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SUPREME COURT NO. 100060-0

(COA No. 812599-I)

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON

v.

ISABELITA HAWKINS

**MEMORANDUM OF *AMICI CURIAE* IN
SUPPORT OF REVIEW
NORTHWEST JUSTICE PROJECT
COLUMBIA LEGAL SERVICES
DISABILITY RIGHTS WASHINGTON
REVIVE CENTER FOR RETURNING CITIZENS**

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I. INTRODUCTION AND STATEMENT OF THE CASE

“[E]veryone deserves a second chance, and many punishments deserve a second look.”¹ *Amici* submit this brief because there is a substantial public interest in equitable access to justice for criminal record vacates. RAP 13.4(b)(4). Isabelita Hawkins did everything the Court asked her to do and more, but the King County Superior Court ignored a decade of exemplary work to rehabilitate herself, relying solely on a one-sided probable cause statement about a period where she experienced a serious mental health crisis to deny her relief.

II. IDENTITY AND INTEREST OF AMICI

The interests of *Amici* are fully laid out in the Motion for Leave to File *Amici Curiae* Brief.

III. ISSUE ADDRESSED BY AMICI

1. People with disabilities are disproportionately impacted by the criminal legal system.

¹ Colleen Chien, *America's Paper Prisons: The Second Chance Gap*, 119 MICH. L. REV. 519, 525 (2020). Available at: <https://repository.law.umich.edu/mlr/vol119/iss3/3>

2. Improperly exercised discretion denies access to justice.
3. RCW 9.94A.640 vacates promote public safety by reducing recidivism.
4. Racism pervades the criminal legal system.

IV. STATEMENT OF FACTS

Amici defer to the Statement of the Case presented in the Petition for Review filed on behalf of Isabelita Hawkins.

V. ARGUMENT

A. THERE IS A SUBSTANTIAL PUBLIC INTEREST IN REDUCING THE DISPROPORTIONATE IMPACT OF THE CRIMINAL LEGAL SYSTEM ON PEOPLE WITH DISABILITIES

The underlying facts of this case are not in dispute. Isabelita Hawkins was a veteran and registered nurse working at the Veteran's Administration. She is a survivor of sexual and physical abuse as a child. As a veteran, she sought mental health treatment multiple times from the Veterans Administration, but she received inadequate assistance. In 2011, she experienced a psychotic break.

However, while incarcerated Hawkins received the mental

health treatment that she was unable to obtain earlier. The State and Hawkins arrived at a plan to provide Hawkins the culturally competent veterans' services she needed by admitting her to King County District Court's Regional Veteran's Court. A Court sitting in equity should consider this context in viewing Hawkins' petition to vacate the record of her conviction.

The Court should look beyond the statement of probable cause, consider the context of the offense, and the steps taken by Hawkins to obtain and remain compliant with the health care she needed to remain safely in the community.

1. This Court Should Adopt a Framework to Structure the Discretion Exercised by Sentencing Courts in Considering Motions to Vacate Under RCW 9.94A.640

As the court of appeals noted in the case below, a court abuses its discretion when its decision “‘is manifestly unreasonable or based upon untenable grounds or reasons.’” *State v. Kopp*, 15 Wn. App. 2d 281, 287–88, 475 P.3d 517 (2020) (internal citations omitted). A decision is based on untenable reasons if it “‘is based on an incorrect standard or the facts do not

meet the requirements of the correct standard” and is manifestly unreasonable if it “is outside the range of acceptable choices, given the facts and the applicable legal standard.” *Id.* (quoting *State v. Lamb*, 175 Wn.2d 121,127, 285 P.3d 27 (2012) (internal citations omitted).

Trial courts lack clear guidance on what would constitute a “manifestly unreasonable” decision on a petition to vacate. This Court, in rendering a decision on another statute (the Public Records Act) in *Yousoufian v. Office of Ron Simms* restated the standard as “[a] trial ‘court’s decision is ‘manifestly unreasonable’ if ‘the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take.’” *Yousoufian v. Office of Ron Simms*, 168 Wn.2d 444, 458–59, 229 P.3d 735 (2010) (internal citations and quotations omitted).

The *Yousoufian* court created both mitigating and aggravating factors to guide a trial court in the exercise of its discretion, noting, “Appellate courts frequently set forth

multifactor frameworks to provide guidance to trial courts exercising their discretion so as to render those decisions consistent and susceptible to meaningful appellate review.” *Id.* at 465. This Court should accept review to consider what framework trial courts should use when exercising their discretion in evaluating petitions under RCW 9.94A.640. That framework should take into account the purpose of the Sentencing Reform Act to ensure appropriate and proportionate punishment, and to offer the offender an opportunity to improve herself and reduce risk to the community. See, generally, RCW 9.94A.010.

2. A Mental Health Crisis Should Not Be Subject to the Same Analysis as Willful Criminal Conduct

Too often, people with serious mental illness (SMI²) only receive appropriate care after an episode leads to interaction with

² Serious mental illness (SMI) is defined as individuals 18 years of age or older who currently have received a diagnoses of schizophrenia, schizoaffective disorder, bipolar disorder, or major depression.

the criminal legal system. The Agency for Healthcare Research and Quality (AHRQ) found that individuals with SMI are over-represented significantly in the criminal legal system.³ Human Rights Watch found that up to 19 percent of adults in State prisons have significant psychiatric or functional disabilities.⁴ Yet the criminal legal system does little to address the ability of people with SMI to reengage successfully with the community after justice involvement.

Another study reviewed by AHRQ found that within 39 months of release, the majority of people with SMI are rearrested.⁵ As Human Rights Watch noted, “Absent appropriate

³ Evidence-based Practice Center Systemic Review Protocol: Interventions for Adults With Serious Mental Illness in the Criminal Justice System and Rational for the Review. Agency for Healthcare Research and Quality. (2012). Retrieved from: <https://effectivehealthcare.ahrq.gov/products/mental-illness-adults-prisons/research> (September 30, 2021).

⁴ Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, 17 (2003), <https://www.hrw.org/reports/2003/usa1003/usa1003.pdf> accessed on September 30, 2021.

⁵ Cloyes KG, Wong B, Latimer S, et al. *Time to Prison Return for Offenders With Serious Mental Illness Released From*

mental health treatment (as well as supports for housing, employment and income), the mentally ill who commit criminal offenses are likely to repeat them, cycling in and out of correctional facilities for years.”⁶

Hawkins’ ability to successfully reenter society following a serious mental health crisis that resulted in a conviction is unfortunate in only one way—it is exceedingly rare. It is clear that Hawkins has been punished, received treatment, and that she is unlikely to reoffend. What is unclear is whether she will be offered the opportunity to improve herself without the ability to vacate her felony conviction, for which she clearly qualifies under RCW 9.94A.640.

B. THERE IS SUBSTANTIAL PUBLIC INTEREST IN ACCESS TO JUSTICE AND IMPROPERLY EXERCISED DISCRETION LIMITS ACCESS

Meaningful access to justice requires clear legal standards

Prison: A Survival Analysis. Crim Justice Behav. Feb. 2010, 37(2): 175-87.

⁶ Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* at 193.

that trial courts can apply equitably. Access to justice is a constitutional right in Washington.⁷ The complex procedure to obtain a vacate reduces access to justice.⁸ The unguided discretion coupled with the complex, time-intensive, petition-based process results in high barriers, especially those with marginalized identities, to access to justice.

1. Improperly Exercised Discretion Adds to the Second Chance Gap and Reduces Access to Justice

Unfortunately, there is no available data on who is being denied motions to vacate or the bases for denial; however, there have been a few studies on the “second chance gap,” defined as, “the difference between eligibility and delivery of a given second chance.”⁹

⁷ Debra Stephens *The Once and Future Promise of Access to Justice in Washington's Article I, Section 10*, Washington Law Review Online: Vol. 91 , Article 4. (2016) Available at: <https://digitalcommons.law.uw.edu/wlro/vol91/iss1/> accessed on September 30, 2021.

⁸ Colleen Chien, *America's Paper Prisons: The Second Chance Gap* at 541.

⁹ *Id* at 544.

One study of Washington’s second chance gap determined¹⁰ ”less than 3% of individuals eligible [to have convictions vacated], and less than 1% of the charges eligible for relief have received the remedies.”¹¹ Like Hawkins, approximately 25% of justice-involved Washingtonians are eligible to clear their entire record.¹²

2. Improperly Exercised Discretion Results in Justice by Geography

Motions to vacate are handled differently in different counties resulting in justice by geography. As such, guidance from this Court would ensure individuals across the state have meaningful access to the opportunity to vacate convictions as guaranteed by the Legislature. For example, King County has the

¹⁰ This article was not able to account for outstanding fines or potentially disqualifying out of state charges due the lack of data.

¹¹ Colleen Chien, Zuyan Huang, Jacob Kuykendall, and Katie Rabago, *The Washington State Second Chance Expungement Gap* (2020) Abstract, Available at: <https://digitalcommons.law.scu.edu/facpubs/971> accessed on September 30, 2021.

¹² *Id.* at 1.

largest population in Washington more than twice the size of Pierce County.¹³ However, in 2019, King County Superior Court only vacated 23 convictions, while Pierce County vacated 198.¹⁴

Courts are likely inappropriately denying Washingtonians the ability to be restored to full civic participation. The need for guidance on this point is evidenced by the fact that Hawkins is the second appellate case where the King County Superior Court denied a motion to vacate based on discretion and a probable cause statement. *State v. Kopp*, 15 Wn. App. 2d. 281, 475 P.3d (2020).

“Equitable access to the courts is essential to achieve justice for all.”¹⁵ Not only does the trial court’s unguided

¹³ [U.S. Census Bureau QuickFacts: King County, Washington](#) and [U.S. Census Bureau QuickFacts: Pierce County, Washington](#).

¹⁴ Colleen Chien, Zuyan Huang, Jacob Kuykendall, and Katie Rabago, *The Washington State Second Chance Expungement Gap* at Appendix A.

¹⁵ Gender and Justice Commission, *2021: How Gender and Race Affect Justice Now Final Report* at 14, Administrative Office of the Courts (September 2021) <https://www.courts.wa.gov/>

discretion to determine whether to vacate a conviction undermine the statutory protections the Legislature created; it also creates wildly disparate access to justice.

C. THE PUBLIC HAS A SUBSTANTIAL INTEREST IN PROMOTING PUBLIC SAFETY, WHICH VACATES DO BY REMOVING BARRIERS TO HOUSING AND EMPLOYMENT

Public safety is promoted when people are able to vacate their criminal records. “Safe and stable housing is often viewed as the foundation for individuals to prepare and proactively engage the process of reentry.”¹⁶ Unfortunately, having a criminal history is often a barrier to obtaining housing and employment. Persons with criminal records have increased barriers to obtain affordable, safe, accessible, and stable housing.¹⁷ “For people with criminal histories, obtaining

subsite/gjc/documents/2021_rt453et4t4rrr4za Gender_Justice_Study_Report.pdf accessed on September 30, 2021.

¹⁶ *Id.*

¹⁷ Faith Lutze, Jeffrey Rosky, Zachary Hamilton, *A Multisite Outcome Evaluation of Washington State’s Reentry Housing Program for High Risk Offenders*, *Crim. Justice and Behav.* Vol. 41 No. 4 (April 2014) 472

employment can be extremely difficult.”¹⁸ Resulting in more than 60% of formerly incarcerated people being unemployed one year after release.¹⁹

By vacating criminal records, housing and employment barriers are removed, leading to more successful reentry. This is the statutory purpose when the legislature adopted RCW 9.94A.640. An explicit goal of the legislation is to “offer the offender an opportunity to improve him or herself.” RCW 9.94A.010. Where a person meets the requirements to vacate their criminal record, it is consistent with public policy for the

<https://s3.wp.wsu.edu/uploads/sites/436/2014/11/Criminal-Justice-and-Behavior-2014-Lutze-471-91.pdf> accessed on September 30, 2021.

¹⁸ Rebecca R. Ramaswamy, *Bars to Education: The Use of Criminal History Information in College Admissions*, Columbia Journal of Race and Law, 5(2), 145-164 (2015) available at <https://doi.org/10.7916/cjrl.v5i2.2310>.

¹⁹ The Sentencing Project, *Poverty and Opportunity Profile: Americans with Criminal Records*, www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf (last visited Sept. 10, 2021).

offender to be reinstated to preconviction status as a full-fledged citizen. *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001) *abrogated by State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011). The legislature continues to recognize the importance of vacating records in promoting successful reentry. When the legislature adopted the New Hope Act in 2019, it intended to “promot[e] successful reentry by modifying the process for obtaining certificates of discharge and vacating conviction records.” SUBSTITUTE HOUSE BILL 1041, Chapter 331, Laws of 2019.

Under the statutory scheme, any individual seeking to vacate a conviction has already been in the community without incident for a minimum of 3 –10 years. RCW 9.94A.640. “When a person has served their time and no longer poses an elevated risk, their record of past crimes becomes irrelevant from a public safety perspective.”²⁰

²⁰ Colleen Chien, *America's Paper Prisons: The Second Chance Gap* at 541.

By denying persons like Ms. Hawkins from vacating their records, when they meet the statutory requirements, the legislative purpose of the statutory scheme is frustrated.

D. RACISM PERVADES THE CRIMINAL LEGAL SYSTEM

“As judges, we must recognize the role we have played in devaluing black lives.”²¹ In the instant case, the Court of Appeals “acknowledge[d] that the criminal justice system has perpetuated legalized forms of racial discrimination against Black defendants[;]” however, in the same breath, the Court required evidence of this racism. Opinion at 6. By requiring such evidence, the Court effectively discounted the pervasive nature of racism in the criminal legal system.

When examining Hawkins’ case, it is important to use an intersectional lens. There is little research on this

²¹ Washington Supreme Court, www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%200060420.pdf (June 4, 2020) accessed on September 30, 2021.

intersectionality in the context of reentry; however, there is no real dispute that the criminal legal system is proportionately impacts people of color at every step.²²

In addition, researchers found evidence of cumulative disadvantage, when relatively small disparities in each step of the process build up to create substantial disparities in final outcomes.²³ The Gender and Justice Study data suggests that race and gender-neutral policies can result in disparate outcomes, as they systematically disadvantage individuals on the basis of

²² Geneva Brown, *The Intersectionality of Race, Gender, and Reentry: Challenges for African-American Women* American Constitution Society for Law and Policy at 3 (November 2010) <https://www.prisonpolicy.org/scans/acs/intersectionality.pdf> accessed on September 30, 2021. at 3; Paula Ditton Henzel, *Disproportionality in Adult Felony Sentencing*, Washington State Sentencing Guidelines Commission (2003) available at [https://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Adult_DisparityDisproportionality_FY2003.pdf;2021_Gender_Justice_Study_Report.pdf\(wa.gov\)](https://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Adult_DisparityDisproportionality_FY2003.pdf;2021_Gender_Justice_Study_Report.pdf(wa.gov)) at 689; Gender and Justice Commission, *2021: How Gender and Race Affect Justice Now Final Report*, passim.

²³ Gender and Justice Commission, *2021: How Gender and Race Affect Justice Now Final Report* at 722-23.

external structural inequities.²⁴

The Court has previously allowed the pervasive nature of racial bias in the criminal legal system to drive change. See e.g. *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018). In *State v. Jackson*, the Court found that, “the systemic control of persons of color remains in society, particularly within the criminal justice system.” *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020). “[The Court] must also recognize that this is not how a justice system must operate. . . . The systemic oppression of black Americans is not merely incorrect and harmful; it is shameful and deadly.”²⁵ This Court should accept review in order to continue to work to redress these harms.

VI. CONCLUSION

For the foregoing reasons, this case is of substantial public

²⁴ *Id.* at 724

²⁵ Washington Supreme Court, www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%200060420.pdf (June 4, 2020) accessed on September 30, 2021.

interest. RAP 13.4(b)(4). Therefore, this Court should accept review of Ms. Hawkins' case.

CERTIFICATE OF COMPLIANCE

This document contains 2488 words exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, this certificate of compliance, the certificate of service, signature blocks, and pictorial images.

RESPECTFULLY SUBMITTED this 4th day of October 2021.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this 4th day of October 2021, I caused the foregoing document to be filed with the Court of Appeals, Division II, and to be served to all participants via the Washington State Appellate Courts' Portal.

SIGNED at Everett, Washington, this 4th day of October 2021.

NORTHWEST JUSTICE PROJECT

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