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STATE OF WASHINGTON
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NO. 101512-7

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON MICHAEL RAMOS,

Petitioner.

**STATE'S ANSWER TO PETITION FOR REVIEW
AND CROSS-PETITION**

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A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case.

B. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is State v. Ramos, No. 82818-5-I, __ Wn. App. 2d __, 520 P.3d 65 (2022).

C. ISSUES PRESENTED FOR REVIEW

Petitioner Ramos seeks review of the Court of Appeals' decision rejecting his excessive fines challenges to the restitution order, interest on restitution, and the Victim Penalty Assessment imposed at his original sentencing and maintained at his post-Blake¹ partial resentencing. Ramos also seeks review of the Court of Appeals' affirmance of the resentencing court's refusal to strike all interest on restitution that had accrued since his original sentencing.

The State believes that review is not warranted in this case. But if this Court grants review, the State seeks cross-review of the following sub-issues, which were either not

¹ State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021).

reached by the Court or were decided adversely to the State, as alternative grounds on which to affirm Ramos's legal financial obligations:

1. The resentencing court did not actually reconsider Ramos's legal financial obligations, and to the extent this Court determines that it did reconsider them, such reconsideration lacked statutory authority because those portions of the judgment and sentence remained valid and final. Ramos's challenges to his legal financial obligations are therefore barred by RCW 10.73.090 and RAP 2.5(c)(1).

2. Ramos has not met his burden to establish a manifest constitutional error as required to obtain review for the first time on appeal under RAP 2.5(a); the Court of Appeals erred when it concluded that the alleged constitutional error was manifest simply because Ramos alleged an error that, if it had existed, would have been manifest.

3. The Court of Appeals erred in concluding that the trial court's rejection of a pro se motion to strike Ramos's legal

financial obligations, which occurred months before resentencing and from which no notice of appeal was filed, properly placed Ramos's constitutional claims before the court.

D. STATEMENT OF THE CASE

1. RAMOS ROBS TWO MEN AND REPEATEDLY STABS ONE OF THEM, AND IS ORDERED TO PAY RESTITUTION FOR MEDICAL COSTS.

The facts of Ramos's crimes were summarized by the Court of Appeals in the direct appeal from Ramos's original sentencing:

On October 31, 2013, Neal Blum and Jarvis Capucion were drinking beer on some steps near the Mt. Baker transit center when they heard a car alarm go off. Two men, later identified as Ayman Ibrahim and Jason Ramos, came running down the stairs. Blum stood up to let them pass, but Ibrahim stopped to speak with him while Ramos continued down the stairs past Capucion. Ibrahim attempted to engage Blum in conversation and shake his hand, in which hand Ibrahim carried an unidentified object concealed with a bandage. During this interaction with Blum, Ibrahim and Ramos spoke to each other in what sounded like Spanish. At one point Ibrahim called out and Ramos came back up the stairs to Capucion. He grabbed Capucion's backpack and punched him in the face, knocking him to the ground. When Capucion got up and tried to retrieve his bag, the

two exchanged blows. Meanwhile Ibrahim grabbed Blum, took his backpack, and removed a knife from Blum's pocket.

Blum heard Capucion cry out for help. He turned to see Ramos making sharp stabbing motions toward Capucion's torso. Ibrahim started down the stairs toward Ramos and Capucion. Blum took out his other knife and went after him. As Blum caught up to Ibrahim on the stairs, he grabbed Ibrahim and the two stumbled into the bushes. Blum cut Ibrahim in the neck with his knife and stabbed him multiple times in the right side. Blum then ran down the stairs to help Capucion. He knocked Ramos's knife away and stabbed him in the left side. When Ramos continued to fight, Blum cut his throat and stabbed him in the right side. Ibrahim came down the stairs and approached Blum, but then backed off. Ramos got up again and challenged Blum, but left after Blum brandished his knife and threatened to kill him if he didn't leave. Ramos and Ibrahim walked away as Blum called 911. Capucion had been stabbed multiple times in the chest and suffered serious injuries to his spleen and other organs. Blum was not injured in the confrontation.

The police apprehended Ibrahim and Ramos about a block away, near Martin Luther King, Jr. Way and S. Hanford Street. The two were arrested and taken to Harborview Hospital for treatment of their injuries. One backpack was recovered from Ramos and another was found on the stairwell; the backpacks were later identified as belonging to Blum and Capucion.

State v. Ramos, Unpublished, No. 73063-1-I, 193 Wn. App. 1033, 2016 WL 1627704, at *1 (Apr. 25, 2016).

In addition to being stabbed numerous times, Capucion's elbow was dislocated during the attack. CP 42. He lost consciousness while being treated by first responders and awoke days later in the hospital. CP 49. He had been intubated and placed on a ventilator. CP 49. The attack lacerated Capucion's diaphragm and forced the removal of his spleen. CP 76. Capucion remained on a ventilator for "a long time" because he struggled to breathe on his own during initial attempts to remove it. CP 76. He spent three weeks in the hospital and later underwent another surgery to address aftereffects of the damage to his elbow. CP 76-77. Capucion was homeless at the time of the assault. RP 11.

A jury found Ramos guilty of two counts of robbery in the first degree and one count of assault in the first degree with a deadly weapon enhancement. CP 13. The trial court ruled that one of the robbery convictions constituted the same

criminal conduct as the assault conviction and sentenced Ramos at or below the midpoint of the standard range on the remaining two counts. CP 14, 16; RP 6.

The trial court entered a timely restitution order. CP 476-77. In it, the trial court ordered Ramos to pay a total of \$50,591.70 in restitution to Capucion, the Washington State Crime Victims Compensation Fund, and two insurance companies for the cost of the medical care Capucion needed as a result of Ramos's crimes. CP 476-77.

2. RAMOS DOES NOT CHALLENGE HIS FINANCIAL OBLIGATIONS IN HIS ORIGINAL APPEAL OR AT HIS BLAKE RESENTENCING.

In his original direct appeal, Ramos challenged only the sufficiency of the evidence to support the robbery conviction pertaining to Blum; the Court of Appeals affirmed the conviction in 2016. State v. Ramos, Unpublished, No. 73063-1-I, 193 Wn. App. 1033, 2016 WL 1627704 (Apr. 25, 2016). This Court denied Ramos's petition for review. 186 Wn.2d 1011, 380 P.3d 492 (2016). In early 2021, the trial court denied

a pro se motion by Ramos to strike his legal financial obligations.² CP 478-79. Ramos did not appeal that decision.

Because Ramos's offender score had included a prior conviction for possession of cocaine under a statute held to be unconstitutional in State v. Blake, Ramos was partially resentenced in June 2021 using a recalculated standard range. RP 4-5. At Ramos's resentencing, Ramos argued that he had been very active in prison in doing all he could to ensure that he would be a productive member of the community upon release so that he could make the "financial reparations that will be imposed again with this resentencing." RP 20. Ramos did not object to the maintenance of the mandatory \$500 Victim Penalty Assessment, and informed the trial court that he had no objection to the original restitution amount. RP 37, 39. However, he asked the trial court to strike any interest that had accumulated since the original sentencing, stating that he

² Ramos's motion does not appear in the appellate court record, leaving it unclear what the legal basis for Ramos's motion was.

“assume[d]” that such interest “is voided and that it starts anew today.” RP 37.

The trial court questioned the accuracy of that assumption and invited Ramos to provide any authority for it. RP 37-38. The court indirectly questioned the legislature’s wisdom in imposing interest on restitution, but noted that that was a policy decision outside the court’s purview. RP 38. Ramos indicated that he would do research on the issue and reiterated that he was “not contesting the amount” of restitution because it was all for medical expenses and the amounts “were appropriate.” RP 38-39. The trial court formally denied the request to strike the accrued interest based on the lack of any identified legal basis for doing so, but indicated that it would welcome a motion for reconsideration if Ramos found any authority to support his request.³ RP 39.

³ Ramos never brought such a motion.

Deferring to the original sentencing court’s judgment, the resentencing court imposed sentences at or below the midpoint of the recalculated standard range. CP 445, 447. The parties and the Court appear to have believed that some written re-acknowledgment of Ramos’s restitution obligation was required. However, the resentencing court explicitly stated its understanding that “this recalculation of the standard range” in the wake of Blake would not “impact the prior restitution order.” RP 38. The resentencing court did not review the evidence supporting the original sentencing court’s restitution determination or otherwise re-evaluate the propriety of the original restitution determination. The resentencing court simply maintained the original sentencing court’s restitution order by entering an “Order Affirming Prior Restitution Amount.” CP 450-51.

3. RAMOS UNSUCCESSFULLY RAISES EXCESSIVE FINES CHALLENGES TO HIS RESTITUTION, INTEREST, AND VICTIM PENALTY ASSESSMENT FOR THE FIRST TIME ON APPEAL.

Ramos timely appealed the restitution order and other legal financial obligations re-imposed at the resentencing, arguing that it violated the state and federal excessive fines clauses to impose restitution and the Victim Penalty Assessment without consideration of his indigency and that the trial court was required to strike all interest that had accrued since his original sentencing. CP 458; Br. of Appellant. The notice of appeal did not address the trial court's prior denial of Ramos's pro se motion. CP 458-70.

In the Brief of Respondent, the State argued that Ramos's claims failed on their merits, but also that Ramos had not established a manifest constitutional error warranting review for the first time on appeal of his constitutional claims. Br. of Respondent at 20. Shortly before oral argument, the State filed a Statement of Additional Authorities citing the statutory one-

year time-bar on collateral attacks and providing caselaw discussing RAP 2.5(c)(1) and the principle that correction of an offender-score error does not affect the finality of other portions of a judgement and sentence. *Statem. of Add'l Authorities* (July 14, 2022). At oral argument, the State argued that Ramos's challenge constituted a time-barred collateral attack on portions of his judgment and sentence that had been final since the conclusion of his original direct appeal. Ramos, No. 82818-5-I, slip op. at 5 n.7.

The Court of Appeals declined to consider the State's late-raised collateral attack argument, and concluded that RAP 2.5(c)(1) permitted review because the resentencing court had, in the Court of Appeals' opinion, conducted "a complete resentencing." Slip op. at 5 n.7. The Court of Appeals also noted sua sponte that, prior to resentencing, the court had rejected Ramos's pro se motion to revisit his financial obligations and strike accrued interest, and asserted that "[t]hese decisions are properly before us." Slip op. at 6. The

Court of Appeals did not address the fact that Ramos’s notice of appeal did not address the trial court’s denial of Ramos’s pro se motion and that any notice of appeal of that decision—which occurred four months before resentencing—would have been untimely.

The Court of Appeals held that the manifest constitutional error standard in RAP 2.5(a) was satisfied in this case because the claims raised for the first time on appeal were constitutional in nature and because “if we were to accept Ramos’s constitutional argument, the alleged error would be manifest.” Slip op. at 7. However, the Court of Appeals went on to find that no constitutional error occurred, rejecting Ramos’s claims on their merits.

The court held that the state and federal excessive fines clauses are coextensive, that restitution based on actual victim losses is by definition not grossly disproportionate to the crime, and that neither interest nor the Victim Penalty Assessment are punitive. It further held that because the original sentencing

court's restitution order was valid, and because post-judgment interest on restitution dates back to the date of the original restitution order by statute, the trial court properly declined to strike the interest that had accrued prior to the resentencing hearing. Ramos seeks review of these decisions.

E. REVIEW SHOULD BE DENIED, BUT IF REVIEW IS GRANTED, THIS COURT SHOULD ALSO REVIEW THE PROCEDURAL ARGUMENTS PRESENTED BY THE STATE

The reasoning and authority set out in the Court of Appeals' opinion and the Brief of Respondent below amply demonstrate that the criteria for acceptance of review set out in RAP 13.4(b) are not met for the issues on which Ramos seeks review. Additionally, Ramos's challenge to the constitutionality of the requirement that he pay interest on restitution may soon become moot, as recent statutory amendments grant the trial court authority to waive interest on restitution and to relieve Ramos of his obligation to pay restitution to two of the four payees on the original restitution

order. RCW 10.82.090(2), (3)(c) (effective Jan. 1, 2023); RCW 9.94A.753(3)(b) (effective Jan. 1, 2023).

In the event this Court grants Ramos's petition for review in whole or in part, this Court should also review the procedural bars argued by the State in briefing and at oral argument below.

1. THE RESENTENCING COURT DID NOT RECONSIDER RAMOS'S LEGAL FINANCIAL OBLIGATIONS, AND IF IT DID, SUCH RECONSIDERATION LACKED STATUTORY AUTHORITY; REVIEW OF RAMOS'S CLAIMS IS BARRED UNDER RCW 10.73.090 AND RAP 2.5(C)(1).

RCW 10.73.090 bars any collateral attack on a judgment and sentence more than one year after the judgment becomes final unless certain exceptions apply. Correction of an offender score and standard range does not disturb the finality of other portions of the judgment and sentence that were correct and valid when imposed. State v. Rowland, 174 Wn.2d 150, 154-56, 272 P.3d 242 (2012); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 877, 50 P.3d 618 (2002).

When a post-sentencing change in offender score affects the standard range, the incorrect standard range renders that portion of the judgment and sentence facially invalid. In re Pers. Restraint of Toledo-Sotelo, 176 Wn.2d 759, 767, 297 Pd 759 (2013). Facial invalidity is an exception to the one-year time bar. RCW 10.73.090. However, when a defect that renders a portion of the judgment invalid on its face is cured, “the entry of a corrected judgment does not trigger a new one-year window for judgment provisions that were always valid on their face.” In re Pers. Restraint of Adams, 178 Wn.2d 417, 424, 309 P.3d 451 (2013).

Even where convictions are not final or have been final for less than one year, RAP 2.5(c)(1) bars post-resentencing review of any claim that could have been raised in the appeal from the original sentencing but was not, unless “the trial court, on remand, exercised its independent judgment, reviewed and ruled again” on the issue. State v. Barberio, 121 Wn.2d 48, 49-52, 846 P.2d 519 (1993); RAP 2.5(c)(1).

Here, the post-Blake error in Ramos's offender score and standard range rendered the portion of his judgment and sentence setting out his score, range, and confinement time facially invalid. As such, Ramos was entitled to have those portions of the judgment and sentence corrected even though his convictions had been final since 2016. However, the remainder of this judgment and sentence, including the portions setting out his obligation to pay restitution and the Victim Penalty Assessment, remained valid and final. Not only was the trial court not required to readdress them, but it lacked statutory authority to do so because no exception to the one-year time bar applied. RCW 10.73.090; RCW 10.73.100.

The record in this case indicates that the resentencing court did not in fact reconsider Ramos's restitution obligations or the Victim Penalty Assessment. Neither party asked it to exercise discretion regarding those aspects of Ramos's sentence, except as to the accrual of interest since the original sentencing. RP 6-41. Ramos affirmatively stated that he was

not challenging the amount of restitution. RP 38. The resentencing court specifically noted that recalculation of the standard range did not “impact the prior restitution order,” and there is no indication the court reviewed the documentation supporting the original restitution order, as would be necessary before making any decision about the appropriate amount of restitution. RP 38. The court simply entered an amended judgment and sentence in which the only changes were to Ramos’s offender score, standard range, and confinement time, and maintained all other provisions of the original sentence. CP 444-54.

This Court should not construe the record in this case to constitute reconsideration of Ramos’s legal financial obligations, particularly in light of the court’s lack of statutory authority to amend valid and final portions of a sentence, and the fact that allowing such reconsideration without statutory authority would undermine the finality of judgments. Because the trial court did not exercise its independent judgment

regarding the amount of restitution or the Victim Penalty Assessment, RAP 2.5(c)(1) bars review of Ramos's claims, and Ramos's appellate challenges to the original trial court's decision to impose restitution, interest on restitution, and the Victim Penalty Assessment are untimely collateral attacks barred by RCW 10.73.090.

Even if this Court were to conclude that the resentencing court *did* exercise independent judgment regarding restitution, interest, and/or the Victim Penalty Assessment, such reconsideration lacked statutory authority and therefore cannot provide a lawful basis for Ramos to belatedly attack his legal financial obligations. This Court has repeatedly emphasized the importance of finality of judgments, and should not permit a defendant to exploit a trial court's legal error to escape the procedural bars the legislature and this Court have put in place to protect finality.

The Court of Appeals refused to consider the State's arguments regarding certain procedural bars because they were

not expressly offered until later in the appellate process. This was error. The State did not seek affirmative relief, nor did it inject new issues into the case. Rather, the State simply offered additional reasons to affirm Ramos’s sentence. Moreover, even a procedural bar that was not raised at all in the Court of Appeals may be considered by this Court in deciding whether to grant review. State v. Molnar, 198 Wn.2d 500, 511, 497 P.3d 858 (2021) (noting that “if the Court of Appeals had reached the correct decision on the merits, we might have dismissed review as improvidently granted” based on very late identification of untimely collateral attack).

2. THE COURT OF APPEALS MISAPPLIED RAP 2.5(a) WHEN IT CONCLUDED THAT RAMOS HAD ESTABLISHED A MANIFEST CONSTITUTIONAL ERROR.

In order to have a claim reviewed for the first time on appeal, a defendant must demonstrate that the error is (1) manifest, and (2) of constitutional dimension. State v. O’Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009); RAP 2.5(a). Not every alleged constitutional error is a manifest constitutional

error. State v. Lynn, 67 Wn. App. 339, 343-44, 835 P.2d 251 (1992) (“[I]t is important that ‘manifest’ be a meaningful and operational screening device if we are to preserve the integrity of the trial and reduce unnecessary appeals.”). A manifest error is an error that is unmistakable, evident or indisputable and that causes “actual prejudice” by having “practical and identifiable consequences in the trial of the case.” State v. Nguyen, 165 Wn.2d 428, 433, 197 P.3d 673 (2008).

Ramos raised his constitutional claims for the first time on appeal from his partial resentencing. As discussed in the Brief of Respondent below, the excessive fines clause was not violated in this case, let alone manifestly violated. Br. of Respondent at 20-32. The Court of Appeals misapplied RAP 2.5(a) by interpreting the requirement of a “manifest” error to be satisfied by a mere allegation of error. Slip op. at 7 (“[I]f we were to accept Ramos’s constitutional argument, the alleged error would be manifest.”). The manifest constitutional error standard requires more—if no error occurred, then by definition

there was no manifest error. Because the Court of Appeals correctly concluded that no constitutional error occurred, it was error to conclude that the manifest constitutional error standard was satisfied.

3. THE COURT OF APPEALS ERRED IN CONCLUDING THAT RAMOS'S PRE-SENTENCING PRO SE CHALLENGE TO LEGAL FINANCIAL OBLIGATIONS PROVIDED A BASIS TO CONSIDER HIS CONSTITUTIONAL CLAIMS.

The Court of Appeals appears to have concluded that the denial of Ramos's pro se pre-resentencing motion attacking his legal financial obligations properly placed his constitutional claims before it, regardless of whether the resentencing court's treatment of the issue warranted review under RAP 2.5(c)(1). Slip op. at 6. This was error and this Court should review the propriety of that decision if review is granted in this case.

After concluding that RAP 2.5(c)(1) permitted review because the resentencing court reconsidered the restitution amount, the Court of Appeals stated:

Moreover, Ramos did file a pro se motion before the resentencing hearing, asking the court to revisit the LFOs. The court denied that motion. Ramos then asked the court to consider striking accrued interest. The court also rejected that request. These decisions are properly before us.

Slip op. at 6. This is incorrect. The notice of appeal that Ramos filed to initiate this appeal challenges only the order entered at the resentencing hearing. CP 458. It did not challenge the denial of Ramos's pro se motion to strike his financial obligations, nor could it have timely done so. RAP 5.2(a). That is therefore the only decision by the trial court that could be properly before the Court of Appeals. RAP 2.4. Additionally, the record does not establish on what grounds Ramos's pro se motion sought to have his legal financial obligations stricken—the trial court's order does not specify the grounds, and Ramos's motion does not appear in the appellate record. This is an additional reason why it was error for the Court of Appeals to conclude that Ramos's pro se motion properly preserved the issue for this appeal.

If this Court grants review of the merits of Ramos's claims, it should also review whether the Court of Appeals was correct to cite Ramos's pro se motion as a basis for appellate review of the claims Ramos raises in this appeal.

F. CONCLUSION


For the foregoing reasons, the petition for review should be denied. However, if review is granted, in the interests of justice this Court should also grant review of the issues raised in this Answer and Cross-Petition.

This document contains 3,796 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 3rd day of January, 2023.

Respectfully submitted,

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