

Supreme Court Issues
Cases Not Yet Set & January Term 2024
February 8, 2024

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Cases Not Yet Set

***Administrative Law—Rules—Adoption—“Rule Making”—What Constitutes—Environment—Department of Ecology—Utility Services—Sewers—Construction and Operation**

Whether the Department of Ecology permissibly included nitrogen discharge restrictions in permits for sewage treatment plants without adopting the restrictions through formal rulemaking procedures under [RCW 34.05.310-.395](#).

No. 102479-7, *Birch Bay Water & Sewer Dist., et al. (respondent) v. State, Dep’t of Ecology (petitioner)*.

[535 P.3d 462 \(2023\)](#).

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Criminal Law—Aggravated First Degree Murder—Punishment—Sentence—Life Imprisonment Without Parole—Youthful Offender—Resentencing—Sentencing Authority—Community Custody as Exceptional Sentence

Whether in resentencing a 20-year-old offender pursuant to *In re Personal Restraint of Monschke*, [197 Wn.2d 305](#), [482 P.3d 276 \(2021\)](#), on a conviction for aggravated first degree murder for which the original sentence was mandatory life without release, the trial court had authority to impose a determinate sentence, and whether it could impose community custody as an exceptional sentence.

No. 101859-2, *State (appellant) v. Reite (respondent)*.

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Criminal Law—Jury—Selection—Challenge for Cause—Actual Bias—What Constitutes—Equivocal Response—Denial of Challenge—Standard of Review

Whether in this criminal prosecution the trial court erred in declining to excuse a prospective juror for cause after the juror evidenced confusion about the presumption of innocence and indicated that the juror may agree with the rest of the jurors if undecided.

No. 102402-9, *State* (petitioner) *v.* *Smith* (respondent).

[534 P.3d 402 \(2023\)](#).

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Criminal Law—Punishment—Sentence—Guilty Plea—Youthful Offender—Resentencing—Breach of Plea Agreement—Remedy—Withdrawal of Guilty Plea

Whether on direct appeal a 17-year-old offender who pleaded guilty to charges and received an agreed sentence may not seek resentencing in light of *State v. Houston-Sconiers*, [188 Wn.2d 1, 391 P.3d 409 \(2017\)](#), because it would breach the plea agreement, and if so, whether as a remedy the offender should be allowed to move to withdraw the plea.

No. 102311-1, *State* (respondent & petitioner) *v.* *Harris* (appellant & cross-petitioner).

[533 P.3d 135 \(2023\)](#).

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**Criminal Law—Unlawful Possession of a Controlled Substance—Bail Jumping—
Motion to Withdraw Guilty Plea—Invalidation of Possession Conviction**

Whether a defendant who pleaded guilty to bail jumping is entitled to withdraw the plea after expiration of the collateral challenge limitation period on the basis the defendant simultaneously pleaded guilty in a separate case to unlawful possession of a controlled substance under a statute later invalidated under *State v. Blake*, [197 Wn.2d 170, 481 P.3d 521 \(2021\)](#).

No. 102325-1, *State (respondent) v. Willyard (petitioner)*.

[Unpublished.](#)

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**Criminal Law—Unlawful Possession of a Controlled Substance—Forgery—
Unlawful Possession of a Firearm—Motion to Withdraw Guilty Plea—
Invalidation of Possession Conviction**

Whether a defendant who pleaded guilty to multiple offenses under a single plea agreement is entitled to withdraw the plea as to all offenses on the basis one of the offenses—unlawful possession of a controlled substance—was invalidated under *State v. Blake*, [197 Wn.2d 170, 481 P.3d 521 \(2021\)](#).

No. 102131-3, *State (respondent) v. Olsen (petitioner)*.

[26 Wn. App. 2d 722 \(2023\)](#).

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Criminal Law—Unlawful Possession of a Controlled Substance—Obstructing a Public Servant—Motion to Withdraw Guilty Plea—Invalidation of Possession Conviction

Whether a defendant who pleaded guilty to two offenses under a single plea agreement is entitled to withdraw the plea to both offenses on the basis one of the offenses—unlawful possession of a controlled substance—was invalidated under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

No. 102326-0, *State* (respondent) *v. Willyard* (petitioner).

Unpublished.

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Divorce—Community Property—Division of Military Pension After Involuntary Recall to Active Duty Following Divorce

Whether a former husband’s increased pension payments for time he served on an involuntary recall to active military duty after the dissolution of his marriage constitute community property in which the former wife is entitled to a share.

No. 102355-3, *Porter* (petitioner) *v. Porter* (respondent).

535 P.3d 465 (2023).

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Divorce—Maintenance—Factors—Need of Recipient—Finding—Necessity

Whether an award of maintenance in a marriage dissolution is proper without finding that the receiving spouse has a need for it.

No. 102401-1, *Wilcox* (petitioner) *v. Wilcox (aka Palomarez)* (respondent).

Unpublished.

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Environment—SEPA—Determination of Nonsignificance—Environmental Assessment—Reasonably Sufficient Information

Whether King County conducted an adequate threshold environmental review for purposes of the State Environmental Protection Act, chapter [43.21C RCW](#), prior to issuing a statement of nonsignificance for King County Ordinance 19030, which amended ordinances relating to the operation of wineries, breweries, and distilleries in agricultural areas.

No. 102177-1, *King County* (respondent) *v.* *Friends of Sammamish Valley, et al.* (petitioner). (See also: [Zoning and Planning—Growth Management—Consistency with Comprehensive Plan—Adult Beverage Businesses](#)).

[26 Wn. App. 2d 906 \(2023\)](#).

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Financial Institutions—Checking Accounts—Customer Agreement—Overdraft Penalties—Breach of Contract—Consumer Protection—Unfair or Deceptive Conduct.

Whether a credit union member stated a claim for which relief could be granted in alleging that the credit union’s method of calculating overdraft fees under its optional checking account overdraft protection service violated the terms of the membership agreement or was unfair or deceptive for purposes of the Consumer Protection Act.

No. 101288-8, *Feyen* (respondent) *v.* *Spokane Teachers Credit Union* (petitioner).

[23 Wn. App. 2d 264 \(2023\)](#).

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Juveniles—Dependency—Shelter Care—Appeal—Specific Direction—Necessity

Whether in this dependency action, dismissal of the mother’s appeal of a shelter care order was warranted under [RCW 13.04.033\(3\)](#) because the mother did not file a written and signed “specific direction” to file the notice of appeal.

No. 102558-1, *In re the Dependency of A.H., L.L., S.O.-W.* (petitioner).

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Juveniles—Dependency—Shelter Care—Continuation of Shelter Care—Hearing—Necessity

Whether in this dependency action in which the superior court entered a third order extending shelter care for 30 days, the court was required under [RCW 13.34.065\(7\)\(a\)\(i\)](#) to hold another hearing at the expiration of the 30 day extension and an additional hearing for any 30 day extension thereafter.

No. 102344-8, *In re the Matter of the Dependency of B.B.B.*

[27 Wn. App. 2d 825, 533 P.3d 1177 \(2023\)](#).

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Limitation of Actions—Filing Complaint—Electronic Filing—Receipt After Close of Business on Last Day of Limitation Period—Constructive Filing—Applicability

Whether in this negligence action in which the plaintiff’s complaint was electronically filed seven minutes after the close of the superior court’s business hours on the last day of the applicable statute of limitations, the complaint was untimely under [GR 30\(c\)\(1\)](#), which provides that an electronic document received after business hours is considered filed at the beginning of the next business day.

No. 102016-3, *Wall (petitioner) v. Grover (respondent)*.

[26 Wn. App. 2d 769 \(2023\)](#).

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Medical Treatment—Malpractice—Evidence—Contributory Negligence—Intoxication

Whether in this federal medical malpractice action in which the plaintiff alleges negligence in her treatment following an automobile accident, the trial court may consider evidence of the plaintiff's pretreatment conduct to support the defendants' affirmative defenses of contributory negligence and intoxication.

No. 102719-2, *Paddock* (plaintiff) v. *Peacehealth, Inc., et al.* (defendants). **(Stricken)**.

Certified from the United States District Court, Western District of Washington.

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Open Government—Public Disclosure—Public Records—Injunctive Relief—Plaintiffs' Use of Pseudonyms—Validity

Whether in this Public Records Act litigation, police officers seeking injunctive relief against disclosure of their unredacted records are entitled to proceed under pseudonym.

No. 102182-8, *John Does 1, 2, 4, & 5* (respondents) v. *Sueoka, et al.* (petitioners). (*See also*: [Open Government—Public Disclosure—Public Records—Law Enforcement Officer Investigative Records—Injunctive Relief—First Amendment—Free Speech—Political Association](#); [Open Government—Public Disclosure—Public Records—Statutory Notice Provisions—Third-Party Rights—Agency's Obligations—Constitutional Rights](#)).

531 P.3d 821 (2023).

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Open Government—Public Disclosure—Public Records—Law Enforcement Officer Investigative Records—Injunctive Relief—First Amendment—Free Speech—Political Association

Whether in this Public Records Act litigation, the records of police officers under investigation for attendance at a political rally are subject to disclosure.

No. 102182-8, *John Does 1, 2, 4, & 5* (respondents) v. *Sueoka, et al.* (petitioners). (See also: [Open Government—Public Disclosure—Public Records—Injunctive Relief—Plaintiffs’ Use of Pseudonyms—Validity](#); [Open Government—Public Disclosure—Public Records—Statutory Notice Provisions—Third-Party Rights—Agency’s Obligations—Constitutional Rights](#)).

531 P.3d 821 (2023).

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Open Government—Public Disclosure—Public Records—Statutory Notice Provisions—Third-Party Rights—Agency’s Obligations—Constitutional Rights

Whether in connection with a request for disclosure of public records, an agency is obligated, beyond the notice provisions in [RCW 42.56.540](#), to notify a third party when disclosure of records may implicate that party’s constitutional rights and refuse disclosure unless the third party does not object.

No. 102182-8, *John Does 1, 2, 4, & 5* (respondents) v. *Sueoka, et al.* (petitioners). (See also: [Open Government—Public Disclosure—Public Records—Law Enforcement Officer Investigative Records—Injunctive Relief—First Amendment—Free Speech—Political Association](#); [Open Government—Public Disclosure—Public Records—Injunctive Relief—Plaintiffs’ Use of Pseudonyms—Validity](#)).

531 P.3d 821 (2023).

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***Personal Restraint—Petition—Young Adult Offender—Timeliness—Exceptions—Newly Discovered Evidence—Youth Brain Development—Evolving Scientific Research**

Whether in this personal restraint petition challenging a 600-month sentence imposed in 1989 on convictions for first degree murder and first degree arson committed when the petitioner was 18 years old, recent scientific evidence on youth brain development constitutes newly discovered evidence exempting the petition from the one-year time limit on collateral review.

No. 102295-6, *In re Pers. Restraint of Frazier* (petitioner).

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***State—Department of Fish and Wildlife—Fish and Wildlife Commission—Appointment—Qualifications of Service—Concurrent Service in Other Public Position—County Planning Commission**

Whether a person serving in a volunteer position on a county planning commission is ineligible for appointment to the state Fish and Wildlife Commission under [RCW 77.04.040](#), which provides that persons eligible for the commission “shall not hold another state, county, or municipal elective or appointive office.”

No. 102358-8, *U.S. Sportsmens’ Alliance Found., et al.* (respondents) v. *Smith* (petitioner).

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Taxation—Business and Occupation Tax—Deductions—“Amounts Derived From Investments”—Meaning

Whether in this business and occupation tax refund action, petitioners were entitled to deduct their entire incomes under [RCW 82.04.4281\(1\)\(a\)](#), and thus avoid any tax liability, on the basis that their incomes were derived solely from investments.

No. 102223-9, *Antio, LLC, et al.* (petitioners) v. *Dep’t of Revenue* (respondent).

[26 Wn. 2d 129 \(2023\)](#).

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Washington Commercial Electronic Mail Act (CEMA)—Consumer Protection Act (CPA)—False or Misleading Information in Subject Line of Promotional Email—Prohibition—Scope

Whether, in this federal action involving alleged violations of Washington’s Commercial Electronic Act and Consumer Protection Act, [RCW 19.190.020\(1\)\(b\)](#) prohibits the transmission of commercial email with a subject line containing any false or misleading information or prohibits only misleading information about the commercial nature of the email.

No. 102592-1, *Brown, et al.* (plaintiff) v. *Old Navy, et al.* (defendants).

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Zoning and Planning—Growth Management—Consistency with Comprehensive Plan—Adult Beverage Businesses

Whether King County Ordinance 19030, which amended ordinances relating to the operation of wineries, breweries, and distilleries in agricultural areas, is inconsistent with the purpose of the Growth Management Act, chapter [36.70A RCW](#), to preserve agricultural land.

No. 102177-1, *King County* (respondent) v. *Friends of Sammamish Valley, et al.* (petitioner). (See also: [Environment—SEPA—Determination of Nonsignificance—Environmental Assessment—Reasonably Sufficient Information](#)).

[26 Wn. App. 2d 906 \(2023\)](#).

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Cases Set for Oral Argument

Criminal Law—Punishment—Sentence—Resentencing—CrR 7.8 Motion—Facial Invalidity—Scope of Resentencing

Whether, when a defendant files a [CrR 7.8](#) motion for resentencing on the basis that the defendant’s original offender score included a prior drug possession conviction now invalid under *State v. Blake*, [197 Wn.2d 170, 481 P.3d 521 \(2021\)](#), and thus the judgment and sentence is facially invalid, the superior court must consider all sentencing issues raised by the defendant de novo, including new matters, or whether the court has discretion to limit the scope of resentencing.

No. 102045-7, [State \(petitioner\) v. Vasquez \(respondent\)](#). (Oral argument 2/15/24).

[Unpublished.](#)

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Criminal Law—Punishment—Sentence—Resentencing After *Blake*—Concurrent Firearm Enhancements—Propriety—Invited Error

Whether in this resentencing on multiple convictions occurring after the defendant’s prior convictions for possession of a controlled substance were invalidated by *State v. Blake*, [197 Wn.2d 170, 481 P.3d 521 \(2021\)](#), the trial court improperly imposed firearm enhancements on two of the nondrug convictions concurrently, and if so, whether the State invited the error.

No. 102002-3, [State \(respondent\) v. Kelly \(petitioner\)](#). (Oral argument 2/15/24). (*See also*: [Criminal Law—Punishment—Sentence—Resentencing After *Blake*—Timeliness—Validity of Judgment and Sentence as to Nondrug Offenses—Change in Law](#)).

Consolidated with: 102003-1, [State \(respondent\) v. Kelly \(petitioner\)](#).

[25 Wn. App. 2d 879 \(2023\)](#).

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Criminal Law—Punishment—Sentence—Resentencing After *Blake*—Timeliness—Validity of Judgment and Sentence as to Nondrug Offenses—Change in Law

Whether a defendant convicted of multiple offenses including possession of a controlled substance may be resentenced on all of his convictions beyond the one-year time limit on collateral relief even though invalidation of the drug possession conviction pursuant to *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), does not alter the standard ranges of the nondrug convictions, either because invalidation of the drug possession conviction effectively vacates the entire judgment and sentence, or because *Blake* constitutes a material retroactive change in the law.

No. 102002-3, *State (respondent) v. Kelly (petitioner)*. (Oral argument 2/15/24). (See also: [Criminal Law—Punishment—Sentence—Resentencing After *Blake*—Concurrent Firearm Enhancements—Propriety—Invited Error](#)).

Consolidated with: 102003-1, *State (respondent) v. Kelly (petitioner)*.

[25 Wn. App. 2d 879 \(2023\)](#).

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Negligence—Premises Liability—Buildings and Other Structures—Instructions—Knowledge or Notice in General—Constructive Notice—Proximate Cause

Whether in this premises liability action involving a slip and fall, the jury should have been instructed on a foreseeability theory of notice of the hazardous condition, and whether [6 Washington Practice: Washington Pattern Jury Instructions: Civil 120.07 \(7th ed. 2022\)](#) is an accurate statement of the law.

No. 102258-1, *Moore, (respondent) v. Fred Meyer Stores, Inc., et al. (petitioner)*. (Oral argument 2/22/24).

[26 Wn. App. 2d 769 \(2023\)](#).

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Process—Service—Sufficiency—Proof—Corporations and Business Organizations—Persons Authorized to Accept Service—Statutory Authority—Human Resources Manager—Whether a “Managing Agent” or “Office Assistant.”

Whether in this personal injury action against a limited liability company, the plaintiff made a prima facie showing of proper service of process on a “managing agent” of the company or an “office assistant” of the head of the company or the company’s registered agent within the meaning of [RCW 4.28.080](#) when process was served on the company’s human resources manager.

No. 102147-0, [Spencer \(respondent\) v. Franklin Hills Health Spokane, LLC \(petitioner\)](#). (Oral argument 2/13/24).

[Unpublished.](#)

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Public Employment—Wrongful Discharge—Violation of Public Policy—Accommodation of Employee—Religious Practices

Whether, in this case for wrongful termination of a public employee in violation of public policy, the employee raised a material question of fact as to whether the employer failed to adequately accommodate the employee’s absences to attend religious events.

No. 101386-8, [Suarez \(respondent\) v. State, et al. \(petitioner\)](#). (Oral argument 2/13/24).

[23 Wn. App. 2d 609 \(2022\)](#).

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Searches and Seizures—Fruit of Unlawful Search—Use to Support Search Warrant in Separate Criminal Investigation—Validity of Warrant—Attenuation Doctrine—Applicability

Whether Washington’s attenuation doctrine permitted the State in this criminal prosecution to rely on evidence obtained from an unlawful search to support a search warrant in relation to a separate criminal investigation.

No. 102134-8, *State (petitioner) v. McGee (respondent)*. (Oral argument: 2/22/24).

[530 P.3d 211 \(2023\)](#).

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