

STATE OF WASHINGTON,)	No. 99483-8
Respondent,)	
)	MOTION TO AMEND
v.)	PETITION FOR REVIEW
)	TO ADD REQUEST
DAVID MULLINS,)	FOR RELIEF BASED ON
Petitioner.)	<i>STATE V. BLAKE</i>

A. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

Petitioner David Mullins asks this Court for permission to amend his pending petition for review and request additional relief based on the change in the law pursuant to *State v. Blake*, ___ Wn.2d, ___ P.3d ___, No. 96873-0 (Feb. 25, 2021). Mr. Mullins makes this motion in the interest of justice and pursuant to RAP 1.2(a), RAP 1.2(c), and RAP 18.8(a). The supplemental petition is being filed simultaneously with this motion.

B. GROUND FOR RELIEF AND ARGUMENT

Mr. Mullins's petition for review is currently pending on this Court's June 1, 2021, calendar. Mr. Mullins appeals from his convictions for escape, bail jumping, theft, and possession of a controlled substance under RCW 69.50.4013(1). CP 34, 98. The court sentenced him to a total of 84 months' confinement on these charges, including 24 months on the possession of a controlled substance count. CP 37, 101.

On December 3, 2020, the Court of Appeals reversed Mr. Mullins’s first degree escape conviction because the information is constitutionally defective and remanded for dismissal of that charge without prejudice. Slip op. at 8-9. Mr. Mullins petitioned this Court for review, arguing insufficient evidence supports the escape conviction and challenging the improper standard of review the Court of Appeals applied. The State did not answer Mr. Mullins’s petition or file a cross-petition. The petition is currently pending on the Court’s June 1, 2021, calendar.

On February 25, 2021, this Court ruled the statute underlying Mr. Mullins’s conviction for possession of a controlled substance is unconstitutional and void. *Blake*, No. 96873-0, at 3. The statute violates the due process clauses of the state and federal constitutions “because it criminalizes wholly innocent and passive nonconduct on a strict liability basis.” *Id.* at 27-28.

As the supplemental petition explains, this Court’s decision in *Blake* renders Mr. Mullins’s drug possession conviction void. The Court of Appeals already ordered Mr. Mullins’s case to be remanded because of the escape charge. *Blake* requires Mr. Mullins’s possession conviction to be vacated and dismissed on remand as well.

Mr. Mullins’s case is before this Court on direct appeal. RAP 1.2(a) directs this Court to “liberally” construe the rules to “promote

justice and facilitate the decision of cases on the merits.” RAP 1.2(c) similarly allows this Court to waive or alter the appellate rules “to serve the ends of justice.” RAP 18.8(a) gives this Court broad discretion to enlarge the time within which an act must be done.

Ms. Mullins is entitled to only a single opportunity for direct appellate review, and he must present and exhaust all viable issues. The change in the law applies to him and could not have been raised earlier in this case. The interest of justice favor granting his relief based on this change in the law. Moreover, the case already requires remand to address the constitutionally deficient information.

C. CONCLUSION

Mr. Mullins respectfully requests this Court grant the motion, permit him to amend his petition to request additional relief based on this change in the law and accept his supplemental petition for filing.

DATED this 12th day of March, 2021.

Respectfully submitted,



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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 99483-8**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Will Ferguson
[will.ferguson208@gmail.com]
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: March 12, 2021

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