

NO. 74195-1-I

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

In re the Personal Restraint Petition Of:

JESSE WHITE,

Petitioner.

FILED
Oct 03, 2016
Court of Appeals
Division I
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Marybeth Dingley, Judge

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
A “MOTION TO TERMINATE LEGAL FINANCIAL OBLIGATIONS” PLAINLY IMPLICATES THE STATUTES WHEREBY A MOVANT MAY ACHIEVE TERMINATION OF HIS LEGAL FINANCIAL OBLIGATIONS	1
B. <u>CONCLUSION</u>	5

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

Kustura v. Dep't of Labor & Indus.
169 Wn.2d 81, 233 P.3d 853 (2010)..... 2

In re Pers. Restraint of White
No. 91581-4, Order (Jun. 1, 2016)..... 4

State v. Blazina
182 Wn.2d 827, 344 P.3d 680 (2015)..... 3

State v. Shirts
__ Wn. App. __, __ P.3d __, 2016 WL 4533751 (Wash. Ct. App. Aug. 30,
2016)..... 4

State v. Sinclair
192 Wn. App. 380, 367 P.3d 612
review denied, 185 Wn.2d 1034, 377 P.3d 733 (2016) 3

RULES, STATUTES AND OTHER AUTHORITIES

CrR 7.8..... 1, 2, 3, 5

RCW 10.01.160 1, 2, 3, 4

RCW 10.73.160 1, 2, 4

A. ARGUMENT IN REPLY

A “MOTION TO TERMINATE LEGAL FINANCIAL OBLIGATIONS” PLAINLY IMPLICATES THE STATUTES WHEREBY A MOVANT MAY ACHIEVE TERMINATION OF HIS LEGAL FINANCIAL OBLIGATIONS

Whenever a Washington court receives a motion titled “Motion to Terminate Legal Financial Obligations,” it should recognize that there are two specific statutes governing this subject, RCW 10.01.160 and RCW 10.73.160. The prosecutor should be able to recognize this too. The State posits that because White did not list the correct subsection of RCW 10.01.160 in his motion to terminate LFOs, the trial court properly treated it as a CrR 7.8 motion, transferring it to this court as an untimely personal restraint petition. The State’s position elevates form over substance and results in a complete waste of this court’s and counsel’s time and resources. The easiest, most efficient, and most logical way to resolve this matter is to remand for the trial court to consider White’s remission motion on its merits. This is what White asks this court to do.

The first sentence of White’s motion requested that the superior court “Terminate Legal Financial Obligations (RCW 10.01.160 (3)).” App. 19. This should have made clear to the trial court and to the prosecutor that the primary relief sought was termination of LFOs. As discussed in White’s opening brief, the trial court then should have considered his motion on the

merits under the statutes that govern such relief, RCW 10.01.160(3) and RCW 10.73.160(4). Br. of Pet'r at 4-6.

However, even if White failed to make his "Motion to Terminate Legal Financial Obligations" absolutely 100 percent clear by not citing subsection four of RCW 10.01.160, he certainly clarified what he was asking for in his reply brief. As the State acknowledges, White cited and quoted both RCW 10.01.160(4) and RCW 10.73.160(4) in his reply brief. App. 40, 44; Br. of Resp't at 6 n.4. Thus, if there were any confusion about the trial court's authority to consider whether or not to terminate LFOs, White's reply pointed to the very statutes that provided the superior court with authority "at any time" to terminate them. RCW 10.01.160(4); RCW 10.73.160(4).

Generally, a "specific statute will supersede a general one when both apply." Kustura v. Dep't of Labor & Indus., 169 Wn.2d 81, 88, 233 P.3d 853 (2010). Both RCW 10.01.160(4) and RCW 10.73.160(4) specifically provide for the remission of LFOs upon a showing of manifest hardship via a petition brought at any time. CrR 7.8, pertaining to relief from judgment, does not. Even if CrR 7.8 arguably applies to any of White's requested relief, RCW 10.01.160(4) and RCW 10.73.160(4) more specifically apply, and must therefore control.

The State makes much of the fact that White sought reimbursement from the LFOs that were originally imposed, asserting that this request for

relief places White's motion under CrR 7.8, not the remission statutes. Br. of Resp't at 5-7. This ignores that the trial court's failure to comply with RCW 10.01.160(3) at sentencing is relevant to whether or not remission is necessary or appropriate under RCW 10.01.160(4). Indeed, prior to State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), and its progeny, the award of several LFOs, and especially appellate costs, was virtually automatic. Trial and appellate courts were not appropriately exercising discretion when imposing vast sums of money on indigent litigants. E.g., Blazina, 182 Wn.2d at 837-38 (holding trial court must assess ability to pay under RCW 10.01.160(3)); State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612 (recognizing it "is entirely appropriate for an appellate court to be mindful of [Blazina] concerns" when considering whether to impose appellate costs), review denied, 185 Wn.2d 1034, 377 P.3d 733 (2016). Thus, the remission process becomes all the more important in light of the trial court's failure to comply with RCW 10.01.160(3) and the appellate court's discretionless imposition of thousands of dollars in appellate costs without regard to White's circumstances. At most, White's alternative requests for relief were impassioned arguments that aptly illustrated the injustice of Washington's "broken LFO systems." Blazina, 182 Wn.2d at 835.

The State concedes White is entitled to file a remission motion and may file one at any time, yet nonetheless claims White could not obtain

relief in this manner. Br. of Resp't at 7. White disagrees, given that the plain language of the remission statutes allows him to move for remission at any time and also requires the court to consider his remission motion on the merits, i.e., whether outstanding LFOs impose manifest hardship on White or his family. State v. Shirts, ___ Wn. App. ___, ___ P.3d ___, 2016 WL 4533751, at *4-5 (Wash. Ct. App. Aug. 30, 2016). Because White has already so moved, the remission statutes "require[] the superior court to determine whether [White] had made a satisfactory showing of 'manifest hardship'" under RCW 10.01.160(4) and RCW 10.73.160(4).¹ Shirts, 2016 WL 4533751, at *5. The superior court may also hold an evidentiary hearing if such a hearing would be instructive. Id. at *6. If the trial court finds that LFOs cause manifest hardship to White or his family, the trial court may grant relief in the form of complete or partial remission, contrary to the State's claim.

Finally, White might be untrained in the law, but he is not unskilled. He has recently prevailed over the arguments of Snohomish County prosecutors as a pro se personal restraint petitioner. See In re Pers. Restraint of White, No. 91581-4, Order (Jun. 1, 2016) (granting review of White's motion for discretionary review and ordering remand to this court for

¹ The Shirts court acknowledged that RCW 10.01.160(4) and RCW 10.73.160(4) were "nearly identical."

consideration of personal restraint petition on the merits). White's success demonstrates he understands the difference between personal restraint petitions, CrR 7.8 motions, and motions to terminate LFOs. The irony is not lost on White that, here too, he appears to have better command of the pertinent law than the Snohomish County prosecutors or superior court. This court should remand for consideration of White's motion to terminate LFOs on its merits.²

B. CONCLUSION

This court should remand this matter to superior court for consideration of White's motion to terminate LFO on the merits.

DATED this 3rd day of October, 2016.

Respectfully submitted,

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² Unless this court orders otherwise, White does not plan to submit additional briefing that pretends that this matter was a properly transferred personal restraint petition. White controls the relief he requests, not the State. Cf. Br. of Resp't at 8 (asserting counsel "has failed to carry out her duty of briefing the issues raised in the personal restraint petition").