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SUPREME COURT
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Supreme Court No. _____ Case #: 1038321
(COA No. 85437-2-I)

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DEBRA KESKEY,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Debra Keskey asks this Court to accept review of the Court of Appeals decision under RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Ms. Keskey appealed the trial court's restitution order. The Court of Appeals affirmed. *State v. Keskey*, No. 85437-2-I, 2025 WL 80291 (Wash. Ct. App. Jan. 13, 2025).

C. ISSUES PRESENTED FOR REVIEW

1. The restitution statute reflects the legislature's intent to limit the burden of legal debt on people who are poor. The legislature specifically authorized the court to decline to impose restitution and interest to certain payees where a person does not have the current or future ability to pay. In this case, Ms. Keskey was elderly, disabled, unemployed, and entirely dependent on public benefits. The trial court erred when it concluded Ms. Keskey had the future ability to pay and ordered \$5,000 in restitution, with interest, to the City of Everett. The trial court's statutory authority to impose restitution and interest

on poor people is an issue of substantial public interest, requiring this Court's guidance. RAP 13.4(b)(4).

2. Ms. Keskey relies on Social Security benefits, and the anti-attachment statute protects these benefits from collection to satisfy a debt. The trial court failed to direct that restitution and interest cannot be satisfied using any of those protected funds. The Court of Appeals decision conflicts with decisions by this Court and is an issue of substantial public interest, requiring this Court's guidance. RAP 13.4(b)(1), (4).

D. STATEMENT OF THE CASE

Ms. Keskey was 65 years old when she pleaded guilty to felony driving under the influence after her car collided with a City of Everett bus. CP 52, 55.

Ms. Keskey shattered her femur and hip bone in the car accident. CP 52; 1/12/23 RP 6. First responders described Ms. Keskey's injuries as a "violent deformity." CP 90. Ms. Keskey was rushed to the hospital and had emergency surgery. CP 91.

Ms. Keskey never fully recovered from her injuries. She experiences chronic pain in her hip and right leg. CP 32. She cannot stand for extended periods of time, and she requires a walker or a cane to get around. CP 33. In addition to these injuries, she also suffers from other health conditions, including osteoporosis, osteoarthritis, and chronic obstructive pulmonary disease. CP 32.

The court sentenced Ms. Keskey to 15 months of incarceration and scheduled a subsequent restitution hearing. CP 60, 63. The State requested \$9,668.68 in restitution, payable to the City of Everett, for damage to the bus. CP 19.

At the restitution hearing, Ms. Keskey argued she did not have the current or future ability to pay. 4/21/23 RP 15. She pointed out she was elderly and, prior to her incarceration, she relied on Social Security and Medicaid benefits that she received due to her age. CP 28. Those benefits were suspended while she was incarcerated. CP 32.

At the time of the restitution hearing, DOC had approved Ms. Keskey for work release. CP 29. But she did not have a job. She could not go back to her prior job because the business had closed. CP 29. That job had been uniquely accessible to her: the store was a single level, and she knew the owner, who made numerous accommodations and “bent over backwards” for her. CP 28-29. Still, she was paid minimum wage, lived paycheck-to-paycheck, and depended entirely on her benefits. CP 28-29, 51; 1/12/23 RP 7-8.

Even though she was approved for work release, Ms. Keskey was “unsure where she will be able to work given her ongoing injuries.” CP 29. Even if she were able to get a job that could accommodate her mobility needs, it would likely pay minimum wage. CP 29. And even though she expected her benefits to resume after she was released from DOC, she would still not be able to afford her living expenses. CP 33.

The court found Ms. Keskey indigent. 5/19/23 RP 22. But because DOC had authorized her for work release, the court

concluded Ms. Keskey had the future ability to pay. 5/19/23 RP

22. It therefore ordered her to pay \$5,000 in restitution to the City of Everett, with interest. CP 18-26. The Court of Appeals affirmed the restitution order. App. 1-5.

E. ARGUMENT

- 1. Ms. Keskey did not have the future ability to pay restitution and interest to a government agency, and the Court of Appeals was wrong to affirm the restitution order.**

Ms. Keskey is indigent, elderly, disabled, and entirely dependent on public benefits. Despite all this, the trial court concluded Ms. Keskey had the future ability to pay and ordered her to pay \$5,000 in restitution, with interest. The Court of Appeals affirmed. This issue involves the correct application of the new restitution statute. It is an issue of substantial public interest, and this Court should grant review. RAP 13.4(b)(4).

- a. *Recognizing the immense burden and enduring consequences of legal debt, the legislature has limited the imposition of restitution and interest on people who cannot pay.*

Legal debt represents a significant burden on people who are poor. It devastates a defendant's reentry and ability to access housing, employment, or financial stability. *State v. Blazina*, 182 Wn.2d 827, 837, 344 P.3d 680 (2015). It subjects people who are poor to extended court involvement and additional fines, sanctions, or even arrest. Katherine Beckett & Alexis Harris, State Minority & Justice Comm'n, *The Assessment And Consequences of Legal Financial Obligations In Washington State*, 62 (2008).¹ It also contributes to Washington's homelessness crisis. *City of Seattle v. Long*, 198 Wn.2d 136, 172, 493 P.3d 94 (2021).

The Washington Legislature recognizes these harms and enacted statutory changes to completely eliminate or

¹ Available at:
https://media.spokesman.com/documents/2009/05/study_LFOi.mpact.pdf.

significantly limit the trial court’s ability to impose legal financial obligations (LFOs) on people who are poor. *See* RCW 10.01.160(3) (costs); RCW 7.68.035(4) (victim penalty assessment); RCW 43.43.7541 (DNA collection fee); RCW 10.82.090(1) (interest on LFOs).

The legislature also limited the imposition of restitution and interest on people who cannot pay. Laws of 2022, ch. 260, §§ 3, 12. If a person “does not have the current or likely future ability to pay,” the court can refuse to impose restitution and interest to “an insurer or state agency.” RCW 9.94A.753(3)(b). A person does not have the current ability to pay if they are indigent. *Id.* (citing RCW 10.01.160(3)). Moreover, the court can refuse to impose restitution interest in any case. RCW 10.82.090(2).

The sentencing court’s authority to order restitution is provided by statute. *State v. Gray*, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). This Court reviews a restitution order for an abuse of discretion. *State v. Tobin*, 161 Wn.2d 517, 523, 166

P.3d 1167 (2007). The trial court abuses its discretion when its decision is “manifestly unreasonable or based on untenable grounds or untenable reasons.” *State v. Deskins*, 180 Wn.2d 68, 77, 322 P.3d 780 (2014).

b. Ms. Keskey is indigent, elderly, disabled, unemployed, and wholly reliant on public assistance. The trial court erred when it ordered her to pay restitution to a government agency.

The trial court found Ms. Keskey indigent and did not have the current ability to pay,² so at issue in this case is whether Ms. Keskey had the future ability to pay.³ See RCW 9.94A.753(3)(b). The trial court erred when it concluded that, despite her indigency, elderly age, disabilities, and reliance on public benefits, Ms. Keskey had the future ability to pay and imposed \$5,000 in restitution.

At the time of sentencing, Ms. Keskey did not have the future ability to pay. She was incarcerated and unemployed.

² “A person does not have the current ability to pay if the person is indigent[.]” RCW 9.94A.753(3)(b).

³ The State conceded the City of Everett is a “state agency.” CP 37; see RCW 9.94A.753(3)(b).

She was elderly and had numerous health conditions and mobility issues. CP 32. She was severely injured in the accident and never fully recovered—she suffers from chronic pain, can only stand for short periods of time, and needs a mobility device to get around. CP 33. It was unlikely she could find a job that could accommodate her needs. CP 29. Even if she could find such a job, it would most likely pay minimum wage, which meant she would still be below the federal poverty level and unable to pay her living expenses. CP 29-30, 33.

Ms. Keskey's situation is exactly the type of case the legislature sought to address when it authorized courts to decline restitution in certain cases. The legislature specifically intended courts to treat restitution payable to state agencies differently. RCW 9.94A.753(3)(b). This is because the purported justification for requiring a defendant to pay restitution is to make a victim of a crime whole again. *See Gray*, 174 Wn.2d at 930. But costs personally borne by an individual victim are different from costs incurred by a

government entity. *See State v. D.L.W.*, 14 Wn. App. 2d 649, 657, 472 P.3d 356 (2020). There is simply no justification to burden someone such as Ms. Keskey with restitution debt payable to a government agency. *See also* RCW 9.96A.010 (declaring the legislature's goal of facilitating reentry).

To be clear, Ms. Keskey's *current* inability to pay is a sufficient basis on its own to decline to impose restitution. *See* RCW 9.94A.753(3)(b) (the court can decline restitution where the person “does not have the current *or* likely future ability to pay” (emphasis added)). But she also did not have any *likely future* ability to pay. Even if Ms. Keskey found a job she could physically perform and her public benefits resumed, she would still be unable to afford her living expenses. CP 29-30, 33. In other words, even in the best case scenario, Ms. Keskey would still be indigent and without any ability to pay restitution. Her future ability to pay was not likely at all.

The Court of Appeals acknowledged “the determination of a future ability to pay is somewhat speculative,” but

concluded she could challenge the restitution order in the future. App. 4 (citing *State v. Bennett*, 63 Wn. App. 530, 534, 821 P.2d 499 (1991)). But the Court of Appeals cites to a juvenile case that was decided over three decades ago, involving a completely different statute. In addition, that case was decided well before the legislature authorized the *adult* sentencing court to decline restitution if a person does not have the current or future ability to pay. *See* Laws of 2022, ch. 260, § 3.

Most importantly, the Court of Appeals ignores the plain language of the adult restitution statute, which specifically directs the court to determine a person's current or future ability to pay "at sentencing." RCW 9.94A.753(3)(b). Of course, the court can lower or waive restitution and accrued interest at a later date. *Id.* But the statute does not permit the court to impose a high amount of restitution on an indigent person based on the chance the person *might* become able to pay in the future

and require the indigent person to file a motion when, unsurprisingly, the debt becomes unbearable.

The trial court's conclusion that Ms. Keskey had the future ability to pay \$5,000 in restitution was untenable, and the Court of Appeals erred when it affirmed. This Court should grant review of this issue of substantial public interest. RAP 13.4(b)(4).

c. The trial court also erred when it ordered Ms. Keskey to pay restitution interest.

The trial court also erred when it ordered Ms. Keskey to pay restitution interest to a government entity.

Restitution accrues interest at the astonishing rate of 12 percent. RCW 10.82.090(1). Interest on legal debt accrues even while a person is incarcerated and unable to pay. *State v. Claypool*, 111 Wn. App. 473, 476, 45 P.3d 609 (2002). Interest accumulation creates an increasingly insurmountable barrier to successful reentry. *See Blazina*, 182 Wn.2d at 836.

The legislature recognized the immense burden of requiring poor people to pay interest on LFOs and authorized courts to waive restitution interest in any case. RCW 10.82.090(2); *see also* RCW 10.82.090(1) (eliminating interest on all other LFOs). In determining whether to waive restitution interest, the court must consider the person's indigency status, their available funds and other financial liabilities, whether they are homeless or suffer from a mental illness, any impact on the payee, and "any other information" that "relates to not imposing interest on restitution." RCW 10.82.090(2). This is much broader than the court's authority to decline restitution principal to certain payees and is not limited to consideration of a person's current or future ability to pay. *Compare id.*, with RCW 9.94A.753(3)(b).

Ms. Keskey is unable to pay restitution principal, and she is also unable to pay interest. She is indigent. 5/19/23 RP 22. She has no income or assets. CP 28-33. There is no hardship for the payee in this case—a local agency—to not receive interest

on restitution. In addition, Ms. Keskey is elderly, disabled, suffers from multiple health conditions, and is entirely dependent on public assistance. CP 28-33. At the time of the restitution hearing, she was unemployed, and she explained it was unlikely she could find a job that could accommodate her many needs. CP 29. Even if she could find such a job, she would still be indigent and unable to afford her basic living expenses. CP 29-30, 33. All these circumstances weigh against imposing restitution interest. *See* RCW 10.82.090(2).

Similar to the restitution principal, the Court of Appeals concluded Ms. Keskey could challenge the restitution interest in the future. App. 5. Again, the court cannot impose restitution interest on an indigent person based on the chance the person *might* become able to pay in the future and require the indigent person to file a motion when the debt becomes truly insurmountable.

The trial court erred when it ordered Ms. Keskey to pay restitution interest, and the Court of Appeals was wrong when it

affirmed. This Court should grant review of this issue of substantial public interest. RAP 13.4(b)(4).

2. In the alternative, the trial court erred when it did not protect Ms. Keskey's Social Security benefits from collection to satisfy restitution and interest, and the Court of Appeals was wrong to affirm.

Ms. Keskey receives Social Security benefits, which are protected by federal law from collection to satisfy a legal debt.

The Social Security Act's anti-attachment statute provides:

The right of any person to any future payment under this subchapter shall not be transferable or 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.

42 U.S.C. § 407(a). “[T]his provision requires that Social Security moneys cannot be reached to satisfy a debt.” *State v. Catling*, 193 Wn.2d 252, 260, 438 P.3d 1174 (2019).

When a person is reliant on Social Security funds, the trial court must specify that any legal fees or debt cannot be collected from those protected funds. In *Catling*, the

defendant's only source of income was Social Security benefits. *Id.* at 256. The trial court ordered the defendant to pay LFOs but failed to specify that the debt could not be satisfied using his Social Security funds. *Id.* at 255-56.

This Court concluded the trial court did not have authority to order the defendant to pay off his debt using funds that are protected by the anti-attachment statute. *Id.* at 264 (citing 42 U.S.C. § 407(a)). Therefore, this Court remanded to the trial court and directed it to revise the order to indicate the debt "may not be satisfied out of any funds subject to the Social Security Act's antiattachment statute." *Id.* at 266. This Court's holding in *Catling* applies to restitution and interest. *Id.* at 260.

It is undisputed Ms. Keskey's Social Security funds are protected under the anti-attachment statute. But when the trial court issued the restitution order, it failed to direct that those benefits are protected from collection and cannot be used to satisfy restitution and interest. CP 18-26.

Even though the trial court never protected her Social Security funds in the restitution order, the Court of Appeals affirmed, concluding a notation in the judgment and sentence was sufficient. App. 5 n.2. A notation in a separate document is not enough. In *Catling*, this Court required the notation in both “the judgment and sentence *and* repayment order” to comport with the anti-attachment statute. 193 Wn.2d at 266 (emphasis added). As such, the restitution order must explicitly protect her Social Security benefits. *See State v. Sandoval*, No. 82447-3-I, 2022 WL 2047218 at *4 (Wash. Ct. App. June 6, 2022) (unpublished)⁴ (remanding under *Catling* “so that the trial court may amend *the [restitution] order.*” (emphasis added)).

The trial court erred when it failed to protect Ms. Keskey’s Social Security benefits in the restitution order, and the Court of Appeals was wrong when it affirmed. The Court of Appeals decision conflicts with this Court’s holding in *Catling*

⁴ Cited pursuant to GR 14.1(a)

and is an issue of substantial public interest. RAP 13.4(b)(1), (4). Even if this Court does not accept review, it should remand to the trial court to revise the restitution order and direct that restitution and interest cannot be satisfied from those benefits.

F. CONCLUSION

Based on the preceding, Ms. Keskey respectfully requests that review be granted pursuant to RAP 13.4(b).

This brief is in 14-point Times New Roman, contains 2,897 words, and complies with RAP 18.17.

Respectfully submitted this 27th day of January 2025.



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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DEBRA JEAN KESKEY,

Appellant.

No. 85437-2-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — Following her conviction for driving while under the influence, Debra Keskey was ordered to pay restitution for property damage. Keskey appeals the restitution order and argues the trial court abused its discretion by determining that she had the future ability to pay restitution and by imposing interest. We affirm.

I

On October 31, 2018, Keskey was in the city of Everett (City) when she drove through an intersection against a red light and struck a City bus. Keskey was injured and taken to the hospital and a subsequent blood test revealed an alcohol concentration higher than the legal limit. Keskey was charged with driving while under the influence of alcohol.

Keskey pleaded guilty and was sentenced to 15 months confinement. Keskey was also ordered to pay a \$500 victim penalty assessment (VPA) in monthly installments of \$25 commencing 30 days after release to be paid within 2 years. The State requested restitution in the amount of \$9,668.68 for damage to the City bus. Keskey argued that there was no causal relationship between the restitution and the crime of driving under the influence. Keskey also argued that the Social Security Act prohibits the trial court from ordering her to satisfy debt because her only source of income is Social Security disability benefits. 42 U.S.C. § 407(a). At the restitution hearing, the trial court decided more information was needed regarding Keskey's ability to pay and gave Keskey additional time to provide supporting documentation or evidence.

Keskey provided the following evidence. Keskey lost her job in 2022 when her employer's business closed. While incarcerated, Keskey did not receive public assistance and had a monthly income of zero. At the time, her only asset was \$2,000 in savings to provide for her pets while she was incarcerated. Keskey was also approved for work release through the Department of Corrections for jobs that would likely pay minimum wage.

At the second restitution hearing, the trial court found that Keskey was indigent. The trial court determined that although indigency may be considered with regard to the amount of restitution, RCW 9.94A.760 states indigency is not grounds for failing to impose restitution. The trial court determined that Keskey had the future ability to pay based on her being approved for work release:

[T]he Court also recognizes the fact that she is in a position where, as the Court understands, is about to be authorized to engage in work release so she does have some ability to pay the restitution that is owed in this case.

What I'm inclined to do in this case is reduce the restitution to \$5,000, set a minimum monthly payment at \$50 per month, provide that that is to be paid within 60 months.

The trial court reduced the restitution amount pursuant to RCW 9.94A.753(3)(b) and ordered Keskey to pay \$5,000 in monthly installments of \$25. Keskey timely appeals the restitution order.¹

II

Keskey argues the trial court abused its discretion by concluding she had the future ability to pay restitution and interest to the City. Keskey asserts that because she is indigent she does not have the future ability to pay. Thus, Keskey argues, the trial court should have determined she was not required to pay under RCW 9.94A.753(3)(b).

We review a trial court's decision to impose restitution for abuse of discretion. State v. Gray, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). A trial court must order restitution "whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property." RCW 9.94A.753(5)(1). A defendant being indigent is not grounds for failing to impose restitution. RCW 9.94A.760. But the restitution statute allows a trial court to use its discretion to assess an indigent defendant's ability to pay restitution:

(b) At any time, including at sentencing, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or state agency, except for restitution owed to the department of labor and

¹ The State also filed a notice of appeal but later withdrew it.

industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3).

RCW 9.94A.753(3).

The trial court determined Keskey did not have the current ability to pay based on indigency but found that work release approval supported a future ability to pay. And based on Keskey's financial circumstances, the trial court exercised its discretion under RCW 9.94A.753(3)(b) and significantly reduced the restitution amount. Keskey was ordered to commence payment 30 days after release. Because the determination of a future ability to pay is somewhat speculative, "the meaningful time to examine the defendant's ability to pay is when the government seeks to collect the obligation." State v. Bennett, 63 Wn. App. 530, 534, 821 P.2d 499 (1991). If Keskey has a hardship in the future, the restitution statute allows for modification of monthly payments based on changed circumstances and allows modification of restitution as to amount, terms, and conditions. RCW 9.94A.753(2), (4). Keskey fails to establish that the trial court abused its discretion by determining she had the future ability to pay.

Keskey also argues the trial court abused its discretion by ordering her to pay interest to the City because it failed to consider several statutory factors all of which weigh in favor of waiving interest.

The trial court has discretion not to impose interest on restitution. RCW 10.82.090(2). Before a trial court determines not to impose interest it must inquire into and consider the following:


(a) whether the offender is indigent as defined in RCW 10.01.160(3) or general rule 34; (b) the offender's available funds, as defined in RCW

10.101.010(2), and other liabilities including child support and other legal financial obligations; (c) whether the offender is homeless; and (d) whether the offender is mentally ill, as defined in RCW 71.24.025.

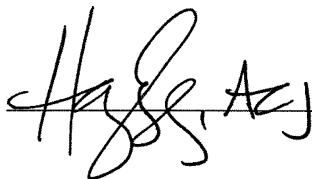
RCW 10.82.090(2).

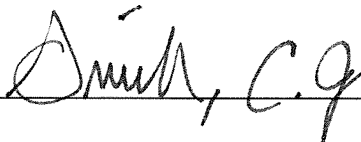
Contrary to Keskey's assertion, the trial court is required to inquire into and consider the above factors before deciding not to impose interest. Here, the trial court imposed interest and the statute does not require consideration of the factors to do so. Moreover, Keskey may seek relief from paying interest following release from confinement if she cannot pay or if the principal has been paid in full. RCW 10.82.090(3). Keskey otherwise fails to persuade us that the trial court abused its discretion by imposing interest on restitution.

We affirm.²



WE CONCUR:





² Keskey alternatively argues that her Social Security benefits are protected by the Social Security Act from collection to satisfy a legal debt. The judgment and sentence expressly states that "legal financial obligations may not be satisfied out of any funds subject to the Social Security Act's anti-attachment statute, 42 U.S.C. § 407(a)." Remand is not necessary to repeat the provision on the restitution order.

Keskey also argues remand is necessary to strike the VPA because she is indigent. Because Keskey did not timely appeal the judgment and sentence, the issue is waived. RAP 2.4; RAP 5.2.

WASHINGTON APPELLATE PROJECT

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