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Court of Appeals
Division III
State of Washington

No. 331008

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

BRIANA WAKEFIELD,

Appellant,

v.

CITY OF KENNEWICK,

Respondent,

and

CITY OF RICHLAND,

Respondent.

**AMICI CURIAE MEMORANDUM IN SUPPORT OF MOTIONS FOR
DISCRETIONARY REVIEW**

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I. INTEREST OF AMICI CURIAE

The interest of *amici curiae* in the current matter is set forth in the Motion for Leave to File Amici Curiae Brief, filed herewith.

II. STATEMENT OF THE CASE

Briana Wakefield is a disabled, homeless, single mother of four children whose only income is means-tested, needs-based public assistance. Following misdemeanor convictions in two cases, Ms. Wakefield was ordered to pay legal financial obligations (LFOs) by the Benton County District Court. *State v. Wakefield*, Transcript of Proceedings (“Transcript”) at 5-7 (A76-A78).

For several years, Ms. Wakefield made intermittent payments toward the LFOs, but her failure to stay current caused the district court to issue a warrant for her arrest. Transcript at 15-16 (A86-A87). At a “fine review” hearing, Ms. Wakefield presented evidence of her disabilities and subsistence on SSI benefits, and an expert established that Ms. Wakefield’s income falls far short of that necessary for an adult in the Tri-Cities to be self-sufficient. *Id.* at 24; 40-41; 52-54 (A49-A53, A95, A111-A112, A123-A125).

Despite this evidence, the district court denied Ms. Wakefield’s motion to reduce or eliminate the LFOs imposed on her. *Id.* at 78 (A149). Furthermore, the court ordered Ms. Wakefield to “restart” payments at \$15 per month and to participate in work crew. *Id.* at 80-83 (A151-A154). In its written decision, the district court concluded “[t]here was no evidence presented that Ms. Wakefield has a permanent disability that prevents her from working.” Findings of Fact and

Conclusions of Law at 1-3 (A10-A13). The court also concluded that the prior payments made by Ms. Wakefield establish she “ha[s] some ability to pay fines,” and that, as a matter of law, “poverty does not insulate a defendant from punishment for inability to pay fines.” *Id.* On appeal, the superior court affirmed the order to restart payments but reversed the order to participate in work crew. Superior Court Ruling on Appeal (A1-A6).¹

III. ARGUMENT

This Court has the discretion to accept review of “a superior court decision entered in a proceeding to review a decision of a court of limited jurisdiction” where “the decision involves an issue of public interest which should be determined by an appellate court.” RAP 2.3(d)(3).

Two issues of significant public interest are presented here. First, Washington courts routinely deny requests by indigent defendants to remit LFOs even though a meaningful LFO remission process is constitutionally required and remission is authorized by statute in cases of “manifest hardship.” A clear standard is needed to guide lower courts in determining when a defendant’s circumstances constitute manifest hardship.

Second, Washington courts routinely order defendants to pay LFOs out of their means-tested social security benefits even though these benefits are protected from legal process. There are serious questions about whether this practice violates federal law. In addition, the practice unjustly forces individuals

¹ Ms. Wakefield filed two motions for discretionary review by this Court, one for each cause number, and *amici curiae* submit this brief in support of both motions.

to choose between satisfying basic needs and making monthly LFO payments to avoid arrest and incarceration.

This case presents an opportunity for the Court to provide much-needed clarity regarding the statutory directives and constitutional standards implicated by LFOs. For the reasons that follow, *amici curiae* respectfully urge the Court to accept review.

A. The Public Interest Supports Granting Review to Establish Clear Standards for “Manifest Hardship” in Remission Procedures under RCW 10.01.160(4).

Courts are constitutionally required to provide a meaningful process by which indigent defendants can obtain relief from their legal financial obligations. *See, e.g., Fuller v. Oregon*, 417 U.S. 40, 47-8 (1974). In *Fuller*, the U.S. Supreme Court held that an Oregon recoupment statute did not violate the Equal Protection Clause of the Fourteenth Amendment because, in part, the defendant was afforded “the opportunity to show at any time that recovery of the costs of his legal defense will impose ‘manifest hardship.’” *Id.* at 47 (internal citations omitted). Thus, the opportunity to seek remission of LFOs is constitutionally required in situations of hardship. *Fuller*, 417 U.S. at 47-48; *see also Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984) (interpreting *Fuller* as requiring courts to consider hardship to individuals and their families); *Olson v. James*, 603 F.2d 150, 155 (10th Cir. 1979) (“[A] convicted person on whom an obligation to repay has been imposed ought at any time be able to petition the sentencing court for remission of the payment of costs or any unpaid portion thereof.”); *State v. Tennin*, 674 N.W.2d

403, 410-11 (Minn. 2004) (holding a state recoupment statute unconstitutional because it did not provide for remission in situations of manifest hardship).

Washington has codified this “manifest hardship” language in RCW 10.01.160(4), which provides that a defendant can petition the sentencing court for remission of costs and that the court “may remit all or part” of the costs 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 Washington Supreme Court has reaffirmed several times that a system for imposing discretionary costs on indigent criminal defendants is only constitutional if a viable remission procedure is in place. *See, e.g., State v. Barklind*, 87 Wn.2d 814, 817, 557 P.2d 314 (1977) (finding the imposition of LFOs constitutional in part because “[t]he trial court order specifically allows the defendant to petition the court to adjust the amount of any installment or the total amount due to fit his changing financial situation.”); *State v. Curry*, 118 Wn.2d 911, 916, 829 P.2d 166 (1992) (noting there is “ample protection” against the collection of LFOs for individuals who cannot pay because a “mechanism is provided for a defendant who is ultimately unable to pay to have his or her sentence modified”); *State v. Blank*, 131 Wn.2d 230, 244, 930 P.2d 1213 (1997) (“A statute which imposes an obligation to pay the costs of court appointed counsel . . . which lacks any procedure to request a court for remission of payment violates due process.”).

Moreover, a remission hearing only comports with due process if the hearing is meaningful. *See Burns v. United States*, 501 U.S. 129, 137-38 (1991). Here, the district court rejected remission and concluded that Ms. Wakefield is able to pay her LFOs even though her only income is means-tested, needs-based public assistance that falls below the amount necessary to be self-sufficient. Sadly, Ms. Wakefield's case is not unusual. *See, e.g.*, ACLU-WA & Columbia Legal Services, *Modern-Day Debtors' Prisons* 10 (2014) (A79). Although defendants have a constitutional and statutory right to a meaningful LFO remission process, in practice, this right is routinely denied. *Id.*²

The research of *amici curiae* reveals no case law interpreting "manifest hardship" in the context of remission of costs. Indeed, few cases analyze a court's obligation to consider ability to pay before imposing costs. *See, e.g.*, *State v. Bertrand*, 165 Wn. App. 393, 404-05 n.15, 267 P.3d 511 (2011) (stating in a footnote that "in light of Bertrand's disability, her ability to pay LFOs now or in the near future is arguably in question," and that she can petition the court for remission or modification of payments due to manifest hardship, but providing no further clarification on the issue). Trial courts are currently left without guidance as to when remission is appropriate or even constitutionally required on equal protection grounds.

² The failure to engage in a meaningful LFO remission process can lead to other constitutional violations, including imprisonment for debt where the failure to pay is due solely to poverty. *See* WASH. CONST. art. I, § 17 (expressly prohibiting "imprisonment for debt, except in cases of absconding debtors"); *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983) (holding it is unconstitutional to "deprive [an individual] of his conditional freedom simply because, through no fault of his own, he cannot pay [a court-imposed] fine").

This lack of guidance regularly results, as here, in defendants being denied remission despite unrefuted, objective evidence of indigency. The district court recognized that Ms. Wakefield's only income is SSI and other state-funded benefits. Findings of Fact and Conclusions of Law at 2 (A11). Ms. Wakefield testified that she relies on these funds—\$710 a month in SSI and \$170 in food stamps—for her basic living expenses, and an expert witness testified that the total amount received is far below the income necessary for self-sufficiency. Transcript at 24, 52-53, (A95, A123-A125). Ms. Wakefield also testified that she is disabled, often homeless, and her actual needs exceed her monthly benefits. *Id.* at 24, 29, 34-35 (A95, A100, A105-106). If Ms. Wakefield's circumstances do not meet the definition of "manifest hardship," it is difficult to imagine a set of circumstances that would justify the remission of costs.

Establishing a clear standard for "manifest hardship" under RCW 10.01.160(4) is in the public interest because it will provide much-needed guidance to lower courts and will have a substantial impact on the thousands of Washington residents with open LFO accounts. Indeed, the Washington legislature recently confirmed there is a strong need to implement the safeguards found in statutes like RCW 10.01.160(4), stating: "[I]t is in the interest of the public to promote the reintegration into society of individuals convicted of crimes. Research indicates that legal financial obligations may constitute a significant barrier to successful reintegration and may result in increases in recidivism." S.B. 5423, 62nd Leg., Reg. Sess. (Wash. 2011).

The federal and state constitutional protections codified in RCW 10.01.160(4) are designed to ensure equal protection for all defendants and to guarantee that Washington residents are not incarcerated for debts they are unable to pay. In Benton County, where Ms. Wakefield's case was judicially administered, approximately one in five in-custody defendants are being detained for nonpayment of LFOs. *Modern-Day Debtors' Prisons* 8 (2014) (A77). Without direction to the lower courts as to what constitutes "manifest hardship," the fundamental fairness of the criminal justice system is in jeopardy. This Court should therefore accept review of Ms. Wakefield's case to establish clear standards for "manifest hardship."

B. The Public Interest Supports Granting Review to Determine Whether a Court Order, Enforceable by Contempt and Incarceration, for Monthly Legal Financial Obligation Payments out of Means-Tested Public Assistance Violates the Anti-Alienation Provision of the Social Security Act, 42 U.S.C. § 407(A).

Aside from some food stamps, Ms. Wakefield's only income is \$710 a month, which she obtains through SSI, a means-tested social security benefit for individuals who are disabled. 42 U.S.C. § 1381. Though this level of income is substantially below the amount necessary for self-sufficiency, the Benton County District Court ordered Ms. Wakefield to pay \$15 per month toward LFOs.

Under the anti-alienation provision of the Social Security Act, social security benefits are not "transferable or assignable, at law or in equity, and none of the moneys paid or payable . . . shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or

insolvency law.” 42 U.S.C. § 407(a). This language “imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a State.” *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973).

The scope of the terms “execution, levy, attachment, garnishment” includes “formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involve some form of judicial authorization.” *Washington State Dep’t of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 383 (2003). “Other legal process” requires “utilization of some judicial or quasi-judicial mechanism . . . 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.* at 385. LFOs fall squarely within these definitions because they are assigned by judges at sentencing and are intended to transfer control of a defendant’s financial resources to the state’s criminal justice system for purposes of punishment, restitution, and defraying court costs.

In the leading case on the Social Security Act’s anti-alienation provision, the United States Supreme Court analyzed whether section 407 prohibited the attachment of social security benefits to defray the costs of incarcerating Arkansas prisoners. *Bennett v. Arkansas*, 485 U.S. 395, 396 (1988). The Court held that section 407 “unambiguously rules out any attempt to attach Social Security Benefits.” *Id.* at 397. Thus, the Arkansas statute allowing attachment of social

security benefits conflicted with federal law in violation of the Supremacy Clause of the Constitution. *Id.* at 397.

Several courts have extended *Bennett's* reasoning to LFOs, holding that section 407 prohibits courts from ordering the payment of LFOs out of a defendant's social security benefits. For example, the Michigan Court of Appeals held that a mother of a juvenile convicted of arson could not be ordered to pay criminal restitution out of her Social Security Disability Insurance (SSDI). *In re Lampart*, 856 N.W.2d 192, 196-99 (Mich. Ct. App. 2014). The court found that the contempt powers of lower courts are "a judicial mechanism to pass control over those benefits from one person to another" and thus constitute "other legal process" within the meaning of section 407. *Id.* at 199. The Supreme Court of West Virginia similarly held that juvenile defendants cannot be ordered to pay criminal restitution out of their SSI pursuant to section 407. *In re Michael S.*, 524 S.E.2d 443, 446-47 (W. Va. 1999). And the Supreme Court of Montana has held that courts cannot use social security benefits when calculating monthly criminal restitution payments. *State v. Eaton*, 99 P.3d 661, 664-66 (Mont. 2004).

Ms. Wakefield is just one of many defendants in Washington who has been forced to choose between making LFO payments out of public benefits or using those benefits for basic needs and risking potential jail time in the process. *See Modern Day Debtors' Prisons*, 7-8 (A178-A179). This practice violates 42 U.S.C. § 407 and is antithetical to the purpose of public assistance. Accordingly, the Court should review this issue of substantial public interest.

IV. CONCLUSION

Ms. Wakefield's continued struggle to obtain relief from LFOs is not unique. Washington courts consistently deny motions by indigent defendants for the remission of LFOs, even when there is clear evidence of hardship. Courts also routinely order defendants—under threat of arrest and jail time—to make LFO payments out of their social security benefits, in direct violation of federal law. This Court should grant review to address these important issues, which substantially impact the public interest.

RESPECTFULLY SUBMITTED this 23rd day of February, 2015.

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