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No. 95794-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JASON M. CATLING, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUE PRESENTED

Whether a sentencing court may impose mandatory legal financial obligations (“LFOs”) upon a defendant who receives Social Security Disability payments as his only source of income, so long as the sentencing court does not require that defendant to pay those obligations from Social Security Disability funds, and whether the clerk of the court may require such a defendant to periodically report his finances to the court so it may determine whether the defendant’s financial situation has changed?

II. STATEMENT OF THE CASE

On August 18, 2016, Catling pled guilty to one count of possession of a controlled substance, heroin, in exchange for the State’s agreement to dismiss another charge and to recommend a residential drug offender sentencing alternative. CP 4-14; 8/18/16 RP 3-10.

On September 23, 2016, the matter was set for sentencing. 9/23/16 RP 3-11. Catling’s attorney argued that because his client’s sole source of income was Social Security Disability, the trial court should not impose any legal financial obligations, including mandatory obligations, based upon this Court’s decision in *City of Richland v. Wakefield*, 186 Wn.2d 596, 599, 380 P.3d 459 (2016). 9/23/16 RP 3-4. *Wakefield* was decided by this Court the day before Catling’s sentencing hearing. *Id.*

In taking the request under advisement, as the sentencing court had not yet reviewed *Wakefield*, the court ascertained Catling’s sole source of legal income was Social Security Disability in the amount of \$753 per month. CP 7-8; 9/23/16 RP 6-8, 11. The defendant had been receiving that

benefit for approximately ten years because of chronic pain, surgeries and birth defects. 9/23/16 RP 8.

On September 26, 2016, the court issued a written order imposing the LFOs. CP 34-35. Its basis for imposing those obligations was its finding that “the mandatory legal financial obligations can be ordered when a person is indigent and whose only source of income is social security disability.” CP 35. The order directed the defendant to pay \$25 dollars per month starting January 5, 2017, for a total amount of \$800 in legal financial obligations (\$500 State Crime Victim’s Compensation Fund, \$200 Filing Fee, and \$100 DNA Collection Fee). CP 35.

On October 5, 2016, the defendant moved the court to reconsider its imposition of LFOs, again citing *Wakefield* and 42 U.S.C. §407(a). CP 36-38. By written order filed October 19, 2016, the trial court denied the defendant’s motion for reconsideration. CP 61. The defendant timely filed a notice of appeal on October 26, 2016. CP 62.¹

On appeal to Division Three of the Court of Appeals, the State conceded that it was error for the sentencing court to set a payment schedule obligating Catling to begin payment of his mandatory LFOs, when the information presented to the court was that the defendant’s only source of

¹ Incidentally, after the defendant filed his appeal, the court revoked the DOSA sentence on January 20, 2017. In doing so, the trial court re-imposed the LFOs, but reset his payment schedule to order his first payment due on January 15, 2018. CP 89-93.

income was Social Security Disability. However, the State argued that it was not appropriate to strike the obligations, as requested by the defendant, but rather, strike the payment schedule, and, instead, require the defendant to periodically present proof to the court that he continued to have no source of income except for Social Security Disability.

Two judges from Division Three agreed with the State, holding that, although the sentencing court may impose mandatory LFOs upon a Social Security Disability recipient, it may not order such a defendant to pay those obligations without first determining the defendant has another source of income. *State v. Catling*, 2 Wn. App. 2d 819, 820-26, 413 P.3d 27 (2018). Judge George Fearing dissented, raising doubts whether such a defendant would ever be able to discharge the debt, and concerns regarding the collateral consequences a defendant may face as a result of his failure to pay legal financial obligations – such as difficulty finding housing, and the inability to regain voting and firearms rights. *Id.* at 835, 845 (Fearing, C.J. dissenting). Judge Fearing would have remanded the matter to the sentencing court to determine whether Catling “will likely receive other income in the indefinite future.” *Id.* at 846.

II. ARGUMENT

Effective June 7, 2018, the legislature amended many of Washington’s LFO statutes. The crime victim assessment statute,

RCW 7.68.035, was, itself, not subject to any relevant amendments. 2018 Laws c 269 §19. The criminal filing fee statute, RCW 36.18.020, was amended to prohibit the imposition of the fee on indigent defendants as defined in RCW 10.101.010(3). 2018 Laws c 269 §17 (2)(h). The DNA fee statute, RCW 43.43.7541 was amended to require imposition of the fee only if such a fee has not been previously collected from an offender. 2018 Laws c 269 §18. The legislature clarified in RCW 9.94A.760 that, if a defendant is indigent, the court may not order the payment of costs as provided in RCW 10.01.160, but indigency is not grounds for waiver of the crime victim penalty assessment under RCW 7.68.035 or the imposition of restitution. 2018 Laws c 269 §14.

Because Catling was ordered to pay mandatory LFOs consistent with the pre-June 2018 amendments, this brief first addresses whether a sentencing court may impose those obligations without violating the anti-attachment provisions of 42 U.S.C. §407(a). Then, because the 2018 amendments to Washington's LFO statutes now specifically require that only restitution and the victim compensation fund assessment may not be waived or converted to community restitution for indigent defendants, this brief will address the importance of a sentencing court imposing these penalties – to hold offenders accountable and to ensure that victims have the potential to be made whole.

A. THE SENTENCING COURT IMPOSED MANDATORY LEGAL FINANCIAL OBLIGATIONS.

The sentencing court imposed a \$500.00 victim assessment fee, a \$200.00 criminal filing fee, and a \$100.00 DNA collection fee. At the time of the defendant's sentencing, each of these obligations was mandated by statute, without regard to the defendant's ability to pay. *See* former RCW 7.68.035 (2017), 36.18.020(2)(h) (2017), and 43.43.7541 (2017); *State v. Stoddard*, 192 Wn. App. 222, 225, 366 P.3d 474 (2016).

There is a statutory, non-constitutional requirement that the court shall determine the defendant's ability to pay *discretionary* financial obligations before ordering them at sentencing. *See* RCW 10.01.160(3). However, as articulated in *State v. Lundy*, 176 Wn. App. 96, 102-03, 308 P.3d 755 (2013), this statute does not apply to *mandatory* LFOs:

[F]or *mandatory* legal financial obligations, the legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing these obligations. **For victim restitution, victim assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account.** *See, e.g., State v. Kuster*, 175 Wn. App. 420, 424-25, 306 P.3d 1022 (2013). And our courts have held that these mandatory obligations are constitutional so long as "there are sufficient safeguards in the current sentencing scheme to prevent *imprisonment* of indigent defendants." *State v. Curry*, 118 Wn.2d 911, 918, 829 P.2d 166 (1992) (emphasis added).

(Footnote omitted) (emphasis added).

Washington, like many other jurisdictions, has adopted the Second Circuit Court of Appeals reasoning in *United States v. Pagan*, 785 F.2d 378, 381-82 (2d Cir.), *cert. denied*, 479 U.S. 1017, 107 S.Ct. 667, 93 L.Ed.2d 719 (1986), concerning whether imposing mandatory fees implicates a defendant's constitutional rights:

Constitutional principles will be implicated ... only if the government seeks to enforce collection of the assessments "at a time when [the defendant is] unable, through no fault of his own, to comply."

Id. (internal quotation marks omitted) (quoting *U.S. v. Hutchings*, 757 F.2d 11, 14-15 (2d Cir.), *cert. denied*, 472 U.S. 1031, 105 S.Ct. 3511, 87 L.Ed.2d 640 (1985)).

B. WAKEFIELD AND FEDERAL ANTI-ATTACHMENT PROVISIONS PROHIBIT COURTS FROM ORDERING A DEFENDANT TO PAY LEGAL FINANCIAL OBLIGATIONS WHEN THE DEFENDANT'S SOLE SOURCE OF INCOME IS FEDERAL SOCIAL SECURITY DISABILITY, AND PROHIBIT SANCTIONS FOR FAILURE TO PAY.

Under 42 U.S.C. §407(a) of the Social Security Act:

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

In *Wakefield, supra*, this Court held that a district court, which denied a motion for remission and ordered a Social Security Disability

recipient-defendant to pay \$15 per month toward her discretionary LFOs, violated the above-quoted anti-attachment provision of the Social Security Act. 186 Wn.2d at 602, 608-609. In doing so, this Court looked to both the United States Supreme Court and other state courts for guidance.

In *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 417, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973), for example, the United States Supreme Court found that funds from Social Security Disability payments retain their protected quality even after being deposited, and that such funds are protected from “the use of any legal process,” to include claims from state governments.² Based upon *Philpott*, and its review of *In Re Lampart*, 306 Mich. App. 226, 856 N.W.2d 192 (2014), *State v. Eaton*, 323 Mont. 287, 293, 99 P.3d 661 (2004), and *Wash. State Dep’t of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 385, 123 S.Ct. 1017, 154 L.Ed.2d 972 (2003), this Court determined that the district court’s order requiring Wakefield to pay \$15 per month from her Social Security Disability payments “meets the Supreme Court’s definition of ‘other legal process’”; accordingly, this Court held that federal law prohibits courts from ordering defendants to pay LFOs if the person’s only source of income

² When a state court order attaches to Social Security benefits in contravention of 42 U.S.C. §407(a), the attachment conflicts with federal law and is a conflict “that the State cannot win.” *Bennett v. Arkansas*, 485 U.S. 395, 397, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988).

is Social Security Disability. *Wakefield*, 186 Wn.2d at 609 (emphasis added).³

Additionally, in the context of defendants who receive only Social Security Disability benefits, even the *threat* of contempt procedures is “other legal process” which violates the anti-attachment provisions of the Social Security Act. *Lampart*, 306 Mich. App. at 242. “An implied or express threat of formal legal sanction constitutes a ‘legal process’ within the meaning of section 407(a).” *Id.* (internal citation omitted).

Based on *Wakefield*, the State conceded below that the trial court erred in ordering the defendant to pay LFOs at a rate of \$25 per month beginning January 5, 2017, where the defendant’s only source of income was Social Security Disability. CP 35. The State agrees that in cases involving recipients of Social Security Disability benefits, under 42 U.S.C. §407(a), it is irrelevant whether the LFO is mandatory or

³ “Other legal process” has been defined by the United States Supreme Court as:

Much like the process of execution, levy, attachment, and garnishment, and at a minimum would seem to require utilization of some judicial or quasi-judicial mechanism, though not necessary 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.

Keffeler, 537 U.S. at 385.

It is “the means by which a court (or agency or official) compels compliance with its demand; generally it is a court order.”

Id. citing POMS GN 02410.001(2002) (“POMS” is the Social Security Administration’s Program Operations Manual System).

discretionary. The court cannot enforce the *collection* of LFOs or compel payment from a defendant's Social Security Disability benefits simply by relying on the legislative dictate that those obligations are mandatory, nor can it threaten contempt or other sanctions for a defendant's failure to pay.⁴

C. THE TRIAL COURT DID NOT ERR IN MERELY IMPOSING MANDATORY LEGAL FINANCIAL OBLIGATIONS.

This ostensible conflict between a trial court's legislative mandate to impose certain LFOs, and its inability to collect funds to satisfy those obligations from a defendant's Social Security payments is not without resolution.

As briefly discussed above, monetary assessments may be imposed on indigent offenders at the time of sentencing without raising constitutional concern because constitutional principles will be implicated only if the government seeks to enforce collection of the assessments at a time when the defendant is unable, through no fault of his own, to comply. *State v. Blank*, 131 Wn.2d 230, 241, 930 P.2d 1213 (1997). It is at the point of enforced collection, where an indigent defendant is faced with the alternatives of payment or imprisonment, that he may assert a constitutional objection based on his indigency. *Blank*, 131 Wn.2d at 241 (quoting *State*

⁴ Here, the defendant's judgment and sentence includes language that failure to comply with the LFO order, to include the failure to make payments as ordered, "will result in a warrant for your arrest." CP 26. To the extent that the court's order threatens legal process for noncompliance with the order, i.e., the issuance of a warrant, the trial court erred.

v. *Curry*, 118 Wn.2d 911, 917, 829 P.2d 166 (1992)); and see *State v. Thompson*, 153 Wn. App. 325, 336-38, 223 P.3d 1165 (2009) (DNA fee); *State v. Williams*, 65 Wn. App. 456, 460-61, 828 P.2d 1158, as modified 840 P.2d 902 (1992) (victim penalty assessment). This issue is well-settled. There are no constitutional roadblocks to the *assessment* of monetary penalties and costs. Thus, the simple assessment of mandatory costs against Catling was not in error.

In *Lampert, supra*, the court addressed the issue of the imposition of *mandatory* restitution under Michigan law:

The restitution order itself remains valid. Indeed, Alexandroni's receipt of SSDI benefits does not immunize her from the restitution order; rather it merely prohibits the trial court from using legal process to compel satisfaction of the restitution order from those benefits. Because it is possible that Alexandroni may have assets or may receive income from other sources in the future, we affirm the trial court's refusal to cancel or modify Alexandroni's restitution obligation.

The trial court's contempt powers similarly remain a valid tool in enforcing the restitution order, and our decision today should not be read otherwise. Again, a contempt hearing can be an appropriate vehicle *for determining income and assets from which the restitution order may properly be enforced...* However, the trial court may not compel Alexandroni to satisfy her restitution obligation out of her SSDI benefits, by a contempt finding or other legal process, because Alexandroni is entitled to the protections of 42 U.S.C. §407(a).

Lampart, 306 Mich. App. at 246 (emphasis added) (internal citations omitted).⁵

⁵ In *Eaton*, the Supreme Court of Montana affirmed the imposition of restitution under Montana law, on other grounds, but determined that the consideration of the defendant's Social Security Disability benefits in determining how much the defendant should pay per

The same is true under Washington law. Our legislature has determined that certain LFOs are mandatory. RCW 7.68.035, 36.18.020(2)(h), 43.43.7541. At the time of Catling's sentencing, these LFOs included restitution, the crime victims' compensation fund assessment, the criminal filing fee, and the DNA fee.⁶ The trial court did not err in declining to follow the defendant's request to *strike* all LFOs pursuant to *Wakefield*. As in *Lampert*, the defendant's status as a Social Security Disability recipient does not immunize him from the imposition of mandatory LFOs. However, it *does* immunize him from paying those LFOs from his Social Security Disability benefits and from the threat of legal process by the court to collect the debt during the time that his sole source of income is Social Security Disability.

In this case, the trial court faced a conundrum - how to craft an order that imposed mandatory LFOs pursuant to Washington law, but that did not run afoul of the Social Security anti-attachment provisions of 42 U.S.C. §407(a). The solution to this quandary is found in RCW 9.94A.760(7)(b). This statute provides a mechanism by which the

month was an improper attempt to subject the defendant's social security benefits to "other legal process." *Eaton*, 323 Mont. at 293-94.

⁶ As indicated above, the legislature has amended Washington's legal financial obligations statutes effective June 8, 2018, and, under the new legislation, *only* the crime victim penalty assessment and restitution may not be waived based upon a defendant's indigency. RCW 9.94A.760.

court may ascertain whether the defendant's financial situation has changed after the imposition of a sentence. It provides:

Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. *During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.*

RCW 9.94A.760(8)(b)⁷ (emphasis added).

This statute provides that the clerk of the court is authorized to require the defendant to report to the clerk's office to provide periodic updates regarding his income and ability to pay, and in this context, that authorization would include allowing the clerk to determine whether the defendant has any assets or income other than his Social Security Disability benefits. Rather than imposing a date certain by which the defendant must commence payment, the trial court should have assessed the mandatory

⁷ Formerly RCW 9.94A.760(7)(b)(2011).

LFOs, but left it to the clerk's office to determine at a designated future point (or points) in time, whether the defendant's circumstances or sources of income have changed.

Thus, as the Court of Appeals did below, this Court should affirm the trial court to the extent that it properly denied the defendant's request to waive all legal financial obligations under *Wakefield*. The defendant is not, and should not be, insulated from the imposition of mandatory LFOs associated with his felony criminal conviction. The State concedes, however, that the trial court erred, and should be reversed, in its decision to order the defendant to pay those obligations, beginning on a date certain, from his Social Security Disability benefits without first determining that he has a means, other than those protected benefits, by which to pay the judgment.

D. THE DISSENTING OPINION'S POSITION THAT A TRIAL COURT SHOULD DETERMINE WHETHER A DEFENDANT "WILL LIKELY RECEIVE OTHER INCOME IN THE INDEFINITE FUTURE" PRIOR TO IMPOSING MANDATORY LEGAL FINANCIAL OBLIGATIONS IS DETRIMENTAL TO CRIME VICTIMS.

Judge Fearing authored the dissenting opinion below, enumerating concerns that the \$800 LFO order will prevent Catling from receiving housing, and restoring voting or gun rights, as well as a concern that requiring him to report, periodically, to the clerk's office, whether his

financial means have changed is both “legal process” as prohibited by the federal anti-attachment statute and is unduly burdensome on the defendant. *Catling*, 2 Wn. App. 2d at 829, 845 (Fearing, C.J. dissenting). He would have required remand of Catling’s matter for the sentencing court to make a current determination whether Catling “will likely receive other income in the indefinite future.” *Id.* at 846

Judge Fearing’s holding requires a sentencing court to divine the future, and first determine whether a Social Security recipient will likely receive other income in the indefinite future, before imposing LFOs that the legislature has determined to be mandatory. If taken to its logical end, Judge Fearing’s holding could deny the trial court the ability to impose restitution in cases where a defendant receives only Social Security Disability,⁸ simply because the defendant could suffer, at some unknown point in the future, collateral consequences due to his or her inability to

⁸ After the 2018 amendments to Washington’s LFO statutes, no interest accrues on nonrestitution legal financial obligations, and interest on nonrestitution obligations that has accrued prior to the effective date of the new legislation may be waived by the court. 2018 Laws c 269 §1. Additionally, the legislature has provided that fees, assessments and penalties, not including restitution or the crime victim penalty assessment, may be converted to community restitution hours if the court is satisfied that default in payment is not willful and the defendant is indigent; the court may also reduce or waive these costs altogether. 2018 Laws c 269 §8(5). Thus, the court may provide an indigent defendant who has been required to pay restitution, the crime victims assessment, the DNA fee and criminal filing costs additional relief from payment of the DNA fee and the criminal filing fee. For this reason, this portion of the brief concentrates on the importance of both restitution and the crime victims’ compensation assessment.

extinguish that debt. This perspective is detrimental to crime victims in Washington state.

The Washington State Constitution provides crime victims certain rights. Const. art. 1, §35. A sentencing court must impose restitution⁹ for injury to any person, loss of property, and for child rape victims who become pregnant, notwithstanding the victim's eligibility for benefits under the crime victims' compensation act. RCW 9.94A.753(5)-(7). The intent of the legislature in enacting the restitution statute was to "ensure that victims of crimes are made whole after suffering losses caused by offenders and to increase offender accountability." *State v. Gonzalez*, 168 Wn.2d 256, 265, 226 P.3d 131 (2010) (citing Laws of 1989, ch. 252 §1 (enactment's intent was to "hold[] offenders accountable to victims ... for the assessed costs associated with their crimes" and provide "remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior")). The legislature has declared that the total amount of restitution ordered may not be reduced because the offender lacks the ability to pay the total amount. RCW 9.94A.750(4).

⁹ A restitution order must be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injuries to person, and lost wages resulting from injury, and may not include damages for intangible losses. RCW 9.94A.750(3).

In the context of the crime victims' compensation fund, our legislature has also recognized that the compensation of crime victims is a compelling state interest. RCW 7.68.300. By statute, crime victims in Washington State may be eligible for compensation through the crime victims' compensation fund. RCW 7.68.060-.070. Certain expenses "shall" be paid to eligible victims from the crime victims' compensation fund. *See, e.g.,* RCW 7.68.070(5)-(6), (9) (eligibility for compensation for lost wages, eligibility for burial expenses); RCW 7.68.080 (reimbursement for cost of transportation to medical treatment and medical examination). Payment from the crime victims' compensation fund to a victim of a criminal act creates a debt due and owing to the department by the defendant, which may also be imposed by restitution order of the sentencing court.¹⁰ RCW 7.68.120. The legislature intended for the crime victim compensation fund to be self-funded.¹¹ *See, Sebastian v. State, Dep't of Labor and Industries*, 142 Wn.2d 280, 296, 12 P.3d 594 (2000) (Talmadge, J. dissenting).

¹⁰ That debt may be waived by the department in the interest of justice, the well-being of the victim, and the rehabilitation of the defendant. RCW 7.68.120.

¹¹ In the 2017-2018 fiscal year, the Washington Crime Victims Compensation Program disbursed over 11 million dollars to crime victims and incurred approximately 2.3 million dollars in administrative costs. *See, Washington Department of Labor and Industries, Fiscal Year 2018 Budget History for Crime Victims Compensation Program*, available at <http://www.lni.wa.gov/ClaimsIns/CrimeVictims/About/BudgetHistory/Default.asp> (last accessed 8/12/2018).

Amici Curiae Disability Rights Washington is concerned with the imposition of legal financial obligations on criminal defendants suffering disabilities. Amicus Curiae Disability Rights Washington Br. in Support of Pet. for Rev. at 5-8. Amici fail to also recognize that a significant number of disabled individuals are crime victims who may be in need of restitution or assistance from the crime victims' compensation fund. According to 2017 Bureau of Justice statistics, nationwide, between 2009 and 2015,¹² persons with disabilities were over three times more likely to be the victim of a nonfatal, serious violent crime (rape, sexual assault, robbery, or aggravated assault) than persons without disabilities. Bureau of Justice Statistics, U.S. Dep't of Justice, Leaflet No. NCJ 250632, *Crime Against Persons with Disabilities, 2009-2015 – Statistical Tables* at 4 (July 2017) available at <https://www.bjs.gov/content/pub/pdf/capd0915st.pdf>, (last accessed 8/13/2018). Between 2011 and 2015, individuals with cognitive functioning disabilities had the highest rates of total violent crime. *Id.* at 5. In 2000, approximately 5 million crimes were committed against individuals with developmental disabilities, compared to the 1.4 million child abuse cases and 1 million elder abuse cases in that year.

¹² Between 2011 and 2015, 14% of the U.S. population age 12 and older living outside of institutions had a disability. Forty-two percent of the population with disabilities were 65 years of age or older. *Crime Against Persons with Disabilities, 2009-2015 – Statistical Tables* at 3.

Petersilia, J. Ph.D. (n.d.). *When Justice Sleeps: Violence and Abuse Against the Developmentally Disabled*. PowerPoint presentation. Irvine, CA: University of California, Irvine. According to the National Crime Victimization survey from 2004-2005, more than one quarter of individuals with serious mental illness had been victims of violent crime, a rate more than 11 times higher than the general population. Teplin, L., Ph.D., G.M. McClelland, Ph.D., K.M. Abram, Ph.D., and D.A. Weiner, Ph.D. 2005. *Crime Victimization in Adults with Severe Mental Illness: Comparison with the National Crime Victimization Survey*. Archives of General Psychiatry 62(8):914.

Not only are individuals with physical, mental, and cognitive disabilities more likely to be victims of certain offenses, but other vulnerable individuals or those potentially of limited means, may be more likely to be victims of certain crime than others. For example, in Washington State in 2017, 20.7% of victims of forcible sex offenses were 10 years and younger, and 38.4% of victims of rape were under the age of 18. Washington Association of Sheriffs and Police Chiefs, *Crime in Washington 2017 Annual Report* at 27.¹³

¹³ Available at: <https://www.waspc.org/assets/CJIS/crime%20in%20washington%202017.small.pdf> (last accessed 8/13/18).

Nationwide, between 1 and 2 million individuals 65 years of age or older are victims of abuse, exploitation or other mistreatment by someone on whom they depended for care. National Research Council, *Elder Mistreatment: abuse, neglect and exploitation in an aging America*, Richard J. Bonnie and Robert B. Wallace, eds. (2003).¹⁴ In Washington, twice as many individuals over the age of 60 were victims of a burglary than any other age group; more than twice as many individuals over 60 were victims of fraud than any other age group. *Crime in Washington 2017 Annual Report*, at 38, 42.

The majority's holding, which would require Catling to periodically report his income to the clerk's office, is authorized by statute, is not overly burdensome to the defendant, is not "legal process" by which the court seeks to obtain control over protected funds, and is a process by which the court may ensure that crime victims' rights to restitution and to access to the crime victims' compensation fund are also protected.

III. CONCLUSION

While the trial court must assess mandatory LFOs against a defendant upon conviction for a felony, *Wakefield* makes it clear that the

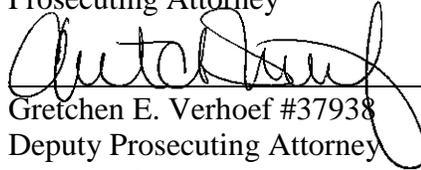
¹⁴ Available at: https://books.google.com/books?hl=en&lr=&id=EAtSgAAQBAJ&oi=fnd&pg=PT13&dq=elder+exploitation+articles&ots=u_lR1dCJ8L&sig=MHi61ybVCrnZHkaiCrHiEpxNzPw#v=onepage&q=elder%20exploitation%20articles&f=true (last accessed 8/13/18).

sentencing court may not order a defendant whose sole source of income is Social Security Disability to *pay* those LFOs from his disability benefits.

To this extent, the State concedes that the trial court erred in ordering the defendant to pay the legal financial obligations from his Social Security Disability moneys, his only present source of income. The matter should be remanded to the sentencing court with an order to strike the requirement that the defendant is to commence making payments on a date certain in a specific amount, unless the court or the clerk of the court first determines that the defendant has another source of income not protected by 42 U.S.C. §407(a). This decision strikes a balance between the mandate of 42 U.S.C. §407(a) that a Social Security recipient's benefits are protected from legal process, yet does not insulate or immunize criminal defendants who receive Social Security Disability funds from paying restitution and contributing to the crime victims' compensation fund. The State respectfully requests that this Court affirm the decision of the Court of Appeals.

Dated this 12 day of September, 2018.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON CATLING,

Appellant.

NO. 95794-1

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on September 12, 2018, I e-mailed a copy of the Supplemental Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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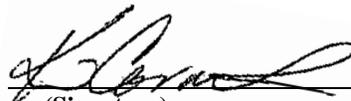
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SPOKANE COUNTY PROSECUTOR

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