

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 103673-6, 103627-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SIMONE RENEE NELSON, and
SABRA DANIELSON

Petitioners.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION II
Court of Appeals Nos. 58161-2-II (consolidated with No. 58165-5-II), and 57675-9-II
Clallam County Superior Court Nos. 95-1-00163-6, 98-1-00046-4, and 02-1-00423-6

SUPPLEMENTAL BRIEF OF RESPONDENT

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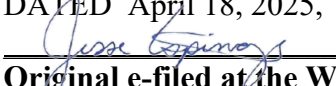
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| SERVICE | Willa D. Osborn Jessica Wolfe Washington Appellate Project 1511 Third Ave, Suite 610 Seattle, WA 98101 wapofficemail@washapp.org | This brief was served <i>electronically</i> . I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED April 18, 2025, Port Angeles, WA  Original e-filed at the Washington Supreme Court; Copy to counsel listed at left. |
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I. ISSUES PRESENTED

1. Whether the trial court's denial of the demand for cash reimbursement for community service work (CSW) did not violate Danielson's and Nelson's equal protections rights because they were not treated differently from similarly situated persons based solely upon their economic status and there is no fundamental or important right to compensation for CSW performed?
2. Whether the trial court's denial of cash reimbursement for CSW performed for those who have had their convictions vacated under *State v. Blake*¹ satisfies the rational basis test because limiting potentially massive amounts of claims for reimbursement to verifiable amounts of cash actually paid leads to a more equitable and workable result, promotes predictability, and supports the continuation of CSW as a benefit for defendants?

¹ 197 Wn.2d 170, 481 P.3d 521 (2021).

II. STATEMENT OF THE CASE

Danielson 57675-9-II, cause no. 02-1-00423-6

On March 26, 2003, Danielson entered a plea of guilty to the crime of unlawful possession of a controlled substance, Amphetamine. Danielson CP 30, 49. The trial court sentenced Danielson to 58 days confinement with credit for 28 days served. Danielson CP 35. The remaining 30 days were converted to 240 community service work hours (CSW). Danielson CP 35. The trial court also imposed a total of \$1060.00 in legal financial obligations (LFOs). Danielson 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. Danielson CP 32–33.

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 performed in excess of 240 hours of converted jail time be credited towards the LFOs at the rate of \$7.16 per hour. Danielson CP 8 (Findings of Fact and Conclusions of Law).

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. Danielson CP 21. Danielson's counsel, in his own calculation, determined that a minimum of \$110.98 was the amount credited towards CSW performed by Danielson. 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. Danielson 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. Danielson CP 10. The court denied the portion of the motion seeking money reimbursements for CSW performed in lieu of paying LFOs.

Danielson CP 10.

Nelson 58161-2-II , cause no. 95-1-00163-6²

On Sept. 26, 1995, Nelson pleaded guilty to unlawful possession of a controlled substance, methamphetamine, under Clallam County Superior Court cause 95-1-00163-6 ('95 cause). CPI 36, 52.

At sentencing, on Sept. 29, 1995, the trial court imposed 52 days of jail with credit for 52 days served. CPI 41, 44. The court imposed legal financial obligations (LFOs) as follows: \$100.00 victim penalty assessment, \$242.90 court costs, \$1000.00 drug enforcement fund, and a \$125 crime laboratory fee for a total of \$1,467.90. CPI 38–39. The court also ordered that LFOs, except for the court costs and victim assessment, could be converted to community service hours (CSW). CPI 40.

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² Clerk's papers under cause no. 58161-2-II (95-1-00163-6) are referred to as CPI and those under cause no. 58165-5-II (98-1-00046-4) are referred to as CPII.

Nelson 58165-5-II, cause no. 98-1-00046-4

On Apr. 3, 1998, Nelson pleaded guilty to possession of methamphetamine under Clallam County Superior Court cause 98-1-00046-4 ('98 cause). CPII 29. The trial court imposed 60 days jail and converted 30 of those days to 240 CSW hours. CPII 33. The court imposed a total of \$1210.00 in LFOs which included a \$500.00 victim penalty assessment, \$110.00 court costs, \$500.00 court appointed attorney fee, and \$100.00 for a crime laboratory fee. CPII 31–32. A box is checked stating that “[i]n addition to the other costs imposed herein the Court finds that the Defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate.” CPII 32.

Post-conviction orders

On Mar. 7, 2003, the court entered an order terminating the Dept. of Correction’s supervision over Nelson’s LFO payments and required Nelson to pay a total of \$70.00 per

month toward her LFOs for the '95 and '98 causes. CPI 29, CPII 28.

Just over a month later, on Apr. 18, 2003, the court ordered that credit in the amount of \$280.00 be applied towards Nelson's LFOs for each of the '95 and '98 causes for completing 80 CSW hours. CPI 28.

Subsequently, on Jan. 25, 2007, Nelson appeared in court requesting to be put on the pay or appear calendar and the hearing notes indicate Nelson was working at the Kitsap Mall. Supp. CPI 59. The court entered an order adjusting Nelson's payments to \$80.00 per month (\$20.00 per case) to account for both the '95 and '98 causes and two additional new causes. CPII 27.

Post *State v. Blake*

On Feb. 24, 2023, Nelson moved, under CrR 7.8 (b)(4) and (5) and *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), for a vacation of her convictions in both the '95 and '98 causes, for a refund of cash payments she made towards LFOs,

and for cash compensation for the CSW she performed. CPI 26, CP II 26.

On Mar. 8, 2023, Nelson filed briefs in both causes clarifying that she was seeking a refund of \$987.50 for the '95 cause, \$922.50 for the '98 cause, and cash compensation in the amount \$280.00 for each of the '95 and '98 causes for the 80 hours CSW performed. CPI 19, CPII 19.

On Apr. 4, 2023, the court heard argument for the motions in both the '95 and '98 causes and granted the motion to vacate the convictions and refund Nelson the payments she made towards LFO's. RPI 23–24, RPII 23–24. The trial court declined to grant the motion for cash compensation for CSW performed reasoning that it was not authorized under *State v. Hecht* and RAP 12.8 and that the claim for compensation or restitution or unjust enrichment was civil in nature. *Id.*

On April 13, 2023, the trial court granted Nelson's motion to vacate the convictions and to refund all cash Nelson

actually paid towards her LFOs, but denied the motion for cash compensation for CSW performed. CPI 6; CPII 6.

III. ARGUMENT

A. NELSON’S AND DANIELSON’S EQUAL RIGHTS VIOLATION CLAIM FAILS BECAUSE THEY CANNOT ESTABLISH THEY WERE TREATED DIFFERENT THAN SIMILARLY SITUATED PERSONS ON THE BASIS OF THEIR INDIGENCY.

“The constitutional right to equal protection of the law requires that similarly situated persons receive like treatment under the law.” *Thornock v. Lambo*, 14 Wn. App.2d 25, 33, 468 P.3d 1074 (2020) (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 *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006)).

Here, Danielson and Nelson fail to establish that they were treated differently than other similarly situated persons on the basis of indigency because non-indigent people were treated more favorably based on their economic status.

Danielson and Nelson present nothing in the record or without which shows that non-indigent people that had their convictions vacated under *Blake* and did CSW in lieu of paying LFOs were reimbursed with cash for CSW performed.

Nelson and Danielson also fail to show that those without less ability to pay only do CSW in lieu of paying LFOs with cash. In fact, although both claim to be indigent or having no means to pay LFOs, they both paid a large part of their LFOs with cash.

Nelson and Danielson fail to show that people with a decent wage or full time job keeping them above the poverty line don't do CSW due to financial hardship. Many people that are fully employed and have a decent wage still live paycheck to paycheck, struggle to pay rent, or bear the expense of raising

children. See Aimee Picchi, *More than 60% of Americans are living paycheck to paycheck. Here's what researchers say is to blame*, MoneyWatch (Aug. 31, 2023), <https://www.cbsnews.com/news/paycheck-to-paycheck-6-in-10-americans-lendingclub/> (last visited April 18, 2025).

Neither Danielson nor Nelson were forced to do CSW in lieu of paying LFOs because they were poor. Both actually paid a large portion of their LFOs with cash. Further, neither Danielson nor Nelson petitioned to have their LFOs converted to CSW.

In Danielson's case, the trial court simply granted credit for CSW done in excess of the 240 CSW hours converted jail sentence. Nelson's case is less clear as in one case her jail sentence was converted to CSW (58165-5-II) and the other case the court permitted in the judgment and sentence that Nelson's LFOs could be satisfied with CSW.

Moreover, both Danielson and Nelson could have moved to have their LFOs remitted in full or in part or have their

payments reduced under RCW 10.01.160(4). Thus, they were not forced to do CSW because they were poor.

The trial court's decision to not grant cash reimbursement for CSW performed in lieu of paying LFOs treats everyone that did CSW exactly the same regardless of ability to pay. Therefore, Danielson and Nelson fail to meet the threshold requirement for establishing an equal rights violation. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (citing *State v. Handley*, 115 Wn.2d 275, 290, 796 P.2d 1266 (1990)).

B. THE TRIAL COURT'S DECISION SATISFIES THE RATIONAL BASIS TEST BECAUSE LIMITING CLAIMS FOR REIMBURSEMENT TO VERIFIABLE AMOUNTS OF CASH PAID LEADS TO MORE WORKABLE AND EQUITABLE RESULTS WHILE PROMOTING PREDICTIBILITY AND CONTINUED USE OF COMMUNITY SERVICE TO SATISFY LEGAL FINANCIAL OBLIGATIONS.

When evaluating an alleged equal rights violation, courts apply rational basis test “[i]f the state action does not threaten a

fundamental or important” right, or if the individual is not a member of a suspect or semisuspect class[.]”*Osman*, 157 Wn.2d at 484 (citing *State v. Shawn P.*, 122 Wn.2d 553, 560, 859 P.2d 1220 (1993)).

Danielson and Nelson fail to establish they were deprived of a fundamental or important right. *State v. Nelson*, 32 Wn. App.2d 679, 688, 693, 558 P.3d 197 (2024). They also fail to establish that they are members of a suspect or semi-suspect class based strictly on indigency. *Id.* at 694. Therefore, the rational basis test applies.

Here the trial court’s decision satisfies the rational basis test because it limits the potential flow of a massive number of claims for reimbursement to those claims with verifiable amounts of cash actually paid. *See Nelson*, 32 Wn. App.2d at 695, 558 P.3d 197 (2024) (citing *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 449, 853 P.2d 424 (1993)). This result leads to a more workable and equitable approach because it treats all defendants who have their convictions vacated

equally, it provides predictability for all parties involved, and it supports the continuation of permitting CSW as a benefit for defendants who may face an economic hardship although they might not be indigent.³

The denial of cash reimbursement for CSW performed in lieu paying LFOs is more equitable for all defendants because not all CSW is the same. CSW was simply a means to allow a defendant to do away with their LFOs in return for doing something beneficial for their communities. CSW, as a benefit to defendants, was not designed to be actually valued at a 1 for 1 equivalency in hours to dollars. Such equivalency would not be realistic, workable, or equitable because it treats all work or labor the same. It wasn't until 2018 that RCW 10.01.160 was amended to require that community restitution be credited towards payment of LFOs *at least* at the minimum wage rate. *See* Laws of 2018, ch. 269, § 6 (4). The purpose of this is

³ Defendants that are indigent are no longer subject to paying LFOs under RCW 10.46.190 and RCW 7.68.035(4).

simply to provide some measure in which LFO's can be worked off with CSW. It was not intended to be a realistic valuation of a person's labor.

Further, CSW done in 1990 also may be valued differently than CSW done in 2015 as the minimum wage rates have changed. Would reimbursements be paid out at today's minimum wage or the wage when the crime occurred, or when the CSW was performed? What if one person did their CSW right away and another convicted at the same time did it years later after the minimum wage increased?

Additionally, courts may need records to verify CSW was actually completed before ordering a reimbursement and some defendants may have access to such records and others may not. The complaints and inequities arising from unworkable solutions would be endless.

The trial court's decision promotes predictability. Criminal statutes have been held to be unconstitutional in the past and it is beyond doubt that they will in the future. *See*

<https://constitution.congress.gov/resources/unconstitutional-laws/> (table of laws held to be unconstitutional by the U.S. Supreme Court).

Community service work has been a tool to alleviate financial hardship to those sentenced for violating criminal statutes. The trial court waived payment of LFOs in return for Nelson and Danielson doing something beneficial for the community. Thus, Nelson and Danielson derived the benefit of leniency.

This leniency may have been subject to second guessing or no leniency if it could be foreseen that defendants would later be able to demand payment in return for the leniency granted to them if their convictions are later vacated as in *State v. Blake*.

The denial of cash compensation for CSW which was converted from LFOs and granted as a benefit to the defendant comports with supports predictability in future outcomes. Predictability in determining the State's duty to defendants with

vacated convictions is promoted by drawing the line at requiring the return of property and verifiable amounts of cash paid towards LFOs.

At the same time these limitations support future grants of leniency towards defendants that truly lack the ability to pay LFOs imposed in judgment and sentence. This is so because the State can continue to grant leniency without fear of being penalized for it later by having pay State pay for a grant of leniency.

For the foregoing reasons, the court's decision limiting cash reimbursements to verifiable amounts of cash actually paid towards LFOs satisfies the rational basis test.

Therefore, this Court should affirm.

VI. CONCLUSION

Danielson and Nelson fail to establish 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.”

Osman, 157 Wn.2d at 484. Therefore, they fail to meet the threshold requirement to establish an equal rights violation.

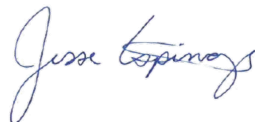
Furthermore, the trial court's decision to deny cash reimbursement for CSW performed in lieu of paying LFOs satisfies the rational basis test because limiting reimbursement to verifiable amounts of cash paid leads to a more workable and equitable solution while promoting predictability and continued use of CSW to satisfy LFOs in order to aid individuals facing economic hardship.

For all the foregoing reasons, this Court should affirm.

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Respectfully submitted this 18th day of April, 2025.

MARK B. NICHOLS
Prosecuting Attorney

A handwritten signature in blue ink that reads "Jesse Espinoza". The signature is written in a cursive, flowing style.

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