

NO. 53698-6-II

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

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STATE OF WASHINGTON,

Respondent,

v.

JASON FERGUSON,  
Appellant.

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

The Honorable Jennifer K. Snider, Judge

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BRIEF OF APPELLANT

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LISE ELLNER, WSBA No. 20955  
SPENCER BABBITT, WSBA No. 51076  
Attorneys for Appellant

LAW OFFICES OF LISE ELLNER  
Post Office Box 2711  
Vashon, WA 98070  
(206) 930-1090

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A. ASSIGNMENT OF ERROR

1. The trial court erred by concluding that Mr. Ferguson is not facing a manifest hardship from his outstanding LFOs when those LFOs could affect his petition for clemency and a change in state law prevents him from making further motions for relief while incarcerated.

Issues Presented on Appeal

1. Should this court review the merits of Mr. Ferguson's appeal when his claim of manifest hardship is based on noneconomic harm?
2. Did the trial court err when it concluded that Mr. Ferguson is not facing a manifest hardship from his outstanding LFOs when those LFOs could affect his petition for clemency and a change in state law prevents him from making further motions for relief while incarcerated?

B. STATEMENT OF THE CASE

Jason Ferguson is currently serving a 340-month prison sentence stemming from a 2004 case where he was convicted of murder in the second degree and assault in the first degree. RP 31-

32; CP 70-73. Mr. Ferguson has outstanding legal financial obligations (LFOs) from that case and two older drug cases where he has already served his full sentence. CP 384, 593. Mr. Ferguson has moved to remit his LFOs and waive any accumulated interest multiple times while incarcerated without success. RP 4-5, 10-23; CP 298, 508, 603.

Mr. Ferguson's most recent motion for relief from his LFOs was filed on April 12, 2018. CP 384. Mr. Ferguson moved to remit his LFOs and waive any interest based on manifest hardship pursuant to RCW 10.01.160(4). CP 385. Mr. Ferguson argued that his LFOs would prevent him from successfully reintegrating into society upon release and that the state Clemency and Pardon Board would look unfavorably on his outstanding LFO balance in determining whether to grant him clemency. CP 384-86. The state opposed Mr. Ferguson's motion. RP 32.

The Clark County Superior Court held a hearing on Mr. Ferguson's motion. RP 30. Following argument from Mr. Ferguson and the state, the trial court denied Mr. Ferguson's motion because it concluded that he failed to show any manifest hardship without further evidence that his LFOs would have a negative impact on his

clemency petition. RP 33-35. Mr. Ferguson filed a timely notice of appeal. CP 391-93.

C. ARGUMENT

1. THIS COURT SHOULD REVIEW THE MERITS OF MR. FERGUSON'S APPEAL BECAUSE HE ALLEGED THAT HIS LFOs CAUSED HIM NONECONOMIC HARDSHIP

“Only an aggrieved party may seek review by the appellate court.” RAP 3.1. At the time that Mr. Ferguson petitioned for remission of his LFOs, RCW 10.01.160(4) provided that “[a] defendant who has been ordered 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.” Former RCW 10.01.160(4) (2007). Petitions for remission of LFOs have not traditionally been considered ripe for appellate review until the defendant has been released from custody and the state initiates collection. *State v. Wilson*, 198 Wn. App. 632, 635, 393 P.3d 892 (2017) (citing *State v. Mahone*, 98 Wn. App. 342, 348, 989 P.2d 583 (1999)).

Following the state Supreme Court’s decision in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Court of Appeals

changed its approach to remission petitions and held that it was error to dismiss a defendant's petition for remission solely because they were still incarcerated. *Wilson*, 198 Wn. App. at 636. When an inmate alleges noneconomic hardship, they can be an "aggrieved party" under RAP 3.1 even if they are still incarcerated. *State v. Shirts*, 195 Wn. App. 849, 856-57, 381 P.3d 1223 (2016); *see also Wilson*, 198 Wn. App. at 636. Accordingly, courts should consider an inmate's petition for remission when he or she alleges noneconomic harm and determine whether the court's imposition of LFOs has created a manifest hardship. *Wilson*, 198 Wn. App. at 636.

Mr. Ferguson alleged noneconomic harm in his motion for remission of his LFOs when he argued that his LFO balance would adversely affect his petition for clemency. RP 31-32. Because Mr. Ferguson's petition was based on noneconomic harm, he can still be an aggrieved party under RAP 3.1 while incarcerated. *Wilson*, 198 Wn. App. at 636. Mr. Ferguson's case is ripe for review and this court should review the merits of his petition.

2. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT MR. FERGUSON HAS NOT SUFFERED A MANIFEST HARDSHIP DUE TO THE IMPOSITION OF LFOs FOLLOWING HIS CONVICTIONS

State law allows criminal defendants to petition for remission of his or her outstanding LFOs upon a showing that payment of the amount due will impose manifest hardship. RCW 10.01.160(4). The term “manifest hardship” is undefined in RCW 10.01.160. *City of Richland v. Wakefield*, 186 Wn.2d 596, 606, 380 P.3d 459 (2016). Washington courts have recognized both economic and noneconomic hardship as bases for remission of LFOs. *Wilson*, 198 Wn. App. at 636. In examining circumstances that could constitute noneconomic hardship, courts have recognized that “the mere existence of an LFO order can impair an individual’s efforts at rehabilitation and community reentry.” *Wilson*, 198 Wn. App. at 636 (citing *Blazina*, 182 Wn.2d at 837).

The record demonstrates that Mr. Ferguson’s outstanding LFOs are causing him noneconomic hardship as he attempts to reintegrate into the community. Mr. Ferguson plans to petition for clemency in the near future and his unpaid LFOs could adversely affect the chances of his petition being granted. RP 31. In this way,



his LFO balance is hindering his efforts to rehabilitate and successfully reenter the community. As the Washington Supreme Court recognized in *Blazina*, LFOs that hinder these efforts can constitute a noneconomic hardship on inmates. *Blazina*, 182 Wn.2d at 837. Such a hardship can form the basis for remission of a defendant's LFOs. *Wilson*, 198 Wn. App. at 636.

The hardship on Mr. Ferguson is enhanced in this case because the Washington State Legislature enacted amendments to RCW 10.01.160 that went into effect June 7, 2018 prohibiting inmates from seeking remission of LFOs and requiring that they be released "from total confinement" before they petition for relief. RCW 10.01.160(4). The recent amendments to RCW 10.01.160 mean that Mr. Ferguson is now prohibited from renewing his motion for remission of his LFOs until he is released from custody. These changes to the law prevent Mr. Ferguson from seeking remission of his LFOs to strengthen his petition for clemency because he now has to wait until he is released to even bring the motion before the trial court. Mr. Ferguson's LFO balance is imposing a manifest hardship on his efforts to reenter society.

The trial court erred when it concluded that Mr. Ferguson's

LFO balance is not imposing a manifest hardship on him in his efforts to rehabilitate and reenter the community. This court should reverse the trial court's denial of his motion for remittance and remand the case with instructions to remit at least a portion of Mr. Ferguson's outstanding LFO balance.

D. CONCLUSION

The trial court should review the merits of Mr. Ferguson's appeal because his claim of manifest hardship is based on noneconomic harm. Furthermore, the trial court erred when it concluded that Mr. Ferguson is not facing a manifest hardship from his outstanding LFO balance as he petitions the state for clemency. This court should reverse the denial of his motion and remand the case with instructions to remit at least a portion of his LFO balance.

DATED this 20<sup>th</sup> day of November 2019.

Respectfully submitted,



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LISE ELLNER, WSBA No. 20955  
Attorney for Appellant



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SPENCER BABBITT, WSBA No. 51076  
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Clark County Prosecutor's Office CntyPA.GeneralDelivery@clark.wa.gov and Jason Ferguson/DOC#750710, Monroe Correctional Complex-WSR, PO Box 777, Monroe, WA 98272 a true copy of the document to which this certificate is affixed on November 20, 2019. Service was made by electronically to the prosecutor and Jason Ferguson by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink that reads "Lise Ellner" followed by a horizontal line.

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Signature