Supreme Court No _____
Court of Appeals No. 58805-6-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JEFFREY PARRISH,
Petitioner.

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

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Rules and Regulations

Statutes

A. INTRODUCTION

When this Court issued its decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), Jeffrey Parrish instantly became eligible to have his 2008 drug possession conviction vacated and his legal financial obligations refunded. However, Mr. Parrish only received a partial refund. Because he was indigent, Mr. Parrish paid his debt through cash payments and community service work. Although the trial court reimbursed Mr. Parrish for his cash payments, it refused to refund him for the labor he performed for the State.

In violation of equal protection, the trial court's ruling treats innocent people who are indigent, like Mr. Parrish, worse than those with means. Yet Division II ruled there was no constitutional error. The same division rejected identical claims in a published opinion in *State v. Nelson*, No. 58161-2-II (consolidated with No. 58165-5-II) (Oct. 29, 2024), and in an unpublished opinion in *State v. Danielson*, No. 57675-9-II (Oct. 22, 2024). Petitions for review in both cases are pending before

this Court. This Court should weigh in on the significant constitutional law question presented by these cases.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Jeffrey Parrish, the petitioner, asks this Court to review the opinion of the Court of Appeals in *State v. Parrish*, No. 58805-6-II (Dec. 3, 2024), pursuant to RAP 13.4(b)(3).

C. ISSUE PRESENTED FOR REVIEW

State action which classifies people based on income level and doles out benefits or burdens based on that classification is subject to equal protection review. Here, the State has no substantial interest in refunding people for legal financial obligations they paid in cash while denying Mr. Parrish a refund for legal financial obligations he paid in labor. The court's disparate treatment of poor people like Mr. Parrish violates equal protection and presents a significant question of constitutional law that warrants this Court's review. RAP 13.4(b)(3).

D. STATEMENT OF THE CASE

Jeffrey Parrish was convicted of unlawful possession of a controlled substance in 2008. CP 20, 34, 56. He was assessed a total of $2,350 in legal financial obligations. CP 37, 62. In September and October of 2010, the court permitted Mr. Parrish to satisfy his legal financial obligations through community restitution work. CP 20, 39, 40.

Because "it appear[ed] to the satisfaction of the court that payment of the [legal financial obligation] amount due [would] impose manifest hardship" on Mr. Parrish, the court was authorized by statute to "remit all or part of the amount due in costs, or modify the method of payment." RCW 10.01.160(4) (effective 2008-2010). The court did not remit Mr. Parrish's remaining legal financial obligations. Instead, it modified the method of payment. CP 20, 39, 40. And it was only authorized to do so because Mr. Parrish was poor and the debt imposed manifest hardship. The first court order specified a conversion

rate of $8.00 per hour. CP 20, 39. A subsequent order amended the rate to the minimum wage: $8.55. CP 20, 40.

On December 17, 2010, the court received documentation that Mr. Parrish completed a total of 276 hours of community service at a rate of $8.55 per hour to total $2,359.80 in legal financial obligation credit—more than satisfying his $2,350.00 legal financial obligation debt. CP 21, 41–46. At that time, the court determined Mr. Parrish satisfied the conditions of his sentencing and was therefore eligible for a certificate of discharge. CP 21, 45–46.

Presumably due to a clerical error, the court's determination was not conveyed to the clerk's office and the clerk did not credit Mr. Parrish for his community service work or issue a certificate of discharge. CP 21. Instead, four months later, the court issued a "pay or appear" arrest warrant. CP 21, 47; RP 7. On February 22, 2011, Mr. Parrish was arrested. CP 21, 47. He was released only to be arrested again two years later in September 2012 on another "pay or appear" warrant for

alleged non-payment. CP 21, 50. On both occasions, the court ordered Mr. Parrish's $150 cash bail be forfeited. CP 22, 49, 52. Documents from the clerk's office show that Mr. Parrish's cash payments relating to this case total $620. CP 22, 54.

Following *Blake*, Mr. Parrish moved to vacate his unlawful possession conviction. CP 26, 55. He also requested a refund for legal financial obligation payments the State received in satisfaction of his unconstitutional and void conviction. CP 22, 26, 55. Although the trial court granted Mr. Parrish's motion to vacate his conviction and reimbursed him the $620 paid in cash, it refused to reimburse Mr. Parrish for the $2,350 paid to the State in community service work hours. CP 11–12; RP 19, 22.

Mr. Parrish appealed, arguing the trial court's refusal to refund him for his labor violated his equal protection rights. The Court of Appeals disagreed and affirmed the lower court's order. *Parrish*, No. 58805-6-II (Dec. 3, 2024).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED[1]

Providing Blake refunds for people who paid their legal financial obligations in cash while denying the same refunds to poor people who satisfied their legal financial obligations in labor violates equal protection.

The Fourteenth Amendment guarantees that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the law." U.S. Const. amend. XIV. Thus, any state action which categorizes people into groups and doles out benefits or burdens based on those classifications necessitates equal protection review. *See, e.g.*, *Strauder v. West Virginia*, 100 U.S. 303, 307, 25 L. Ed. 664 (1879) (finding the Equal Protection Clause "is to be construed liberally").

A person is denied equal protection of the law where state action treats members of an identifiable class differently

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[1] For the purposes of this Court's review, the argument for why review should be granted is effectively identical to the argument raised in the petition for review in *State v. Danielson*, No. 57675-9-II, which was filed with this Court on November 15, 2024, and *State v. Nelson*, No. 58161-2-II (consolidated with No. 58165-5-II), which was filed in this Court on December 4, 2024.

from other members of the class without a sufficient state interest. *See, e.g.*, *Shelley v. Kraemer*, 334 U.S. 1, 13–14, 68 S. Ct. 836, 92 L. Ed. 1161 (1948); *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006). Because it affects a suspect class, disparate treatment based on wealth requires a substantial relationship to an important state interest. *See, e.g.*, *Matter of Mota*, 114 Wn.2d 465, 474, 788 P.2d 538 (1990); *In re Pers. Restraint of Fogle*, 128 Wn.2d 56, 62–63, 904 P.2d 722 (1995).

The State must show its disparate treatment "serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S. Ct. 3331, 73 L. Ed. 1090 (1982) (internal quotation omitted); *see also State v. Shawn P.*, 122 Wn.2d 553, 560 n. 23, 859 P.2d 1220 (1993) (relying on *Hogan*).

If the classification does not merit intermediate scrutiny, courts apply rational basis review. *Osman*, 157 Wn.2d at 484. Although rational basis review is more deferential to the State,

actions that lack a "legitimate state interest" will not survive. *Id.* at 486. Even if this Court applies rational basis review, Mr. Parrish prevails because the State lacks *any* legitimate interest in withholding reimbursement from poor people who paid off their *Blake* legal financial obligations in community service.

a. Refusing to refund poor people who paid their legal financial obligation debt for an unconstitutional conviction with labor implicates a semi-suspect classification and an important right.

Washington considers classifications based on poverty to be "semi-suspect." *Mota*, 114 Wn.2d at 474. In *Mota*, this Court established that "[a] higher level of scrutiny is applied to cases involving a deprivation of a liberty interest due to indigency." *Id.* And even though a superseding statute rendered *Mota*'s specific holding obsolete, this Court has noted that *Mota*'s reasoning remains undisturbed and that wealth-based classifications merit "semi-suspect" status. *See Fogle*, 128 Wn.2d at 62–63.

"Indigence" does not require "absolute destitution." *See State v. Johnson*, 179 Wn.2d 534, 553, 315 P.3d 1090 (2014).

Courts determine constitutional indigence based on the totality of the defendant's financial circumstances in light of a particular fine. *Id.* at 554 (relying on *Bearden v. Georgia*, 416 U.S. 660, 666 n. 8, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983).

Moreover, the right of a person to seek reimbursement for payments made toward legal financial obligations after their conviction has been vacated is not just "important"—it is fundamental. *See Coffin*, 156 U.S. at 454 (recognizing an "axiomatic and elementary" presumption of innocence, which "lies at the foundation of the administration of our criminal law"); *see Nelson v. Colorado*, 581 U.S. 128, 135–36, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017); *see also Coffin*, 156 U.S. at 454 (holding people who have their convictions overturned have an "obvious interest" in being refunded).

Here, the court used Mr. Parrish's indigence as the basis for exacting legal financial obligation payment in the form of labor in lieu of cash. *Blake* voided any interest the State had in

Mr. Parrish's legal financial obligations. *See Nelson*, 581 U.S. at 135–36. Thus, he has a fundamental right to full restoration.

b. The State does not have an important interest in withholding reimbursement from poor people.

Intermediate scrutiny requires the State—not Mr. Parrish—to prove the disparate treatment furthers a "substantial interest." *Mota*, 114 Wn.2d at 474; *see also United States v. Virginia*, 518 U.S. 515, 533, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996) (noting that for intermediate scrutiny "[t]he burden of justification is demanding and it rests entirely on the State"). And unlike rational basis review, where courts may "hypothesize facts to justify a . . . distinction," *see Schroeder v. Weighall*, 179 Wn.2d 566, 574, 316 P.3d 482 (2014), intermediate scrutiny requires the proffered justification to be "genuine, not hypothesized or invented *post hoc* in response to litigation." *Virginia*, 518 U.S. at 533.

Satisfying intermediate scrutiny and upholding the state action almost always requires a substantial interest relating to public safety. *See, e.g.*, *Fogle*, 128 Wn.2d at 63 (finding a

substantial interest in "maintaining prisoner discipline, particularly by preventing flight from prosecution and preserving local control over jails"); *State v. Miles*, 66 Wn. App. 365, 368, 832 P.2d 500 (1992) (finding a substantial interest in "protecting society" and "deterring offenders on community placement from committing subsequent crimes").

Here, the State has not provided sufficient justification for its refusal to reimburse Mr. Parrish for the work he performed in payment of his legal financial obligations debt. There is no public safety rationale. And it is not Mr. Parrish's—or, for that matter, this Court's—job to justify the State's decision to withhold remuneration. That burden falls solely and "demanding[ly]" on the State. *Virginia*, 518 U.S. at 533.

c. The State's policy of denying reimbursement for debt paid in community service work fails rational basis review.

Not only does the State lack a substantial interest in withholding Mr. Parrish's remuneration, it cannot satisfy even the more relaxed standard of rational basis review—which

requires only a "legitimate" government interest. *Osman*, 157 Wn.2d at 486.

In *Reanier v. Smith*, this Court applied equal protection review to a State practice of denying time-served credit for pre-trial detention. 83 Wn.2d 342, 343, 517 P.2d 949 (1974).[2] Two of the petitioners in that case did not have money to post bail. *Id.* at 343–44. As a result, they spent months in pre-trial confinement. *Id.* However, neither received credit for time served at sentencing. *Id.* The Court compared the petitioners to similarly situated defendants who had money to post bail. *Id.* at 346–47. "[W]ealthy defendants," the Court noted, could pay for their freedom pre-trial, but "the poor stay[ed] behind bars." *Id.* at 349. Because the lower court did not have a "rational reason" to treat the two groups differently, the Court held the practice "clear[ly] . . . breached" equal protection. *Id.* at 347, 349.

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[2] This Court decided *Reanier* before the development of intermediate scrutiny, which is why it applied rational basis review to a classification on the basis of wealth.

Elsewhere in Washington, courts have consistently and repeatedly held that administrative reasons, by themselves, cannot survive rational basis review. For example, "[p]reservation of state funds is not in itself a sufficient basis to defeat an equal protection challenge." *Willoughby v. Dep't. of Lab. and Indus.*, 147 Wn.2d 725, 741, 57 P.3d 611 (2002), *partially abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). Similarly, the presence of an established administrative pattern or tradition is not sufficient. *See, e.g.*, *Wash. Pub. Emps. Ass'n v. State*, 127 Wn. App. 254, 268, 110 P.3d 1154 (2005). And neither is "administrative convenience." *See In re Salinas*, 130 Wn. App. 772, 778, 124 P.3d 665 (2005).

The Court of Appeals, relying on *Salinas*, has reiterated that state actions denying reimbursement because there was no "obvious, and maybe no easy, method to quantify" an entitlement were not legitimate and did not pass rational basis review. *In re Stevens*, 191 Wn. App. 125, 138–39, 361 P.3d 252

(2015) ("The [Department of Corrections'] justifications for its different treatment . . . amounts to administrative inconvenience and the *Salinas* court already rejected the same logic . . . We agree with *Salinas* that administrative inconvenience is not a rational basis.").

Refunding the wealthy and depriving the poor is disparate treatment that offends fundamental principles of equal protection and innocence. Because the lower court violated Mr. Parrish's right to equal protection, the Court of Appeals should have reversed and directed the court below to refund all payments. Yet it refused to do so.

Simply put: The trial court's ruling treated poor people worse than people with means. Similarly situated people who had money to pay off their legal financial obligations were entitled to full reimbursement. But people without money were not. Denying Mr. Parrish a full refund violates equal protection and warrants this Court's review. RAP 13.4(b)(3).

F. CONCLUSION

For the reasons stated above, this Court should accept review.

This brief is 2,372 words long and complies with RAP 18.17.

DATED this 2nd day of January, 2025.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JEFFREY RANDALL PARRISH, Appellant.	No. 58805-6-II UNPUBLISHED OPINION

GLASGOW, J.—Parrish was convicted of unlawful possession of methamphetamine in 2008. The court found that he had the ability or future ability to pay and ordered him to pay $2,350 in various legal financial obligations (LFOs). Parrish asked the court to permit him to satisfy a portion of his LFOs by performing community service. The court granted the request but did not make a finding that Parrish was indigent.

In 2021, the Washington Supreme Court held in *State v. Blake*[1] that Washington's strict liability drug possession statute[2] was void because it violated due process. Parrish then moved to vacate his conviction and for an LFO refund under CrR 7.8. He asked the court to refund the cash equivalent of the community service labor that he performed to satisfy his LFOs, in addition to refunding his cash payments. The court granted the motion in part, vacated his conviction, and

[1] 197 Wn.2d 170, 174, 481 P.3d 521 (2021).
[2] Former RCW 69.50.4013(1) (2017).

ordered a refund of $620 in cash payments, but declined to order reimbursement for Parrish's community service.

Parrish appeals the court's partial denial of his CrR 7.8 motion. He argues that refusing to reimburse him for his community service violated the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. He also argues that the trial court erred by treating his CrR 7.8 motion as a civil claim for damages. We disagree and affirm.

FACTS

I. BACKGROUND

In 2008, Parrish pleaded guilty to one count of unlawful possession of a controlled substance under former RCW 69.50.4013(1) (2003). The court considered Parrish's financial resources and found that he had the ability or likely future ability to pay LFOs. The court ordered him to pay $2,350 in LFOs including costs, fees, and restitution. No LFOs were waived or suspended due to indigency. The court also ordered Parrish to perform 240 hours of community service in lieu of jail time.

A. Conversion of LFOs

Parrish continued to perform community service after completing his required community service hours. Parrish asked the court to permit him to satisfy his LFOs by performing community service and to apply his excess community service hours to the balance of his LFOs. The court ordered that Parrish "will be allowed to perform community service work hours and they will be converted at minimum wage [$8.55 per hour] to be applied to defendant's legal financial obligations." Clerk's Papers (CP) at 40. The court also ordered that Parrish's excess community service already performed could be credited toward his nonrestitution LFOs. The court did not find

Parrish to be indigent or otherwise discuss its reason for allowing community service in lieu of payment.

B. Satisfaction of LFOs and Subsequent Procedure

Parrish petitioned for discharge after completing 276 hours of community service to be credited toward his LFOs. The State agrees that these hours amounted to about $2,360 in LFO credit and that these hours satisfied all of Parrish's LFOs. The court ordered that Parrish's judgment was satisfied in December of 2010.

Parrish was later arrested twice on pay or appear warrants as the result of an apparent clerical error. Due to the arrests, Parrish paid warrant fees and forfeited cash bail The parties agree that including these payments, Parrish ultimately paid a total of $620 in cash toward LFOs in addition to his community service hours.

II. POST-*BLAKE* PROCEDURE

In 2021, the Washington Supreme Court held in *State v. Blake* that Washington's strict liability drug possession statute, former RCW 69.50.4013(1), was void because it violated due process. 197 Wn.2d at 174.

Parrish moved to vacate his conviction and for an LFO refund under CrR 7.8(b)(4) and (5), because his conviction was void under *Blake*. Parrish asked the court to refund $620 and to reimburse the remainder of his LFOs that were satisfied through community service. Parrish specified that he was "not seeking damages" and was "not seeking reimbursement for community restitution work done in excess of the total imposed judgment." CP at 22.

Parrish argued that reimbursement of his community service hours was required under the principles of substantive due process, equal protection, and unjust enrichment. Parrish

acknowledged that "we don't have a specific order finding the indigence" to show that his indigence was the cause of any disparate treatment. Verbatim Rep. of Proc. (VRP) at 5. However, he argued that the court should infer his indigence because he was assigned counsel. The State responded that Parrish's community service benefitted the organizations he volunteered for but did not confer a benefit on the State.

The court granted Parrish's motion in part, vacating his conviction and refunding the $620 in cash payments. The court explained that the State did not directly receive a benefit from Parrish's community service hours and that "in the context of these criminal proceedings," there was not a basis for reimbursement for community service hours. VRP at 22. The court noted that there might be a civil avenue for recovery and that "to the extent that we're operating in a world of restitution," Parrish's labor did not directly benefit the State. *Id.* The court adopted Parrish's proposed written order but crossed out a paragraph that would have certified a refund of approximately $2,360 for the community service he performed. Parrish appeals.

ANALYSIS

I. SUBSTANTIVE DUE PROCESS

Parrish argues that the trial court violated due process when it refused to reimburse him for community service hours worked to satisfy his LFOs. We disagree.

A. Substantive Due Process Framework

The Fourteenth Amendment protects people from deprivations of "life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The due process clause provides substantive and procedural protections. *Romero v. Dep't of Soc. & Health Servs.*, 30 Wn. App. 2d 323, 345, 544 P.3d 1083 (2024). The two inquiries are distinct: substantive due process "requires

deprivations of life, liberty, or property to be substantively reasonable," whereas procedural due process entitles individuals to "'notice . . . and an opportunity to be heard to guard against erroneous deprivation.'" *Id.* at 339, 345 (quoting *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216, 143 P.3d 571 (2006)).

We review substantive due process challenges de novo. *In re Adoption of K.M.T.*, 195 Wn. App. 548, 559, 381 P.3d 1210 (2016). Our substantive due process inquiry begins with "'the nature of the right involved.'" *Chong Yim v. City of Seattle*, 194 Wn.2d 682, 689, 451 P.3d 694 (2019) (quoting *Amunrud*, 158 Wn.2d at 219). If the government has interfered with a fundamental right, we apply strict scrutiny and ask whether "'the infringement is narrowly tailored to serve a compelling state interest.'" *Id.* (quoting *Amunrud*, 158 Wn.2d at 220). If the "'state action does not affect a fundamental right, the proper standard of review is rational basis.'" *Id.* (quoting *Amunrud*, 158 Wn.2d at 222). The rational basis test asks whether the challenged deprivation was "'rationally related to a legitimate state interest.'" *Id.* (quoting *Amunrud*, 158 Wn.2d at 222).

B. Parrish Has Not Identified A Fundamental Right

Parrish asserts that we should apply strict scrutiny, relying on *Nelson v. Colorado*, 581 U.S. 128, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017), to argue that there is a "fundamental right to restoration" after a conviction is reversed, including reimbursement for work performed in lieu of payment of his LFOs. Br. of Appellant at 6. But *Nelson v. Colorado* performed a *procedural* due process analysis, so its reasoning does not support a *substantive* due process claim. 581 U.S. at 134-35. We agree with the State that Parrish has not identified a fundamental right that would trigger strict scrutiny within our substantive due process analysis.

In *Nelson v. Colorado*, the Supreme Court addressed procedural due process and applied the *Mathews v. Eldridge*[3] balancing test to Colorado's process for obtaining reimbursement of fees paid pursuant to overturned convictions. *Nelson v. Colorado*, 581 U.S. at 135. *Mathews* requires courts to balance three factors in a procedural due process challenge: the private interest affected by the challenged procedure; the risk of erroneous deprivation under the challenged procedure; and the countervailing governmental interest supporting the challenged procedure. 424 U.S. at 335.

In addressing the private interests affected by the Colorado law, the Court explained that the petitioners had "an obvious interest in regaining the money they paid to Colorado" because once their "convictions were erased, the presumption of their innocence was restored." *Nelson v. Colorado*, 581 U.S. at 135. The Court characterized the presumption of innocence as "'[a]xiomatic and elementary'" to the "'foundation of our criminal law.'" *Id*. at 135-36 (quoting *Coffin v. United States*, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed. 481 (1895)). As for the governmental interest in the money, the Court explained, "Colorado has no interest in withholding from [petitioners] money to which the State currently has zero claim of right." *Id.* at 139. The Court ultimately concluded that the Colorado law was procedurally deficient under the *Mathews* test. *Id.*

As a panel of this court recently explained, the *Nelson v. Colorado* Court referred to a foundational principle in criminal law, it did so in the context of weighing the private interest affected by the Colorado law and did not articulate a fundamental right associated with the reimbursement of funds after an overturned conviction. *State v. Nelson*, No. 58161-2-II, slip op. at 6-7 (Wash. Ct. App. Oct. 29, 2024), https://www.courts.wa.gov/opinions/pdf/D2%2058161-2-

[3] 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

II%20Published%20Opinion.pdf (addressing *Nelson*, 581 U.S. at 135-36). The foundational principle that the *Nelson v. Colorado* Court identified—the presumption of innocence—is certainly fundamentally important, but the Court's recognition of the private interest at stake in a procedural due process analysis did not also create a fundamental right to reimbursement of funds for substantive due process purposes. 581 U.S. at 135-36. Although Parrish discusses the right at stake in this case as the right to a presumption of innocence, Parrish has not explained precisely how refusal to pay him for community service hours invaded his right to a presumption of innocence.

Furthermore, we note that "'[t]he protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity'" and "[t]hese fields likely represent the outer bounds of substantive due process protection." *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 n.4 (9th Cir. 1998) (quoting *Albright v. Oliver*, 510 U.S. 266, 272, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994)); *see also State v. Nelson,* No. 58161-2-II, slip op. at 7. Thus, *Nelson v. Colorado* does not support Parrish's substantive due process claim, and Parrish cites to no other legal authority establishing a substantive due process right or common law right to monetary reimbursement for community service performed to satisfy a criminal judgment and sentence when the underlying criminal statute is later held to be unconstitutional. We conclude that Parrish has failed to establish a fundamental right that would elevate scrutiny beyond rational basis in this case.

C. Reimbursing Only Cash LFO Payments Survives Rational Basis Review

Because Parrish has not shown a threat to a fundamental right, we apply rational basis review. *See Chong Yim*, 194 Wn.2d at 689. Parrish argues that the refusal to reimburse his

community service is supported only by administrative and economic justifications that are insufficient to survive rational basis review. We disagree.

Under the rational basis test, the challenged state action must bear only a rational relationship to a legitimate state interest. *Id.* We "may assume the existence of any necessary state of facts" that we "can reasonably conceive in determining whether a rational relationship exists between the challenged [state action] and a legitimate state interest." *Amunrud*, 158 Wn.2d at 222.

Here, we examine whether a legitimate state interest supports the trial court's partial denial of Parrish's CrR 7.8 motion and refusal to reimburse the cash equivalent of Parrish's LFOs that were completed via community service. Parrish cites *In re Salinas*, 130 Wn. App. 772, 124 P.3d 665 (2005), and *In re Stevens*, 191 Wn. App. 125, 361 P.3d 252 (2015) for the idea that administrative convenience cannot constitute a legitimate state interest. *Salinas* and *Stevens* both involved the same facts, namely, the State's refusal to grant good time early release credit to defendants who were incarcerated out of state. *Stevens*, 191 Wn. App. at 137; *Salinas,* 130 Wn. App. at 774. In both cases, we rejected the State's administrative inconvenience justification not because administrative concerns are wholesale insufficient to constitute a legitimate state interest, but because the State proffered an administrative justification that was not rationally related to the distinction it employed to deny good time credit to the petitioners in those cases. *Salinas*, 130 Wn. App. at 778 (pointing out that good time credit was granted to others despite "present[ing] the same administrative inconvenience"); *Stevens*, 191 Wn. App. at 139 (same).

We conclude that the State has a legitimate interest in limiting reimbursement to those *Blake* defendants who paid their LFOs in cash. For one thing, the distinction between LFOs paid in cash and those satisfied via community service serves to control the flow of reimbursement

requests and allows the state to efficiently refund all readily definable monetary payments. *See In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 449, 853 P.2d 424 (1993) (holding that the State has a legitimate interest in "controlling the flow" of postconviction relief when "[f]aced with a virtually unlimited universe of possible postconviction claims."). Additionally, it is rational to distinguish between community service and cash LFO payments when ordering reimbursement from State funds because, unlike community service performed in lieu of payment, cash payments directly benefitted the State. *See State v. Nelson*, No. 58161-2-II, slip op. at 14-15.

Parrish relies on *Willoughby v. Department of Labor & Industry*, 147 Wn.2d 725, 57 P.3d 611 (2002), to assert that preserving state funds cannot constitute a legitimate interest to satisfy rational basis review. But *Willoughby* applied a different substantive due process standard, the now-rejected "unduly oppressive test" that was formerly interpreted as an elevated level of scrutiny applied to laws regulating the use of property. *Chong Yim,* 194 Wn.2d at 690. *See Willoughby*, 147 Wn.2d at 733. Moreover, it is well established that governments are entitled to make incremental decisions about economic policy, something that refund allocation certainly is. *See Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483, 489, 75 S. Ct. 461, 99 L. Ed. 563 (1955). And here, unlike in *Willoughby*, we are not confined to the State's proffered justifications but "may assume the existence of any necessary state of facts" that could provide a rational basis for the classification. *Amunrud*, 158 Wn.2d at 222. As a panel of this court explained, there are other reasons to distinguish among LFOs paid in cash versus those paid in labor: it was reasonable to limit the volume of reimbursements and prioritize cash payments, which benefitted the State. *State v. Nelson*, No. 58161-2-II, slip op. at 14-15.

Thus, we hold that the trial court's refusal to reimburse Parrish's community service performed in lieu of paying his *Blake* LFOs survives rational basis review, and Parrish's substantive due process claim fails.

II. EQUAL PROTECTION

Parrish argues that the trial court denied him equal protection by treating him differently than other similarly situated defendants on the basis of his purported indigency. We disagree.

The equal protection clause of the Fourteenth Amendment prohibits state actors from denying "to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. "'Equal protection requires that all persons similarly situated should be treated alike.'" *Romero*, 30 Wn. App. 2d at 347 (internal quotation marks omitted) (quoting *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 608, 192 P.3d 306 (2008)).

As a threshold matter, an individual raising an equal protection claim must show that they "received disparate treatment because of membership in a class of similarly situated individuals and that the disparate treatment was the result of intentional or purposeful discrimination." *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006). If the individual does not make this threshold showing, no equal protection analysis is required. *See State v. S.D.H.*, 17 Wn. App. 2d 123, 141, 484 P.3d 538 (2021).

A. Parrish Has Not Shown Disparate Treatment Because of Indigency

To show a violation of the equal protection clause, Parrish must first "establish his classification by showing he was treated differently from others who were similarly situated." *Osman*, 157 Wn.2d at 485. Parrish attempts to show that people who satisfy their LFOs through community service hours are similarly situated to wealthier people who satisfy their LFOs through

cash payments. Parrish asserts that because of his indigency, he was "not similarly restored" compared to wealthy defendants who paid their LFOs in cash. Br. of Appellant at 15. We disagree.

Parrish's claim rests on the premise that indigent individuals satisfy their LFOs through community service and wealthy individuals satisfy their LFOs by paying cash. He asserts: "Similarly situated people who had money to pay off their LFOs are receiving full reimbursement. But people who lack money, who paid the same LFOs for the same unconstitutional and void convictions in labor, are not similarly restored." *Id.* Parrish does not, however, show that the group of individuals who performed community service in lieu of LFOs consists of exclusively or even mostly indigent individuals. And although Parrish may be correct that those who paid their LFOs in cash are, on the whole, wealthier than those who performed community service in lieu of LFOs, this does not establish that the trial court permitted him to perform community service in lieu of payment *because* he was indigent.

Parrish asserts that the terms of his LFOs were modified to permit community service in lieu of LFO payments "[b]ecause he is indigent." *Id.* at 8. He cites to RCW 10.01.160(4), which currently allows a sentencing court to "modify the method of payment" of court costs "or convert the unpaid costs to community restitution hours" if payment poses a "manifest hardship" to the defendant. RCW 10.01.160(4) goes on to provide, "Manifest hardship exists where the defendant is indigent." However, the record does not show what authority the trial court relied on when it converted Parrish's LFOs to community service.

Moreover, at the time of the relevant orders, the statute mentioned neither indigency nor community restitution. *See* former RCW 10.01.160(4) (2010). And neither the current nor former statute actually *requires* indigency to convert LFOs to community service, and we cannot presume

that the legislature actually *meant* to create a class of indigent defendants when it chose to use a different term. *See Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007) ("When the legislature uses two different terms in the same statute, courts presume the legislature intends the terms to have different meanings.").

Indeed, the record does not establish that the trial court considered Parrish's finances at the time it permitted future community service work. Nor does the record show that the court considered Parrish's finances at the time it deemed Parrish's LFOs satisfied. The sole ruling regarding Parrish's ability to pay LFOs was entered at the time the LFOs were initially imposed, when the trial court found he *would* likely be able to pay them. Therefore, we find no support in the record for Parrish's assertion that "the court used Mr. Parrish's indigence as the basis for exacting LFO payment in the form of labor in lieu of cash." Br. of Appellant at 13.

On this record, Parrish has not met his burden to show that the trial court's partial denial of Parrish's CrR 7.8 motion was disparate treatment of similarly situated people *because of* indigency, nor has he shown that he is a member of a class of indigent people. Because he has failed to make the threshold showing that he "received disparate treatment because of membership in a class of similarly situated individuals and that the disparate treatment was the result of intentional or purposeful discrimination," our review of Parrish's equal protection challenge ends here and we need not address his argument for heightened scrutiny. *Osman*, 157 Wn.2d at 484.

IV. CHARACTERIZATION AS CIVIL DAMAGES ACTION

Parrish argues that the trial court abused its discretion by characterizing his CrR 7.8 motion as a civil claim for damages and denying his claim for reimbursement of community service based on *State v. Hecht*, 2 Wn. App. 2d 359, 409 P.3d 1146 (2018). The State responds that the trial court

properly relied on *Hecht* when it declined to award Parrish restitution for his labor. Parrish replies that CrR 7.8 is the proper means for his claim of LFO reimbursement. We agree with Parrish that CrR 7.8 is the proper procedural avenue, but we hold that the trial court did not improperly characterize his motion as a civil claim for damages.

CrR 7.8 provides that a trial court "may relieve a party from a final judgment, order, or proceeding" where, relevant to this appeal, "[t]he judgment is void" or for "[a]ny other reason justifying relief." CrR 7.8(b)(4)-(5). We review the denial of a CrR 7.8 motion for an abuse of discretion. *State v. Robinson*, 193 Wn. App. 215, 217, 374 P.3d 175 (2016). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *Id.*

Division One of this court recently held that CrR 7.8 is the exclusive procedural means by which to seek refund and cancellation of superior court imposed *Blake* LFOs. *Civil Survival Project v. State*, 24 Wn. App. 2d 564, 578, 520 P.3d 1066 (2022). In *Civil Survival Project*, the court reasoned that CrR 7.8 "clearly applies to the reconsideration of constitutionally invalid convictions" because it "explicitly contemplates being used to address precisely this sort of issue: 'A defendant is entitled to relief under subsection (i) where the person . . . is serving a sentence *for a conviction under a statute determined to be void, invalid, or unconstitutional.*'" *Id.* at 578 (alteration in original) (quoting CrR 7.8(c)(2)). A panel of this court recently adopted *Civil Survival Project*'s reasoning, holding that CrR 7.8 is the correct and exclusive procedural means by which to seek refund and cancellation of superior court imposed *Blake* LFOs. *State v. Nelson*, No. 58161-2-II, slip op. at 17. Therefore, we agree with Parrish that the claim was properly raised under CrR 7.8.

Even so, Parrish has not shown that the trial court's partial denial of his motion was an abuse of discretion, because the record does not support his claim that the trial court misconstrued his motion as a civil claim for damages. For one thing, the trial court's order clearly treated Parrish's motion as a CrR 7.8 motion—the court signed Parrish's proposed order, except the court crossed out the portion of the order that would have ordered reimbursement for his community service hours. And in its oral ruling, the court explained that there was no basis to reimburse community service hours "*in the context of these criminal proceedings*." VRP at 22 (emphasis added). This shows that the trial court's oral ruling, in addition to its written order, took Parrish's motion for what it was, a CrR 7.8 motion.

We therefore conclude that Parrish has not shown an abuse of discretion in the trial court's partial denial of his motion for relief from his judgment and sentence under CrR 7.8.

CONCLUSION

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

GLASGOW, J.

We concur:

CRUSER, C.J.

PRICE, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 58805-6-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Jeremy Morris
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☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

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