No. 995923

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY DAVID CONAWAY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Alan R. Hancock, Judge
Superior Court Cause No. 16-1-00155-7

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Consistent with the decisions of this Court, in State v. Conaway (No. 80214-3-I, March 1, 2021) the Court of Appeals held that a plea of guilty followed by a completed deferred sentence constitutes a conviction within the meaning of RCW 9A.88.010 and affirmed Conaway's conviction for Felony Indecent Exposure predicated on a previous conviction for the same crime. The issues raised in Conaway's Petition for Review do not warrant further review under RAP 13.4. The State of Washington respectfully requests this Court deny the Petition.

II. RESTATEMENT OF ISSUES

A. Whether review is needed to conduct successive, inconsistent interpretations of the same statutory language.

B. Whether a defendant who has had a sentence deferred after conviction "has previously been convicted" as this Court held in Schimmelpfennig.

C. Whether the Court of Appeals erred by citing the statutory definition of the term "Conviction" at RCW 9.94A.030(9).

D. Whether the Court of Appeals applied the standard of review advanced by both parties and articulated in its decision.

III. STATEMENT OF THE CASE

On October 16, 2006, Jeffrey Conaway was charged with the crime of Indecent Exposure in violation of RCW 9A.88.010(2)(a). CP 83. On July 18, 2007, after advisement of Conaway's rights and the potential consequences of a guilty plea, the court accepted Conaway's counseled plea of guilty to the charge of Indecent Exposure, entered a Judgement and deferred sentence for a period of 12 months. CP 85. At the 12 month review hearing, which Conaway did not appear for, the court found Conaway in compliance and dismissed the charge. CP 86; see also RP 469-477.

On June 27, 2016, Jeffrey Conaway exposed his penis to a 17-year old girl, C.M., while she was alone. RP 363-73. The next day, C.M. identified Conaway directly behind her in line at a coffee stand, and Conaway was arrested. RP 375.

In June of 2019, Conaway was retried on the charge of Felony Indecent Exposure following reversal of his conviction for Felony Indecent Exposure with Sexual Motivation in No. 77107-8-I (Div. 1, 12/3/2018).

In this second trial, Conaway was charged with Felony Indecent Exposure predicated on his previous conviction for the same crime in 2007. CP 63-64. Issues pertaining to the admissibility of the certified docket evidencing Conaway's prior conviction which resulted in a completed deferred sentence were argued prior to trial. RP 38-44. The trial court

concluded as a threshold matter that the defendant's prior guilty plea was a conviction, and the docket was admitted into evidence. RP 62-63. The jury found Conaway guilty.

On appeal from his second trial, the Court of Appeals addressed the merits of Conaway's sufficiency of the evidence claim. No. 80214-3-I at 6. The Court of Appeals agreed with the trial court's conclusion that the 2007 guilty plea followed by a deferred sentence was a "conviction" which could be used to elevate the current offense to a felony and affirmed Conaway's conviction in this case. Id. at 5-6.

IV. ARGUMENT

A. The decision of the Court of Appeals in this case is in line with Supreme Court precedent and it is consistent with similar decisions from other divisions.

Rule of Appellate Procedure 13.4(b) states that a petition for review will be accepted by the Supreme Court only if one of four conditions are met: (1) conflict with a decision of the Supreme Court; (2) conflict with a published decision of the Court of Appeals; (3) a significant question of law under the Constitution of the State of Washington or of the United States; or (4) involving an issue of substantial public interest that should be determined by the Supreme Court. As argued below, Conaway's Petition meets none of these criteria.

B. This Court need not grant review to engage in successive interpretations of the same statutory language.

Jeffrey Conaway asks this Court to accept review in order to construe the phrase "has previously been convicted" in RCW 9A.88.010 to exclude a guilty plea followed by a completed deferred sentence, characterizing the issue as one of first impression. However, this Court has previously interpreted the same statutory language in the context of a related statute, 9A.88.020, and determined that the Legislature intended the opposite of what Conaway now suggests. State v. Schimmelpfennig, 92 Wn.2d 95, 104, 594 P.2d 442, 448 (1979). As discussed in more detail below, that authority is consistent with other Washington decisions from this Court and the Court of Appeals which clarify that a guilty plea followed by a deferred sentence constitutes a "conviction" for purposes of use as an element in a later prosecution for a recidivist felony.

1. A defendant who has had a sentence deferred "after conviction" pursuant to RCW 3.66.067 has thereafter "previously been convicted"

Conviction occurs upon a plea, finding or verdict of guilty, regardless of whether sentence is ever imposed. Schimmelpfennig, 92 Wn.2d 104; see also State v. Carlyle, 19 Wn. App. 450, 457, 576 P.2d 408, 413 (1978) ("we construe the term "conviction" to mean the point in a prosecution where the accused is formally adjudged as being guilty of the

crime charged."); RCW 9.94A.030 (9). Put another way, "[t]he conviction is the finding of guilt. Sentence is not an element of the conviction but rather a declaration of its consequences." Carlyle, 19 Wn. App. at 458, (quoting People v. Funk, 321 Mich. 617, 33 N.W.2d 95, 96 (1948)); State v. Prater, 22 Wn. App. 212, 214–15, 589 P.2d 295, 297 (1978) (interpreting term "conviction" in context of recidivist escape statute, holding "[t]he determination of the guilt of the defendant is the important factor under the statutes, not the subsequent judgment and sentence"); Hokama v. Johnson, 89 Wn.2d 580, 583, 574 P.2d 379, 381 (1978).

The maintenance of consistent definitions of ubiquitous terms such as "conviction" promotes efficiency and predictability in the administration of justice. Recognizing this, the Court of Appeals in the instant case cited and applied both the statutory definition of "conviction" at 9.94A.030(9) as well as this Court's more recent decisions in State v. Cooper, 176 Wn.2d 678, 685, 294 P.3d 704 (2013) and State v. Haggard, 195 Wn.2d 544, 551, 461 P.3d 1159 (2020). The Court of Appeals decision here correctly reflects this Court's holding that the deferral of sentence is not a deferral of conviction.

2. The Deferred Sentence ("Post-Conviction Probation") pursuant to RCW 3.66.067

The instant case involves the application of two statutes which each incorporate references to a defendant's "conviction." The first of these is the deferred sentence statute, RCW 3.66.067, which at the time Conaway was granted a deferred sentence in 2007, read in its entirety:

> *After a conviction*, the court may impose sentence by suspending all or a portion of the defendant's sentence or by deferring the sentence of the defendant and may place the defendant on probation for a period of no longer than two years and prescribe the conditions thereof. A defendant who has been sentenced or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty and to enter a plea of not guilty, and the court may dismiss the charges.

See Laws of 2001 c 94 § 1 (emphasis added); RCW 3.66.067.

"In judicial interpretation of statutes, the first rule is the court should assume that the legislature means exactly what it says. Plain words do not require construction." State v. McCraw, 127 Wn.2d 281, 288, 898 P.2d 838, 842 (1995); Snohomish v. Joslin, 9 Wn. App. 495, 498, 513 P.2d 293 (1973). This Court ascertains the Legislature's intent "solely from the plain language by considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the

statutory scheme as a whole." State v. Evans, 177 Wn.2d 186, 192, 298 P.3d 724 (2013).

In practice, deferred sentences may be imposed after conviction by guilty plea, jury verdict, or finding of guilt. See State v. Gallaher, 103 Wn. App. 842, 843–44, 14 P.3d 875, 876 (2000).

> [a] deferred sentence occurs when a court adjudges a defendant guilty of a crime but stays or defers imposition of a sentence and places the person on probation. A deferred sentence is never imposed unless a defendant violates conditions of his probation. A defendant whose sentence was deferred may move to have the information filed against him dismissed upon fulfillment of the conditions of probation. Courts of limited jurisdiction may also permit a defendant on a deferred sentence to withdraw a guilty plea, enter a plea of not guilty, and dismiss the charges.

State v. S.G., 11 Wn. App. 2d 74, 80, 451 P.3d 726, 729 (internal citations omitted) (citing Carlyle, 19 Wn. App. 450, 454, 576 P.2d 408 (1978)); see also Cooper, 176 Wn.2d at 681–82, (in context of felony sentencing, contrasting Washington's deferred sentence procedure with the deferred adjudication procedure of Texas).

The Court of Appeals has further recognized, independent of the SRA, that the deferral of sentence pursuant to RCW 3.66.067 is a form of "post-conviction probation." State v. Vinge, 59 Wn. App. 134, 137, 795 P.2d 1199, 1201 (1990). This feature is a "fundamental distinction" between deferred sentences and pre-conviction alternatives such as deferred

prosecutions pursuant to RCW 10.05. Id; see also State ex rel. Schillberg v. Cascade Dist. Ct., 94 Wn.2d 772, 779, 621 P.2d 115, 119 (1980) (deferred prosecution under RCW 10.05 is "fundamentally a new sentencing alternative of preconviction probation, to be added to the traditional choices of imprisonment, fine, and post-conviction probation").

Washington courts have also held that the dismissal of a charge upon completion of a deferred sentence does not expunge or "erase or invalidate" the fact of the original conviction. Haggard, 195 Wn.2d at 553. In other words, a dismissal occurring after a period of post-conviction probation does not have the same effect as a reversal by a higher court, or a vacation based on a constitutional infirmity – results which this Court declared to be "entirely different in kind" from the dismissal of a charge after completion of a period of probation. In re Carrier, 173 Wn.2d 791, 803, 272 P.3d 209, 216 (2012). The continued validity of convictions which are followed by completed deferred sentences is also consistent with related statutory schemes, such as the use of "conviction records" under RCW 10.97. See AGO 1997 No. 1 (January 10, 1997) (completion of deferred sentence under RCW 3.66.067 does not result in expungement of defendant's "conviction record" stemming from the guilty plea.); State v. Gallaher, 103 Wn. App. 842, 844, 14 P.3d 875, 876 (2000) ("Nothing in RCW 3.66.067 implies that a

conviction is automatically deleted or expunged from the criminal record after dismissal").

Conaway argues that because RCW 3.66.067 does not include a provision expressly permitting use of the conviction in a future prosecution, that the Legislature must have intended to prevent that use. Conaway reasons that, because the Legislature included such a proviso in RCW 9.95.240, it could have included the same language in 3.66.067. See RCW 9.95.240 ("…PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.") But the only reasonable interpretation of the proviso in RCW 9.95.240 is as a limitation on the language which directly precedes it: "…who shall thereafter be *released from all penalties and disabilities resulting from the offense or crime* of which he or she has been convicted." RCW 9.95.240(1). This proviso is necessary in 9.95.240 because without it, the Legislature's grant of relief from "all penalties and disabilities" may have appeared unlimited. In contrast, the misdemeanor deferred sentence statute does *not* purport to release a defendant from "all penalties and disabilities" resulting from the conviction and thus, no express limitation of this absent language is needed.

3. Felony Indecent Exposure under RCW 9A.88.010, where person "has previously been convicted" of the same crime

The second statute at issue here is the Indecent Exposure statute, RCW 9A.88.010, which currently includes a provision for increased felony punishment when the offender has "previously been convicted" of either indecent exposure or a sex offense. The plain language of this statute read in conjunction with the deferred sentence statute is dispositive of Conaway's first claim. Logically, a defendant who has sentence deferred under RCW 3.66.067 "after a conviction" has "previously been convicted" within the meaning of RCW 9A.88.010. In essence, RCW 9A.88.010 and numerous recidivist statutes like it pose a question of historical fact: Was the defendant previously convicted of a qualifying crime? The only true answer in the instant case is yes.

Both the Indecent Exposure statute and the deferred sentence statute are unambiguous, however a closer look at the history of this Court's interpretation of the language at issue only bolsters this plain reading. When first enacted in 1975, Chapter 9A.88 was titled "Public Indecency" and included the specific offense of "public indecency" in section .010 as well as "Communicating with a Minor for Immoral Purposes" in section .020. Laws of 1975 1st Ex. Sess. c 260 § 9A.88.020. The first of these offenses, "public indecency", was at most a gross misdemeanor and contained no

provision for an escalation in punishment upon a second conviction. Id. The Communication with a Minor for Immoral Purposes statute on the other hand, did contain language designed to provide for felony punishment when a person had been previously convicted of the same crime. Under former RCW 9A.88.020, a violation was a gross misdemeanor, "*unless such person has previously been convicted* of a felony sex offense or has previously been convicted under this section…" Id. Four years after the creation of these statutes in chapter 9A.88, this Court ascertained the Legislature's intent behind the language "unless such person has previously been convicted" as used in 9A.88.020. In State v. Schimmelpfennig, a defendant was tried on the charge of felony Communication with a Minor for Immoral Purposes based in part on his guilty plea to the misdemeanor crime three years earlier which had resulted in a deferred sentence. 92 Wn.2d 95, 105, 594 P.2d 442, 448. The defendant in that case had completed the term of his probation and had thus never been sentenced. Id. The defendant claimed on appeal that despite a completed deferred or suspended sentence "he had not been previously convicted within the meaning of the statute." Id. This Court squarely rejected that claim:

> …RCW 9A.88.020 defines the offense as a felony when the defendant "has previously been convicted of a felony sexual offense or . . . under . . . RCW 9.79.130" (the prior statute prohibiting communication with a minor for immoral purposes). In 1974 defendant was charged with a

> violation of RCW 9.79.130 and pleaded guilty. He was granted probation for a period of 6 months and was never sentenced. At trial for the instant offense, the jury returned a special verdict finding defendant had previously been convicted of the crime of communication with a minor for immoral purposes. Defendant contends, however, that a plea of guilty followed by a grant of probation is not a previous conviction within the meaning of the statute. We cannot agree…
> *We see no reason why a completed period of probation should be treated any differently than a suspended sentence, or, indeed a sentence of imprisonment in this regard.* … We hold that a plea of guilty followed by a period of probation is a prior conviction within the meaning of RCW 9A.88.020.

Schimmelpfennig, 92 Wn.2d at 105 (1979).

In its decision, this Court again confirmed that the fact of a guilty plea is not erased by the deferral of sentence which occurs after conviction. Id., 92 Wn.2d at 104 ("A plea of guilty should thus be treated no differently than a jury verdict upon a subsequent charge of criminal behavior for the purpose of determining whether there has been a prior conviction for a related offense."); see also State v. Braithwaite, 92 Wn.2d 624, 629–30, 600 P.2d 1260, 1263 (1979), overruled on other grounds by State v. Hennings, 100 Wn.2d 379, 670 P.2d 256 (1983)).

Following this Court's decision in Schimmelpfennig, interpreting the felony predicate language: "such person has previously been convicted", the Legislature decided to use that exact language again in 9A.88.010, the statute now at issue. As part of the Community Protection Act of 1990, the

Legislature created the crime of Felony Indecent Exposure by amending RCW 9A.88.010 to provide that "*if such person has previously been convicted* under this subsection or of a sex offense as defined in RCW 9.94A.030, then such person is guilty of a Class C felony…" Laws of 1990 c 3 § 904. In this amendment to RCW 9A.88.010, the Legislature reasonably relied on this Court's previous interpretation of its words and chose to use the same language it had used in RCW 9A.88.020, because it intended those words to have the same meaning.

As this Court has recognized on several occasions, the Legislature "is presumed to be aware of judicial interpretation of its enactments." Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004); see also Neil F. Lampson Equip. Rental & Sales, Inc. v. W. Pasco Water Sys., Inc., 68 Wn.2d 172, 176, 412 P.2d 106 (1966) ("we must assume that the new legislation is in line with our prior decisions."). Further, this Court recognizes that "[c]onsiderations of stare decisis have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated[.]" State v. Blake, 197 Wn.2d 170, 191, 481 P.3d 521, 532 (2021).

The question of statutory re-interpretation posed here presents a slightly different case than in Riehl or Blake. For here, the Legislature has not remained silent in the face of this Court's decisions. Instead, the

Legislature has affirmatively *taken action in reliance* on this Court's previous interpretation of the statutory language first used in 9A.88.020. Consequently, the precedent of Schimmelpfennig is entitled to substantial deference in any successive interpretations of the same statutory language.

4. Post-conviction dismissal does not erase the fact of conviction

The deferred sentence statute gives courts the opportunity to grant to convicted defendants an opportunity for rehabilitation. Complimentary statutes have been designed to reduce or eliminate some of the collateral consequences associated with involvement in the criminal justice system, providing opportunities for rehabilitation, providing for the restoration of civil rights, and facilitating reentry into society. See, e.g., RCW 9.96.060 (misdemeanor vacation); RCW 9.97.020 (Certificate of Restoration of Opportunity). The deferred sentence statute, RCW 3.66.067, is related in this sense. See State v. Farmer, 39 Wn.2d 675, 678–79, 237 P.2d 734, 736 (1951), holding modified by State v. Proctor, 68 Wn.2d 817, 415 P.2d 634 (1966) ("Suspension of sentence followed by probation is intended as a reforming discipline.")

But there is a difference between forgiving and forgetting. None of these statutes, indeed no process under Washington law, entitles a defendant to erase the fact of a previous conviction from the mind of society. Haggard,

195 Wn.2d at 553 ("While a defendant may later be released from some legal consequence of his or her conviction, i.e., deferred sentence and dismissal, this does not invalidate or erase the initial finding of guilt for future sentencing purposes."); see also Carlyle, 19 Wn. App. 450, 457, 576 P.2d 408, 413 (1978) (in context of former habitual criminal statutes, "the fact that a court has exercised its discretion and sought to rehabilitate an individual does not alter the fact that the person has been convicted of the crime.").

Conaway asks this Court to reimagine the deferred sentence statute as a form of legislative super-pardon which grants previously convicted defendants a benefit that they would not even be entitled to if they took advantage of the statutory vacation procedure at RCW 9.96.060, or even upon receipt of a full and unconditional pardon by the Governor. See State v. Aguirre, 73 Wn. App. 682, 690, 871 P.2d 616, 620 (1994); State v. Cullen, 14 Wn.2d 105, 109, 127 P.2d 257, 259 (1942) ("To hold that an unconditional pardon obliterates the offense or the fact of conviction is to assume that the accused is innocent in the first instance. A pardon proceeds, not upon the theory of innocence, but implies guilt. The very act of forgiveness implies the commission of wrong, and that wrong has been established by the most complete method known to modern civilization.") Conaway argues he is entitled to a benefit which Washington law does not even provide for children who successfully complete a deferred disposition under RCW 13.40.127. See,

e.g. State v. S.G., 11 Wn. App. 2d 74, 82, 451 P.3d 726, 730. But there is no reason to believe the Legislature intended to silently imply this absurd result. Instead, in creating an opportunity for deferral of sentence "after a conviction", the Legislature intended to create a reformative alternative which allowed a defendant to avoid the punitive aspect of criminal sentencing altogether, while still memorializing the formal establishment of the defendant's guilt for use in a future prosecution. The Court of Appeals sound application of RCW 9A.88.010 here is consistent with relevant authority.

C. The statutory definition of the term "Conviction" at RCW 9.94A.030(9) was applied as intended to recidivist statutes in the criminal code.

In his Petition, Conaway correctly identifies examples of statutes which contain separate definitions of "conviction" which are specific to those crimes. Pet. Rev. at 6 (citing RCW 9.41.040(3)); see also RCW 9A.46.100). However, Conaway fails to note that the majority of recidivist statutes, like Indecent Exposure, do not pack their own special definition of the word "conviction."[1] A reasonable explanation for the Legislature's

[1] See e.g., Felony Second Degree Vehicle Prowling (RCW 9A.52.100); Felony Assault in the Fourth Degree (RCW 9A.36.041); Disclosing Intimate Images (RCW 9A.86.010); -Criminal Street Gang Tagging and Graffiti (RCW 9A.48.105); Interference with a Health Care Facility-penalty (RCW 9A.50.030 (imposing increasing fines for successive offenses resulting in a conviction); Unlawful Issuance of Bank Checks or Drafts (RCW 9A.56.060(b) (providing that certain punishment may not be suspended or deferred upon conviction for second offense within 12 months); Escape in the First Degree (RCW 9A.76.110); Escape in the Third Degree (RCW 9A.76.130); see also, Chapters 9A.44 (Sex Crimes); and 9.68A (Child Exploitation).

choice to not define "conviction" separately in each chapter and section of the criminal code, is that such duplication would be unnecessary given the existence of a clear definition of the term at RCW 9.94A.030(9) and the demonstrated ability of Washington courts to find it and use it. The Court of Appeals has applied 9.94A.030(9) to define the term "conviction" in the same context presented in the instant case on prior occasions. See State v. Benitez, 175 Wn. App. 116, 122, 302 P.3d 877, 881 (Div. 2, 2013) (in felony Indecent Exposure case, applying 9.94A.030(9) definition of "conviction" to determine whether a prior adjudication of guilt qualifies as a predicate conviction under RCW 9A.88.010); State v. LaPointe, 1 Wn. App. 2d 261, 269, 404 P.3d 610, 615 (Div. 1, 2013) (applying 9.94A.030(9) definition of "conviction" to evaluate predicate for felony vehicle prowling). It is also notable that the Legislature amended 9.94A.030 in 2019 expressly listing Indecent Exposure as one of several "recidivist offenses" under RCW 9.94A.030(41). The Legislature expects that these statutes will be read together, just as the Court of Appeals has done to provide clarity in matters involving predicate convictions for recidivist felonies. See also Pub. Util. Dist. No. 1 of Okanogan Cty. v. State, 182 Wn.2d 519, 537–38, 342 P.3d 308, 317 (2015) ("Whenever a legislature had used a word in a statute in one sense and with one meaning, and subsequently uses the same word in

legislating on the same subject-matter, it will be understood as using it in the same sense.")

In its analysis in the current case, the Court of Appeals recognized the most recent authorities from this Court in Haggard and Cooper articulating the effect of convictions followed by deferred sentences and applied the law consistent with the Legislature's intent, and it used the definition that the Legislature provided. In other words, the court "resort[ed] to the statements of law contained in both statutes and in court rulings" considered "the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole." Douglass, 115 Wn.2d 171, 180, 795 P.2d 693, 697 (1990); Evans, 177 Wn.2d 186, 192, 298 P.3d 724. This was not error, and further review is not necessary.

D. The Court of Appeals was aware of and applied the correct standard of review.

The Court of Appeals opinion in this case contains the correct standard of review for a sufficiency of the evidence claim following a jury verdict, as advocated by the State below. See No. 80214-3-I at 14-15 ("The State must prove every element of a charged offense beyond a reasonable doubt…To determine whether sufficient evidence supports a conviction, we view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the elements

of the crime beyond a reasonable doubt.") (internal citation and quotations removed); Br. Resp. at 13. Applying this standard, the Court of Appeals addressed the merits of Conaway's claim of insufficient evidence, and found the evidence to be sufficient to support the jury's verdict. No. 80214-3-I at 6. As correctly pointed out by Conaway, the Court of Appeals also cited the standard of review that applies to sufficiency of the evidence claims relating to findings made by a judge. See No. 80214-3-I at 3. Both standards had application in this case given the nature of Conaway's claims below. Conaway's appeal included challenges to both the threshold legal conclusions of the trial judge which were based on the trial court's findings at a pre-trial hearing, as well as the verdict rendered by the jury. Conaway challenged these conclusions on appeal. As a result, the court was prompted to consider whether the trial court's findings were supported by substantial evidence and whether its legal conclusions were supported by those findings. The State believes that it was for this reason that the Court of Appeals recited both the substantial evidence standard applicable to a judges' findings and conclusions, as well as the standard that it ultimately applied to the jury's verdict. Further, the Court of Appeals opinion demonstrates that it was well aware that this was not a bench trial. No. 80214-3-I at 6 ("sufficient evidence *supported the jury's finding* that

Conaway was previously convicted of indecent exposure.") (emphasis added).

V. CONCLUSION

The issues raised in this Petition do not satisfy the criteria of RAP 13.4(b). The felony predicate language, "has previously been convicted", has already been interpreted by this Court. The Court of Appeals and the Legislature have relied on the authority of that interpretation. No re-interpretation by this Court of the same language in RCW 9A.88.010 is warranted or appropriate. Finally, it is not necessary for this Court to grant review to determine the appropriate standard of review for sufficiency of the evidence claims where, as here, Conaway advocates for the same standard of review that the State advanced at the Court of Appeals, and which the Court of Appeals articulated in its decision.

Respectfully submitted this 30th day of July, 2021.

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Plaintiff/Respondent, vs. JEFFREY DAVID CONAWAY, Defendant/Appellant.	No. 995923

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Signed at Coupeville, Washington on this 30th day of July, 2021.

Kristin LeClercq
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ISLAND COUNTY PROSECUTING ATTORNEY'S OFFICE

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