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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 1036736

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

SIMONE RENEE NELSON,

Petitioner.

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ON DISCRETIONARY REVIEW FROM  
THE COURT OF APPEALS, DIVISION II  
Court of Appeals No. 58161-2-II and No. 58165-5-II  
Clallam County Superior Court Nos. 95-1-00163-6, and 98-1-00046-4

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ANSWER TO PETITION FOR REVIEW

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## **I. IDENTITY OF RESPONDENT**

The respondent is the State of Washington. The answer is filed by Clallam County Deputy Prosecuting Attorney Jesse Espinoza.

## **II. COURT OF APPEALS DECISION**

The State respectfully requests this Court to deny review of the Court of Appeals decision in *State v. Nelson*, No. 58161-2-II (Consol. With No. 58165-5-II), slip op. at 1 (Wash. Ct. App. Oct. 29, 2024), a copy of which is attached to the petition for review.<sup>1</sup>

Nelson moved, under *State v. Blake*,<sup>2</sup> to vacate her two convictions for possession of a controlled substance, for a refund of all cash paid to satisfy legal financial obligations (LFOs) imposed in the judgment and sentence, and for cash

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<sup>1</sup> See also *State v. Nelson*, 558 P.3d 197, 2024 WL 4598916 (Wn. App. 2024) (resolving appeals raised in Clallam County Superior Court causes 95-1-00163-6 and 98-1-00046-4)

<sup>2</sup> 197 Wn.2d 170, 481 P.3d 521 (2021).

reimbursement for community service work (CSW) performed in lieu of paying LFOs.

The trial court granted Nelson's motion to vacate and ordered a refund of all cash Nelson paid to satisfy LFOs but denied Nelson's motion for cash reimbursement for CSW.

On appeal, Nelson argued that the trial court erred by denying Nelson's motion for cash reimbursement for CSW performed in lieu of paying LFOs imposed in a judgment and sentence. *Nelson*, slip op. at 1.

Nelson argued that the denial of the motion for reimbursement violated Nelson's substantive due process and equal protections rights. *Id.* Nelson argued that due process required reimbursement for CSW performed. *Id.* at 4. Nelson argued further that the court violated her equal protections rights because it treated Nelson differently than other similarly situated persons by denying the motion for reimbursement for CSW on the basis of Nelson's indigency. *Id.* at 9.

The Court of Appeals, Division II, in conformity with well-established principles held that Nelson's due process claim failed because any constitutionally protected interest in money paid pursuant to an overturned conviction does not extend to CSW performed in lieu of paying LFOs. *Id.* at 7.

Additionally, the Court of Appeals held that the trial court did not violate Nelson's right to equal protections because the record does not support her argument that the determination of whether a defendant will be reimbursed for CSW turns on their wealth. *Id.* at 11–12. Furthermore, the Court of Appeals held that even if Nelson had established a general class of defendants who had their LFOs converted to CSW, the trial court's ruling survives rational basis review. *Id.* at 14–15.

### **III. COUNTERSTATEMENT OF THE ISSUES**

Should this Court decline to accept review because the petitioner fails to establish that the Court of Appeal's decision presents a significant question of law under the state and federal constitutions?

#### **IV. STATEMENT OF THE CASE**

##### **Cause no. 95-1-00163-6<sup>3</sup>**

On Sept. 26, 1995, Nelson pleaded guilty to unlawful possession of a controlled substance, methamphetamine, under Clallam County Superior Court cause 95-1-00163-6 ('95 cause). CPI 36, 52.

At sentencing, on Sept. 29, 1995, the trial court imposed 52 days of jail with credit for 52 days served. CPI 41, 44. The court imposed legal financial obligations (LFOs) as follows: \$100.00 victim penalty assessment, \$242.90 court costs, \$1000.00 drug enforcement fund, and a \$125 crime laboratory fee for a total of \$1,467.90. CPI 38–39. The court also ordered that LFOs, except for the court costs and victim assessment, could be converted to community service hours (CSW). CPI 40.

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<sup>3</sup> Clerk's papers under cause no. 95-1-00163-6 are referred to as CPI and those under cause no. 98-1-00046-4 are referred to as CPII.



**Cause no. 98-1-00046-4**

On Apr. 3, 1998, Nelson pleaded guilty to possession of methamphetamine under Clallam County Superior Court cause 98-1-00046-4 ('98 cause). CPII 29. The trial court imposed 60 days jail and converted 30 of those days to 240 CSW hours. CPII 33. The court imposed a total of \$1210.00 in LFOs which included a \$500.00 victim penalty assessment, \$110.00 court costs, \$500.00 court appointed attorney fee, and \$100.00 for a crime laboratory fee. CPII 31–32.

**Post-conviction orders**

On Mar. 7, 2003, the court entered an order terminating the Dept. of Correction's supervision over Nelson's LFO payments and required Nelson to pay a total of \$70.00 per month toward her LFOs for the '95 and '98 causes. CPI 29, CPII 27.

Just over a month later, on Apr. 18, 2003, the court ordered that credit in the amount of \$280.00 be applied towards

Nelson's LFOs for each of the '95 and '98 causes for completing 80 CSW hours. CPI 28.

Subsequently, on Jan. 25, 2007, Nelson appeared in court requesting to be put on the pay or appear calendar. CPI, Clallam Co. Superior Ct., no. 95-1-00163-6, sub. no. 179, Motion hearing, filed Jan. 25, 2007. The court entered an order adjusting Nelson's payments to \$80.00 per month (\$20.00 per case) to account for both the '95 and '98 causes and two additional new causes. CPII 27.

**Post *State v. Blake***

On Feb. 25, 2021, the Washington Supreme Court held that the strict liability statute criminalizing possession of a controlled substance was unconstitutional because it could punish unintentional and unknowing conduct. *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

Thereafter, on Feb. 24, 2023, Nelson moved, under CrR 7.8 (b)(4) and (5) and *State v. Blake*, for a vacation of her convictions in both the '95 and '98 causes, for a refund of cash

payments she made towards LFOs, and for cash compensation for the CSW she performed. CPI 26, CP II 26.

On Mar. 8, 2023, Nelson filed briefs in both causes clarifying that she was seeking a refund of \$987.50 for the '95 cause, \$922.50 for the '98 cause, and cash compensation in the amount \$280.00 for each of the '95 and '98 causes for the 80 hours CSW performed. CPI 19, CPII 19.

On Apr. 4, 2023, the court heard argument for the motions in both the '95 and '98 causes and granted the motion to vacate the convictions and refund Nelson the payments she made towards LFO's. RPI 23–24, RPII 23–24. The trial court declined to grant the motion for cash compensation for CSW performed reasoning that it was not authorized under *State v. Hecht* and RAP 12.8 and that the claim for compensation or restitution or unjust enrichment was civil in nature. *Id.*

On April 13, 2023, the court signed an order granting Nelson's motion to vacate the convictions as requested and to refund all monies that Nelson actually paid towards her LFOs,

but denying the motion for cash compensation for CSW performed. CPI 6; CPII 6.

## **V. ARGUMENT**

### **A. THE PETITION FOR REVIEW FAILS TO ESTABLISH ANY OF THE CRITERIA GOVERNING THIS COURT'S ACCEPTANCE OF REVIEW.**

RAP 13.4(b) sets forth the considerations governing this Court's acceptance of review:

A petition for review will be accepted by the Supreme Court only:

If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or

If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or

If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

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- 1. The petition should be denied because the Court of Appeals decision is consistent with well-settled case law and does not present a significant question of law involving the state or federal constitutions.**

The petitioner claims that the Court of Appeals decision involves a significant question of law under the state and federal constitutions. The petitioner's argument fails because the Court of Appeals decision, consistent with well-established case law, does not present any new or significant question of constitutional law.

There is no due process right to cash compensation for CSW performed in lieu of paying LFOs when the underlying criminal statute is later held to be unconstitutional. *See State v. Nelson*, 558 P.3d 197, 206 (Wn. App. 2024) (finding Nelson provided no argument or authority showing a constitutionally protected interest in CSW).

Further, all persons who paid LFOs and/or performed CSW were treated exactly the same because claims for cash reimbursement for CSW would be denied in *all Blake* cases

regardless of a persons' economic standing. Therefore, Nelson fails to establish she was treated differently than similarly situated persons based upon her economic standing.

Finally, the Nelson Court's analysis of rational basis review is consistent with the Washington Supreme Court holding in *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 449, 853 P.2d 424 (1993).

It is well known that there is no common law remedy in the form of monetary damages for convictions reversed on appeal where the State did not refile, or where a defendant spent time in custody awaiting trial only to be acquitted, or even for those who were wrongfully convicted. *See In re Smith*, 333 S.W.3d 582, 585 (Tex., 2011) (citing *State v. Oakley*, 227 S.W.3d 58, 62 (Tex. 2007) ("The common law provided no recourse for the innocent. . . . It was not until 1965 that the Legislature enacted the first wrongful-imprisonment statute."); *Edmonds v. State*, 234 So.3d 286, 293 (Miss., 2017) (quoting *Wells by Wells v. Panola Cty. Bd. of Educ.*, 645 So.2d 883, 898

(Miss. 1994) (“In reliance upon the above-referenced rules, the State argues the cause of action established under the Wrongful Conviction and Imprisonment statutes is not based in common law. The State is correct: ‘At common law, suits ... against the State were not available at all, due to sovereign immunity.’”).

Here, convictions for possession of a controlled substance prior to *State v. Blake*, were not even wrongful convictions or convictions for a non-existent crime. *See State v. Olsen*, 555 P.3d 868, 875 (Wash., 2024) (citing *State v. Cleppe*, 96 Wn.2d 373, 635 P.2d 435 (1981), *overruled in part by Blake*, 197 Wn.2d 170, 481 P.3d 521; *State v. Bradshaw*, 152 Wn.2d 528, 98 P.3d 1190 (2004), *overruled in part by Blake*, 197 Wn.2d 170, 481 P.3d 521; *see also State v. Schmeling*, 191 Wn. App. 795, 801–02, 365 P.3d 202 (2015)).

Furthermore, *State v. Blake* was certainly not the first case in which a statute underlying a criminal conviction was held unconstitutional. *See, e.g., State v. Williams*, 144 Wn.2d 197, 202–03, 26 P.3d 890 (2001) (holding the criminal

harassment statute unconstitutionally vague); *Seattle v. Rice*, 93 Wn.2d 728, 612 P.2d 792 (1980) (holding a Seattle criminal trespass ordinance unconstitutionally vague); *City of Seattle v. Ivan*, 71 Wn. App. 145, 856 P.2d 1116 (1993) (holding attempted coercion statute which prohibited threats was unconstitutionally overbroad); *State v. Jenkins*, 100 Wn. App. 85, 995 P.2d 1268 (2000) (holding sex offender registration statute was unconstitutionally vague).

Despite the number of cases holding penal statutes to be unconstitutional, there are no cases which recognize a due process right to reimbursement beyond cash actually paid and certainly not for CSW performed in lieu of paying LFOs.

On the other hand, there are cases which, consistent with the instant case, limited remedies for overturned convictions to the return of property or cash actually paid in satisfaction of the judgment and sentence. *State v. Hecht* was such a case. 2 Wn. App.2d 359, 366, 409 P.3d 1146 (2018).



In *State v. Hecht*, the defendant was convicted of patronizing a prostitute and felony harassment. 2 Wn. App.2d at 361–62. Hecht’s convictions were overturned on appeal and the State declined to retry the case and it was dismissed without prejudice. *Id.* at 362. Hecht had already satisfied the requirements of the judgment and sentence and thus he moved to be reimbursed for LFOs paid, the cost of John School, blood testing, and CSW hours required by the judgment and sentence. *Id.*

The *Hecht* Court did not permit restitution (or monetary compensation) for CSW performed. *Id.* at 366. The *Hecht* Court, citing *Nelson v. Colorado*, only allowed Hecht to recover restitution for amounts that *Hecht* actually paid to satisfy the judgment and sentence and characterized this as property. *See Id.* at 368 (citing *Nelson*, 137 S.Ct. at 1257–58).

The *Hecht* Court, citing *Nelson v. Colorado*, pointed out that its analysis of restitution and the return of property comported with due process. *Hecht*, at 368 (citing *Nelson v.*

*Colorado*, 581 U.S. 128, 137 S.Ct. 1249, 1252, 197 L.Ed.2d 611 (2017)).

Because there is no constitutionally protected interest in CSW performed in lieu of paying LFOs imposed in a judgment and sentence, the refusal to require cash reimbursement for such does not violate Nelson's rights to due process.

Moreover, Nelson's equal protections claim fails because Nelson has not established unequal treatment due to membership in a class of individuals. This is because the denial of cash reimbursement for CSW applies irrespective of one's economic situation. Nelson also fails to establish that *she* was forced to do CSW in order to satisfy her LFOs because she was poor.

The *Nelson* Court pointed out that Nelson actually paid cash to satisfy a portion of her LFOs. Further, the record shows Nelson did CSW to satisfy LFOs not because she was indigent, but because the trial court authorized it. After Nelson performed CSW which was converted from her jail sentence, the trial court

applied the excess towards her LFOs. CPI 28. A few years later, Nelson, despite the authorization to do CSW, actually requested the court to put her on pay or appear to continue paying LFOs with cash at the rate of \$80 per month, to be distributed equally between her four cases. CPI, Clallam Co. Superior Ct., no. 95-1-00163-6, sub. no. 179, Motion hearing, filed Jan. 25, 2007; CPII 27.

Based upon the record, the *Nelson* Court was correct in finding that Nelson failed to establish that she did CSW because she was too poor to pay LFOs with cash let alone that all people who perform CSW in such cases do so because they are indigent or poor. Furthermore, “[the Washington State Supreme Court] has previously stated that ‘[t]he equal protection clause does not require a state to eliminate all inequalities between the rich and the poor.’”) *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 449, 853 P.2d 424 (1993) (quoting *Riggins v. Rhay*, 75 Wn.2d 271, 283, 450 P.2d 806 (1969)).

Therefore, Nelson fails to show that, due to indigency, she was treated differently from others in a class of similarly situated people when she was denied compensation for CSW performed.

“If the state action does not threaten a fundamental or “important” right, or if the individual is not a member of a suspect or semisuspect class, [courts] apply a rational relationship or rational basis test.” *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (citing *State v. Shawn P.*, 122 Wn.2d 553, 560, 859 P.2d 1220 (1993)).

Here, the *Nelson* Court found that the court’s decision to limit reimbursement to cash actually paid survives rational basis review and is consistent with *Runyan*, 121 Wn.2d at 449, 853 P.2d 424 (1993).

In *Runyan*, RCW 10.73.100 was a reasonable means of controlling the flow of potentially endless filings of postconviction collateral relief petitions and the limitations

apply equally to all prisoners regardless of economic status. *Id.* at 449. Similarly, the *Nelson* Court found that “[l]imiting reimbursement to only those LFOs satisfied by monetary payments to the State is a similarly rational means of determining and controlling the flow of reimbursement requests from defendants who have had a conviction overturned pursuant to *Blake*. *State v. Nelson*, 558 P.3d 197, 206 (Wash.App. Div. 2, 2024). Also, as in *Runyan*, the limitation on reimbursement applies equally to all persons regardless of economic status. Thus, *Nelson* is consistent with *Runyan* and in finding the trial court’s action survived rational basis review.

Finally, the *Nelson* Court easily distinguished *Willoughby v. Dep't of Lab. & Indus.*, from which *Nelson* argues that “[p]reservation of state funds is not in itself a sufficient basis to defeat an equal protection challenge.” 147 Wn.2d 725, 741, 57 P.3d 611 (2002), *abrogated on other grounds by Yim*, 194 Wn.2d at 704, 451 P.3d 694. The *Nelson* Court pointed out that it was not mere solvency that justified the limitation on cash

reimbursement to cash actually paid. *State v. Nelson*, 558 P.3d at 207. The *Nelson* Court pointed out that the State received no benefit from the Nelson's CSW performed in lieu of paying LFOs. *Id.*

Therefore, *Nelson* was consistent with *Runyan* finding the court's action limiting cash reimbursement to cash actually paid survives rational basis review.

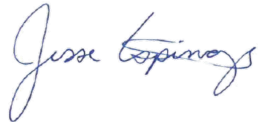
## **VI. CONCLUSION**

Review of the Court of Appeals decision is not warranted under RAP 13.4(b) because Nelson has not established that “a significant question of law under the Constitution of the State of Washington or of the United States is involved.” For the foregoing reasons, the State respectfully requests that the Court deny Nelson's Petition for Review.

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Respectfully submitted this 6th day of January, 2025.

MARK B. NICHOLS  
Prosecuting Attorney

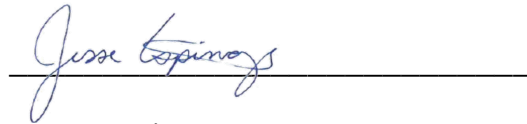
A handwritten signature in blue ink, reading "Jesse Espinoza". The signature is fluid and cursive, with the first name "Jesse" and last name "Espinoza" clearly distinguishable.

JESSE ESPINOZA  
WSBA No. 40240  
Deputy Prosecuting Attorney

## **CERTIFICATE OF DELIVERY**

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically to Jessica Wolfe on January 6, 2025.

MARK B. NICHOLS, Prosecutor



Jesse Espinoza



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