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SUPREME COURT
STATE OF WASHINGTON
1/27/2023
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Court of Appeals
Division I
State of Washington
1/25/2023 4:16 PM

Supreme Court No. 101666-2
(COA No. 83793-1-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

J.M.L., Jr.,

Respondent,

v.

STATE OF WASHINGTON,

Appellant.

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

PETITION FOR DISCRETIONARY REVIEW

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A. INTRODUCTION

The ability to seal a juvenile conviction is critical to the juvenile court's mission to rehabilitate, not punish, children who are less culpable than adults, and whose criminal offense is often the result of transient immaturity. To that end, the trial court applied RCW 13.50.260 with RCW 13.50.050 and sealed J.M.L. Jr. (pseudonym Joe)'s the juvenile convictions but allowed a mechanism for the court clerk to keep Joe accountable for the restitution he owes.

The Court of Appeals misconstrued RCW13.50.260 to find it does not permit a juvenile court to seal a juvenile record if the juvenile has not completed paying restitution. The Court of Appeals's misreading will wrongly deprive indigent, but rehabilitated juveniles, the opportunity to seal their juvenile records unless this Court accepts review.

B. INDENTITY OF PETITIONER AND DECISION BELOW

Joe, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals's decision issued on January 17, 2023. RAP 13.3, 13.4(a).

D. STATEMENT OF THE CASE

The State charged Joe, a Hispanic juvenile, with malicious mischief in the second degree and conspiracy to commit malicious mischief in the second degree. CP 1-2.

Joe pleaded guilty to one count of malicious mischief in juvenile court. The court accepted his plea and entered an adjudication and disposition. CP 10-22. The sentence was time already served in jail, eight hours of community service, and $1233.17 in restitution. CP 10-22. As part of his disposition, the

court set a date to administratively seal his adjudication. Slip op at 1, attached as Appendix.

At the sealing hearing, the State argued the court could not seal these juvenile record because Joe still owed $613.17 in restitution. RP 4. The court gave each party a partial victory and sealed the criminal portion of Joe's juvenile record but left unsealed the restitution case and allowed a mechanism for the court clerk to "interact" with Joe, or his parents, and the recipient of the restitution to ensures he pays what he still owes. CP 31-32, CP 56.

The State appealed under RAP 2.2(b)(1) arguing it may appeal a decision that in effect abates, discontinues, or determines the case other that a judgment or verdict of not guilty. CP 62-63; Slip. Op. at 2. Joe moved to dismiss the appeal because a decision ordering his juvenile offender's record sealed is not

enumerated under RAP 2.2(b) and is not appealable a matter of right.

A commissioner denied Joe's motion to dismiss the appeal and ordered the State to file an amended brief—to address whether the sealing order was appealable and to alternatively argue for discretionary review. Slip Op. at 2. Joe filed his responsive brief.

On January 17, the Court of Appeals issued an unpublished decision agreeing with Joe that an order sealing juvenile records is not appealable as a matter of right. Slip. Op. at 4. But it entertained the State's motion for discretionary review and reversed the trial court's sealing order and declared RCW 13.50.260 unambiguous and does not allow discretion for a court to seal juvenile records if the youth has not paid restitution in full. Slip. Op. at 4-8.

E. ARGUMENT

This Court should accept review because the Court of Appeals misinterprets the sealing statutes with grave consequences for indigent juveniles who cannot afford to pay restitution.

RCW 13.50.260 allows the court discretion to seal the official juvenile court file. The Court of Appeals erroneously determined that RCW 13.50.260(1)(f)(i) means the court "shall" deny sealing the juvenile court record if the respondent has not paid restitution in full. Slip Op. at 7.

In resolving an issue of statutory construction, courts first look to the plain meaning of the statute. *Matter of Dependency of E.M.*, 197 Wn.2d 492, 499, 484 P.3d 461 (2021). "In interpreting a statute, our Supreme Court's fundamental objective is to ascertain and carry out the legislature's intent." *State v. Gray*,

174 Wn.2d 920, 926, 280 P.3d 1110 (2012). "To properly understand this statute, our Supreme Court looks for its plain meaning, 'discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn*, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)).

The trial court gave each party a partial win: it sealed the criminal records and left open the restitution case and allowed a mechanism for the court clerk to interact with the juvenile, his parents, and the recipient of the restitution payments to ensure that those obligations would be still be met after the juvenile file was sealed. CP 31-32; CP 56.

The Court of Appeals misreads RCW 13.50.260. The practical consequence of this ruling is a matter of substantial public interest. Indigent but rehabilitated

youth will continue to be laden with negative consequences of their juvenile record hampering their rehabilitation unlike their affluent counterparts who are able to pay. RAP 13.4(b)(4).

Specifically, the ruling holds a trial court has no discretion to seal only the criminal records and leave a mechanism for the court clerk to keep the youth accountable for paying his remaining restitution. But nothing in this sealing statutes prevents the juvenile court from sealing the criminal portion and leaving unsealed the restitution case expressly to continue to hold the juvenile accountable to the court for completing his restitution obligations. CP 31-32, 56.

a. Juvenile court records have not historically been open to the press and the general public.

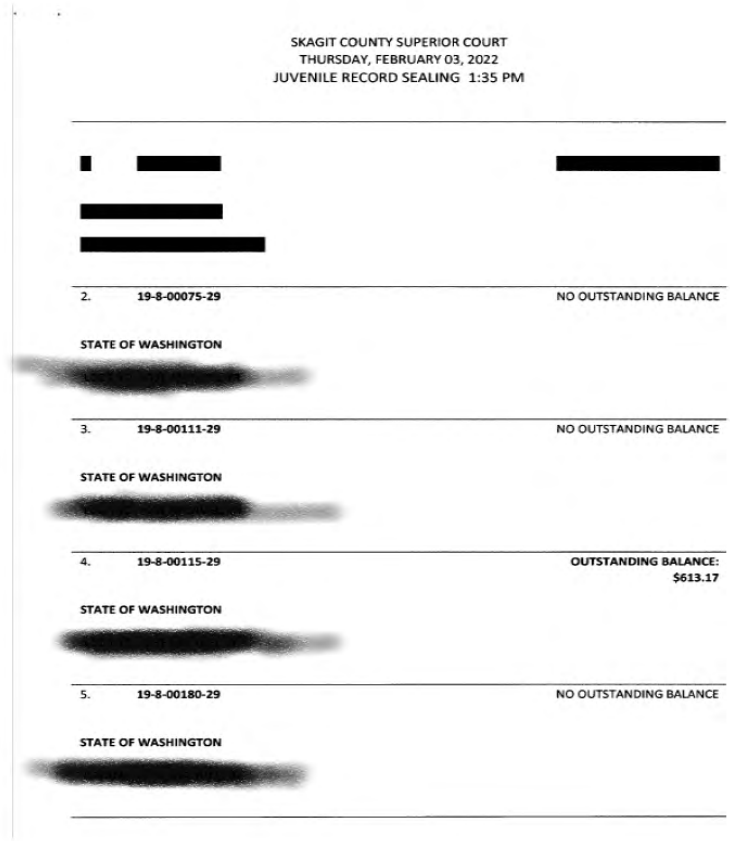
The legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records. *State v. S.J.C.*, 183 Wn.2d 408, 417–18, 352 P.3d 749 (2015). The legislature through the JJA has constructed a constitutional wall around juveniles. *S.J.C.*, 183 Wn. 2d at 413. This court has always given effect to the legislature's judgment in the unique setting of juvenile court records. *Id.* at 417–18. From the inception of juvenile courts in this state, the juvenile court laws have undergone a continuous process of refinement regarding the confidentiality of juvenile court records. *Id.* at 421. The weighing of competing interests and policy judgments has recognized the dual purpose of holding juveniles accountable and fostering

rehabilitation for reintegration into society, and it has led to the conclusion that juvenile court records should be treated as separate from, and deserving of more confidentiality than, other types of court records. *Id.*

The need for confidentiality in this juvenile context is substantial, both for the subject of the juvenile court record and for the juvenile courts' purpose of preventing adult recidivism, A publicly available juvenile court record has real and objectively observable negative consequences, including denial of "housing, employment, and education opportunities." LAWS OF 2014, ch. 175, § 1(1); *see Oddo, supra, at 108; Leila R. Siddiky, Note, Keep the Court Room Doors Closed So the Doors of Opportunity Can Remain Open: An Argument for Maintaining Privacy in the Juvenile Justice System*, 55 How. L.J. 205, 232 (2011); *S.J.C.*, 183 Wn.2d at 432.

b. The trial court sealed Joe's record after delicately balancing the competiting interest and policy judgments in the JJA, the restitution statutes, and the sealing statutes.

The trial court sealed the official juvenile court record, the social file, and other records relating to the case except for Joe's identifying information as provided in RCW 13.50.050(13) and the restitution owed of $613.17. CP 31, 56.



SKAGIT COUNTY SUPERIOR COURT
THURSDAY, FEBRUARY 03, 2022
JUVENILE RECORD SEALING 1:35 PM

[redacted]

2.	19-8-00075-29	NO OUTSTANDING BALANCE
	STATE OF WASHINGTON [redacted]	
3.	19-8-00111-29	NO OUTSTANDING BALANCE
	STATE OF WASHINGTON [redacted]	
4.	19-8-00115-29	OUTSTANDING BALANCE: $613.17
	STATE OF WASHINGTON [redacted]	
5.	19-8-00180-29	NO OUTSTANDING BALANCE
	STATE OF WASHINGTON [redacted]	

CP 31.

Paragraph III(1) and (2) of the juvenile court's sealing order allowed a mechanism for the clerk of the court to interact with Joe, his parents, the restitution recipient even after the record were sealed to ensure the $613.17 in restitution was paid in full:

> 1. With the exception of identifying information specified in RCW 13.50.050(13), the official juvenile court record, the social file, and other records relating to the case as are named are sealed;
> 2. The proceedings in the case shall be treated as if they never occurred and the subject of the records may reply accordingly to any inquiry about the events, the records of which are sealed. However, county clerks may interact or correspond with the Respondent, Respondent's parents, restitution recipients, and any holders of potential assets or wages of the Respondent for the purposes of collecting any outstanding legal financial obligations, even after juvenile court records have been sealed.

CP 56.

The purposes of the Juvenile Justice Act (JJA) includes holding offenders accountable and repaying victims while rehabilitating juvenile offenders. RCW 13.40.010(2)(c),(f),(g),(i); *State v. J.A.*, 105 Wn. App. 886, 886, 20 P.3d 487 (2001)("Although the JJA seeks a balance between the poles of rehabilitation and retribution, the purposes of accountability and punishment are tempered by and at times must give way to the purposes of responding to the needs of the juvenile.")

Our Supreme Court said restitution is "primarily a rehabilitative tool" it "increases the defendant's self-awareness and sense of control over his or her own life." *State v. Gray*, 174 Wn. 2d 920, 929–30, 280 P.3d 1110 (2012). And that the purpose of restitution is to increase offender accountability. *Gray*, 174 Wn.2d at 929. And that a secondary purpose of restitution is to

compensate victims affected by crime. RCW 7.69.010; *Gray*, 174 W.n2d at 929–30.

Our Supreme Court has said, juvenile restitution is remedial, not punitive. *Id.* (internal citation omitted.)

According to *S.J.C*, sealing the official juvenile record involves a "delicate balance" of weighing of competing interests and policy judgments with the dual purpose of holding juveniles accountable and fostering rehabilitation to reintegrate the youth into society. 183 Wn.2d at 421.

Read in conjunction with related statutes, the framework in RCW 13.50.260 contains carefully drawn provisions which delicately balance the juvenile's interest in confidentiality, recognizing that confidentiality plays an important role in

rehabilitating youths, against the public's interest in oversight and ensuring restitution recipients are compensated. *See S.J.C.*, 183 Wn.2d 408.

Recognizing this complex statutory scheme, the trial court delicately balanced the competing interests. And gave effect to juvenile restitution's dual purpose of holding Joe accountable for paying restitution and fostered his rehabilitation and reintegration into society by sealing the facts of his criminal conviction. CP 31-32, 56; *S.J.C.*, 183 Wn.2d at 421.

RCW 13.50.260 is susceptible to the interpretation the trial court gave it— it is the only interpretation which gives effect the stated purposes of restitution and the JJA. The Court of Appeals had no basis for reviewing under RAP 2.3(b)(3) and 5.1. Slip. Op. at 5. The Court of Appeal's ruling unwisely

unravels the delicate balancing of competing interests the trial court conducted in this case. CP 31-32, 56.

c. The Court of Appeal's reading frustrates juvenile restitution's dual purpose of holding youth accountable and fostering their rehabilitation to reintergrate them into society.

The Court of Appeals incorrectly concludes that the trial court lacked authority to seal Joe's record and declares RCW 13.50.260(1)(f)(i) "unambiguous" and it means a juvenile court "shall" deny sealing the juvenile court record if the respondent has not paid restitution in full. Slip Op. at 7. The ruling incorrectly determines that legislative intent reduces to the meaning of the single word "shall." Slip. Op. at 7.

The ruling purports to construe the plain meaning of RCW 13.50.260(1)(f) without analyzing the purpose of the statute and any related statutes—viz., the restitution statutes, the JJA, in the context of the

broader sealing statutory scheme. Slip. Op. at 7-8; *Campbell & Gwinn, LLC*, 146 Wn.2d at 11.

But the discernment of legislative intent in the juvenile context, involves much more than that. It entails considering the purpose of the JJA, the restitution statutes in the context of the sealing statutory framework. The Court of Appeal's interpretation is rudimentary, simplictic and incorrect.

Additionally, the Court of Appeals' interpretation leads to an absurd result. The ruling acknowledges that Joe's "correspondent" paid $620 of restitution, as "a joint and several legal financial obligation." Slip. Op. at 7. That "correspondent's" juvenile record could be sealed because his or her parents had the financial wherewithal to pay that tidy sum in restitution. Slip Op. at 7. But Joe who is indigent and whose parents could not afford to pay will be ladened with the

criminal record for years to come. Slip. Op. at 7. Surely, the legislature did not intend such an unequal treatment because of a youth's financial status.

Finally, Washington strongly disfavors interlocutory review, and it is available only "in those rare instances where the alleged error is reasonably certain and its impact on the trial manifest." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591, review denied, 169 Wn.2d 1029 (2010.)

The ruling strains to frame the State's failure to make cogent legal arguments as "uninspired advocacy." Slip. Op. 7-8. It invents a new exception to the invited errors doctrine to excuse the State's legal blunders. Slip. Op. at 8. The ruling then readily makes legal arguments the State failed to make in its briefing as legal justification for accepting review in this case.

Our appellate courts disfavor discretionary review. Most petitioners who received "uninspired advocacy" in lower courts find our appellate court uninspired to review even their most meritorious claims under this "rare" and "disfavored" form of review. But the Court of Appeals bent over backwards to accept review and rule for the State.

The Court should accept review and address this matter of substantial public interest. Otherwise indigent but rehabilitated youth will remain hamstrung by the negative consequences of their juvenile records while their more affluent counterparts will not. RAP 13.4(b)(4).

F. CONCLUSION

The Court of Appeals misinterprets RCW 13.50.260(1)(f) analyzing none of the related statutes, the restitution, JJA, in the broader context of the sealing statutory framework, to ascertain the legislative intent. Joe asks this Court to accept review under RAP 13.4(b)(3)-(4).

This brief contains 2,643 words and complies with RAP 18.17(b).

DATED this 25th day of January 2023.

Respectfully submitted,

MOSES OKEYO (WSBA 57597)
Washington Appellate Project (91052)
Attorneys for Appellant

Appendix:

FILED
1/17/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. J.M.L., JR., Respondent.	No. 83793-1-I DIVISION ONE UNPUBLISHED OPINION

BOWMAN, J. — J.M.L. Jr. pleaded guilty to one count of malicious mischief in the second degree. As part of his disposition, the court ordered that he pay restitution and set a date to administratively seal his adjudication. J.M.L. did not pay the restitution in full. Still, the court sealed J.M.L.'s record over the State's objection. The State appeals, arguing the juvenile court did not have the statutory authority to seal J.M.L.'s record before he paid restitution in full. J.M.L. argues the State cannot appeal an order sealing a juvenile record. We grant review under RAP 2.3(b)(3). And we reverse and remand for the trial court to vacate the order sealing J.M.L.'s juvenile record.

FACTS

J.M.L. pleaded guilty to one count of malicious mischief in the second degree in Skagit County Juvenile Court. In his plea agreement, J.M.L. agreed to pay restitution. At sentencing on September 5, 2019, the court imposed conditions of supervision and ordered restitution in the amount of $1,233.17. The court set a hearing date to administratively seal J.M.L.'s juvenile court record for

This opinion bases the citations and pin cites on the Westlaw online version of the cited material.

"February 2022."

At the hearing, the prosecutor argued that J.M.L. still owed $613.17 in restitution, so he was not statutorily eligible for sealing. The court said it would "seal this [case] despite the [S]tate's proposal." So, for "purposes of the record," the prosecutor read to the court RCW 13.50.260(1)(d) and reasserted that "[b]ased upon the statute," because "respondent has not paid the full amount of restitution . . . , he is statutorily ineligible" for sealing.

The court ruled, "I'm going to seal it. In my discretion, I don't believe that the only reason we should not seal it, in this case, is that he's only paid 50 percent of the restitution." The court entered an order sealing J.M.L.'s juvenile record, finding that he is eligible for sealing because he "paid in full the amount of restitution owing," but also finding that "the remaining amount of restitution . . . is $613.17."

The State appealed under RAP 2.2(b)(1), arguing it may appeal "[a] decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty." J.M.L. moved to dismiss the appeal, arguing that RAP 2.2(b) does not authorize the State to appeal the juvenile court's order to seal a respondent's record. A commissioner of this court denied the motion to dismiss. She entered a notation ruling requesting the State file "an amended brief addressing appealability and, in the alternative, grounds for discretionary review." The commissioner referred the matter "to a panel of judges for consideration."[1]

[1] The State filed an amended brief to include the same appealability arguments as in their answer to J.M.L.'s motion to dismiss.

ANALYSIS

J.M.L. maintains that a "juvenile court order to seal records is not appealable as a matter of right." The State disagrees. Alternatively, the State asks that we treat their notice of appeal as a motion for discretionary review.

Appeal as a Matter of Right

The State argues that it has a right to appeal the order sealing J.M.L.'s record as a final decision that abates or discontinues the case under RAP 2.2(b)(1). We disagree.

RAP 2.2(b) specifically applies to an "Appeal by State or a Local Government in Criminal Case." Under RAP 2.2(b)(1), the State may appeal in a criminal case from a final decision. A "final decision" is

> [a] decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

"RAP 2.2(b)(1) broadly permits the State to appeal superior court decisions resolving the disposition of a case." State v. Tracer, 173 Wn.2d 708, 715, 272 P.3d 199 (2012).

The State argues that the juvenile court sealing order abates or discontinues this case because "it effectively ends the ability of victims and the court to collect restitution" and "discontinues any other pending issues that may arise before the court in the same matter." But under RCW 13.50.260(10), "[c]ounty clerks may interact or correspond with the respondent . . . [and] restitution recipients . . . for the purposes of collecting an outstanding legal

financial obligation after juvenile court records have been sealed."[2] And the judgment ordering restitution remains enforceable for 10 years. RCW 13.40.192(1). Contrary to the State's suggestion, an order sealing juvenile records does not end the ability of victims and the court to collect restitution. So, the order does not effectively abate or discontinue a case under RAP 2.2(b)(1).

Citing State v. Richardson, 177 Wn.2d 351, 302 P.3d 156 (2013), the State argues that our Supreme Court has already determined that the sealing or unsealing of juvenile records is appealable as a matter of right. But Richardson is not on point. In that case, a third-party intervenor moved to unseal a criminal record. Id. at 356-57. The trial court denied the motion and the intervenor appealed, petitioning for direct review of the decision. Id. at 357. Our Supreme Court held that "an intervenor seeking to unseal criminal records has a right to appeal as a matter of right under RAP 2.2(a)(13)." Id. at 365. But RAP 2.2(a)(13) allows a party—other than the state or a local government—to appeal an order that affects a substantial right not adjudicated by the underlying action. Id. at 364-65. That rule does not apply here.

Discretionary Review

The State argues that if we conclude it cannot appeal as a matter of right, we should treat its notice of appeal as a motion for discretionary review and grant

[2] At oral argument, the State suggested that county clerk's offices cannot access a sealed juvenile record, despite the language in RCW 13.50.260(10). But the State provides no authority to support their argument. " 'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.' " City of Seattle v. Levesque, 12 Wn. App. 2d 687, 697, 460 P.3d 205 (2020) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

review under RAP 2.3(b)(3)[3] because the juvenile court "so far departed from the accepted and usual course of judicial proceedings" as to call for review. We agree.

We consider an incorrectly designated notice of appeal as a motion for discretionary review. RAP 5.1(c). We will grant a motion for discretionary review under limited circumstances, including when "[t]he superior court has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review by the appellate court." RAP 2.3(b)(3). Discretionary review under RAP 2.3(b)(3) is appropriate when the trial court ignores "unambiguous language in the statutory scheme." See In re Marriage of Folise, 113 Wn. App. 609, 613, 54 P.3d 222 (2002) (granting discretionary review under RAP 2.3(b)(3) because trial court "ignor[ed] unambiguous language in the statutory scheme and case law" when issuing a protective order); Young v. Key Pharms., Inc., 63 Wn. App. 427, 431, 819 P.2d 814 (1991) (granting discretionary review under RAP 2.3(b)(3) of a trial court's decision not to permit testimony under ER 804(b)(1)).

Here, the State alleges the trial court ignored RCW 13.50.260 when it sealed J.M.L.'s juvenile record. RCW 13.50.260(1)(d) provides:

> At the time of the scheduled administrative sealing hearing, the court shall enter a written order sealing the respondent's juvenile court record pursuant to this subsection if the court finds by a preponderance of the evidence that the respondent is no longer on supervision for the case being considered for sealing and has paid

[3] We note that throughout their brief, the State refers to RAP 2.3(d)(4). But that rule applies to only courts of limited jurisdiction. The juvenile court is a department of the superior court, not a court of limited jurisdiction. See Dillenburg v. Maxwell, 70 Wn.2d 331, 352, 422 P.2d 783 (1967). RAP 2.3(b)(3) applies here.

> the full amount of restitution owing to the individual victim named in the restitution order.[4]

But if the juvenile court finds that the respondent "has not paid the full amount of restitution owing," the court "shall deny sealing the juvenile court record." RCW 13.50.260(1)(f)(i). And the court's written order must specify the amount of restitution that remains unpaid and give the respondent directions on how to seal their record after paying restitution in full. RCW 13.50.260(1)(f)(i).

Reading RCW 13.50.260(1)(d) and (1)(f)(i) together, a juvenile court has the authority to seal a juvenile court record only when the respondent completes supervision and pays restitution in full. The trial court's conclusion that it had discretion to do otherwise goes against the statutory scheme and warrants review under RAP 2.3(b)(3).

Order Sealing Juvenile Record

The State argues that the trial court erred by sealing J.M.L.'s record because RCW 13.50.260(1)(f)(i) "is unambiguous: if a respondent owes restitution and it is not owed to any public or private entity providing insurance or health care coverage, the specific case cannot be sealed." We agree.

We review a trial court's decision to seal records for abuse of discretion. State v. H.Z.-B., 1 Wn. App. 2d 364, 366, 405 P.3d 1022 (2017). But we interpret statutes de novo. Id. When interpreting a statute, we first look to its plain language to determine the legislature's intent. Id. We assume the legislature meant exactly what it said and apply the statute as written. HomeStreet, Inc. v.

[4] The statute excludes restitution to "any public or private entity providing insurance coverage or health care coverage." J.M.L. does not argue the exclusion applies.

Dep't of Revenue, 166 Wn.2d 444, 452, 210 P.3d 297 (2009). "A statute that is clear on its face is not subject to judicial construction." State v. J.M., 144 Wn.2d 472, 480, 28 P.3d 720 (2001); see also State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) ("If the plain language of the statute is unambiguous, then [our] inquiry is at an end.").

As discussed above, RCW 13.50.260(1)(f)(i) states that the court "shall deny sealing the juvenile court record" if the respondent has not paid restitution in full. "Use of the word 'shall' emphasizes the mandatory nature of the statutory requirements that must be met to obtain an order sealing juvenile offender records." State v. Hamedian, 188 Wn. App. 560, 566, 354 P.3d 937 (2015).[5] Here, J.M.L. still owed $613.17 in restitution.[6] There is no dispute that J.M.L. has not paid restitution in full. Still, the court sealed his record because "[i]n my discretion, I don't believe that the only reason we should not seal it . . . is that he's only paid 50 percent of the restitution." But the statute gives the court no discretion to seal a juvenile record if the respondent has not paid restitution in full. The trial court erred by sealing J.M.L.'s juvenile record.

J.M.L. argues that the State invited the court's error by citing the language in RCW 13.50.260(1)(d) without also citing (1)(f)(i). We disagree.

The invited error doctrine prohibits a party from setting up an error at trial and then challenging that error on appeal. In re Pers. Restraint of Coggin, 182

[5] The legislature codified RCW 13.50.260 in 2014. LAWS OF 2014, ch. 175, § 4. Hamedian interprets former RCW 13.50.050(12)(b)(v) (2012). Former RCW 13.50.050(12)(b)(v) also provided that the juvenile court "shall not grant any motion to seal records . . . unless . . . [f]ull restitution has been paid."

[6] J.M.L.'s corespondent paid the other $620 of restitution, a joint and several legal financial obligation.

Wn.2d 115, 119, 340 P.3d 810 (2014). To determine whether the State invited error, we consider whether it affirmatively assented to the error, materially contributed to it, or benefited from it. Id. The party inviting error must do so knowingly and voluntarily. State v. Mercado, 181 Wn. App. 624, 630, 326 P.3d 154 (2014). The party asserting invited error has the burden of proof. State v. Thomas, 150 Wn.2d 821, 844, 83 P.3d 970 (2004).

Here, the State did not suggest the court should seal J.M.L.'s record. Nor did it affirmatively assent to or benefit from the court's decision to do so. To the contrary, it argued repeatedly that the court lacked the statutory authority to seal. And as much as J.M.L. argues the prosecutor contributed to the error by not specifically citing RCW 13.50.260(1)(f)(i), J.M.L. confuses invited error with uninspired advocacy. J.M.L. fails to show that the State knowingly and voluntarily invited the error.

We reverse and remand for the trial court to vacate the order sealing J.M.L.'s juvenile record.

Brennan, J.

WE CONCUR:

Mann, J.

Dwyer, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 83793-1-I**, 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:

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☐ Attorney for other party

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Washington Appellate Project

Date: January 25, 2023

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