No. I03627-2

NO. 57675-9-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION TWO

STATE OF WASHINGTON
Respondent,

v.

SABRA DANIELSON,
Appellant.

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

REPLY BRIEF OF APPELLANT

TIMOTHY SEVERANCE
Rule 9 Intern for Appellant
JESSICA WOLFE
Attorney for Appellant
WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT 1

1. CrR 7.8 is the exclusive remedy for seeking a *Blake* LFO refund. 2

2. The State clearly intended to waive sovereign immunity by appropriating $23.5 million to refund *Blake* LFOs 3

3. Ms. Danielson received a diminished LFO refund because she was poor. 4

a. Due process requires LFO reimbursement for a vacated conviction regardless of the method of payment—especially if the method of payment is imposed by the court. 4

b. The Equal Protection Clause bars the State from diminishing Ms. Danielson's refund. 6

c. The State has no basis for denying Ms. Danielson's refund. 8

B. CONCLUSION 10

TABLE OF AUTHORITIES

United States Supreme Court

Nelson v. Colorado, 581 U.S. 128, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017) 3, 5

Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970) 8, 9

Washington Supreme Court

Civil Survival Project v. State, 24 Wn. App. 2d 564, 520 P.3d 1066 (2022) 2

In re Williams, 171 Wn. 2d 253, 250 P.3d 112 (2011) 2, 3

Matter of Mota, 114 Wn.2d 465, 788 P.2d 538 (1990) 10

Reanier v. Smith, 83 Wn.2d 342, 517 P.2d 949 (1974) ... 7, 8, 9

State v. Hunley, 175 Wn. 2d 901, 916, 287 P.3d 584 (2012) .. 7

State v. Osman, 157 Wn.2d 474, 139 P.3d 334 (2006) 11

Union Elevator & Warehouse Co., Inc. v. State ex rel. Dept. of Transp., 171 Wn. 2d 54, 248 P.3d 83 (2011) 4

Washington Court of Appeals

State v. Stevenson, 128 Wn. App. 179, 189, 114 P.3d 699 (2005) 7

United States District Court

Culp v. Bounds, 325 F.Supp. 416 (D.N.C. 1971) 8

Statutes

2021 Wash. Sess. Laws ch. 334 § 115(6)..... 4

A. ARGUMENT

If Sabra Danielson had cash in 2005 to pay off her LFOs, she would have gotten a full refund pursuant to *Blake*. But she had no money. As a result, she had to pay her LFOs in labor. And now—because she paid in a court-approved alternative payment method—the same court refuses to give her a full refund.

The court violated Ms. Danielson's rights to due process and equal protection by diminishing her LFO refund. The only thing that accounts for the court's differing treatment between Ms. Danielson and similarly situated people seeking to have their *Blake* LFOs refunded is poverty.

Because there is no important—or even rational—basis for treating groups differently on account of their payment method, this Court should reverse the lower court's decision and remand for a new hearing.

1. CrR 7.8 is the exclusive remedy for seeking a *Blake* LFO refund.

In *Civil Survival Project v. State*, this Court held that CrR 7.8—not RAP 12.8, and not a civil suit—was the "exclusive procedural means" for seeking a *Blake* LFO refund. 24 Wn. App. 2d 564, 578, 520 P.3d 1066 (2022). The State is patently wrong to suggest that Ms. Danielson can seek relief through tort law or the Rules of Appellate Procedure. *See* Brief of Respondent at 8.

The State is also wrong to contend that *In re Williams*, 171 Wn. 2d 253, 250 P.3d 112 (2011), bars Ms. Danielson from requesting "monetary compensation" under CrR 7.8. Brief of Respondent at9. *Williams* was a case about the scope of personal restraint petitions (PRPs) and simply does not apply to this case. *Williams*, 171 Wn. 2d at 256 ("[A] demand for money damages is not actionable by *personal restraint petition*.") (emphasis added). First, Ms. Danielson's claim is

not a PRP. Second, unlike Williams, who sought damages totaling $300,000 for constitutional violations unrelated to his judgment or conviction, *Williams*, 171 Wn. 2d at 255, Ms. Danielson seeks a constitutionally mandated reimbursement due to a vacated conviction. *Nelson v. Colorado*, 581 U.S. 128, 130, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017) (noting that States are obligated "to refund fees, court costs, and restitution exacted from a defendant" when their conviction is vacated).

2. The State clearly intended to waive sovereign immunity by appropriating $23.5 million to refund *Blake* LFOs.

Although the State did not raise a sovereign immunity defense below, it now argues that sovereign immunity bars Ms. Danielson from seeking relief under CrR 7.8. *See* Brief of Respondent at 6. But the State waived any claim of sovereign immunity by setting aside $23.5 million to refund *Blake* LFOs. 2021 Wash. Sess. Laws ch. 334 § 115(6); *see*

also Union Elevator & Warehouse Co., Inc. v. State ex rel. Dept. of Transp., 171 Wn. 2d 54, 68, 248 P.3d 83 (2011) ("A waiver of sovereign immunity exists when the State has expressly, or by reasonable construction . . . of a statute, placed itself in a position of attendant liability.").

The legislature's express purpose was to create an LFO "aid pool" to assist counties that were "obligated" to refund payments. 2021 Wash. Sess. Laws ch. 334 § 115(6). In light of the legislature's unmistakable intent to refund *Blake* LFOs, it cannot be argued that sovereign immunity bars Ms. Danielson from requesting her LFO refund.

3. Ms. Danielson received a diminished LFO refund because she was poor.

a. Due process requires LFO reimbursement for a vacated conviction regardless of the method of payment—especially if the method of payment is imposed by the court.

Due process obligates States "to refund fees, court

costs, and restitution exacted from a defendant" when their conviction is invalidated. *Id.* at 130.

The State claims that the right ought to turn on the *method* of payment. *See* Brief of Respondent, 21 (arguing that there is no authority establishing that reimbursement for Community Service Work (CSW) performed to pay an LFO is a right at all). The State is incorrect to define the right to reimbursement so narrowly. The right to be refunded for LFO payments cannot turn on the method of payment—especially where that method of payment has been set ***by the court***.

Here, the court created an LFO payment plan and placed a value—$7.16 per hour—on Ms. Danielson's labor. CP 8. Thus, the reimbursement Ms. Danielson seeks is not a refund for CSW generally, but reimbursement in accordance with the court's LFO payment plan.

Making a right contingent on the availability of a person's financial means upsets fundamental fairness. This Court should define the right to reimbursement broadly enough to encompass court-arranged, alternative payment methods.

b. The Equal Protection Clause bars the State from diminishing Ms. Danielson's refund.

Contrary to the State's contention—that "[t]here is no evidence that Danielson's indigence played any role at all in the court's decision"—Ms. Danielson's poverty was the *only* reason she did not get refunded. Brief of Respondent, 21. *Reanier v. Smith* illustrates this. 83 Wn.2d 342, 517 P.2d 949 (1974).

In *Reanier*, the Court found that the State clearly violated equal protection principles by not providing time-served credit for defendants who could not afford bail. *Id.* at 347. The *Reanier* Court credited the reasoning of North

Carolina's *Culp v. Bounds*, 325 F.Supp 416 (D.N.C. 1971). *Reanier*, 83 Wn.2d at 349. Even though the state action in *Culp* did not *expressly* discriminate based on the defendant's poverty, the court found that it "*in effect*, provide[d] for differing treatment on the basis of wealth." *Id.* (quoting *Culp*, 325 F.Supp. at 419) (emphasis added).

Reiterating this position, the *Reanier* Court also referenced *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970). *Reanier*, 83 Wn.2d at 350. There, if the defendant defaulted on paying the fines associated with his conviction, he had to "remain in jail . . . to 'work off' the monetary obligation at $5 per day." *Id.* The Supreme Court held that "[s]ince only a convicted person with access to funds c[ould] avoid the increased imprisonment, the Illinois statute *in operative effect* expose[d] only indigents to the risk of imprisonment beyond the statutory maximum." *Id.*

(quoting *Williams*, 399 U.S. at 242) (emphasis added).

Here, the lower court diminished Ms. Danielson's refund because of her poverty. The court assumed supervision of Ms. Danielson's sentence when she could not afford to pay her LFOs in cash. The court arranged labor-based payment because of Ms. Danielson's poverty. And it was solely because Ms. Danielson paid her LFOs in labor that the court later refused to fully reimburse her.

Other people, who paid with cash, motioned for the court to return their payments and were fully refunded. Ms. Danielson—who paid the same *Blake* LFOs but paid with her labor—was not. Thus, "in operative effect," the lower court discriminated against Ms. Danielson because she was poor. *See Reanier*, 83 Wn.2d at 350.

c. The State has no basis for denying Ms. Danielson's refund.

Ms. Danielson maintains that she is entitled to heightened scrutiny based on the Supreme Court's holding in *Matter of Mota*. 114 Wn.2d 465, 474, 788 P.2d 538 (1990) ("A higher level of scrutiny is applied to cases involving a deprivation of a liberty interest due to indigency."); *see also* Brief of Appellant, 22–29.

Although the State concedes that—at a minimum—any classification must serve a "relevant" purpose, it does not even attempt to provide a basis—rational or otherwise—for denying a refund of Ms. Danielson's labor-based LFO payments. Brief of Respondent at 20 (quoting *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006)).

That is because no basis exists. *See* Appellant Opening Brief at 29–33 (showing how Washington courts have consistently rejected (1) administrative reasons, (2) preservation of state funds, (3) established patterns or

traditions, (4) administrative convenience, and (5) difficulty calculating or quantifying an entitlement as rational bases). This Court should therefore conclude no rational basis supported the lower court's unequal treatment of Ms. Danielson.

B. CONCLUSION

Even though *Blake* conferred innocence and restoration equally on all who were unconstitutionally convicted under Washington's former drug possession law, in practice, the State's position provides an eroded remedy—a half-measure of restoration—for the poor.

This Court should reverse the trial court and remand for a new hearing.

This brief contains 1,386 words and complies with RAP 18.17.

DATED this 14th day of December, 2023.

Timothy Severance,
Licensed Legal Intern No. 9900603

Jessica Wolfe
WSBA No. 52068
Washington Appellate Project - 91052
Email: wapofficemail@washapp.org

Attorneys for Sabra Danielson

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 of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 57675-9-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered by other court-approved means 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 Jesse Espinoza
[jespinoza@co.clallam.wa.us]
Clallam County Prosecuting Attorney

☒ appellant

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: December 14, 2023

WASHINGTON APPELLATE PROJECT

December 14, 2023 - 4:29 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	57675-9
Appellate Court Case Title:	State of Washington, Respondent v. Sabra Kaye Danielson, Appellant
Superior Court Case Number:	02-1-00423-6

The following documents have been uploaded:

- 576759_Briefs_20231214162934D2108240_2195.pdf
  This File Contains:
  Briefs - Appellants Reply
  The Original File Name was washapp.121423-02.pdf

A copy of the uploaded files will be sent to:

- jespinoza@co.clallam.wa.us
- jesse.espinoza@clallamcountywa.gov

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Jessica Constance Wolfe - Email: jessica@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20231214162934D2108240