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Case #: 1037040

Supreme Court No. _____
Court of Appeals No. 58813-7-II

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.

BOBBI JEAN LATCH,
Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, Bobbi Latch, appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review that is designated in part B of this petition.

B. DECISION OF THE COURT OF APPEALS

Ms. Latch seeks review of the unpublished opinion of the Court of Appeals in cause number No. 58813-7-II, 2024 WL 4851443, filed November 21, 2024. A copy of the decision is in Appendix A at pages A-1 through A-4.

C. ISSUE PRESENTED FOR REVIEW

Should this Court grant review where due process requires the State to return the full amount of LFOs paid by a defendant who subsequently has her or his criminal conviction vacated, and where Ms. Latch paid off a portion of her LFOs in the form of labor and the trial court declined to refund Ms. Latch for the amount of LFOs she paid in community service work performed.

D. STATEMENT OF THE CASE

Bobbi Latch was convicted by plea of possession of marijuana on September 8, 1997. Clerk's Papers (CP) at 57-63,

48-56. RCW 69.50.401(d). She was sentenced to 30 days, and the court ordered that the 30 days could be converted to 240 hours of community service hours at the rate of eight hours equal to one day. CP at 52. The sentencing court also imposed legal financial obligations including \$110.00 in costs, \$250.00 attorney fees, a \$500.00 crime victim penalty assessment, and a \$1000.00 fine, for total LFOs of \$1860.00. CP at 51.

An order allowing the hours of community service work performed in excess of the converted jail time to be credited against the LFOS was entered March 12, 1999. CP at 47. A Minute Order was entered May 22, 2006, reflecting the court had reviewed and accepted 250 hours of community service work performed by Ms. Latch and converting that at a rate of \$7.63 an hour—the state minimum wage—for a total of \$1907.50 to be credited against her non-restitution LFOs. CP at 44-46. The Clallam County court clerk spread sheet attached to the Minute Order Converting CSW in Lieu of Fines indicates that Ms. Latch paid \$500.00 toward the LFOs. CP at 16, 24, 45.

On September 6, 2023, Ms. Latch moved to have her

conviction vacated under CrR 7.8 (b)(4) and (5), and *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). CP at 41. As part of her motion to vacate, Ms. Latch requested the court to order that she be reimbursed for payments she made towards her LFOs and also for community service work (CSW) performed to satisfy the LFOs. CP at 41. Ms. Latch's counsel submitted a brief in support of the motion and argued that she was entitled to reimbursement for \$500.00 paid in cash against the LFOs, and that she was entitled to reimbursement of \$1907.50 for CSW performed by Ms. Latch based on the state minimum wage (\$7.63 an hour) that was applied toward LFOs in lieu of paying cash. CP at 44.

The motion to vacate the conviction for drug possession and for refund of LFOs paid and for community service performed was heard by Judge Simon Barnhart on October 10, 2023. Report of Proceedings (RP) at 4-24. The prosecution argued that the State did not receive a benefit from Ms. Latch's CSW, that it was the "community" that received a benefit and that "the community is different from the state," and that "the state does not have that labor in its back pocket somewhere, did not receive a benefit from

that labor,” and that it was an opportunity for a defendant, who is indigent, to perform a service instead of repaying legal financial obligations which they don’t have the ability to pay[.]” RP at 12. After hearing argument of counsel, the Clallam County Superior Court granted Ms. Latch’s motion to vacate her conviction pursuant to *Blake* but concluded that CSW performed in lieu of paying LFOs was not subject to cash reimbursement. CP at 15-16. The court granted a refund of \$500 in cash paid toward LFOs, but denied the requested refund of \$1907.50 for CSW performed by the defendant as repayment for that amount of LFOs. CP at 16. The court stated:

I believe that to the extent that we’re operating in a world of restitution, that there’s not a benefit that the state directly received from the defendant that would entitle the defendant to reimbursement for the value of his labor. There may be a different avenue, I don’t know, in a civil side, an inequity, but at least in the context of these criminal proceedings, the court doesn’t believe that there’s a basis to award a financial reimbursement to a defendant who provided community

service work in lieu of paying legal financial obligations.

RP at 22.

On direct review Ms. Latch appealed the superior court's order denying her motion for cash reimbursement for the community service work that she completed to satisfy her legal financial obligations (LFOs) after her possession of a controlled substance conviction was vacated. Ms. Latch argued that due process required her to be reimbursed for community service work converted to LFO payments. *State v. Latch*, slip op. at 2-3.

By unpublished opinion filed November 21, 2024, the Court of Appeals, Division II, affirmed the superior court's order. See unpublished opinion, *Latch*, slip op at 1, 4. Ms. Latch relies on the facts as presented in the Court's Opinion and as contained in her Brief of Appellant at 5-13.

Ms. Latch petitions this Court for discretionary review pursuant to RAP 13.4(b).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The considerations that govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes that this court

should accept review because the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; and is in conflict with a published decision of the Court of Appeals. RAP 13.4(b)(1), (2).

1. Defendants who have subsequently vacated convictions have a fundamental right to be made whole financially as a matter of substantive due process.

In *Nelson v. Colorado*, 581 U.S. 128, 137 S. Ct. 1249, 197 L.Ed.2d 611 (2017), the Supreme Court addressed a procedural due process challenge to a Colorado law that allowed reimbursement of fees paid based on a conviction that had been overturned but only if the defendant proved their innocence. *Id.* at 134. Applying the *Mathews* test, the Court concluded that the Colorado law violated procedural due process. *Id.* at 139.

The Fourteenth Amendment's Due Process Clause “forbids the government to infringe certain ‘fundamental’ liberty interests at *all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno v.*

Flores, 507 U.S. 292, 302, 113 S. Ct. 1439, 123 L. Ed.2d 1 (1993) (emphasis in original). The presumption of innocence reattaches when a court erases a conviction. See *Johnson v. Mississippi*, 486 U.S. 578, 585, 108 S. Ct. 1981, 100 L. Ed.2d 575 (1988). The State relinquishes all rights to payments exacted from the innocent. *Nelson v. Colorado*, 581 U.S. 128, 136, 137 S. Ct. 1249, 197 L. Ed.2d 611 (2017).

Under the Court's holding in *Nelson*, (*id.* at 1252), the State is obligated under the due process clause of the Fourteenth Amendment to refund monies where three elements are satisfied: (1) the monies were “exacted from the defendant” upon conviction and as a consequence of the conviction; (2) the amounts “exacted” were actually paid by the defendant; and (3) the conviction has been “invalidated by a reviewing court and no retrial will occur.” *Id.* at 1252. Once a defendant's conviction is “erased, the presumption of [his] innocence [is] restored,” (*id.* at 1255), and the State “has no interest in withholding from [a

defendant] money to which the State currently has zero claim of right,” *id.* at 1257.

Nelson v. Colorado was recently addressed by Division Two in *State v. Nelson*, No. 58161-2-II, slip op. at 6-7 (Wash. Ct. App. Oct. 29, 2024). In *Nelson v. Colorado* the Court recognized the private interest at stake in a procedural due process analysis in the context of weighing the private interest affected by the Colorado law, but the Court did not identify a fundamental right to reimbursement of funds for substantive due process purposes. *Nelson v. Colorado*, 581 U.S. at 135-36; *State v. Nelson*, slip op. at 6-7. Accord, *State v. Parrish*, No. 58805-6-II, (unpublished), 2024 WL 4949108 (December 3, 2024) (*Nelson v. Colorado* does not support Parrish's substantive due process claim).

Ms. Latch respectfully submits that *State v. Nelson* is wrongly decided and asks that review be accepted by this Court. Ms. Latch submits that substantive due process and the principle

of “fundamental fairness” articulated in *Nelson v. Colorado* prohibits the State from being unjustly enriched from a conviction that was subsequently vacated. Substantive due process requires the State to return value obtained from Ms. Latch, regardless of the form in which it was paid, including the wages of her labor performed to pay off LFOs.

For the foregoing reasons, this Court should accept review and remand to the trial court with the direction to vacate the conviction.

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F. CONCLUSION

For the foregoing reasons, this Court should grant review to correct the above-referenced errors in the unpublished opinion of the court below that conflict with prior decisions of this Court and the courts of appeals.

Certificate of Compliance: This document contains 1566 words, excluding the parts of the document exempted from the word count by RAP 18.17.the petition exempted from the word count by RAP 18.17.

DATED: December 18, 2024.

Respectfully submitted,
THE TILLER LAW FIRM



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Of Attorneys for Bobbi Latch

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that the Statement of Arrangements was e-filed to the Court of Appeals, Division 2, and Jesse Espinoza, Clallam County Prosecuting Attorney's office, and mailed to Bobbi Latch, Appellant by first class mail, postage pre-paid on December 18, 2024, at the Centralia, Washington post office addressed as follows:

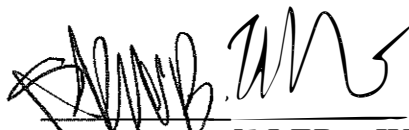
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Dated: December 18, 2024.

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P.B. Tiller', written over a horizontal line.

PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

November 21, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BOBBI JEAN LATCH,

Appellant.

No. 58813-7-II

UNPUBLISHED OPINION

PRICE, J. — Bobbi J. Latch appeals the superior court’s order denying her motion for cash reimbursement for the community service work that she completed to satisfy her legal financial obligations (LFOs) after her unlawful possession of a controlled substance conviction was vacated. Latch argues that due process requires her to be reimbursed for community service work converted to LFO payments. We disagree and affirm the superior court’s order.

FACTS

In 1997, Latch was convicted of unlawful possession of a controlled substance. In lieu of jail time, Latch was sentenced to 240 hours of community service and 12 months of community supervision. The superior court also imposed \$1,860 in LFOs. After she had completed most of her community service work, the superior court allowed her to satisfy her remaining LFOs by continuing to do community service work with a local community center. In addition to paying \$500 in cash toward her LFOs, Latch completed 250 hours of community service work, which the court valued at \$1,907.50 to be credited to her LFOs.

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extends to community service work converted to LFO payments. Although the phrase “substantive due process” does not appear in her brief, it appears that Latch is arguing that substantive due process, rather than procedural due process, requires reimbursement of community service work converted to LFO payments.

Recently, this court addressed the same argument in *State v. Nelson*. *State v. Nelson*, No. 58161-2-II, slip op. at 7 (Wash. Ct. App. Oct. 29, 2024).³ This court noted that, to the extent *Nelson*, 581 U.S. 128, actually recognized a constitutionally protected interest, it recognized only a constitutionally protected interest in money actually paid to the state. *Id.* Further, applying principles of substantive due process, this court held that the defendant failed to establish that there was a fundamental right to repayment of money for community service work converted to LFO payments. *Id.* at 7-8. We agree with the reasoning of *Nelson* and decline, on this record, to recognize a constitutionally protected interest in reimbursement for community service work converted to LFO payments. Accordingly, principles of due process do not require Latch to be reimbursed for community service work converted to LFO payments.

CONCLUSION

Because Latch has failed to establish a constitutionally protected interest in reimbursement for community service work converted to LFO payments, Latch’s due process claim fails. Accordingly, we affirm the superior court.

³ <https://www.courts.wa.gov/opinions/pdf/D2%2058161-2-II%20Published%20Opinion.pdf>.

THE TILLER LAW FIRM

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Transmittal Information

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