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SUPREME COURT
STATE OF WASHINGTON
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NO. 966435

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Petitioner,

v.

MATTHEW THOMAS SCHWARTZ,
Respondent.

ANSWER TO STATE'S PETITION FOR REVIEW

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I. RESPONDENT'S IDENTITY

Matthew Thomas Schwartz (Mr. Schwartz) is the respondent in this matter. I, Tanesha La'Trelle Canzater, represented Mr. Schwartz, as the appellant before Division Three Court of Appeals (Division Three), and I represent him here.

II. COURT OF APPEALS' DECISION

The State of Washington (State) petitioned this Court to review State v. Matthew Thomas Schwartz, https://www.courts.wa.gov/opinions/pdf/351718_pub.pdf, 429 P.3d 1080 (Wash. Ct. App. 2018), which was published on November 15, 2018. In that decision, Division Three found the phrase, “the last date of release from confinement...pursuant to a felony conviction” in RCW 9.94A.525(2)(c) does not include confinement for a failure to make a payment toward legal financial obligations...,”and remanded Mr. Schwartz’s case for re-sentencing found Mr. Schwartz’s 2001 failure to register conviction washed-out based on his six and a half crime free years in the community following September 2006. Div. III Opinion at 2; 11.

The State has already attached a copy of the decision to its petition. However, to comply with Rule of Appellate Procedure (RAP) 13.4(c), I have attached another copy here.

III. RESPONSE TO ISSUES PRESENTED

1. The State maintains Division Three erred when it found “the date of last release from confinement” does not include confinement imposed for failing to pay legal financial obligations. Contrary the State’s assertions, the way Division Three interprets that statutory phrase is consistent with what our legislature intends.

2. The State asks this Court to determine whether Division Three erred by not considering whether a 2014 felony conviction is the correct trigger date to calculate washout under the statute. Division Three determined the trigger clause is not ambiguous and the 2001 felony conviction is the appropriate trigger date. With that, we believe the court has already resolved the issue of whether the trigger date could be any other.

IV. STATEMENT OF THE CASE

Generally, we rely on the facts we presented in our opening brief. For purposes here, however, we adopt the State's rendition of the facts in its petition.

V. REASONS WHY THIS COURT SHOULD DENY REVIEW

The criteria for which this court will accept review are constrained by the very specific and limited circumstances described in our rule of appellate procedure or RAP 13.4(b). This court will only grant a petitioner's request for review if the court of appeals' decision conflicts with a decision of this court or with another court of appeals' decision; involves a significant question of law under the Constitution of the State of Washington or of the United States; or involves an issue of substantial public interest. RAP 13.4(b)(1)-(4).

According to the State, State v. Schwartz goes against prior published case law established in State v. Mehrabian, 175 Wn. App. 678, 714-15, 308 P.3d 660 (2013). So, in order to ensure uniformity, this Court should accept review. But, Division Three's decision is consistent with the purpose of the wash-out provisions in the Sentencing Reform Act of 1981, chapter 9.94A RCW, considers what the legislature intends for financial and non-financial conditions and, aligns with this state's efforts to ensure poor people are not unfairly jailed or tied for years to the criminal justice system because they

are unable to pay legal financial obligations. Div. III Opinion at 10.¹ Therefore, this Court need not accept review either to clarify the law or to make the law more uniformed.

Granted, as the State points out in its petition, Division Three expressly disagrees with State v. Mehrabian, 175 Wn. App. 678, and arguably that could be reason enough for this Court to accept review. But, Schwartz and Mehrabian are based on different analyses.

Division One relies on State v. Perencevic, 54 Wn. App. 585, 589, 774 P.2d 558 (1989) and State v. Blair, 57 Wn. App. 512, 515-16, 789 P.2d 104 (1990) to shape its analysis in State v. Mehrabian.

In State v. Perencevic, 54 Wn. App. at 589, 774 P.2d 558, the court “held that confinement for a community supervision violation was confinement ‘pursuant to a conviction of a felony.’” State v. Mehrabian, 175 Wn. App. 678, 714–15, 308 P.3d 660, 679 (2013), *quoting* Blair, 57 Wn. App. at 515, 789 P.2d 104. And, in State v. Blair, the court ruled, “there is no reason to disassociate the probation confinement from its underlying cause, the felony conviction.” Blair, at 515-16, 789 P.2d 104. What is more, the court’s analysis of Perencevic and Blair concentrated on alleged violations of *community supervision* (emphasis added) pursuant to a felony conviction, not on “substantial differences between financial and nonfinancial conditions...” Div. III Opinion at 10-11; State v. Mehrabian, 175 Wn. App. at 714.

In addition, the State asks this Court to rule on whether the 2014 felony conviction reset the trigger period because Division Three neglected to do so. State’s Pet. Rev. 3.

¹ “Legislature passes bill to bring fairness to Washington’s system of Legal Financial Obligations,” *ACLU Washington*, News Release: Tuesday, March 6, 2018.

We believe Division Three addressed the issues raised in this matter and resolved any doubt about which date is the correct trigger date and about which convictions washout of Mr. Schwartz's offender score.

VI. CONCLUSION

For those reasons, we believe the State has neither met a requisite criterion under RAP 13.4(b), nor established a basis for this Court to address whether a different trigger date should have applied. Therefore, we respectfully ask this court to deny the State's petition for review.

Respectfully submitted this 14th day of January, 2019.

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DECLARATION OF SERVICE

January 14, 2019

Case Name: **State of Washington v. Matthew Thomas Schwartz**

Supreme Court Case Number: 966435

I declare under penalty and perjury of Washington State laws that on January 14, 2019, I filed this **ANSWER TO STATE'S PETITION FOR REVIEW** with this Court and served copies to:

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