State of Washington, Respondent v. Simone Renee Nelson, Appellant

2024 | Cited 0 times | Court of Appeals of Washington | October 29, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, No. 58161-2-II (Consol. with No. 58165-5-II)

Respondent,

v.

SIMONE RENEE NELSON, PUBLISHED OPINION

Appellant.

LEE, J. their CrR 7.8 motion, filed

pursuant to State v. Blake, 1 seeking reimbursement for community service work they performed in lieu of paying legal financial obligations (LFOs). Nelson argues the trial court erred by denying their motion, and that the denial violated their substantive due process and equal protection rights. We hold that the trial court

fails to show a violation of their substantive due process or equal protection rights. Therefore, we affirm.

FACTS

A. CONVICTIONS AND LFOS

In 1995, Nelson pleaded guilty to one count of unlawful possession of a controlled

substance. Nelson was sentenced to 52 days of confinement with credit for 52 days served and 24

1 197 Wn.2d 170, 481 P.3d 521 (2021). Filed Washington State Court of Appeals Division Two

October 29, 2024 months of community supervision. The trial court also imposed $1,467.90 in legal financial

obligations (LFOs): a $100 victim assessment fee, $242.90 in court costs, $1,000 to the drug

enforcement fund, and a $125 crime lab fee.

1995 judgment and sentence included boilerplate language indicating Nelson

le Papers (CP) (58161-2-II) at 38, 40.

LFOs.

In 1998, Nelson pleaded guilty to one count of unlawful possession of a controlled

substance. Nelson was sentenced to 60 days of confinement, with 30 days converted to 240 hours

of community service, and 12 months of community supervision. The trial court also imposed

$1,210 in LFOs: a $500 victim assessment fee, $110 in court costs, $500 in court appointed

boilerplate language indicating Nelson (58165-5-II CP (58165-5-II) at 32.

Nelson to make $70

monthly payments towards satisfying their LFOs, with the amount split equally between the 1995

and 1998 judgment and sentences ($35 each). CP (58161-2-II) at 29; CP (58165-5-II) at 28. 80 hrs of [community service work]. The clerk is directed to credit [Nelson] on each cause number

CP (58161-2-II) at 28. The record is unclear when and on what basis the

service hours. Nelson maintains that the court modified the payment terms because of

indigency based on RCW 10.01.160. However, there is no record of a trial court finding Nelson

indigent nor is there a motion by Nelson seeking to convert her LFOs to community service work.

In 2007, Nelson again appeared in superior court, and the court issued an order requiring

Nelson to make $80 monthly LFO payments, with the 1995 and 1998 judgment and sentences each credited with $20. 2

B. BLAKE AND MOTION TO VACATE

In 2021, our Supreme Court decided Blake possession law, RCW 69.50.4013, as unconstitutional. 197 Wn.2d at 195. Following Blake,

Nelson filed a CrR 7.8 motion seeking to have their 1995 and 1998 felony drug possession convictions vacated, and to be reimbursed for money paid and community service hours worked in satisfaction of the Blake LFOs. 3 and that Nelson should be reimbursed for cash payments made towards the Blake LFOs, but the

2 The remaining $40 was split between two unrelated judgment and sentences. 3 We use Blake vacated unlawful possession of a controlled substance convictions. State (58161-2-II) at 23; CP (58165-5-II) at 23.

convictions be vacated and that Nelson be reimbursed $1,910.00 for cash payments made towards the Blake for reimbursement of community service enrichment and that while Nelson was entitled to a refund for money actually paid in satisfaction of the judgment, the community service work did not confer a benefit on the State.

Nelson appeals. 4

ANALYSIS

A. NO SUBSTANTIVE DUE PROCESS VIOLATION

Nelson argues that the trial court violated their substantive due process rights when the court denied monetary compensation for community service work performed in lieu of paying LFOs. We disagree.

1. Legal Principles

The United States Constitution and the Washington Constitution both protect against the

U.S. CONST. amend. XIV,

§ 1; WASH. CONST. art. I, § 3. Federal and state due process claims are subject to the same

standards. Yim v. City of Seattle, 194 Wn.2d 682, 686, 451 P.3d 694 (2019). We review

4 Nels we granted. substantive due process challenges de novo. In re Adoption of K.M.T., 195 Wn. App. 548, 559,

381 P.3d 1210 (2016), review denied, 187 Wn.2d 1010 (2017).

government to i at all Reno v. Flores, 507 U.S.

292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (emphasis in original); see also Yim, 194 Wn.2d

at 688- [T] bitrary and capricious

government action even when the decision to take action is pursuant to constitutionally adequate

Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 218-19, 143 P.3d 571 (2006),

cert. denied, 549 U.S. 1282 (2007))).

A State deprived

Johnson v. Dep t of Fish and

Wildlife, 175 Wn. App. 765, 774, 305 P.3d 1130, review denied, 179 Wn.2d 1006 (2013). Once a

protected interest has been identified, the level of scrutiny we apply on whether the affected interest or right is fundamental. Yim, 194 Wn.2d at 689; Johnson, 175

Wn. App. at 775. When the State interferes with a fundamental right, we apply strict scrutiny,

Yim, 194 Wn.2d at 689 (quoting Amunrud, 158 Wn.2d at 220). State interference with a

nonfundamental right is subject to rational basis review, requiring only a rational relationship

between the challenged action and a legitimate State interest. Yim, 194 Wn.2d at 693-94; Johnson, 175 Wn. App. at 775. 2. No Constitutionally Protected Interest in Community Service Work

Here, Nelson argues that they have their

due process right to receive monetary compensation for [community service work] performed in

We agree with the State.

To support their argument, Nelson cites to Nelson v. Colorado, 581 U.S. 128, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017). In Nelson, the United States Supreme Court addressed a procedural due process challenge to a Colorado law allowing defendants to seek reimbursement of fees paid pursuant to overturned convictions. 581 U.S. at 133-34. The Court applied the Mathews v. Eldridge 5 test. Id. at 135. In addressing the private interests affected by the Colorado

s were erased, the presumption of innocence was

Id. [a]xiomatic and

Id. at 135, 136 (quoting Coffin v. United

States, 156 U.S. 4

money, the Court explained that the S Id. at 139. The Court ultimately concluded

that the Colorado law was procedurally deficient under the Mathews test. Id.

Preliminarily, we note that Nelson was a procedural, not substantive, due process case, and

is readily distinguishable on that ground alone as Nelson raises a substantive due process

5 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). challenge. Also, the Court in Nelson did not explicitly analyze whether petitioners had a

constitutionally protected interest at stake; rather, the Court simply assumed, without referencing

either federal or state law, that defendants who have convictions reversed have a right to repayment of any monies paid because of those convictions. See Nelson, 581 U.S. at 149 (Thomas, J., dissenting). Nelson seems to acknowledge this by arguing that Nelson implicitly recognized defendants have a constitutionally protected interest in money paid pursuant to an overturned conviction and attempts to broaden the interest to encompass the community service work or labor Nelson expended in lieu of cash. See though Nelson primarily concerns

restitution exacted from [the] Nelson (quoting Nelson, 581 U.S. at 130)). However, to the extent Nelson recognized a constitutionally protected interest in money paid pursuant to a reversed conviction, the interest would be limited to money actually paid and would not extend to

community service work performed in lieu of payment. See Nelson have an obvious interest in regaining the money they paid to Emphasis added.)).

accorded to matters relating to marriage, family, procreation, and the right to bodily integrity.

These fields likely represent Nunez v.

City of Los Angeles, 147 F.3d 867, 871 n.4 (9th Cir. 1998) (quoting Albright v. Oliver, 510 U.S.

266, 272, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994)). Community service work performed in lieu of paying LFOs does not readily fit into any of these categories. Furthermore, Nelson fails to cite

any authority recognizing repayment for community service work in lieu of paying LFOs as a

protected property interest. See DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372

required to search out authorities, but may assume that counsel, after diligent search, has found

.

We decline to recognize a fundamental right to repayment of money for community service

performed in lieu of paying LFOs. As Division One has cautioned, substantive due process

responsible

decisionmaking in this uncharted area are scarce and open- Aji P. v. State, 16 Wn. App.

2d 177, 200, 480 P.3d 438 (internal quotation marks omitted) (quoting Washington v. Glucksberg,

521 U.S. 702, 720, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997)), review denied, 198 Wn.2d 1025

interest . . . place[s] the matter outside the aren exer transformed into the policy preferences Glucksberg, 521 U.S. at 720 (quoting

Collins v. City of Harker Heights, 503 U.S. 115, 125, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992)).

We refrain from recognizing a fundamental right to restoration under either the federal or state due

process clauses. community service work performed in lieu of paying LFOs. Johnson, 175 Wn. App. at 774.

B. NO EQUAL PROTECTION VIOLATION

Nelson argues that the trial court violated their right to equal protection by treating them

differently than other defendants with Blake LFOs on the basis of their purported indigency. We

disagree.

1. Legal Principles

The equal protection clause of the Fourteenth Amendment of the United States Constitution

Harmon v. McNutt, 91 Wn.2d 126, 130, 587 P.2d 537 (1978). We review

constitutional challenges de novo. State v. Shultz, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999),

cert. denied, 529 U.S. 1066 (2000).

In addressing equal protection claims, we first determine whether the individual bringing

the claim is situated similarly to other persons. State v. Osman, 157 Wn.2d 474, 484, 139 P.3d

334 (2006). The individual bringing the claim bears the burden of establishing that they were

treated disparately because they belong to a class of similarly situated people, and that intentional

or purposeful discrimination drove the disparate treatment. Id.

The level of scrutiny applied depends on the type of classification or right at issue. Id.

This court applies

strict scrutiny if the individual is a member of a suspect class or the state action threatens a fundamental right. We apply intermediate scrutiny if the individual is ight, or if the individual is not a member of a suspect or semisuspect class, we apply a rational relationship or rational basis test.

Id. (internal citations omitted) (quoting State v. Shawn P., 122 Wn.2d 553, 560, 859 P.2d 1220

(1993)); see also State v. Hirschfelder fundamental right or suspect class, or an important right or semisuspect class, a law will receive

6

2. Similarly Situated Classification

Nelson argues that Blake that they were treated disparately because of their alleged indigence. Br. of Appellant at 13. In

other words, Nelson asserts that they satisfied their Blake LFOs through community service work

community service work was due to their indigency, but other Blake defendants who satisfied their

LFOs with cash payments were made more whole by virtue of wealth. We disagree.

Nelson contends that, pursuant to RCW 10.01.160(4), they were allowed to perform

community service in lieu of paying LFOs. The State also alleges that the conversion of LFOs to

community service work occurred pursuant to RCW 10.01.160(4). However, the record does not

6 We note that Hirschfelder also stated, if the statute Wn.2d at 550 (internal quotation marks omitted) (quoting Health, 164 Wn.2d 570, 608, 192 P.3d 306 (2008)). Regardless of whether the standard for

intermediate scrutiny requires the implication of an important right or semisupsect class as stated in

Osman, 157 Wn.2d at 484, or the implication of an important right and a semisuspect class as stated in Hirschfelder, 170 Wn.2d at 550, Nelson fails to meet either standard. service work.

Even if we accept the unsupported allegation, RCW 10.01.160(4) allows defendants who

ordered to p that

the plain language of the statute allowing for community service in lieu of paying LFOs does not

sentencing court to allow remission of the payment or allow community service in lieu of payment.

RCW 10.01.160(4).

. Id. 7

Here, there is nothing in the record to show that only indigent defendants have had their

. RCW 10.01.160(4). The

record also Blake

defendant will be reimbursed for their community service work turns on their wealth. There is no record that the trial court found Nelson indigent at the time the court allowed Nelson to perform community service in lieu of paying LFOs nor does the record show that the trial court found Nelson indigent at the time the court credited the community service performed towards partial

7 a petition to remit costs. RCW 10.01.160(4). The two terms are not interchangeable; thus, the

manifest hardship. payment of LFOs. Similarly, Nelson provides no support for their argument that only indigent

persons performed community service in lieu of paying LFOs. It is a reasonable proposition that some non-indigent people were allowed to satisfy their Blake LFOs through community service work and that some indigent people were able to satisfy all their Blake LFOs with cash payments. Indeed, the record shows that Nelson satisfied a portion of their LFOs with cash payments even

after performing some community service. Thus, Nelson fails to show that the trial court classified

Nelson In re Pers. Restraint of Runyan, 121 Wn.2d 432,

448, 853 P.2d 424 (1993).

3. Level of Scrutiny

As discussed above, Nelson fails to show that only indigent defendants had their LFOs

converted to community service hours. However, even if we assume a general class of defendants

Nelson fails to show an equal

protection violation.

a. Applicable level of scrutiny

The level of scrutiny depends on the characterization of the right involved. When a

fundamental right or a suspect class is involved, we apply a heightened level of scrutiny. Osman,

157 Wn.2d at 484. If an important right or a semisuspect class is involved, we apply an

intermediate level of scrutiny. Id. If there is no fundamental or important right or suspect or

semisuspect class involved, we apply a rational basis test. Id.

With regard to a fundamental right, Nelson merely states reimbursement for payments made toward LFOs after their conviction has been vacated . . . is and cites to Coffin and Nelson.

quotations from Coffin are unavailing. Coffin involved a challenge to charges in a federal

indictment, and the full sentence from which Nelson extracts certain phrases states, The principle

that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic

and elementary, and its enforcement lies at the foundation of the administration of our criminal

law. We do not quibble with Coffin fails to support the notion that being reimbursed for community service performed in lieu of

monetarily paying LFOs is a fundamental right. Nelson is also unavailing as the Nelson court never recognized such a fundamental right. Nelson provides no other authority recognizing such a right. See DeHeer, 60 Wn.2d at 126.

Similarly, Nelson provides no argument that an important right is implicated. While Nelson argues the application of intermediate scrutiny for an important right, Nelson merely assumes an important right is involved and fails to provide argument or authority on how being reimbursed for community service performed in lieu of monetarily paying LFOs is an important right such that intermediate scrutiny applies. See id.

Nelson argues that disparate treatment based on wealth affects a suspect class and classifications based on poverty are semisuspect, relying on In re Personal Restraint of Mota. 8 In Mota, the court addressed the good-time credit provisions treat those who are unable to obtain pretrial release differently from those who serve the entire sentence either in county jail or in a state institution ur Supreme 8 114 Wn.2d 465, 788 P.2d 538 (1990). Ca liberty Id. at 474. However, Nelson has not established that they were deprived of a liberty interest. Moreover, as discussed above, Nelson has not established that any classification involved was based strictly on indigency. Therefore, a heightened scrutiny based on a suspect or semisuspect classification of poverty does not apply. Absent the showing of a suspect or semisuspect class, we do not apply heightened scrutiny or intermediate scrutiny.

Because Nelson has not shown that there is a threat to a fundamental or important right or that they are a member of a suspect or semisuspect class, we apply a rational relationship or rational

basis test. 9

b. Rational basis test

In Runyan, our Supreme Court applied a rational basis review to RCW 10.73.090, the statute requiring that personal restraint petitions be filed within one year of a final judgment. 121 Wn.2d at 436, 449. The court concluded that the statute was rationally related to a legitimate state collateral

Id. aced with a virtually unlimited universe of possible

postconviction claims, the Legislature wisely chose to exempt those contentions which go to the

Id.

Limiting reimbursement to only those LFOs satisfied by monetary payments to the State is a similarly rational means of determining and controlling the flow of reimbursement requests from

9 As discussed above, even if a heightened level of scrutiny

Osman, 157 Wn.2d at 485. defendants who have had a conviction overturned pursuant to Blake. As Division One recently

The rippling impacts of [the Blake] decision have yet to be fully realized, let alone

Civ. Survival Project v. State, 24 Wn. App. 2d

564, 568, 520 P.3d 1066 (2022), review denied, 2 Wn.3d 1011 (2023) possible that more

Blake decision. Id. Faced with such a large number

of potential claims for reimbursement, there is a rational relationship between providing reimbursement for LFO payments and limiting the flow of reimbursement claims only to those Blake defendants who satisfied their LFOs with definable monetary payments received by the

State.

[p]reservation of state funds is not in itself a sufficient basis to defeat

(alteration in original) (quoting Willoughby

, 147 Wn.2d 725, 741, 57 P.3d 611 (2002), abrogated on other grounds

by Yim, 194 Wn.2d at 704). But it is not mere solvency that justifies the State action here: limiting refunds to payments actually made to the State is a legitimate State interest because the State has benefited from the monetary payment made to the State. Conversely, the State derived no benefit from any community service performed in lieu of paying LFOs. From a commonsense standpoint, the State has a reasonable interest in only reimbursing LFOs it actually received; community service work performed in lieu of LFOs did not directly benefit the State, nor is community service Br. of Appellant at 18. Rather, the trial court reimbursed monetary payments made to satisfy LFOs and denied reimbursement for community service work in lieu of paying LFOs. 10 Thus equal protection claim fails.

C. CrR 7.8

Nelson argues that the trial court erred by denying their CrR 7.8 motion, and the State responds that a CrR 7.8 motion was not the appropriate mechanism by which to seek reimbursement for community service work. We disagree with both parties and hold that CrR 7.8 is the appropriate procedural means by which to seek reimbursement of Blake LFOs and that the

1.

The State argues that a CrR 7.8 motion to vacate is not the appropriate procedural mechanism by which to seek compensation for the community service work Nelson performed. We disagree.

In Civil Survival Project, plaintiffs argued that a civil class action was the proper means of

seeking compensation for Blake but that the rule does not specify whether it

10 Even if Blake defendants who paid their LFOs entirely through monetary payments may receive more reimbursement than defendants like Nelson who satisfied their LFOs through performing inequalities between the rich and the poor Runyan, 121 Wn.2d at 449 (alteration in original)

(quoting Riggins v. Rhay, 75 Wn.2d 271, 283, 450 P.2d 806 (1969)). is the exclusive means of doing so. Id. at 572, 5

has repeatedly affirmed that provisions similar to CrR 7.8 but operative in courts of limited

jurisdiction, rather than superior courts, are the exclusive means to remedy problems in criminal

Id. at 574. The court pointed out that our Supreme

Court, in Williams v. City of Spokane, 199 Wn.2d 236, 505 P.3d 91 (2022), affirmed the line of

cases holding provisions similar to CrR 7.8 as the exclusive means to remedy issues in criminal

judgments. Id. at 575.

Ultimately, the Civil Survival Project court explained that because the differences between

the rules analyzed in the cited precedent and CrR 7.8 were negligible, Id. procedural means by which to seek refund and cancellation of superior court imposed Blake

Id. at 578.

We adopt the reasoning in Civil Survival Project appropriately brought pursuant to CrR 7.8. 11

2. No Abuse of Discretion

Nelson argues that the trial court erred by characterizing their reimbursement request as a

claim for damages.

11 that sovereign immunity precludes Nelson from maintaining their action. We argument because this is a criminal matter and there is no civil suit against the State. We review the denial of a CrR 7.8 motion for an abuse of discretion. State v. Robinson,

193 Wn. App. 215, 217, 374 P.3d 175 (2016). A trial court abuses its discretion if its decision is

manifestly unreasonable or based on untenable grounds or reasons. Id. at 217-18.

See 1 Verbatim Rep.

of Proc. (VRP)

restitution or unjust enrichment claim. By denying the motion in part on that ground, the trial court

implied that a CrR 7.8 motion was not the appropriate mechanism for what it characterized as

Civil Survival Project, decided before the trial

court hea which to seek reimbursement of Blake LFOs. 24 Wn. App. 2d at 578. Thus, the trial court erred

by suggesting Nelson could seek reimbursement through a civil claim for damages.

However, the trial court did not abuse its discretion because

Court of Appeals as to whether we ought

to approach differently the question of community service work performed in lieu of legal financial

1 VRP (Apr. 4, 2023) at 23. In the absence of such guidance, the trial court

analogized to State v. Hecht, 2 Wn. App. 2d 359, 409 P.3d 1146, review denied, 190 Wn.2d 1024

(2018). was persuaded by Hecht In Hecht, a defendant whose conviction had been reversed brought a RAP 12.8 motion

2 Wn. App. 2d at 361. Relying on the Restatement of Restitution, the court explained person who has conferred a benefit upon another in compliance with a judgment, or whose property

Id.

at 367 (quoting RESTATEMENT OF RESTITUTION § 74, at 302-03) and reference to taken property suggests restitution concerns only the property transferred between

Id. at 367. Then citing to Nelson, hen a criminal conviction

is overturned by a reviewing court, the State is obliged to refund fees, court costs, and restitution

Id. at 368.

Thus, the court concluded that Hecht money paid in satisfaction

paid in satisfaction of his judgment and the State was

Id. (emphasis added).

While Nelson did not make a restitution or unjust enrichment claim under RAP 12.8, the

reasoning articulated in Hecht not paid to the State in satisfaction of the imposed LFOs as no property was transferred by Nelson

to the State in the performance of community service. And the State did not receive any benefit

paid in satisfaction of the judgment and sentence. Thus, the trial court did not abuse its discretion when it denied

R 7.8 motion seeking reimbursement for community service hours performed in lieu

of paying LFOs.

CONCLUSION

otherwise fails to show the denial violated their constitutional rights, we affirm the trial court.

Lee, J. We concur:

Veljacic, A.C.J.

Price, J.