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NO. 57675-9-II

No. 103627-2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

SABRA DANIELSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Clallam County Superior Court No. 02-1-00423-6

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

Danielson was found guilty of unlawfully possessing a controlled substance in 2003. Danielson was ordered to serve 58 days in jail. The sentencing court granted credit for 28 days served and converted the remaining 30 days to 240 hours of community service work. Danielson also performed community service work (CSW) in lieu of paying legal financial obligations (LFOs) imposed in the judgment and sentence.

In 2021, the Washington Supreme Court in *State v. Blake*,¹ found RCW 69.50.4013 to be unconstitutional and convictions under that statute were rendered void. Pursuant to *State v. Blake*, Danielson filed a motion under CrR 7.8 requesting the court to vacate her conviction, refund LFOs she paid, and order monetary compensation for CSW she performed in lieu of payment of LFOs.

The following issues are addressed in this brief:

¹ *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021)

Whether a motion for monetary compensation for CSW performed to satisfy a judgment and sentence for a conviction in which the underlying criminal statute was later declared unconstitutional may be brought against the State in a CrR 7.8 motion to vacate?

Whether the trial court properly denied Danielson's motion for monetary compensation for CSW to satisfy the judgment and sentence because there is no due process or common law right to monetary compensation for CSW on the basis that former RCW 69.50.4013 was later found to be unconstitutional?

Whether Danielson's equal protections claim fails because the court did not use her indigency as a basis for denying her the motion for monetary compensation, the court did not deny Danielson any right, and the court did not treat Danielson differently from similarly situated persons?

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II. STATEMENT OF THE CASE

On March 26, 2003, Danielson entered a plea of guilty to the crime of unlawful possession of a controlled substance, Amphetamine, contrary to former RCW 69.50.401(d). CP 30, 49.

The trial court sentenced Danielson to 58 days confinement with credit for 28 days served. CP 35. The remaining 30 days were converted to 240 community service work hours (CSW). CP 35. The trial court also imposed a total of \$1060.00 in legal financial obligations (LFOs). CP 33. This total included \$100.00 for a DNA collection fee, \$350.00 for a court appointed attorney, and \$500.00 for a Victim Penalty Assessment, and \$110.00 for a court filing fee. CP 32–33.

About a year later, on March 22, 2004, there was a request that the court supervise Danielson's completion of supervision. State's Supp. CP, sub nos. 56, 57, filed Mar. 22, 2004.

Subsequently, Danielson turned in a total of 12 CSW hours on Apr. 16, 2004 (CP 29); 65 CSW hours on June 18, 2004 (CP 28); 34 CSW hours on Aug. 6, 2004 (CP 26–27); 36 CSW hours on Dec. 10, 2004 (CP 25); 8 CSW hours on Apr. 7, 2005 (CP 24).

On June 24, 2005, the court believed that Danielson completed a total of 243.5 CSW hours and credited 240 CSW hours towards the 30 days jail converted to CSW. *See* CP 20. The court converted the remaining 3.5 hours of CSW to satisfy \$25.06 towards LFOs owed. CP 23.

Ultimately, between April 19, 2004 and June 24, 2005, the court accepted and credited a total of 255.5 hours of CSW and ordered that CSW in excess of 240 hours be credited towards the LFOs at the rate of \$7.16 per hour. CP 8 (Findings of Fact and Conclusions of Law).

On February 25, 2021, the Washington Supreme Court held that the strict liability statute criminalizing possession of a controlled substance was unconstitutional because it punishes

unintentional and unknowing conduct. *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

Thereafter, on Aug. 18, 2022, Danielson 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 21. As part of her motion to vacate, Danielson requested the court to order that she be reimbursed for payments she made towards her LFOs and also for CSW performed to satisfy the LFOs. CP 21. Danielson's counsel submitted a brief in support of the motion and posited that the court clerk determined that Danielson was credited \$546.00 towards LFOs by virtue of having performed CSW in lieu of paying cash. CP 16. Counsel, in his own calculation, determined that a minimum of \$110.98 was the amount credited towards CSW performed by Danielson. CP 16.

The Clallam County Superior Court granted Danielson's motion to vacate her conviction but concluded that CSW performed in lieu of paying LFOs was not subject to cash reimbursement because it was not property that Danielson

transferred to the State. CP 9. The court ordered that Danielson be reimbursed for payments that she made towards her LFOs in an amount believed to be \$520.00. CP 10. The court denied the portion of the motion seeking money reimbursements for CSW performed in lieu of paying LFOs. CP 10.

III. ARGUMENT

A. DUE TO WASHINGTON STATE'S SOVEREIGN IMMUNITY, THERE IS NO COMMON LAW RIGHT TO MONETARY COMPENSATION OR RESTITUTION FOR COMMUNITY SERVICE WORK PERFORMED IN LIEU OF PAYING LFOs AND THE CLAIM MAY NOT BE RAISED IN A CrR 7.8 MOTION TO VACATE.

It is well known that there is no common law remedy in the form of monetary damages for convictions reversed on appeal where the State did not refile, or where a defendant spent time in custody awaiting trial only to be acquitted, or even for those who were wrongfully convicted. Generally, this is because states enjoy sovereign immunity and may only be sued with their consent. *See Mancini v. City of Tacoma*, 196 Wn.2d 864, 883, 479 P.3d 656 (2021) (referencing sovereign immunity

and its waiver by legislative action in 1967); *Donohoe v. State*, 135 Wn. App. 824, 842–43 n.14, 142 P.3d 654 (2006) (discussing Washington State’s and other state’s legislative waiver of sovereign immunity); see also *State ex rel. Abbott v. Young*, 265 S.W.3d 697, 703–04 (Tex. App., 2008); *In re Smith*, 333 S.W.3d 582, 585 (Tex., 2011) (citing *State v. Oakley*, 227 S.W.3d 58, 62 (Tex. 2007) (“The common law provided no recourse for the innocent. . . . It was not until 1965 that the Legislature enacted the first wrongful-imprisonment statute.”); *Edmonds v. State*, 234 So.3d 286, 293 (Miss., 2017) (quoting *Wells by Wells v. Panola Cty. Bd. of Educ.*, 645 So.2d 883, 898 (Miss. 1994) (“In reliance upon the above-referenced rules, the State argues the cause of action established under the Wrongful Conviction and Imprisonment statutes is not based in common law. The State is correct: ‘At common law, suits ... against the State were not available at all, due to sovereign immunity.’”).

However, the wrongfully convicted may have a statutory civil remedy. Washington State enacted a broad waiver of sovereign immunity through the Tort Claims Act under RCW 4.92. “This statute is ‘one of the broadest waivers of sovereign immunity in the country’ and makes the State presumptively liable for its alleged tortious conduct ‘in all instances in which the Legislature has not indicated otherwise.’” *H.B.H. v. State*, 192 Wn.2d 154, 179, 429 P.3d 484 (2018) (quoting *Savage v. State*, 127 Wn.2d 434, 444–45, 899 P.2d 1270 (1995)).

Additionally, to account for the lack of a remedy at common law specifically for wrongfully convicted persons, Washington State enacted the Wrongfully Convicted Persons Act (WCPA) as an avenue to obtain compensation. *See Allen v. State*, 19 Wn. App.2d 895, 901, 498 P.3d 552 (2021) (citing RCW 4.100.010).

Both Acts exist under Title 4 entitled “Civil Procedure.” Title 4, RCW. Thus, claims for monetary compensation under the WCPA and the Tort Claims Act are civil actions.

Further, as opposed to the return of property in the form of cash for cash paid as recognized at common law² and RAP 12.8, a claim for monetary compensation (or restitution based upon unjust enrichment) is civil in nature and may not be raised in a criminal case as relief from judgment or order under CrR 7.8. *See In re Williams*, 171 Wn.2d 253, 255–56, 250 P.3d 112 (2011) (citing *In re Pers. Restraint of Sappenfield*, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999)).

Therefore, Danielson’s claim for cash compensation for CSW performed under a motion to vacate under CrR 7.8 fails and this court should affirm.

**B. *NELSON* v. *COLORADO* AND *STATE* v. *HECHT*
DO NOT ESTABLISH A DUE PROCESS RIGHT
TO CASH COMPENSATION FOR
COMMUNITY SERVICE WORK.**

Danielson points to *Nelson v. Colorado* to support the argument that she should be awarded cash compensation for CSW performed in lieu of paying LFOs on the voided judgment

² *See infra* p. 13, *Nelson*, 581 U.S. at 142 (J. Alito, concurring).

and sentence. *Nelson v. Colorado*, 581 U.S. 128, 137 S.Ct. 1249, 1255, 197 L.Ed.2d 611 (2017); *see also* Br. of Appellant, at 16.

Nelson did not create a substantive due process right to receive monetary compensation for CSW performed in lieu of payment of LFOs. Rather, *Nelson* was about *procedural* due process. It was Colorado's legislative scheme that failed to provide due process it because it required a defendant "prove her innocence by clear and convincing evidence to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction." *Nelson*, 581 U.S. at 134 (concluding that the Colorado scheme failed procedural due process under the test outlined in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

The *Nelson* Court pointed out that the Colorado legislative scheme violated due process because Colorado it required more than "minimal procedures on the refund of exactions" considering that Colorado had no interest in retaining Nelson's

property after her conviction was invalidated. *See Nelson*, 581 U.S. at 139.

Thus, it was the Colorado *legislative scheme* that the *Nelson* Court found violated *procedural* due process due to the risk of erroneous deprivation under the *Mathews v. Eldridge* test. There is no case that holds a person has a due process right or common law right to monetary compensation for either jail time or CSW performed to satisfy a criminal judgment and sentence when the underlying criminal statute is later held to be unconstitutional. Danielson fails to provide such authority. ““Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”” *State v. Logan*, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

Thus, *Nelson v. Colorado* did not extend a due process right, or common law remedy of reimbursement for cash paid, to

cash compensation for CSW performed. *Nelson* only held that a statute that created more hurdles for getting reimbursed for cash paid, (a right enjoyed at common law) was not justified. See *Nelson*, 581 U.S. at 139; see also *Nelson*, 581 U.S. at 142 (J. Alito, concurring) (citations omitted).

Furthermore, *Nelson v. Colorado* does not support Danielson's claim for cash compensation because *Nelson* was limited to reimbursement for cash *actually paid* and was not a compensation for CSW case at all. See *Nelson v. Colorado*, 137 S.Ct. 1249, 1251–52 (2017) (syllabus) (“Colorado argues that an Act that provides sufficient process to compensate a defendant for the loss of her liberty must suffice to compensate a defendant for the lesser deprivation of money. But Nelson and Madden seek the return of their property, not compensation for its temporary deprivation. Just as restoration of liberty on reversal of a conviction is not compensation, neither is the return of money taken by the State on account of the conviction.”).

Justice Alito’s concurring opinion points out that it was a remedy well known at common law ‘that when an individual is obligated by a civil judgment to pay money to the opposing party and that judgment is later reversed, the money should generally be repaid.’” *Nelson*, 581 U.S. at 142 (J. Alito, concurring) (citations omitted). “[T]his practice carried over to criminal cases. When a conviction was reversed, defendants could recover fines and monetary penalties assessed as part of the conviction.” *Id.* However, Alito points out that this was not a matter of strict right, but a matter of court discretion. *Id.* at 143.

State v. Hecht was also a case in which the remedies available were limited under RAP 12.8 to reimbursement for cash actually paid in satisfaction of the judgment after Hecht’s conviction was overturned and the case was dismissed. *See State v. Hecht*, 2 Wn. App.2d 359, 366, 409 P.3d 1146 (2018).

The *Hecht* Court did not permit *restitution* for CSW performed. *Hecht*, at 366 (“The State contends that the trial court properly awarded restitution only for the LFOs imposed by the

judgment and sentence, and that Hecht improperly requests civil damages that are unavailable under RAP 12.8. *While we agree that RAP 12.8 does not support Hecht's request for community service and supervision, physical and mental deterioration, or legal fees, we remand for reimbursement of the cost of John School tuition.*") (emphasis added). The *Hecht* Court, citing to *Nelson v. Colorado*, only allowed Hecht to recover restitution for amounts that *Hecht* actually paid and characterized this as property. *See Hecht*, 2 Wn. App.2d at 368 (citing *Nelson*, 137 S.Ct. at 1257–58).

Here, the State is not retaining and cannot give back Danielson the CSW she performed, but it can give back the money she paid in accordance with *Nelson* and *Hecht*. *Nelson* provides no authority that permits the court to award cash compensation for CSW performed to satisfy a judgment and sentence in this criminal case.

Danielson argues that the trial court exacted labor from Danielson by ordering that she pay off her LFOs by performing

CSW under the threat of jail time. Br. of Appellant, at 15. The record shows this is an inaccurate characterization.

Rather, about a year after Danielson was sentenced, the trial court took over supervision of the 240 CSW hours converted from the 30-day jail sentence. Supp. CP, sub. Nos. 56, 57. Thereafter, it appears there was a request to credit CSW performed in excess of the 240 CSW hours towards her LFOs. *See* CP 20, 23, 35. On June 24, 2005, Danielson turned in 28.5 hours of CSW to the court. State's Supp. CP, sub nos. 78, 80, filed June 27, 2005. The trial court believing that Danielson completed 243.5 CSW hours (*see* CP 20) entered an order granting a motion and gave Danielson credit for 3.5 hours of the 28.5 hours at the rate of \$7.16 per hour toward her LFOs. CP 23.

Ultimately, the court credited all CSW performed in excess of 240 hours towards the LFOs imposed in the judgment and sentence. CP 8.

The record does not show that the trial court ordered Danielson to complete CSW to satisfy LFOs under the threat of

jail time. There is no such order in the record and Danielson does not provide one. Rather, the record shows Danielson was granted credit towards LFOs for CSW she had already completed.

In fact, in 2005, RCW 10.01.160(4) allowed *the defendant to petition the court* to modify the method of payment of LFOs when a defendant could show that payment of LFOs created a manifest hardship.

A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

RCW 10.01.160(4) (2005).

Currently, RCW 10.01.160(4) expressly allows the defendant to petition the court and for the court to convert LFOs to CSW:

If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court

may . . . convert the unpaid costs to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage

Thus, the trial court aided Danielson by relieving her financial burden by allowing her to perform CSW instead of paying LFOs. This was a benefit that Danielson took advantage of by completing CSW. Danielson had the option of asking for a different form of relief such remitting all or part of the amount due or lowering payments requirements or frequency or otherwise modifying the method of payment.

Therefore, the trial court did not exact labor from Danielson with the threat of jail.

Danielson also argues that this burden was imposed upon her because she was convicted for violating a statute in which the State unconstitutionally criminalized “innocent, passive nonconduct.” Br. of Appellant, at 15 (citing *Blake*, 197 Wn.2d at 183).

Danielson ignores that by the time she was convicted for possession of a controlled substance, the Washington State Supreme Court had upheld the constitutionality of the possession of controlled substance statute in *State v. Cleppe*. See *Matter of Pleasant*, 21 Wn. App.2d 320, 340, 509 P.3d 295 (2022) (citing *State v. Cleppe*, 96 Wn.2d 373, 378–80, 635 P.2d 435 (1981)).

Furthermore, *after* Danielson was convicted in 2003, the statute was upheld again by the Washington State Supreme Court in *State v. Bradshaw*. *Id.* (citing *State v. Bradshaw*, 152 Wn.2d 528, 532–37, 98 P.3d 1190 (2004)). Thereafter, there were several unsuccessful due process challenges to the strict liability character of former RCW 69.50.4013. *Id.* at 340–41.

Thus, the sentence imposed upon Danielson was the result of violating a lawful statute. At the time Danielson was convicted and for many years thereafter, there was no legitimate doubt about the constitutionality of RCW 69.50.4013 as the issue had been resolved by our State’s highest court.

The trial court **did** not err or violate Danielson's **due** process rights by refusing to award Danielson cash compensation for CSW performed **in lieu** of payment of LFOs pursuant to her CrR 7.8 motion. Therefore, this Court should **affirm**.

C. DANIELSON'S EQUAL PROTECTIONS CLAIM FAILS BECAUSE DANIELSON WAS NOT DENIED ANY RIGHT, THE COURT DID NOT USE INDIGENCE AS A BASIS FOR ITS DECISION, AND THE COURT'S DECISION DID NOT TREAT DANIELSON DIFFERENT FROM OTHERS SIMILARLY SITUATED.

"The equal protection clause of the Fourteenth Amendment to the United States Constitution and article I, section 12 of the Washington State Constitution are 'substantially identical and subject to the same analysis.'" *Thornock v. Lambo*, 14 Wn. App.2d 25, 33, 468 P.3d 1074 (2020) (quoting *State v. Osman*, 157 Wn.2d 474, 483 n. 11, 139 P.3d 334 (2006)).

"The constitutional right to equal protection of the law requires that similarly situated persons receive like treatment

under the law.” *Id.* (citing *State v. Shawn P.*, 122 Wn.2d 553, 559–60, 859 P.2d 1220 (1993)).

“As a threshold requirement, an equal protection claim must establish that the defendant 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.” *Id.* (citing *Osman*, 157 Wn.2d at 484).

Although equal protection does not require that the State treat all persons identically, any classification must be relevant to the purpose for the disparate treatment. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (citing *In re Det. of Thorell*, 149 Wn.2d 724, 745, 72 P.3d 708 (2003)).

Here, Danielson argues that the court *used her indigence* as a basis to deny her an important right, LFO reimbursement, without substantial relation to an important governmental interest. Br. of Appellant, at 19.

Danielson first fails to show that LFO reimbursement *as claimed* is an important right. Danielson fails to provide any authority establishing that monetary compensation for CSW performed to satisfy a judgment and sentence is a right at all.

Next, Danielson fails to show that the court denied Danielson reimbursement for LFOs she paid. The trial court granted Danielson a refund of all LFOs she paid just as it presumably does for everyone else.

Danielson also fails to show that the court used her indigence as a basis to deny the requested relief.

There is no evidence that Danielson's indigence played any role at all in the court's decision. Rather, the trial court was simply operating within its authority. Under RAP 12.8, *State v. Hecht*, and *Nelson v. Colorado*, the trial court only had authority to require that any LFOs Danielson paid be refunded to her.

Additionally, the trial court was not provided any authority for which it could award financial compensation for CSW performed under a CrR 7.8 action. See *In re Williams*, 171 Wn.2d

at 255–56. Thus, Danielson’s indigence played no part in the court’s decision.

Moreover, Danielson fails to show that non-indigent people were treated more favorably based on their economic status. One doesn’t have to be indigent to be greatly inconvenienced by paying LFOs such that they could successfully petition the court to allow LFOs to be satisfied by CSW. If the hypothetical non-indigent defendant did CSW to pay off LFOs, they would be treated exactly as Danielson was.

It is also perfectly plausible that indigent persons could make cash payments on LFOs. This is especially true because RCW 10.01.160(4) allows for relief and modification of payment methods. In fact, Danielson did make cash payments and she was treated just as any other hypothetical defendant, she was granted a refund.

Danielson’s equal protections claim fails because Danielson fails to establish she was denied a right, that the court used her indigence as a basis to deny her a right, or that she was

treated differently from other similarly situated defendants. Therefore, Danielson's equal protections claim on the basis that the court used her indigence to deny her motion for monetary compensation for CSW fails. This Court should affirm.

IV. CONCLUSION

Consistent with *Nelson v. Colorado*, *State v. Hecht*, and RAP 12.8, the trial court granted Danielson's CrR 7.8 motion and vacated Danielson's conviction and ordered a refund for LFOs she paid.

Having no authority to do more, the trial court denied the part of the motion seeking monetary compensation for CSW performed, just as was denied in *State v. Hecht*. See *Hecht*, 2 Wa. App.2d at 366. Danielson fails to establish, that in doing so, the court violated a due process right to monetary compensation for CSW performed to satisfy a judgment and sentence.

Due to Washington State's sovereign immunity, Danielson may only bring claims for monetary damages as

permitted by statute. Additionally, because the claims are civil in nature, Danielson's claim for monetary compensation may not be brought in a CrR 7.8 motion. *See Williams*, 171 Wn.2d at 255–56.

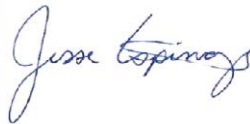
Finally, Danielson fails to establish that the trial court used her indigency as a basis to deny her a right and that she was treated differently from similarly situated persons. Therefore, her claim that the trial court violated her right to equal protection under the law fails.

For all the foregoing reasons, this Court should affirm.

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Respectfully submitted this 13th day of October, 2023.

MARK B. NICHOLS
Prosecuting Attorney

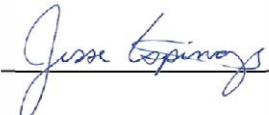
A handwritten signature in blue ink, appearing to read "Jesse Espinoza", with a stylized, cursive script.

JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically to Timothy Severance and Jessica Wolfe on October 13, 2023.

MARK B. NICHOLS, Prosecutor



Jesse Espinoza

CLALLAM COUNTY DEPUTY PROSECUTING ATTORNEY

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