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Division III
State of Washington

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

No. 331008
Superior Court # 13-1-01070-8

CITY OF RICHLAND,

and

CITY OF KENNEWICK,

Respondents,

v.

BRIANA WAKEFIELD

Appellant.

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The Trial Court did not abuse its discretion in refusing to remit Ms. Wakefield's costs under RCW 10.01.160(4).
2. The Trial Court did not abuse its discretion or violate federal law when ordering Ms. Wakefield to pay $15.00 per month towards her legal financial obligations.
3. The Trial Court did not violate Ms. Wakefield's due process rights to a fair and impartial judge or her procedural due process rights regarding notice in regards to the August 20, 2013 hearing.

II. STATEMENT OF THE CASE

On December 8, 2010 and July 18, 2012, the Appellant, Briana Wakefield, pled guilty and was sentenced upon charges of Disorderly Conduct, (RMC 9.14.010, filed by the City of Richland) and Harassment, (KMC 10.08.100, filed by the City of Kennewick). CP 635-655, 725, 732-733, 735, 738, 760-761, 833-853, 902, 907-908, 913-914. The Benton County District Court included as part of the sentence that the Appellant pay a fine of $500.00 and costs totaling $668.00 in the Richland case and a fine of $500.00 and costs totaling $843.00 in the Kennewick case. *Id.* The Respondents, City of Richland and City of Kennewick had no further involvement with these matters until notified of the appeal from the District Court ruling imposing work crew in the Richland case and it's

ruling denying Ms. Wakefield's motion to remit fines and costs and restarting payments at $15.00 per month in the Kennewick case. Both decisions were the result of a hearing that had been held August 20, 2013. Neither City had been notified of that hearing or of any of the relevant procedural history resulting in the hearing. However, a review of the transcript indicates that a consolidated hearing with Kennewick and Richland for Ms. Wakefield's failure to pay fines was held on August 20, 2013 with neither of the prosecuting agencies of those cities in attendance. CP 31-131[1].

At the August 20, 2013 hearing, Ms. Wakefield appeared with counsel and a witness from the University of Washington School of Social Work, Dr. Diana Pearce. CP 31-131. Ms. Wakefield initially claimed she was unaware of the purpose of the hearing. CP 40-45. The court explained that the hearing was being held to determine whether her failure to pay fines was willful, and offered to continue the hearing if Ms. Wakefield and her attorney were not prepared to proceed. *Id.* Ms. Wakefield declined a continuance and elected to proceed with the hearing. *Id.* The Court considered testimony from both Ms. Wakefield and Dr. Pearce in the form of live testimony and declaration. CP 31-131, 635-665, 791-825, 833-853. The Court also reviewed the case files at issue. CP 31-

[1] Although the transcript of this hearing appears in more than one location in the Clerk's Papers, only one location will be referenced to avoid confusion.

131. Again, because neither the City of Richland nor the City of Kennewick participated at the hearing both agencies continue to rely upon the record and the transcript of the hearing for this response.

At the hearing, Ms. Wakefield asked the court to eliminate or reduce her outstanding legal financial obligations based on her allegation that she was, and would continue to be, unable to pay them. CP 95-100. Although she testified that she was receiving Supplemental Security Income (SSI) due to Bipolar Disorder, PTSD, and ADHD, CP 352, she failed to provide any documentation supporting that allegation. CP 31-131, 352-356. In addition, neither her declaration nor her testimony alleged that she was permanently disabled and unable to work. *Id.*

In Ms. Wakefield's sworn Application for Court Appointed Counsel dated July 9, 2012, Ms. Wakefield swore under penalty of perjury that at least at that time, while supporting three children on the same income she claims to receive today, she was able to meet her needs and still have $50.00 left over at the end of the month. CP 347. That amount was in addition to $30.00 per month budgeted to pay court costs. *Id.* At the hearing, Ms. Wakefield testified that she was no longer supporting her four children as they had been taken from her in a dependency action. CP 50-75. She testified at the time of hearing that she was only supporting herself. CP 75.

Exhibit A of the Declaration of Brianna Wakefield notes that substance abuse was one of the parental deficiencies identified in the dependency petition. CP 366. Ms. Wakefield testified that after her children had been taken from her, she admitted her drug use to the dependency court and entered in-patient drug treatment on two occasions. CP 67. Ms. Wakefield acknowledged at the hearing that she is a recovering drug addict. CP 353. Despite voluntarily entering drug treatment in order to be compliant with the dependency court, Ms. Wakefield admitted that she didn't comply with the treatment requirements that were placed on her as part of her sentence in the disorderly conduct case. CP 68. She also admitted that she would be unable to do work crew to work off her fines because of the requirements in her dependency case. CP 71. Additional impacts of the dependency included the requirement that Ms. Wakefield take parenting classes and attend narcotics anonymous meetings two to three times a week. CP 353. Ms. Wakefield testified that she incurs additional travel expenses to get to these appointments. *Id.*

Ms. Wakefield did not testify regarding attempts she had made to pay her legal financial obligations. Although she stated that at the time of hearing she didn't have anyone she could ask for money, CP 62, she did not testify to any attempts she made to borrow money. In fact, Ms.

Wakefield stated in her declaration that her Aunt was in possession of $200.00 that was owed to her but that she hadn't gotten it back because her Aunt was not speaking to her. CP 356. She also stated in her declaration that for about a month, she "lived on the generosity of people [she] knows. *Id.* Most importantly, Ms. Wakefield did not testify as to any attempts to find work or, as mentioned earlier, that she was unable to work. CP 31-131.

Dr. Diana Pearce testified at the hearing that, pursuant to her research regarding sufficiency standards, Ms. Wakefield's basic essential needs could not be met at less than $1,492 per month. CP 378. It was clear from her declaration and testimony at the hearing that Dr. Pearce's research is based on estimates, not on Ms. Wakefield's specific financial situation. CP 78-92, 373-380. For example, although Dr. Pearce testified that a basic housing cost for citizens of Kennewick and Richland is $618.00, Ms. Wakefield indicated to the court that she has been able to obtain housing for far less than that amount. CP 371-372.

In making its decision, the trial court referenced the fact that Ms. Wakefield had been able to make $290.00 worth of payments toward her fines from 2010 to 2013: $25.00 in October 2010, $25.00 in February 2011, $80.00 in March 2011, and $60.00 in April 2013. CP 46-47. Ms. Wakefield acknowledged that she made payments in the past. RP 62. The

trial court stated that it had reviewed Ms. Wakefield's files and noted that Ms. Wakefield had at one point requested to do work crew, reading a direct quote from Ms. Wakefield's file into the record: "she would love to do work crew." CP 36, 110-111. After making these statements, the Judge asked Ms. Wakefield "so far we're tracking?" Ms. Wakefield answered "yes." CP 36-37. The court noted that Ms. Wakefield was able to pay the Work Crew fee and had successfully completed 45 hours of Work Crew, which resulted in a credit of $450.00 towards her fines. CP 36-38, 110-111. The trial court also noted that Ms. Wakefield had continued to engage in criminal activity. She was convicted of three criminal charges in 2011 and 2012 and was assessed fines and costs on at least the two cases at issue here and presumably on the Theft case as well. CP 36, 104.

Following the August 20, 2013 hearing, the Court found that, on the Richland matter, the Court did not need to necessarily decide the issue of whether the Appellant's failure to pay was willful, as the Court believed it had the ability to convert the fines and costs to the jail alternative of work crew. CP 100-113. The Court refused to remit the costs previously imposed and sentenced the Appellant to 30 days of work crew. CP 99-118, 610, 771. In the Kennewick case, The Court denied Ms. Wakefield's motion to remit the costs previously imposed and entered a "restart order"

after concluding that Ms. Wakefield could afford to pay $15.00 per month on her legal financial obligations. *Id.* Ms. Wakefield appealed. CP 608, 764.

On February 13, 2014, this matter came on for oral argument in the appeal to Superior Court under the RALJ. CP 237. Following argument, the Superior Court was concerned about the lack of written findings entered by the District Court and remanded this matter back to District Court for the limited purpose of permitting the District Court to enter written Findings of Fact and Conclusions of Law. CP 237-238. Entry of findings and conclusions was the sole purpose for remand. *Id.*

The District Court filed the requested Findings of Fact and Conclusions of Law on April 15, 2014 and supplemental briefing was filed by all parties. CP 239-242, 245-254, 267-273, 255-266. Oral argument was heard by Superior Court Judge Carrie L. Runge on September 25, 2014. CP 274-279. Judge Runge issued her written findings and decision on December 4, 2014. *Id.*

In the Richland matter, the Court agreed with all parties that the District Court erred in its analysis that it could not impose work crew as a punishment for non-payment of fines without reaching the issue of the non-payment being willful. *Id.* The Superior Court indicated that while there was evidence of willfulness for the non-payment, District Court

never specifically reached that conclusion, as it felt it unnecessary to do so. The imposition of work crew for the non-payment was reversed. *Id.* The Court affirmed the remaining issues on the Richland appeal including the finding that the District Court did not abuse its discretion in refusing to remit costs under RCW 10.01.160(4). *Id.*

In the Kennewick matter, the Court affirmed the District Court's denial of Appellant's motion to remit costs and affirmed the restart order requiring the Appellant to pay fifteen dollars per month toward her legal financial obligations. CP 274-279. Specifically, the Court found that there was substantial evidence in the record to support the District Court's findings of fact and that its conclusions of law did not contain legal error. *Id.*

Ms. Wakefield filed a motion for reconsideration that was denied by Superior Court on December 18, 2014. CP 281-286, 287-291. The Appellant filed a Motion for Discretionary Review, which was granted on April 16, 2015. CP 292-301. This appeal follows.

III. SUMMARY OF ARGUMENT

"The State, of course, has a fundamental interest in appropriately punishing persons—rich and poor—who violate its criminal laws. A defendant's poverty in no way immunizes him from punishment." *Bearden v. Georgia,* 461 U.S. 660, 669 (1983).

Ms. Wakefield is asking this Court to relieve her of her legal financial obligations in a criminal judgment without providing sufficient proof for her allegation that she is and will be unable to pay. A petitioner under RCW 10.01.160(4) has the burden of proof[2], and Ms. Wakefield has failed to meet her burden. She has failed to demonstrate that payments of $15.00 per month are unreasonable when considering her financial situation or that payments of that amount would impose a manifest hardship on her or her family. Absent proof of these facts, a court does not err in imposing a $15.00 per month installment payment and does not abuse its discretion in denying a motion to remit costs.

Ms. Wakefield further asks this Court to create a blanket rule for criminal defendants who allege that they are receiving SSI benefits. Such a rule would in essence rewrite the relevant statutes by removing a court's discretion in determining ability to pay or manifest hardship. Such a rule would require courts to disregard the size of the fine, the reasonableness of the payment schedule, the extent of a defendant's disability, a defendant's means, a defendant's ability to work, and a defendant's ability to pay. Because in this case, Ms. Wakefield did not even prove her allegation that

[2] The burden of proving inability to pay lies with the defendant. *United States v. Quan-Guerra,* 929 F.2d 1425, 1427 (9th Cir.1991).

she is receiving SSI, her proposed rule would permit any bald allegation to reverse a criminal judgment.

Finally, Ms. Wakefield argues that she was denied due process – in part because the judge asked clarifying questions of her witnesses and considered her payment history, and in part because she alleges she received inadequate notice of the August 20, 2013 hearing. The trial court, as the trier of fact in a contempt hearing, is permitted to ask clarifying questions of witnesses and to review the evidence in front of it. Ms. Wakefield was not denied her right to an impartial judge. Additionally, she was not denied procedural due process – at the beginning of the hearing, the judge explained the purpose of the hearing to Ms. Wakefield and offered her a continuance if she was unprepared to proceed. By electing to have the hearing as scheduled, Ms. Wakefield waived any notice issue.

IV. ARGUMENT

Ms. Wakefield concedes that the initial imposition of fines and costs in these cases is not properly before this court. The matters that are appropriate for review in this appeal are addressed below.

1. **The Trial Court did not abuse its discretion by refusing to remit Ms. Wakefield's costs under RCW 10.01.160(4).**

Ms. Wakefield alleges that the trial court erred by failing to consider her financial circumstances when evaluating and eventually denying her motion to remit costs. It is important to note at the forefront of this issue the distinction between fines and costs. Ms. Wakefield's original motion to reduce or eliminate financial obligations was made under RCW 10.01.160(4), which states:

> A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

RCW 10.01.160(4). While other sections in RCW Chapter 10.01 reference both fines and costs, section 10.01.160 refers only to costs. RCW 10.01.160(2) lays out what "costs" may include, and makes clear they are separate from fines. This section does not indicate that a court is required to reduce or eliminate fines under any circumstance.[3]

A trial court's decision on a motion to remit costs is reviewed for abuse of discretion. *State v. Campbell,* 84 Wn. App. 596, 600–01, 929

[3] Sections of the RCW's that do reference a Court's reduction of fines are RCW 10.01.180 and 3.62.010, which state that a court may suspend or revoke a portion of a fine "at the time of sentencing or at any time thereafter" (3.62.010), or in the event that the default in payment is not contempt (10.01.180).

P.2d 1175 (1997). A decision constitutes an abuse of discretion when it is "is manifestly unreasonable or based on untenable grounds." *In re Marriage of Fiorito*, 112 Wn. App. 657, 663–64, 50 P.3d 298 (2002). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *Id.* at 664.

RCW 10.01.160(4) states:

> A Defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

RCW 10.01.160(4). This statute allows a defendant who is not in "contumacious default" to seek relief "at any time ... for remission of the payment of costs or any unpaid portion thereof," on the basis of hardship. If the court is satisfied that payment of the amount due will impose manifest hardship on the defendant, the court may remit all or part of the

amount due in costs or modify the method of payment under RCW 10.01.170.

In this case, the trial court heard abundant evidence regarding Ms. Wakefield's financial circumstances. The court noted on the record that it was aware of her payment history, noncompliance with treatment requirements, failure to keep the court apprised of her address, failure to appear at fine review hearings, drug issues, and continuing criminal behavior.[4] Additionally, the court found that Ms. Wakefield had made payments in the past in the same or more difficult financial circumstances. Although Ms. Wakefield testified that she was on SSI due to some mental health issues, she failed to provide any documentation either that she had been determined to be disabled or that she was receiving SSI benefits. She produced no evidence that she was permanently disabled and unable to work. Ms. Wakefield argued to Superior Court that it should take judicial notice of the fact that persons who receive SSI benefits are disabled and unable to work. CP 249. This overlooks the fact that the only evidence

[4] Despite Ms. Wakefield's contention that this evidence was "presented" by Judge Butler at the hearing, this information was in part evident from Ms. Wakefield's file and payment history and in part elicited from Ms. Wakefield herself when the court asked her some clarifying questions during the hearing. Even at trial, where a defendant is entitled to the full panoply of due process rights, the court is permitted to ask clarifying questions of witnesses. *Egede-Nissen v. Crystal Mountain, Inc.*, 93 Wash.2d 127, 141, 606 P.2d 1214 (1980); *State v. Brown*, 31 Wash.2d 475, 197 P.2d 590, 202 P.2d 461 (1948). Additionally, the judge is the trier of fact at a contempt hearing and is entitled to determine the credibility of witnesses. The allegation that the court is not permitted to disbelieve Ms. Wakefield or review her file and relevant history is incorrect.

presented at the hearing that Ms. Wakefield qualified for and/or received SSI was an allegation by Ms. Wakefield. No supporting documentation submitted to detail the extent of her disability or her inability to engage in gainful activity was submitted. It is important to note that 42 U.S.C. § 1382h provides that SSI benefits can still be provided to a person who is engaged in substantial gainful activity as long as certain requirements are met. *See* 42 U.S.C. § 1382h. Therefore, even if a court were to accept Ms. Wakefield's assertion that she receives SSI benefits, that alone is not determinative of her having a permanent disability or being unable to work. For this reason, judicial notice is not appropriate.

The cases cited by Ms. Wakefield do not take away a court's discretion. The fact that a decision on a motion to remit costs is reviewed for abuse of discretion evidences that the determination of whether remittance is appropriate is highly fact dependent and allows a tremendous amount of discretion and deference to the trial court. The cases cited by the Appellant certainly provide factors to be considered in exercising that discretion, but they do not and cannot dictate an outcome, as that would remove any and all discretion from the court. After considering the various factors, it must "appear to the satisfaction of the court" that there would be a manifest hardship to a defendant or their family if costs were not remitted. After considering all of the evidence in this case, the court

determined that remission of the costs was not appropriate as Ms. Wakefield had not met her burden of establishing she couldn't pay them or that they worked a manifest hardship upon her. Specifically, the court found that there was no evidence presented that Ms. Wakefield is unable to work or is permanently disabled. The court also noted that she had made payments in the past while in similar or worse financial circumstances. Finally, the court found that there had been no evidence that Ms. Wakefield had made bona fide efforts to pay her fines, she did not testify she had looked for work or tried to borrow money.

Ms. Wakefield has presented nothing to suggest that the trial court failed to take into account the criteria suggested by the cases she has cited in determining her ability to pay. A review of the record reveals ample evidence that the Ms. Wakefield's financial circumstances and any alleged hardship caused thereby was considered by the court. The court was not convinced there was a manifest hardship. The Court did not abuse its discretion or violate any controlling law by not being persuaded by Ms. Wakefield's testimony. The crux of her argument is that the court should have agreed with her version of the facts and reached the determination that she wanted. This assertion does not render the trial court's decision not to remit her costs an abuse of discretion.

2. The Trial Court did not abuse its discretion or violate federal law when ordering Ms. Wakefield to pay $15.00 per month towards her legal financial obligations.

A. The Court's Determination that Ms. Wakefield could afford to pay $15.00 per month toward her legal financial obligations was reasonable and supported by substantial evidence in the record.

Appellant first argues that there was a lack of evidence in the record to support the court's finding that she could afford to pay $15.00 per month on her legal financial obligations and that therefore the court's order requiring her to make those payments was an abuse of discretion. Because there was substantial evidence in the record that Ms. Wakefield could afford to pay the amount ordered and because RCW 10.01.170 allows a court to set installment payments on legal financial obligations, this argument fails.

RCW 10.01.170 provides that when a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. RCW 10.01.170. When imposing costs and setting a payment amount, the court is tasked with "tak[ing] account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(4). The trial court did not err in finding that Ms. Wakefield has the ability to pay $15.00 per month on her fines and costs. First, the court

recognized in Finding of Fact number 15 that no evidence was presented at the hearing that Ms. Wakefield's financial status was different when she was making payments on her cases than it is today. CP 31-131. Despite her financial status, Ms. Wakefield was able to make four payments, totaling $290.00, on her cases. CP 46-47. She presented no testimony or other evidence that her financial situation was direr when making those payments than it was at the time of the hearing. In fact, Ms. Wakefield testified at the August 20, 2013 hearing that she no longer had to financially support her four children because they were in foster care, and that at that time she wasn't supporting anyone but herself. CP 50-75. Although Ms. Wakefield testified that she suffered from mental health conditions, she did not detail how those conditions would prevent her from working even the minimal amount required to pay $15.00 per month; this could easily be earned from mowing a lawn or babysitting for a couple of hours. Ms. Wakefield is a mother of four children, relatively young, and seems to be healthy given her success on the work crew program. She did not testify to any physical disabilities that would prevent her from earning the small amount of money required of her in these cases.

Ms. Wakefield seems to suggest that none of these factors matter because Dr. Diana Pearce testified that her basic essential needs can't be met at less than $1,492 per month. CP 378. But despite her allegation that

she earns less than that amount, Ms. Wakefield is meeting her needs and testified that she is even able to budget money for expenses such as Tupperware and coloring supplies to take to her children during dependency visits. In fact, in Ms. Wakefield's sworn Application for Court Appointed Counsel dated July 9, 2012 Ms. Wakefield testified under penalty of perjury that at least at that time, while supporting four children on the same income she receives today, she was able to meet her needs while budgeting $30.00 per month in court fines and still have $50.00 left over at the end of the month. CP 347. That amount alone would cover payments on this case for three months. As noted earlier, Dr. Pearce's sufficiency standards are based on estimates. The trial court properly considered evidence in Ms. Wakefield's files and evidence presented by her at the hearing in determining her ability to pay. Recognizing that Ms. Wakefield has a limited income, a limited social support network, and likely has limited work opportunities given at the very least her criminal history and alleged mental health issues, the court set payments at $15.00 per month - $10.00 per month lower than the court's minimum payment. Ms. Wakefield did not demonstrate that an obligation of $15.00 per month would be a burden on her. When she swears to a court that even after budgeting $30.00 per month for court costs she still has $50.00 left over at the end of the month, it seems

contradictory to claim that because she survives on less than what Dr. Diana Pearce estimates that an average person needs she should have no responsibility to pay the costs imposed on her. Implicit in the court's findings and conclusions is the determination that Ms. Wakefield failed to carry her burden of establishing her inability to pay costs in this case. Because the relevant statutes permitted the court to set installment payments and because the evidence presented at the hearing supports the payment amount ordered, Ms. Wakefield's argument fails.

B. The Court's Order that Ms. Wakefield pay $15.00 per month towards her legal financial obligations was not in violation of federal law.

The second issue the Ms. Wakefield raises in regards to her $15.00 payment amount is that it is in violation of federal law. She argues that because she alleged to the court that her only income was SSI, a determination that she can pay any amount toward her legal financial obligations unconstitutionally assigns her SSI benefits in violation the anti-alienation provision of the Social Security Act (SSA). Despite Ms. Wakefield's contention that "the evidence was uncontroverted that Ms. Wakefield's cash support for the last seven years has been her monthly SSI benefits," no evidence that Ms. Wakefield qualified for or was receiving SSI benefits was presented to the court apart from Ms. Wakefield saying so. If courts are required to accept the financial

situation of defendant's based only on their word, why wouldn't every one of them claim they were destitute and receiving SSI benefits? This would also be problematic in that it would prevent the trier of fact from making any kind of credibility determination. Because insufficient evidence to prove she qualified for SSI and was receiving SSI benefits was submitted by Ms. Wakefield to the trial court in this case, this Court should not even reach this argument and should determine that imposition of a fifteen dollar per month payment amount in this case does not implicate 42 U.S.C. 407(a), and therefore cannot conflict with it.

Even if this Court were to overlook the lack of evidence provided by Ms. Wakefield and assume that she was and is receiving SSI benefits, her anti-alienation argument is still unpersuasive as she has cited no controlling law that interprets the trial court's imposition of a time payment in this circumstance as an "attachment" of SSI benefits under the SSA. The setting of a payment amount and refusal to remit costs does not amount to a transfer of SSI benefits.

Likely recognizing that an argument that the time payment subjects her SSI benefits to execution, levy, attachment, or garnishment would be unpersuasive, Ms. Wakefield argues that imposition of the time payment in this case constitutes "other legal process", citing *Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S.

371, 372 (2003). In *Guardian Estate of Keffeler*, the Supreme Court instructed that "'other legal process' should be understood to be a process much like the processes of execution, levy, attachment, and garnishment, and at a minimum, would seem to require utilization of some 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." *Id.* The argument that an installment payment amounts to "other legal process" is unsuccessful as the time payment imposed in this case is notably different than a writ of garnishment or other quasi-judicial mechanism. Here, the court did not order Ms. Wakefield to pay SSI benefits to the court nor did it exercise any means to attach those benefits.

Ms. Wakefield cites a newspaper article to support the allegation that Benton County District Court is purposefully and recklessly issuing warrants against judgment proof individuals. But there has been no evidence to support this charge, and in fact even Ms. Wakefield's case doesn't support it. In this case, the court sent three separate notices of a fine review hearing to the address Ms. Wakefield had provided to them. Only after those notices were returned and the court had exhausted all avenues to summons her did a warrant issue. Although Ms. Wakefield attempts to characterize this situation as a direct consequence of her

failure to pay fines, and thereby analogize it to a legal attachment, it is not. Part of the standard sentencing conditions in Ms. Wakefield's cases is that she keep her mailing address updated with the probation. CP 345. Additionally, she is required to "attend all hearings when notified to attend." Her warrant was issued because of her failure to do these things, not as a direct consequence of her failure to pay her fines. Had she kept her mailing address updated with the court, she would have appeared at the contempt hearing and presented her case for why she was unable to pay. If the court disagreed, she could have appealed. Even if that avenue failed, the statutes at issue provide that Ms. Wakefield, and all other defendants, may petition the court to readdress their financial situation at any time as long as they are not in willful default. In the event that a court disagrees with their claim that they are unable to pay, they can have the decision reviewed by a higher court. These and the other legal parameters at issue in this case are safeguards to ensure that persons are not incarcerated solely due to poverty. This is especially evident in the case at hand, wherein the trial court erroneously believed it could sanction Ms. Wakefield to jail alternatives for failing to pay fines without first making a finding that her non-payment was willful. The Superior Court correctly found this decision to be error and reversed it, removing the trial court's imposition of work crew. The controlling law and applicable standards

were successful in ensuring that Ms. Wakefield was not, and will not be, incarcerated merely because of her poverty and inability to pay fines, so long as that non-payment is not willful.

The out-of-state cases cited by Ms. Wakefield to support the proposition that the court's action in this case amounts to legal process are factually distinguishable from this case and not binding on this court. For example, the lower court in *In re Michael S.*, 524 S.E.2d 443 (W. Va. 1999) specifically ordered a juvenile respondent to pay $80.00 per month out of his SSI benefits. *In re Michael S.*, 524 S.E.2d at 445. It should be noted that there are also out-of-state cases that support the position that this type of action is not an attachment of SSI benefits, especially when, as in this case, the source of the payment was not delineated. *See Russo v. Russo,* 1 Conn. App. 604, 474 A.2d 473, 477 (1984) (holding that "nothing in [Section 407(a)] prevents the use of the funds, when received, to pay loans or debts for which the beneficiary is obligated where the agreement to repay does not delineate the source of the repayment"); *See also Tidwell v. Schweiker,* 677 F.2d 560, 568 (7th Cir.1982), *cert. denied,* 461 U.S. 905 (1983) (recognizing that agreements that consisted of an obligation to pay back a loan which did not delineate the source of the repayment did not subject Social Security benefits to any legal process nor did they transfer control of Social Security benefits to the State).

Here, the court did not order Ms. Wakefield to pay SSI benefits to the court. After considering all of the evidence in this case, the Judge determined that Ms. Wakefield is and will be able to pay $15.00 per month - $10.00 per month below the minimum amount - towards her costs and that remission of those costs was not appropriate as Ms. Wakefield had not met her burden of establishing she couldn't pay them or that they worked a manifest hardship upon her. Because Ms. Wakefield did not submit proof that she was receiving SSI benefits and because even if she were on SSI the court's imposition of a payment amount on her legal financial obligations does not amount to an attachment of SSI benefits, this argument fails.

3. The Trial Court did not violate Ms. Wakefield's procedural due process rights regarding notice of the August 20, 2013 hearing, nor did the Court act as both judge and prosecutor at that hearing.

A. The Trial Court did not act as Judge and Prosecutor during the August 20, 2013 hearing.

Ms. Wakefield argues that she was denied her right to a neutral and impartial judge, mainly because no prosecutor was present and because the trial court asked questions of her witnesses.

At the outset, it is important to note that Ms. Wakefield did not ask Judge Butler to recuse herself at any point before or during the hearing. A

defendant who has reason to believe that a judge should be disqualified must act promptly to request recusal and "cannot wait until he has received an adverse ruling and then move for disqualification." *State v. Carlson,* 66 Wn. App. 909, 917, 833 P.2d 463 (1992).

If this Court decides to address this argument despite Ms. Wakefield's failure to move for recusal at the appropriate time, her argument still fails. Ms. Wakefield alleges that her right to a neutral and impartial judge was violated because the trial court "acted as the prosecutor and the judge". Brief of Appellant at 31. Because the August 20, 2013 hearing was a contempt proceeding exempt from the rules of evidence and because at said hearing, the trial court was acting as the trier of fact, this argument fails.

RCW 10.01.180 provides that "[a] defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. This type of contempt is exempt from the application of the rules of evidence pursuant to ER 1101(c)(3).

It is the duty of courts to enforce obedience to their orders, and the burden of showing an inability to comply is on the one alleged to be in contempt. *State v. Smith*, 17 Wash. 430, 50 P. 52 (1897). Additionally, a contempt proceeding is not a criminal case within the meaning of the

constitutional provision that no person shall be compelled to give evidence against himself. *State v. Rielly*, 40 Wash. 217, 82 P. 287 (1905). RCW 7.21.050 requires that a defendant be allowed to be heard to give any mitigating evidence. In a proceeding for failure to pay fines and costs, the Judge is tasked with determining whether the defendant is indeed in contempt by way of willful nonpayment or, if not, with determining whether costs should be remitted. To do this, she is directed to "take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3). The contention that the court is not permitted to review Ms. Wakefield's files and relevant criminal and payment history in making this decision is incorrect. The Judge is the trier of fact at this contempt hearing, and credibility determinations are left to her. Although Ms. Wakefield argues throughout her briefing that everything she presented as evidence must be taken as fact, the Judge is entitled to disbelieve her if she doesn't find her credible or determines that her testimony is inconsistent with other evidence in the record.

Despite the fact that all of the cases cited by the Appellant are factually and procedurally dissimilar to the present matter, they do stand for the recognized principle that a judge must be fair and impartial to the proceedings and to those involved. More importantly in regards to this

case, they emphasize that a judge has the right, as the trier of fact, to question witnesses to elicit the truth or clarify material issues. Even at trial, where a defendant is entitled to the full panoply of due process rights, the court is permitted to ask clarifying questions of witnesses. *Egede-Nissen v. Crystal Mountain, Inc.*, 93 Wash.2d 127, 141, 606 P.2d 1214 (1980); *State v. Brown*, 31 Wash.2d 475, 197 P.2d 590, 202 P.2d 461 (1948).

As the Appellant notes in her brief, a judge may cross the line into impartiality when they: (1) Issue a warrant when having previously sat as a Special Inquiry Judge on the same case if under the facts their conduct may cause them to lose their status as a neutral and detached magistrate (*State v. Neslund*, 103 Wn.2d 79, 690 P.2d 1153 (1984); (2) In a suppression hearing, assume the role of the prosecutor and assume the "Peoples" burden of putting on evidence by moving *sua sponte* for admission of a prior transcript into evidence, calling witnesses on behalf of the "People", examining those witnesses and cross-examining defense witnesses, making *sua sponte* objections to defense counsel's questions and ruling on objections to his own questions (*People v. Martinez*, 523 P.2d 120 (Colo. 1974); (3) Cite an attorney for Criminal Indirect Contempt and then later sit as Judge and prosecutor at a later hearing on the indirect contempt charge (*Harthun v. Dist. Court*, 495 P.2d 539 (Colo.

1972); and (4) At a trial, call the State's witnesses, conduct examination, ask questions directed to elicit testimony to support the allegations against the defendant, call a police officer to refresh the recollection of a witness and seek to awaken the conscience of a witness to speak the truth by threating to take her into custody if they did not (*People v. Cofield*, 293 N.E.2d 692 (Ill. App.3d 1973).

In this case the Court conducted a fine review hearing. In conducting the hearing, the court relied on its knowledge of the case, the file before it, and the witnesses presented by Ms. Wakefield. The court asked questions of witnesses to clarify material issues regarding the non-payment of fines and the ability to pay those fines. The court's actions in this case cannot be realistically compared to those of the Judges in Ms. Wakefield's cited cases. She was not denied the right to neutral and impartial judge. That is precisely what the Superior Court found when, after thoroughly reviewing the record, it ruled:

> Ms. Wakefield also claims her due process rights were violated because Judge Butler asked questions of witnesses, "cross-examined" witnesses, and asked clarifying questions. Judge Butler had the right and duty to understand the evidence that was being presented to her. Judge Butler was the trier of fact in this proceeding. The cases cited by Ms. Wakefield are factually and procedurally dissimilar to Ms. Wakefield's case. The cases are clear on one point; a judge has the right, as trier of fact, to question witnesses in order to elicit the truth or to clarify material

issues. This is what Judge Butler did. Ms. Wakefield was not denied her right to a neutral and impartial judge.

Because the court acted within its purview as the trier of fact when asking questions of witnesses and reviewing evidence, this argument fails.

B. The Trial Court did not violate the Appellant's procedural due process rights regarding notice of the August 20, 2013 hearing.

Finally, Ms. Wakefield argues that her procedural due process rights to were violated in regards to the August 20, 2013 hearing because she did not receive adequate notice.

The essential elements of procedural due process include notice and a meaningful opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Ms. Wakefield is challenging the notice she received, citing *Smith v. Whatcom Cnty. Dist. Court*, 147 Wash. 2d 98, 113, 52 P.3d 485 (2002), for the proposition that the trial court did not properly notify her of the contempt hearing.

This argument is not persuasive in light of the fact that Ms. Wakefield appeared at the August 20, 2013 hearing not only with counsel but also with an expert witness who was prepared to present evidence that she was destitute and therefore couldn't be held accountable for her failure to pay her fines. When Ms. Wakefield's counsel alleged that she was unaware of the purpose of the hearing, the court explained it to her and offered to reset

the hearing to a more acceptable date if Ms. Wakefield felt the notice she received had been inadequate to allow her to prepare for the hearing. The Appellant declined this request, opting to proceed with the hearing on that date. Lack of formal written notice in this situation, where Ms. Wakefield acquiesced to proceeding with the hearing in spite of her claim to inadequate notice, is not a violation of procedural due process. See *State v. Myers*, 86 Wash. 2d 419, 430-431, 545 P.2d 538 (1976) (Despite lack of formal written notice of probation violation allegations, due process violation not found when allegations came into case without objection from appellant and where appellant did not claim surprise or request a continuance in order to develop explanations or obtain further evidence). The Superior Court agreed that Ms. Wakefield waived any procedural due process issue, holding as follows:

> Ms. Wakefield waived any argument regarding notice. Judge Butler explained to Ms. Wakefield why she was before the court and it is clear that Ms. Wakefield's attorney understood why she was before the court. Additionally, Judge Butler offered to continue the hearing so that Ms. Wakefield and her counsel could understand the nature of the hearing and be prepared. Ms. Wakefield and her counsel indicated they were ready to proceed. Clearly, Ms. Wakefield had notice as to why she was before the court. Even if the argument was that notice was insufficient, it is clear that Ms. Wakefield and her counsel waived any potential defect in the notice by agreeing to proceed with the hearing and indicating to the court that they did not wish a continuance.

CP 278. Ms. Wakefield was given the opportunity for a continuance if she believed notice was improper or that she was somehow unprepared or unclear as to the purpose of the hearing. Her procedural due process rights to notice were not denied. Additionally, Ms. Wakefield seems to argue that while she may not have ultimately been prejudiced by the District Court process, others may be in the future. Ms. Wakefield lacks standing to allege prejudice on the part of other parties who may or may not have been affected by this procedure. RAP 3.1.

V. CONCLUSION

On August 20, 2013 the trial court held an extensive and individualized hearing regarding Ms. Wakefield's financial circumstances and her ability to pay her legal financial obligations in these cases. As is its right as the trier of fact, the court questioned witnesses to elicit the truth and to clarify material issues. Even assuming notice was inadequate, Ms. Wakefield waived her claim to inadequate notice when she refused a continuance offered by the court. The $15.00 installment payment amount ordered by the court was supported by substantial evidence in the record. Ms. Wakefield, who shoulders the burden of proof in this proceeding, failed to establish that she was unable to pay this amount or that imposition of this payment amount would impose a manifest hardship upon her or her family. She provided no documentation of receipt of SSI

benefits nor did she testify that she was unable to work. Imposition of a time payment amount in this circumstance does not amount to an attachment of funds, whether SSI or otherwise. For these reasons, the ruling of both the trial court and Superior Court denying Ms. Wakefield's motion to remit costs and entering an order restarting her payments in the amount of $15.00 per month in the Kennewick case should be affirmed.

Respectfully submitted this 23rd day of September 2015.

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

CITY OF RICHLAND and CITY OF KENNEWICK,

Respondents,

vs.

BRIANA WAKEFIELD,

Appellant.

No. 331008-III

AFFIDAVIT OF SERVICE

CERTIFICATE OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

COMES NOW, Jessica Foltz, who being first duly sworn upon oath, deposes and says:

I am an Assistant City Attorney for the Kennewick City Attorney's Office and I served a copy of the BRIEF OF RESPONDENT in this case upon the following, by placing into Pronto Messenger Service for hand delivery and by email, on the 23rd day of September, 2015:

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JESSICA FOLTZ, WSBA #41866
Assistant City Attorney, Kennewick City Attorney's Office

SUBSCRIBED AND SWORN to before me this 23rd day of September, 2015.

BONNIE J. LANNING NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 1-09-18

Notary Public in and for the State of Washington,
Residing at Pasco. My Com. Expires: 1-9-18.

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