

No. 92594-1

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

**FILED**  
Feb 17, 2015  
Court of Appeals  
Division III  
State of Washington

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

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CITY OF RICHLAND,

and

CITY OF KENNEWICK,

Respondents,

v.

BRIANA WAKEFIELD

Appellant.

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ANSWER TO APPELLANT'S MOTION FOR DISCRETIONARY  
REVIEW

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## I. STATEMENT OF THE CASE

On December 8, 2010, the Appellant, Briana Wakefield, pled guilty and was sentenced upon a charge of Disorderly Conduct, RMC 9.14.010, filed by the City of Richland. 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. On July 18, 2012, the Appellant pled guilty and was sentenced on the charge of Harassment, KMC 10.08.100, filed by the City of Kennewick. In that case, the Benton County District Court sentenced the Appellant to a fine of \$500.00 and costs totaling \$843.00. 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 release in the Richland case and the it's ruling denying Appellant'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 indicated that a consolidated hearing with Kennewick and Richland for the Appellant's failure to pay fines was held on August 20, 2013 with neither of the prosecuting agencies of those cities in attendance.

At the August 20, 2013 hearing, the Court heard testimony from Ms. Wakefield, in the form of testimony and Declaration and from Dr. Diana Pearce in the form of testimony and Declaration. Additionally, the Court reviewed the case files at issue as well as other files of Ms. Wakefield and heard arguments from her counsel. 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.

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. The Court refused to remit the costs previously imposed and sentenced the Appellant to 30 days of work crew. 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. Ms. Wakefield appealed.

On February 13, 2014, this matter came on for oral argument in the appeal to Superior Court under the RALJ. 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. Entry of findings and conclusions was the sole purpose for remand.

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. Oral argument was heard by Superior Court Judge Carrie L. Runge on September 25, 2014. Judge Runge issued her written findings and decision on December 4, 2014.

In the Richland matter, the Court agreed with all parties that the District Court erred in its analysis that it could impose work crew as a punishment for non-payment of fines without reaching the issue of the non-payment being willful. 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. The Court affirmed the remaining issues on the Richland appeal including the finding that the District Court did not abuse its discretion in failing to remit costs under 10.01.160(4).

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. 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.

Ms. Wakefield filed a motion for reconsideration that was denied by Superior Court on December 18, 2014. The Appellant now seeks discretionary review.

## **II. ISSUES PRESENTED**

1. Whether the decision of the Superior Court is in conflict with a decision of the Court of Appeals or the Supreme Court?
2. Whether the Superior Court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the Court of Limited Jurisdiction, as to call for review by this court?
3. Whether the Court's decision in this case involves an issue of public interest which should be determined by this court?

## **III. ARGUMENT**

Appellant seeks discretionary review of four issues from this Court, and unsuccessfully argues that discretionary review is appropriate under RAP 2.3(d). To support this argument, she alleges that the Superior

Court, in affirming the District Court, significantly departed from the law in three ways:

1. The decision of Superior Court is in conflict with a decision of the Court of Appeals or the Supreme Court.
2. The Superior Court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the Court of Limited Jurisdiction, as to call for review by the appellate court
3. The decision involved an issue of public interest which should be determined by an appellate court.

As will be detailed below, discretionary review is not appropriate because the Appellant cannot demonstrate that the Superior Court or District Court decisions departed from the law in any of these ways, much less all of them. Her motion must be denied.

- 1. Discretionary review is not warranted under RAP 2.3(d)(1), as the Superior Court's affirming of the District Court's decision not to remit the Appellant's court costs is not in conflict with controlling law.**

Appellant's first argument for why this court should accept discretionary review centers around her assertion that the District Court's denial, and the Superior Court's affirmation of that denial, of her motion to remit costs is in conflict with the controlling law. Essentially,

Appellant argues that the District Court completely failed to consider her financial circumstances when considering her motion to remit costs and therefore its' decision is in conflict with *State v. Curry* and *State v. Barkalind*. What the Appellant ignores is the abundant evidence in the record and in the District Court's findings of fact and conclusions of law that indicates very clearly that the court evaluated her financial circumstances. The Appellant's real complaint is that the court didn't find her credible and failed to accept her testimony as absolute truth, ignoring evidence to the contrary. She continually alleges, as she has since the beginning of this case, that the court was not permitted to take any of her history into account, nor was it permitted to disbelieve her testimony at the fine review hearing. The fact that the court made a determination regarding her financial situation that was different than what Appellant hoped it would be does not render that decision in conflict with controlling law.

As a fundamental rule, a defendant may not be incarcerated solely because of an inability to pay court ordered costs. *State v. Curry*, 118 Wash.2d 911, 918, 829 P.2d 166 (1992). Consequently, RCW 10.01.160(4) 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. RCW 10.01.160(4).

In this case, the District Court heard abundant evidence regarding the Appellant's financial circumstances. The court noted on the record that it was aware of Ms. Wakefield's 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.<sup>1</sup> After considering all of the evidence, the court determined that remission of the fines was not appropriate. Although the court did not make specific findings, it did indicate, after hearing and considering the evidence presented, "The Court does not have to, nor should it, get rid of the fines in this matter or the costs." The District Court found that the Appellant had made payments in the past in the same or more difficult financial circumstances. It is also apparent

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<sup>1</sup> 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.

from the record that the court did not find the Appellant particularly credible as she had continued to commit crimes, had failed to comply with treatment requirements, and had continued to use illegal drugs.

As much as she would like them to, the cases cited by the Appellant 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 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. Here, the court heard and considered the evidence presented and did not find evidence of a manifest hardship. The fact that the Appellant disagrees with this finding doesn't make it contrary to the law.

The Appellant's second argument regarding remittance specifically suggests that the controlling law requires that if the payment of costs will result a manifest hardship on the defendant or the defendant's family, the court is required to remit costs and it is error if they do not. A review of

the statute makes clear that that is not the “controlling law”. The wording of the statute makes clear that even if re-imposition of costs would appear to create a hardship, remittance is discretionary, not mandatory. Where a provision contains both the words “shall” and “may,” it is presumed that the lawmaker intended to distinguish between them; “shall” being construed as mandatory and “may” as permissive or discretionary. *In re Rogers*, 117 Wash. App. 270, 274-75, 71 P.3d 220, 222 (2003) (citing *Carrick v. Locke*, 125 Wash.2d 129, 142, 882 P.2d 173 (1994); *see also State v. Pineda-Guzman*, 103 Wash. App. 759, 763, 14 P.3d 190 (2000)). RCW 10.01.160 contains several subsections directing that courts “shall” or “shall not” do certain things. As such, the fact that the chosen wording in subsection four was “may” indicates that the legislature intended a court have discretion in deciding whether or not to remit fines even in the event that a manifest hardship was suggested by the defendant. This is likely because a defendant’s financial situation could change at any time.

The Appellant has presented nothing to suggest that the Court failed to take into account the criteria suggested by the cases they have cited when determining her ability to pay. A review of the record reveals ample evidence that the Appellant’s financial circumstances and any alleged hardship caused thereby was considered by the District Court. The Court was not convinced there was a manifest hardship, and again, even if

the Court was so convinced, they would be allowed to remit costs, not required to do so. The Court did not abuse its discretion or violate any controlling law by not agreeing with, or being persuaded by, the appellant's evidence. The only argument made by the Appellant is that the court should have agreed with their version of the facts and reached the determination that they wanted. This argument is not sufficient to prove or even suggest that the trial court's decision not to remit the Appellant's costs is in conflict with any controlling law. As such, this Court should not accept review on this basis.

2. **Discretionary Review is not appropriate under RAP 2.3(d)(4), as the Superior Court has not departed from the accepted and usual course of judicial proceedings nor sanctioned such a departure by the District Court.**

The Appellant makes separate arguments in the Richland and Kennewick cases regarding how the District Court is alleged to have departed from the accepted and usual course of judicial proceedings. Neither are persuasive for the reasons laid out below.

*Richland*

It is clear that no action taken by the Superior Court ever departed from the usual course of judicial proceedings, leaving only the argument that Superior Court has sanctioned the District Court's departure from the accepted and usual course of judicial proceedings. In the Richland case,

the Appellant argues that the District Court departed from the accepted and usual course of judicial proceedings by ruling that the Appellant's procedural due process rights of prior notice were not violated at the August 20, 2013 hearing and, second, by ruling that the Appellant's procedural rights to a neutral and impartial judge were not violated at the August 20, 2013 hearing.

The appellant first argues the Superior Court sanctioned the District Court's denial of the appellant's procedural due process rights to notice at the initial hearing on August 20, 2013.

It is clear from the record that the appellant's hearing was properly set, with notice as the Appellant appeared and was ready for the hearing with Counsel. The District Court addressed this issue in detail with Appellant and offered to reset the hearing to a more acceptable date if the Appellant felt she had been prejudiced by the procedure to get the matter before the Court, or was unclear as to why they were there, and the Appellant chose to go forward.

Further, in reviewing this issue, the Superior Court specifically found that *"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.”* There is no departure from the accepted and usual course of judicial proceedings.

Secondly, the appellant argues that the Superior Court erred by finding that the appellant’s procedural due process rights to a neutral and impartial judge were not violated at the August 20, 2013 hearing.

In regards to this issue, all of the cases cited by the Appellant are factually and procedurally so strikingly dissimilar to the present matter, however, they still stand for the underlying proposition that a Judge has the right, as the trier of fact, to question witnesses to elicit the truth or clarify material issues. What the cases do say is that they must be fair and impartial to the proceedings and to those involved.

A Judge may cross the line into impartiality when they (as cited by Appellant): (1) Issue a warrant when having previously sat as a special Inquiry Judge on the same case if under the facts his conduct may cause him to lose his status as a neutral and detached magistrate. *State v.*

*Neslund*, 103 Wn.2d 79, 690 P.2d 1153 (1984); (2) In suppression hearing, assume the role as prosecutor and assume the "Peoples" burden of putting on evidence that statements were voluntarily made by moving *sua sponte* for admission of a prior transcript into evidence, call witness on behalf of the "People", examine those witnesses and cross-examine defense witnesses, make *sua sponte* objections to defense counsel's questions and rule 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 threatening to take her into custody if they did not. *People v. Cofield*, 293 N.E.2d 692 (Ill. App.3d 1973).

Clearly, in this case the Court conducted a fine review hearing and relied on her knowledge of the case, the file before her and the witnesses presented by the Appellant. She asked questions of witnesses to clarify material issues regarding the non-payment of fines and the ability to pay those fines. The Court's conduct did not rise anywhere near to the

egregious levels of the above cited cases. The Appellant was not denied a 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 there was no departure from the accepted and usual course of judicial proceedings in the Richland case, Superior Court cannot be said to have sanctioned such departure.

#### *Kennewick*

In the Kennewick case, the Appellant alleges that the District Court's imposition of a time payment of \$15.00 per month conflicts with the anti-alienation provisions of the Social Security Act (SSA) 42 U.S.C. § 407(a). It should be noted that this argument is not properly made under RAP 2.3(d)(4). The argument that the Appellant is clearly trying to make

is that the District Court's action is in conflict with another law, the SSA. This is an argument that would be appropriately analyzed under RAP 2.3(d)(1) if it had any merit. Likely because the Appellant is aware that she can cite no *controlling* law that interprets the District Court's imposition of a time payment in this circumstance as an "attachment" of SSI Benefits under the SSA, she attempts to make this argument here. She is, in essence, asking this Court to find that the District Court's decision to set a payment amount on an outstanding legal financial obligation for a person who has been found by the court to have the ability to pay is a far departure from the acceptable and usual course of judicial proceedings. This argument cannot stand as RCW 10.01.170 provides that "[w]hen 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. The District Court's utilization of a method of collecting fines and costs that is clearly allowed for by statute cannot be said to be a departure from the accepted and usual course of proceedings.

Even if this Court were to consider the Appellant's arguments regarding the SSA despite the fact that they are not properly argued here, discretionary review on that basis is still unwarranted. The Appellant claims that because she alleged to the court that her only income was SSI,

any determination that she can pay the costs assigned her unconstitutionally assigns her SSI benefits in violation of the Supremacy Clause. Because setting of a payment amount and refusing to remit costs does not amount to a transfer of SSI benefits, these arguments fail.

The Supremacy Clause is violated when a State statute directly conflicts with a Federal statute. *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-13 (1985). The Appellant's Supremacy Clause challenge cannot stand as she is not alleging that any Washington statute conflicts with 42 U.S.C. 407(a) but rather argues that the Judge in this specific case could not find that she has the ability to pay costs because doing so would equate to an attachment of her SSI benefits. If she were correct, the result would be that the Judge committed an error of law – not that a violation of the Supremacy Clause occurred. The cases she cites in support of her argument regarding a Supremacy violation are factually distinguishable from the case at hand in that they involve state statutes that specifically provided for garnishment or other seizures of SSI benefits. For example, in *Bennett* the state adopted the State Prison Inmate Care and Custody Reimbursement Act, a statute that authorized the State to seize a prisoner's property or "estate" in order to help defray the cost of maintaining its prison system. The Act specifically defined "estate" to include a prisoner's federal Social Security

benefits, as well as other types of pension or retirement benefits. § 46-1702(d). *Bennett v. Arkansas*, 485 U.S. 395, 396, 108 S. Ct. 1204, 1204-05, 99 L. Ed. 2d 455 (1988).

The Appellant cites no cases in support of her contention that the District Court's determination that Ms. Wakefield can afford to pay \$15.00 per month on her fines and costs in this case is in conflict with 42 U.S.C. 407(a). Likely recognizing that an argument that the time payment subjects her SSI benefits to execution, levy, attachment, or garnishment would be unpersuasive, she attempts to characterize this time payment as "other legal process", citing *Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 372, 123 S. Ct. 1017, 1019, 154 L. Ed. 2d 972 (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." 537 U.S. 371, 372, 123 S. Ct. 1017, 1019, 154 L. Ed. 2d 972 (2003). This argument is also 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 the Appellant to pay her SSI benefits to the court nor did it exercise any means to attach those benefits. After considering all of the evidence in this case, the Judge determined that the Appellant had the ability to pay \$15.00 per month towards her costs and that remission of those costs was not appropriate. She set time payments in an amount the Appellant was able to pay. This decision does not amount to an "attachment" of SSI benefits and is therefore not in violation of the SSA.

The Appellant's second argument under RAP 2.3(d)(4) in the Kennewick case is essentially that the Superior Court should have found that the District Court abused its discretion in determining that the Appellant had the ability to pay \$15.00 per month toward her legal financial obligations and that the failure to do so warrants review under this subsection. This argument is not persuasive.

There was substantial evidence in the record to support the District Court's finding that the Appellant could afford to pay \$15.00 per month. Despite Appellant's contention that her evidence was "uncontroverted" and completely and totally established she had no ability to pay, the Court noted that no evidence was presented at the hearing that her financial status was different at that time than it was when she was making payments on her cases. Despite her apparently dire financial status, the

Appellant was able to make four payments on her cases – which totaled \$290.00. She presented no testimony that her financial situation was more dire then than it was at the time of the hearing. In fact, Appellant, while alleging that she was unable to pay even a meager \$15.00 per month towards the costs on her cases, testified that she no longer had to financially support her four children because they were in foster care. She testified at the time of hearing that she wasn't supporting anyone but herself. Nevertheless, Appellant argues that pursuant to the research and testimony of Dr. Diana Pearce, her basic essential needs can't be met at less than \$1,492 per month. But somehow, the Appellant was able to survive and was able to budget money for expenses such as Tupperware and coloring supplies to take to her children during dependency visits. In fact, in her sworn Application for Court Appointed Counsel, Appellant 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. That amount alone would cover payments on this case for three months. Dr. Pearce's sufficiency standards are based on estimates. For example, although Dr. Pearce's research estimates a basic housing cost of \$618.00 for citizens of Kennewick and Richland, Appellant testified that she has been able to

obtain housing for less than that amount. 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 record is clear that the Judge reviewed the evidence in front of her and determined that the Appellant had made payments in the past while in the same financial circumstances, if not worse financial circumstances. Also relevant to her determination was that Appellant testified to no bona fide efforts to make payments in this case. She did not testify she couldn't work, did not testify she had looked for jobs, and did not testify she had tried to borrow money. Recognizing that Appellant had a limited income, a limited social support network, and likely had limited work opportunities given at the very least her criminal history and disabilities, the Judge set payments at \$15.00 per month - \$10.00 per month lower than the court's minimum payment. Appellant 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 disingenuous to then claim that because she survives on less than what Dr. Diana Pearce says an average person needs she should have no responsibility to pay costs imposed on her due to her continuing criminal activity. It is these same realities that

support the Judge's decision not to remit costs. Implicit in the court's statements is a determination that Ms. Wakefield failed to carry her burden of establishing her inability to pay costs in this case and failed to convince the Judge that imposition of the costs would work a manifest hardship on her or her family.

Because the District Court's determination that the Appellant could afford to pay \$15.00 per month towards her fines and costs was supported by substantial evidence in the record, neither the time payment agreement nor the Superior Court's affirmation of that agreement so far departed from the accepted and usual court proceedings to warrant review under RAP 2.3(d)(4).

3. **Because the circumstances in this case do not involve an issue of public interest that needs to be decided by this Court, review under RAP 2.3(d)(3) is unwarranted.**

The crux of the appellant's argument seems to be that since it is difficult for her to pay; she should not have to be held financially accountable for her continuing commission of crimes. Under the Appellant's theory, no one who is on SSI can ever be made to pay court costs, and the court has no discretion to say otherwise. That cannot, and should not, be the rule. The appellant is correct in her indication that "*the United States Supreme Court held that a person cannot be incarcerated for failure to pay her criminal debt if the failure to pay was due solely to*

*her poverty.*" *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064 (1983). What she conveniently failed to include, however, is this additional statement made by the *Bearden* Court: "*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* at 669.

Despite the Appellant's insistence otherwise, there are safeguards in place to ensure that persons are not incarcerated solely due to poverty. This fact is especially evident in the case at hand, wherein the District Court erroneously believed it could sanction the Appellant 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 District Court's imposition of work crew. Although the District Court identified issues surrounding the Appellant's non-payment that were relevant to a finding of willfulness, a specific finding of willfulness was not made. The District Court erred in believing it did not need to make a finding of willful non-payment before imposing jail alternatives and its' decision was overruled by a higher court. The controlling law and applicable standards were successful in ensuring that the Appellant 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.

Despite that successful result, the Appellant now advocates for a blanket rule that would allow anyone receiving SSI benefits to avoid being held responsible for payment of court costs and fees simply because they are on SSI. A ruling of this nature would effectively rob all courts of their ability to exercise appropriate discretion in reviewing an individual's specific financial situation in determining an ability to pay fines. SSI is an important benefit that helps many disabled Americans meet their basic needs, and it should clearly be a factor that is considered in determining if a criminal defendant has the ability to pay or if their non-payment is willful. It is not however the definitive factor, nor should it be. Courts need to be able to examine and assess an individual's situation, and the current controlling law and applicable standards ensure that.

While the illegality of debtor's prisons may arguably be an issue of public interest, Appellant's claim that "Ms. Wakefield's case clearly exemplifies the debtor's prison problem in Benton County" is a stretch at best. This case is quite simply an issue of personal responsibility and whether the court impermissibly exercised its discretion in deciding that the remittance of costs and fines was inappropriate. In an additional attempt to convince this Court of the gravity of the legal error running

rampant in Benton County, the Appellant lists a percentage regarding the number of inmates in the Benton County jail who are there for non-payment of LFO's, claiming that "[s]uch a large number of people are in Benton County jail because the court is not applying the correct legal standards and controlling law when collecting LFOs." But the Appellant makes no allegation and cites no facts establishing that these inmates were not found in willful non-payment. As even the Appellant would have to concede, courts are legally allowed to jail people for non-payment of LFO's if the non-payment is determined to be willful.

The Appellant's accusations regarding the percentage of persons in the Benton County jail for non-payment of LFOs and her reference to newspaper articles on this issue does not make her case an issue of public interest that must be decided by this Court. Here, the Superior Court found that the District Court did not abuse its discretion in finding that the Appellant was able to pay \$15.00 per month towards her legal financial obligations. This finding was based in part on the fact that no evidence was presented that she had a permanent disability or an inability to work, and in part on the Court's awareness of the Appellant's participation in a dependency action regarding her children, the Court's awareness that the Appellant had made payments towards her fines in the past, and the fact that the Appellant's continuing criminal activity, failure to do court

ordered treatment and continued drug use were lifestyle choices that willfully affected her ability to pay. Also considered was the fact that no evidence was presented that the Appellant's financial situation from the time when she was able to make payments was different than at the time of the hearing and that the Appellant presented no bona fide efforts she had made to be current in her payments. After considering all of this evidence, the Court determined that no hardship existed that would make remitting costs appropriate.

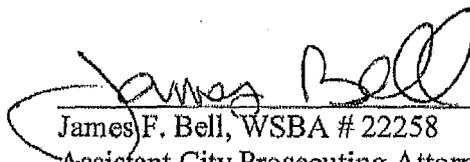
This case involves the application of specific facts to the current controlling law and applicable legal standards. Despite the Appellant wanting to characterize this case as a prime example of the District Court and Superior Court's aggressive use of incarceration as a collection tool, there is no evidence to even suggest any such motivation. This is simply a case where a defendant stopped making fine payments on her criminal cases while continuing to commit crimes. The court wanted to know why and the Appellant was given a hearing to explain. After hearing the evidence and reviewing the files the court determined that in this case it was not satisfied that remittance of costs was appropriate. Through Superior Court's review, the current safeguards and controlling law were properly applied to this district court case. The fact that the Appellant is not happy with the result does not change that fact. This specific situation

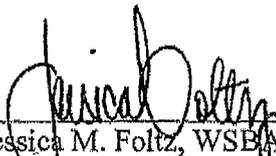
was properly dealt with and creates no matter of public interest that would justify any further review.

#### V. CONCLUSION

Based on the above analysis, acceptance of discretionary review of this matter would be inappropriate under RAP 2.3(d). The Superior Court's affirming of the District Court's decision not to remit the appellant's court costs, and the subsequent imposition of a \$15.00 per month time payment, is not in conflict with controlling law, the Superior Court has not so far departed from the accepted and usual course of judicial proceedings nor sanctioned such a departure by the District Court as to warrant review, and the Superior Court's decision does not involve an issue of public interest which should be decided by the appellate court. As such, the Appellant's Motion for Discretionary Review must be denied.

Respectfully submitted this 17<sup>th</sup> day of February 2015.

  
James F. Bell, WSBA # 22258  
Assistant City Prosecuting Attorney  
Attorney for Respondent, City of Richland

  
Jessica M. Foltz, WSBA #41866  
Assistant City Attorney  
Attorney for Respondent, City of Kennewick

1  
2 IN THE COURT OF APPEALS IN AND FOR THE STATE OF WASHINGTON  
3 DIVISION III

4 CITY OF RICHLAND and CITY OF KENNEWICK, )

5 Respondents, )

6 vs. )

7 BRIANA WAKEFIELD, )

8 Appellant. )

No. 331008-III

AFFIDAVIT OF SERVICE

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10  
11 CERTIFICATE OF SERVICE

11 STATE OF WASHINGTON )

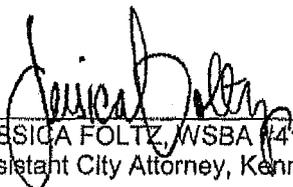
12 COUNTY OF BENTON )

) ss.

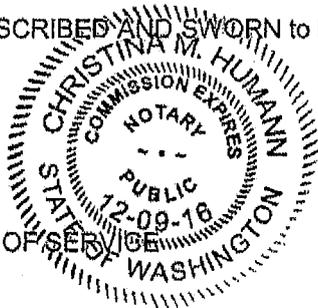
13 **COMES NOW**, Jessica Foltz, who being first duly sworn upon oath, deposes and says:

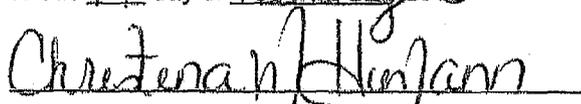
14 I am an Assistant City Attorney for the Kennewick City Attorney's Office and I served a copy of  
15 the ANSWER TO APPELLANT'S MOTION FOR DISCRETIONARY REVIEW in this case by hand  
16 delivery upon the following, on the 17th day of February, 2015:

17 Jefferson Coulter  
18 Karla Carlisle  
19 Northwest Justice Project  
1310 N. 5<sup>th</sup> Avenue Ste. B  
Pasco, WA 99301

20  
21   
22 JESSICA FOLTZ, WSBA #41866  
Assistant City Attorney, Kennewick City Attorney's Office

23 SUBSCRIBED AND SWORN to before me this 17 day of February 2015



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Notary Public in and for the State of Washington,  
Residing at Richland My Com. Expires: 2/9/16

AFFIDAVIT OF SERVICE  
Page 1 of 1

Lisa M. Beaton  
Kennewick City Attorney  
210 W. 6<sup>th</sup> Avenue  
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Kennewick WA 99336  
(509) 585-4274  
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**KENNEWICK CITY ATTORNEY**

**February 17, 2015 - 3:51 PM**

**Transmittal Letter**

Document Uploaded: 331008-Wakefield Answer to Motion for Discretionary Review.pdf

Case Name: City of Richland and City of Kennewick v. Briana Wakefield

Court of Appeals Case Number: 33100-8

Party Represented: City of Kennewick/City of Richland

Is This a Personal Restraint Petition?  Yes  No

Trial Court County: Benton - Superior Court # 13-1-01070-8

**Type of Document being Filed:**

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Response/Reply to Motion: Response
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: \_\_\_\_\_

**Comments:**

Response to Motion for Discretionary Review

Sender Name: Jessica M Foltz - Email: [jessica.foltz@ci.kennewick.wa.us](mailto:jessica.foltz@ci.kennewick.wa.us)