparation for the hearing. CP 635-665, CP 791-825 and CP 833-853.

Although the district court cross-examined both witnesses, the hearing testimony was consistent and undisputed that Ms. Wakefield was disabled and struggled to obtain stable housing. CP 54-55 and CP 439-440. Ms. Wakefield's only cash income was around \$700.00 in monthly, federally-protected SSI benefits. CP 54 and CP 439. Dr. Pearce explained

this equaled about half the \$1400 to \$1468 monthly income necessary for a single person living in the Benton-Franklin County area to meet minimum, basic needs for self-support. CP 83-85 and CP 468-470. The sworn testimony was that Ms. Wakefield's basic subsistence needs and family related expenses require all her monthly income. CP 83-85 and CP 468-470. The testimony was therefore that the financial burdens imposed by the July 24, 2012 and December 8, 2010 judgments were a hardship manifestly beyond her ability to meet. The district court aggressively questioned Dr. Pearce on whether she thought indigents "should not be responsible for their actions" or "not held responsible for punishment that might be monetary" because of their limited income. CP 85-91 and CP 470-476. In answer, Dr. Pearce testified:

I don't think one goes to the other because if you had limited means, you can't meet your needs, you're being forced to choose between, for example, heat and eating. You're being forced to make choices where you're not going to meet your basic needs. You won't be able to maintain housing -- CP 87 and CP 472.

I mean, for me it's hard to understand the monetary punishment that asks someone to pay a court rather than meet their basic needs. You're asking someone to not eat in order to pay the court. CP 87-88 and CP 472-473.

My understanding, yes, it's that the Court is asking someone to not meet their basic needs, which seems to me a basic human right for food and shelter, and asking someone to be homeless, they're continuing to be homeless in order to pay the court. And that, to me, seems problematic. . . CP 88 and CP 473.

[B]eing able to meet your basic needs should have precedence over paying court fines because it would be counter-productive to have people not meet their basic needs. You're asking people to starve, you're asking people to continue to be homeless in order to pay fines. It seems to me, this is like debtor's prison; I mean, it's something that is against human rights. CP 90 and CP 475.

The court committed legal error when it ignored the substantial evidence of manifest hardship submitted at the hearing. Ms. Wakefield's evidence proved that requiring her to make any payment towards her discretionary court costs would be a manifest hardship on her and her family. Further, Ms. Wakefield was the only party to offer evidence at the hearing on August 20, 2013. The Benton County District Court erred when it failed to follow the mandates of *Fuller v. Oregon* and *State v. Blazina* to remit discretionary court costs as constitutionally required. This Court should reverse and order that the discretionary LFOs be remitted in full.

C. **The Benton County District Court committed errors of law when it ordered Ms. Wakefield to pay \$15.00 each month towards her LFOs.**

The Benton County District Court also committed an error of law when it required Ms. Wakefield to pay \$15 each month from her SSI benefits. The order lacked any evidential support in the record and thus was arbitrary and capricious and/or an abuse of discretion as a matter of

law. It also violated federal law—the anti-alienation provision of the Social Security Act (SSA), 42 U.S.C. § 407(a).

1. No substantial evidence exists in the record that Ms. Wakefield had \$15 of unallocated income.

No evidence was presented or otherwise exists in the record that Ms. Wakefield had \$15 of unallocated income available each month after her minimum needs were met. Ms. Wakefield’s testimony, the monthly budget worksheet she submitted, and Dr. Pearce’s testimony incontrovertibly proves otherwise. Dr. Pearce was adamant in her own testimony that Ms. Wakefield’s SSI income was only about half what she minimally needed to satisfy her most basic human needs, and that the district court was “asking someone to not eat in order to pay the court.” CP 87-88 and CP 472-473. The district court’s conclusion that Ms. Wakefield had *any* ability to pay is not based on any evidence, let alone substantial evidence in the hearing record.

The district court found that Ms. Wakefield’s behavior and drug addiction impacted her ability to repay the court. CP 240 and CP 540. Ms. Wakefield’s drug addiction and one additional criminal offense did not have any impact on her ability to pay a debt she has never been able to afford. At all times in this case, Ms. Wakefield’s main source of income never changed. Ms. Wakefield’s ongoing struggles with addiction are

irrelevant to the issue of her ability to pay. Living on SSI, Ms. Wakefield has never had enough income to meet her basic essential needs, let alone pay a discretionary LFO imposed by the court. Chemical dependency or not, Ms. Wakefield's income remained the same. As a woman living with a disability on SSI, Ms. Wakefield cannot budget her way out of poverty or to pay a discretionary LFO she simply cannot afford. To find that Ms. Wakefield's unfortunate illness of chemical dependency demonstrates her willfulness to not pay is purely punitive and erroneous because it has no impact on the amount of money available (or what would be available). Ms. Wakefield is indigent and has never had enough money to pay discretionary LFOs to the Benton County District Court.

2. The district court's order for Ms. Wakefield to pay \$15 a month violated federal law.

The evidence was uncontroverted that Ms. Wakefield's cash support for the last seven years has been her monthly SSI benefits. CP 54 and CP 439. As to those benefits, 42 U.S.C. § 407(a) states:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, *and none of the moneys paid or payable or rights existing under this subchapter* shall be subject to execution, levy, attachment, garnishment, *or other legal process*, or to the operation of any bankruptcy or insolvency law. (emphasis added)

Congress intended SSI benefits paid from its appropriations provide a basic floor of subsistence-level income to otherwise destitute Americans

unable to work because of severe disabilities. §407(a) shows Congress did *not* want the appropriations that provide those benefits garnished, attached, or diverted from that use. It forbids the district court from directly garnishing Ms. Wakefield's SSI benefits to collect LFOs. *See, e.g., Bennett v. Arkansas*, 485 U.S. 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1998)) (no state may divert social security benefits to payment of incarceration costs levied as part of a criminal conviction). Section 407(a) also forbids the lower court from pursuing the same result through means of any "other legal process." But diverting Ms. Wakefield's SSI benefits from her subsistence needs to the district court's financial demands was plainly what the district court intended the August 20, 2013 order to accomplish; Ms. Wakefield has no other income from which payment could be made.

The term "other legal process" in § 407(a) includes any "judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability." *Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 385-86, 123 S. Ct. 1017, 154 L. Ed. 2d 972 (2003). A court order requiring payment which can only come from SSI benefits constitutes "legal process" within the meaning of § 407,

especially where the district court will enforce that order through bench warrants or incarceration.

The Benton County District Court publicly and freely admits its routine use of bench warrants, jail time, and orders of partial confinement with work crew specifically to compel judgment-proof individuals to surrender court-ordered payments that no collection agency could legally garnish.⁴ Even a *threat* of legal proceedings to extort surrender of SSI benefits is “legal process” prohibited by § 407.⁵ Here, in fact, the district court has already *employed* such sanctions against Ms. Wakefield. *See, e.g.*, June 24, 2013 bench warrant for her arrest for failure to comply with payment order. CP 725. If Ms. Wakefield does not surrender her SSI benefits to the district court, Ms. Wakefield plainly faces the loss of her liberty because the district court has already announced its belief that she has an ability to pay that amount.

Such extortion cannot lawfully stand. The August 20, 2013 order and the district court’s customary use of incarceration to force compliance constitute a judicial mechanism to take control of Ms. Wakefield’s

⁴ *See* “Benton County time-for-fines program criticized,” *Tri-City Herald*, November 18, 2013, reproduced in CP 410-413.

⁵ In *King v. Schafer*, 940 F.2d 1182 (8th Cir. 1991), the Missouri Department of Mental Health threatened to seize the personal assets of representative payees who refused to voluntarily pay their wards’ Social Security benefits to the state. The Eighth Circuit quickly recognized that a state’s threat of adverse legal consequences to obtain Social Security benefits it could not legally attach constituted “other legal process” within the prohibition of 42 U.S.C. § 407: “**what the state cannot do, it cannot threaten to do.**” *Id.* at 1185.

monthly SSI benefits toward discharge of a financial obligation claimed by the district court. The order constitutes “other legal process” within the meaning of § 407(a). The August 20, 2013 order was therefore illegal under federal law and *Bennett v. Arkansas*; its entry constituted an error of law. *Similarly, see In re Michael S.*, 206 W.Va. 291, 524 S.E.2d 443 (1999) (court order requiring juvenile offender to pay restitution out of his SSI violates §407); *State v. Eaton*, 323 Mont. 287, 293-94, 99 P.3d 661, 665-66 (2004) (criminal sentence “improperly burdens” social security benefits in violation of §407 when sentence required payment from income including SSDI benefits); *First Nat’l Bank & Trust Co of Ada v. Arles*, 816 P.2d 537 (Oklahoma 1991) (use of contempt process to force payment from defendant’s social security benefits constituted legal process violating §407).

Congress intended the anti-alienation provision to protect SSI benefits, even from the state. *In re Michael S.*, 206 W. Va. 291, 524 S.E.2d 443 (1999) “The purpose of the program is to provide the recipient with minimum necessary financial resources. That purpose is defeated if the resource is depleted.” *Schweiker v. Wilson*, 450 U.S. 221, 233, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981)). In this case, the Benton County District Court is a debt collector enforcing a debt. *See Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 52 P.3d 485 (2002). The law treats the

district court like any other debt collector. The Benton County District Court is trying to use “other legal process” to acquire money they know they could never receive if they transferred this judgment to a private debt collector. The current LFO collection system of the Benton County District Court is criminalizing poverty. This Court should make it clear that poverty is not a crime and that SSI benefits are protected, even from the Benton County District Court.

D. The Benton County District Court erred when it denied Ms. Wakefield procedural due process at the August 20, 2013 hearing.

The Benton County District Court violated Ms. Wakefield’s right to liberty and due process during the August 20, 2013 hearing.

1. Right to Neutral and Impartial Judge

A person at risk of losing his or her liberty is entitled to a fair hearing before a fair tribunal. *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955). A fair tribunal means the decision-maker must actually be impartial. *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); *State ex rel. Barnard v. Bd. of Educ.*, 19 Wash. 8, 17–18, 52 P. 317 (1898). Moreover, the judge must also appear impartial to any reasonable observer. *See Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009); *see also State ex rel. McFerran v. Justice Court*, 32 Wn.2d 544, 202 P. 2d

927 (1949); *In re Swenson*, 158 Wn. App. 812, 818, 244 P.3d 959 (2010). No judge may act in a prosecutorial or investigative role in a case she will adjudicate. *In re Murchison*, 349 U.S. 133, 137, 75 S. Ct. 623, 99 L. Ed. 942 (1955); *Cf. State v. Neslund*, 103 Wn.2d 79, 86, 690 P.2d 1153 (1984). “[T]he semblance of due process is a sham when the judge is both prosecutor and judge.” *Harthun v. Dist. Court*, 495 P.2d 539, 542, 178 Colo. 118 (Colo. 1972). Judges cross that boundary when they offer evidence, cross-examine to elicit new testimony, or rule on objections to their own questions. *See People v. Martinez*, 523 P.2d 120, 121, 185 Colo. 187 (1974) (right to impartial judge violated when, in absence of district attorney, court cross-examined witness, proposed evidence, and ruled on objections to court’s questions); *People v. Cofield*, 293 N.E.2d 692, 694, 9Ill.App.3d 1048 (1973) (same, where judge played similar role, though district attorney was then present).

The district court unconstitutionally acted as both prosecutor and judge on August 20, 2013. The hearing was required by the district court *sua sponte*. No motion for review or enforcement was filed by the real parties in interest, the City of Richland and the City of Kennewick. The cities did not schedule or appear at the hearing. The only witnesses were called by Ms. Wakefield. The only exhibits were those Ms. Wakefield’s counsel offered. But the district court’s statements at the hearing proved

the court had searched through records for other appearances by Ms. Wakefield prior to the hearing. And the district court made explicit statements as to prior events as though placing those statements into evidence for adjudicating the August 20, 2013 hearing.

For example, the court began by referencing events at a hearing represented as occurring almost eighteen months earlier, at which Ms. Wakefield had volunteered for work crew to pay off fines owed in a different case. CP 35 and 420. The district court on its own initiative searched records in other cases going back to at least 2010 to find evidence that Ms. Wakefield had made prior payments despite her SSI indigency:

THE COURT: In 2010, in October Ms. Wakefield made a \$25 payment; on February 1 of 2011, Ms. Wakefield made a \$25 payment; on March 30 of 2011 Ms. Wakefield made an \$80 payment; on April 2, 2013 Ms. Wakefield made a \$60 payment.

So in and of itself (sic), those payments by Ms. Wakefield, would suggest she has some means to make these payments. Those payments equal up to \$180, plus 60, \$240. CP 46 and CP 431.

After Ms. Wakefield testified, the district court cross-examined her asking 28 hostile questions, going well past the scope of direct and beyond clarification of Ms. Wakefield's very plain and uncomplicated testimony. CP 65- 70 and CP 450-455. When Ms. Wakefield's attorney objected, the district court judge ruled on the objection to her own question. CP 68 and

CP 453. The appearance of what was happening in the courtroom is starkly apparent on the record. After the district court's questioning of Ms. Wakefield ended, Ms. Wakefield's counsel advised that she wished "to redirect." CP 70 and CP 455. The district court granted her permission to do so. CP 70 and CP 455.

The district court also cross-examined Ms. Wakefield's expert witness, Dr. Pearce. CP 85-91 and CP 470-476. Those 18 questions were not limited to clarification of Dr. Pearce's prior testimony about the minimum income required for a basic level of subsistence in Benton County. Instead, the district court conducted an argumentative cross-examination, searching for testimony to impeach the relevance of Dr. Pearce's evidence. For example:

"But this, all of this self-sufficiency that you do is not for the benefit of the criminal justice system. It's within just how we live our lives and how we enable people to be self-sufficient so perhaps they can get out of the system, whether its welfare or a benefit system. Is that my understanding?" CP 86 and CP 471.

"Is it your opinion that those people, because of that limited amount of money, should not be responsible for their actions?" CP 87 and CP 472.

"So if a person chooses to commit crimes ... is it your belief that if they do not meet the independent, the self-sufficiency standards, they should not be held responsible for punishment that might be monetary?" CP 87 and CP 472.

"So I could, I understand, so you're not just specifically talking about, let's say, a collection agency, when a person hasn't been

able to pay their medical costs or (inaudible) but a business that wants to execute a collection agency, a credit card business, for example, because they're using that to pay minimum needs. In that particular situation, I get that. You're saying a person should not have to pay this before they can meet their basic needs. Is that what you're telling me?" CP 88-89 and CP 474-475.

In no way did the district court act as a neutral arbiter of justice.

The district court unconstitutionally served as the prosecutor at this hearing. It searched for and offered its own statements as evidence, cross-examined witnesses to develop impeaching evidence and new testimony, and ruled on objections to its own expansive questioning. Such clear, apparent constitutional violations of Ms. Wakefield's right to due process before an impartial tribunal cannot stand.

2. Right to Prior Notice

Above all, procedural due process requires prior notice and a meaningful opportunity to be heard. *In re Pers. Restraint of Bush*, 164 Wn.2d 697, 704-05, 193 P.3d 103 (2008). Before a district court may confine for failure to pay fines, the defendant must have been provided prior notice that contempt and potential loss of liberty are issues for hearing. *See Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 111-114, 52 P.3d 485 (2002).

When the Benton County District Court began collecting Ms. Wakefield's LFOs, it began the process by mailing out a notice of case

setting for non-compliance. CP 737. The notice of case setting did not inform Ms. Wakefield that the hearing scheduled was a contempt hearing for failure to pay her LFOs. CP 737. It did not inform her that her liberty was at issue if she was found to be in willful violation for failure to pay her LFOs. CP 737. The notice did not inform her of her right to counsel at the contempt hearing. CP 737. Ms. Wakefield did not receive the notice because she was no longer living at the address on file. Ms. Wakefield did not appear for the hearing and a bench warrant was issued for her arrest. CP 736.

The same process occurred for the August 20, 2013 hearing. No contempt motion or show cause order was ever filed. Counsel for Ms. Wakefield was unclear as to the reason for the August 20, 2013 hearing other than the motion to remit costs filed on Ms. Wakefield's behalf. The superior court did reverse the district court's order confining Ms. Wakefield to work crew. CP 610. Nevertheless, the district court's process failed to comply with the requirements of *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 111 – 114, 52 P.3d 485 (2002).

Without counsel, Ms. Wakefield would not have known what the consequences or issues before the court might have been. This Court should find review the process the Benton County District Court undertakes to collect LFOs because many defendants are affected and it is

in clear violation of the requirements set out in *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 112, 52 P.3d 485 (2002).

VII. CONCLUSION

Ms. Wakefield asks this Court to find, as a matter of law, that she is indigent and lacks the ability to pay any legal financial obligations owed to the Benton County District Court. Ms. Wakefield also asks this court to find that it is a violation of the SSA anti-alienation provision to order a recipient of SSI benefits to pay any money towards LFOs. This Court should also find that any order requiring Ms. Wakefield to pay discretionary LFOs is manifest hardship on her and her family, and remit costs accordingly. Finally, Ms. Wakefield asks this Court to hold that the “review” process used by the District Court to collect LFOs against Ms. Wakefield violated her constitutional right to due process of law.

July 24, 2015

Respectfully submitted,

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FILED

JUL 27 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
(DIVISION III)

Briana Wakefield,

Appellant,

No. 331008

City of Kennewick,

Respondent,

CERTIFICATE OF SERVICE

and

City of Richland,

Respondent,

The undersigned hereby certifies that on July 24, 2015, a copy of the following:

Appellant's Brief

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Signed this 24^h day of July, 2015.



Karla Carlisle