

FILED
SUPREME COURT
STATE OF WASHINGTON
11/1/2023 3:09 PM
BY ERIN L. LENNON
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Jodi R. Backlund Po Box 6490 Olympia, Wa 98507-6490 backlundmistry@gmail.com	Service was electronic, or if no email address appears at left, via U.S. Mail. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED November 1, 2023, Port Orchard, WA Original to Supreme Court; Copy as listed at left.

IN THE SUPREME COURT OF WASHINGTON

THE STATE OF WASHINGTON,) No. 102424-0
)
 Respondent,) STATE’S MOTION TO
) STRIKE POINT I(B)
 v.) FROM THE PETITION
) FOR REVIEW
JEREMY BLAINE FENNEY,)
)
 Appellant.)
_____)

I. IDENTITY OF MOVING PARTY

The respondent, STATE OF WASHINGTON, asks this Court for the relief designated in Part II of this motion.

STATE’S MOTION STRIKE
POINT I(B) FROM THE
PETITION FOR REVIEW;
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Chad M. Enright, Prosecuting Attorney
Appeals Unit
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 328-1577; Fax (360) 337-4949
www.kitsapgov.com/pros

II. STATEMENT OF RELIEF SOUGHT

The State respectfully moves to strike Point I(B) from the petition for review.

III. FACTS RELEVANT TO MOTION

In this appeal, Fenney challenged the sentence imposed on remand following his first direct appeal.

Fenney was originally convicted of 44 offenses, including human trafficking, promoting prostitution, robbery and multiple counts of rape, assault, felony harassment, kidnapping, and sundry lesser offenses. CP 555-630. Based on an offender score of 87, the trial court imposed an exceptional sentence of 4048 months. CP 834-36.

In the first direct appeal, the Court of Appeals vacated and merged some of the offenses, and accordingly remanded for resentencing. *State v. Fenney*, 18 Wash.App.2d 1064, 2021 WL 3630924 (2021), *review denied*, 198 Wn.2d 1037 (2022).



On remand, the trial court accordingly struck the reversed convictions, merged others, struck Fenney's possession of methamphetamine conviction pursuant to *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), CP 3444, and resentenced Fenney. Based on a standard range of 1998 to 2316 months, CP 3237, the trial court imposed an exceptional sentence totaling 3700 months. RP (3/14/22) 21.

In his second direct appeal, Fenney argued only that his sentence was clearly excessive based on comparisons to average sentences for murder convictions. Corrected Brief of Appellant, at 6-8.¹ The Court of Appeals rejected this argument. Opinion, at 7-10.

At no point at resentencing, or in the Court of Appeals, did Fenney argue that the trial court's sentence was tainted by racism, as he presently urges as a ground for discretionary

¹ He also argued that certain conditions of community custody were improper, which is not germane to the present motion.



review in this Court at Point I(B).

IV. GROUNDS FOR RELIEF AND ARGUMENT

An issue not raised or briefed in the Court of Appeals will not be considered by this court. *State v. Halstien*, 122 Wn.2d 109, 130, 857 P.2d 270 (1993). Nothing in Fenney's Point I(B) was raised in either the trial court at resentencing or in his appeal to the Court of Appeals therefrom. The argument is thus improper and should be stricken.

V. CONCLUSION

The State respectfully requests that Point I(B) be stricken from the petition for review and that a new date for filing the State's answer to the petition be set.

VI. CERTIFICATION

This document contains 401 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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Chad M. Enright, Prosecuting Attorney
Appeals Unit
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 328-1577; Fax (360) 337-4949
www.kitsapgov.com/pros

DATED this 17th day of October, 2022.

CHAD M. ENRIGHT
PROSECUTING ATTORNEY



RANDALL A. SUTTON
WSBA No. 27858
Deputy Prosecuting Attorney
kcpa@kitsap.gov

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Chad M. Enright, Prosecuting Attorney
Appeals Unit
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 328-1577; Fax (360) 337-4949
www.kitsapgov.com/pros

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