SUPREME COURT NO. 101710-3
COURT OF APPEALS NO. 57448-9-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LARRY EDWARD TARRER,

Petitioner.

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

The Honorable Timothy L. Ashcraft, Judge

PETITION FOR REVIEW

KEVIN A. MARCH
Attorney for Petitioner

NIELSEN KOCH & GRANNIS, PLLC
The Denny Building
2200 Sixth Avenue, Suite 1250
Seattle, WA 98121
(206) 623-2373

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES

OUT-OF-STATE CASES

RULES, STATUTES, AND OTHER AUTHORITIES

TABLE OF AUTHORITIES (CONT'D)

Page

A. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Petitioner Larry Edward Tarrer, the appellant below, seeks review of the January 11, 2023 order granting the state's motion to modify the commissioner's ruling and dismissing the appeal as moot.

B. ISSUES PRESENTED FOR REVIEW

Mr. Tarrer served concurrent sentences in prison on two counts between 1991 and 2007. At a 2021 resentencing, the trial court imposed consecutive sentences on these two counts. This appeal stems from the trial court's refusal to award credit for the concurrent time served between 1991 and 2007 to each resentenced count.

Mr. Tarrer, in other consolidated appeals, has challenged the validity of the 2021 sentencing on other grounds, the remedy for which would be resentencing; these appeals are stayed pending the outcome of this appeal. While this appeal was pending, Mr. Tarrer was released from prison.

1a. Because Mr. Tarrer may still be resentenced at which the concurrent time served on two counts between 1991 and 2007 would still need to be credited against the new sentence he receives on these counts, can the appellate court grant effective relief by deciding the credit issue in this appeal, such that this appeal is not moot?

1b. Does the Court of Appeals decision to dismiss this appeal as moot conflict with decisions of the Washington Supreme Court and Court of Appeals that indicate that a mere possibility of relief overcomes a claim of mootness, such that the Court of Appeals decision should be reviewed pursuant to RAP 13.4(b)(1) and (2)?

2. No Washington court has addressed the double jeopardy issue of credit for time served when a sentence on two convictions is initially run concurrently, served concurrently for a period of time, and then run consecutively at a subsequent resentencing. Even if this appeal were moot, does it present a continuing matter of public interest given the important

constitutional question of a public nature and does the Court of Appeals decision that fails even to provide a continuing matter of public interest analysis conflict with Washington Supreme Court and Court of Appeals cases, such that review should be granted pursuant to every RAP 13.4(b) criterion?

C. STATEMENT OF THE CASE

In 1991, at the age of 17, Mr. Tarrer was charged with first degree murder, attempted first degree murder, and first degree manslaughter. CP 1-3. He pleaded guilty to the amended charges of second degree murder and first degree assault. CP 4-7 (statement on plea of guilty), 8-9 (amended information).

Between 1991 and 2007, Mr. Tarrer served a concurrent sentence on the two convictions. CP 6 (statement on plea of guilty indicating concurrent sentences), 17 (judgment and sentence not explicitly specifying concurrent sentences), 31-32 (Court of Appeals decision noting the standard sentence range for both counts was 175 to 233 months and the trial court imposed a total exceptional sentence term of 270 months), 216 & n.3

(prosecution's filing acknowledging that in 1991 Mr. Tarrer received a total term on both counts of 270 was concurrent). At no time, including at the May 27, 2022 hearing regarding credit for time served, has the prosecution ever disputed that the time between 1991 and 2007 was served concurrently for Counts I and II.

The procedural history of Mr. Tarrer's case between 1991 and 2020 is not pertinent to the issues presented in this appeal, but, by way of background, Mr. Tarrer was permitted to withdraw his guilty plea and his convictions were vacated in 2006. CP 73-74. He was released from custody between February 2007 and May 2007, but otherwise was in custody until he was released in 2022.[1] See CP 191 (August 4, 2021 judgment and sentence indicating periods of custody). He was tried on and convicted of the original charges (first degree murder, attempted first degree murder, and attempted first degree manslaughter) for

[1] Mr. Tarrer was also in custody pursuant to a federal matter, during this period but this matter ran concurrently with his state court sentence. CP 191.

the first time in 2010; the Court of Appeals reversed his convictions. CP 86-105. He was retried in 2014, convicted, and sentenced; the Court of Appeals affirmed these convictions. CP 106-54.

In December 2020 and August 2021,[2] Pierce County Superior Court resentenced Mr. Tarrer pursuant to State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017). The court imposed an exceptional 180-month sentence down on Count I, a standard range 240-month adult sentence on Count II, and ran the sentence on Count III concurrently with Count II. CP 169, 171-72, 187-88, 191. It ran the sentences for Count I and Count II consecutively. CP 172, 188, 191.

At the December 2020 sentencing, the issue of credit for time served arose, and the parties decided to leave the matter to the Department of Corrections to calculate. RP (Dec. 4, 2020)

[2] Mr. Tarrer appealed the judgments and sentences entered in December 2020 and August 2021. CP 179, 247. These appeals (nos. 55568-9-II & 56458-1-II) were consolidated and are currently stayed until the mandate issues in this appeal.

20, 23-32. Leading up to the August 4, 2021 sentencing, the parties met for a status conference, noting that they were close to reaching an agreed sentence but there was "a little bit of a concern about what [Mr. Tarrer's earned release date] will be and how that process can start at DOC[.]" RP (Jul. 23, 2021) 6. The defense asked that Mr. Tarrer remain in county jail until a new sentencing date was set. RP (Jul. 23, 2021) 6-8.

At the August 4, 2021 sentencing hearing, the parties purportedly reached an agreement about the sentence. The prosecutor indicated that, per the agreed sentence, Mr. Tarrer would "go off to DOC, get his credit for time served, which will presumably be closed to a release if not a release, subject to victim notification and other compliance with those requirements that DOC has, and then this case will be closed after, well, 30 years of its existence . . . ." RP (Aug. 4, 2021) 7-8. The prosecutor also explained the only difference between the agreed sentence to be imposed in August 2021 and the sentence imposed in December 2020 is that it would "now run concurrently with

the federal sentence of 10 years." RP (Aug. 4, 2021) 8; compare CP 172 (sentence to run consecutively to federal time served) with CP 191 (sentence to run concurrently to federal time served).

The prosecutor also noted a new Washington Supreme Court case governing the issue of credit for time served:

> There is a recent case that the Supreme Court just issued within the last week or so,[3] I think, that says a defendant is entitled for credit for time served on any case that he is in custody and not solely on one case or the other.
>
> And so for the entirety of the time that Mr. Tarrer was in custody -- not the entirety but certainly a large part of the time he was in custody and the federal court case -- he was also in custody on this case with bail revoked or pending trial or pending sentencing while post-conviction.
>
> And the way I read that case, he's likely entitled to credit for that time served, which will sort of make them run concurrently even though you have the discretion to run consecutively -- running them consecutively and giving him credit for the time served on both cases would make them be concurrent, pretty much.

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[3] The prosecutor was referring to State v. Enriquez Martinez, 198 Wn.2d 98, 492 P.3d 162 (2021).

RP (Aug. 4, 2021) 8-9.

Consistent with the sentencing agreement between the parties, the trial court imposed a 180-month sentence on Count I, a 240-month sentence on Count II, and a 120-month sentence on Count III. CP 191. The court ran Counts I and II consecutively, Counts II and III concurrently. CP 191. The judgment and sentence read, "Actual number of months of confinement ordered is: **420 MONTHS**." CP 191.

As for credit for time served, the August 4, 2021 judgment and sentence states, "The defendant shall receive credit for time served from his original booking date of January 25, 1991, through his release from custody on February 3, 2007." CP 191. The judgment and sentence also credited the "time served from his second booking date of May 22, 2007 through the date of this Judgment and Sentence." CP 191. The trial court handwrote "credit 11,036 days served." The court did not indicate how these 11,036 days related to each count or were to be credited against each count.

Despite the state's representation at the August 4, 2021 sentencing that Mr. Tarrer would be released immediately or almost immediately based on credit for time served and the release date anticipated by all based on Enriquez Martinez, Mr. Tarrer was not released following that hearing and remained in Department of Corrections custody.

Because there was no specific information in the judgment and sentence about how the credit applied to each count for which he was sentenced, Mr. Tarrer sought clarity by filing a motion for immediate release on April 26, 2022. CP 198-208. His argument was based on crediting each day he served between 1991 and 2007 against each count, as this period of custody was time served concurrently on all counts. CP 200-05. Because of the more than 16 years of concurrent time he served between 1991 and 2007—which must be credited against both the 180- and 240-month sentences he received in August 2021—along with the additional 14 years he had served since May 2007, Mr. Tarrer asserted he had more than served his entire sentence, was

currently serving dead time, and therefore must be released immediately. CP 205.

The parties attended a hearing on May 27, 2022 before Judge Ashcraft to address Mr. Tarrer's arguments. The state declined to respond to Mr. Tarrer's arguments in writing, see CP 209-15, but at the hearing asserted that Mr. Tarrer's "argument needs to be brought pursuant to a PRP" and characterized the argument as "ask[ing] this Court to reinstate his original judgment and sentence, which was . . . clearly vacated in 2005." RP 7. The state asserted it would not be "lawful for the Court to hear or make a substantive finding on their motion today." RP 8.

At the May 27, 2022 hearing, the trial court expressed confusion between the concepts of credit for time served and the vacation of prior sentences:

> when I read the cases . . . we're talking about getting credit for time served, but there was never this concept of . . . in these previous sentences . . . you were serving two sentences concurrently, those got vacated, and therefore, you're still entitled to the benefit, if you will, of the prior sentence that's been vacated.

RP 15-16. Mr. Tarrer responded, "the sentence itself perhaps was vacated; however, the time that Mr. Tarrer was punished pursuant to that sentence remains. That time was served concurrently on both counts." RP 18; accord RP 20 ("But he truly did serve that period of time as punishment for both sets of conduct.").

The trial court also suggested that the credit for time served calculation was in the purview of the Department of Corrections, and that it had no authority to direct DOC on how to apply credit. RP 28. Mr. Tarrer responded, "The legislature has commanded . . . sentencing courts to give all credit for time served as parts of this sentence. So that's where the authority comes in and where it really should be the . . . sentencing court making the determination of what credit is due." RP 29.

The court also was concerned that Mr. Tarrer's arguments were required to be raised in a personal restraint petition. RP 29-31. Mr. Tarrer pointed out that the trial court indicated the number of days of credit Mr. Tarrer had; the problem was that it did not indicate how that number of days applied to each count.

RP 30-32. The state responded, "he's asking Your Honor to try and modify that August judgment and sentence. Now he wants double good time and wants you to run the sentences concurrently, and I think Your Honor made the record crystal clear that there is nothing to clarify." RP 33. The trial court asked the defense, "So you're saying it's 11,346 [sic] days, but some percentage of those days should be counted twice. Right?" to which the defense responded, "Yes. Because they were served on both counts." RP 35.

Ultimately, the trial court ruled,

> On the issue of authority, again, I do think what's being asked of me today is a modification of my prior judgment and sentence, which I do not have the authority to do. So in that sense I agree that, if anything, it's a PRP.
>
> On the issue of concurrent versus . . . consecutive, again, . . . I'm not sure that it's properly before me because, again, I was not ruling on anything from 1991, when I ruled.
>
> But, having said that, I don't think I can take a sentence based on a vacated judgment and say that's what it has to be. That just doesn't make sense to me because, again, if the sentence is vacated, the sentence is vacated.

And then I don't think I can then look to a vacated sentence for authority as to what was or was not concurrent or consecutive.

That was vacated, there were subsequent proceedings that again, to me, pulse a nullity because they were no longer in effect.

So I'm dealing from 2014. How DOC calculates release dates is – again, my understanding is as per DOC. So I'm trying to enforce simply the agreement that I signed in 2021, which was for the 11,000 days.

Again, the issue of that being concurrent or consecutive was not in my mind . . . because no one had presented to me any comment.

So, again, this is up at the Court of Appeals. I think to the extent the Court of Appeals believes it should have been concurrent, that's obviously their prerogative, not mine.

But I don't think I have the authority even procedurally to give the relief that Defense is seeking which is for me to say right now -- to tell DOC to release Mr. Tarrer. I think that is a DOC issue.

But, again, to the extent that I have authority, I know that none of my rulings even address the issue of concurrent versus consecutive, so I don't think I can clarify something that I didn't rule because it wasn't before me.

> So in all those ways, the motion for me to tell DOC is denied. Certainly that can be a PRP, and if you want me [to] sign an order on that, I will -- sending that up to the Court of Appeals -- for all the reasons I've stated here today. . . .
>
> if you want to transfer it as a PRP or your counsel does, I'll sign that order. But my ruling is the motion is denied for the reasons I've stated here today.

RP 51-53.

The trial court's written order stated it "[d]enied the defendant's motion seeking immediate release as the court did not rule whether he is being held in violation of double jeopardy; the court transfers this motion to the Court of Appeals is the parties would like to[.]" CP 235.

Mr. Tarrer filed timely notices of appeal from this order. CP 237, 243. Mr. Tarrer filed an opening brief, contending, among other things, that the period of concurrent punishment Mr. Tarrer served on Counts I and II between 1991 and 2007 must be credited against both counts under double jeopardy principles in any subsequent sentence. Br. of Appellant at 18-41.

While the appeal was pending, Mr. Tarrer was released from custody. The state moved to dismiss the appeal as moot given the release, contending the Court of Appeals could no longer give effective relief. Mr. Tarrer responded that he had two stayed appeals awaiting the outcome of this appeal and his requested relief in the stayed appeals was full resentencing, so this appeal was not moot because the credit for time served determination would govern credit for time served in any subsequent sentence. Further, Mr. Tarrer asserted that, similar to State v. Enriquez Martinez, 198 Wn.2d 98, 492 P.3d 162 (2021), which the Supreme Court expressly acknowledged was moot, the credit for time served issue was a matter of continuing public importance, especially because no Washington case expressly addresses post-sentencing credit for time served under the double jeopardy clauses.

The Court of Appeals commissioner agreed with Mr. Tarrer and ruled that the state had not demonstrated that the appeal was entirely moot. The state moved to modify this ruling,

and a panel of judges granted the motion to modify and dismissed the appeal as moot in one sentence.

D. ARGUMENT

1. **Because effective relief remains available, this appeal is not moot**

A case is moot when the appellate court can no longer provide effective relief. State v. Hunley, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). Although Mr. Tarrer has now been released from prison, he still has pending challenges to his sentences that may result in resentencing. At a subsequent resentencing, the court will again have to contend with Mr. Tarrer's claim that he is entitled to credit for time served on both Counts I and II between 1991 and 2007 because the sentences ran concurrently during this period. Because the appellate court can grant effective relief by deciding the credit issue, ensuring that the trial court correctly applies credit due at a subsequent resentencing, this appeal is not moot.

The Court of Appeals' one-sentence ruling on mootness conflicts with case law that recognizes a mere possibility of relief is sufficient to defeat a mootness claim. In State ex rel. T.B. v. CPC Fairfax Hosp., 129 Wn.2d 439, 444-47, 918 P.2d 497 (1996), a patient detained at Fairfax Hospital petitioned for habeas corpus relief to effectuate her release and received no hearing. She escaped from the hospital. Id. at 447. The Supreme Court held that her case is not moot because "she still faces the possibility of reincarceration and therefore the court can provide appellant effective relief." Id. (emphasis added).

Mr. Tarrer still faces the possibility of reincarceration. He has two stayed appeals (55568-9-II & 56458-1-II) pending the outcome of this appeal. In these stayed appeals, he contends that the trial court erroneously imposed an adult sentence despite at the same time finding that he met the burden of proving he was entitled to a juvenile-mitigated sentence. If these appeals are successful, the remedy would be a full resentencing. At that resentencing, the trial court would not have to accept youthful

mitigation at all and could impose an adult sentence, which could result in reincarceration. If he faces reincarceration, the trial court would need to determine the amount of credit he is due for time served. Because this appeal could definitively answer the credit issue and would control at any subsequent resentencing, this appeal is not moot.

In State v. Raines, 83 Wn. App. 312, 315, 922 P.2d 100 (1996),[4] Mr. Raines served his entire modified sentence, including an extended term of community placement. The state thus argued that Mr. Raines's challenge to the sentence on appeal was moot. Id. The Court of Appeals disagreed, acknowledging that the modified sentence "could affect future sentencing decisions should Raines reoffend" including additional conditions of community placement or swaying a "future sentencing court to impose the high end of the standard range." Id. Reversing the modified sentence also had the potential to affect Mr. Raines's

[4] The Raines decision has been superseded by statute grounds not pertinent here. See State v. Jones, 118 Wn. App. 199, 205, 76 P.3d 258 (2003).

offender score by adjusting the wash out periods if he reoffended. Id. Just the "potential impact on his future offender score" was enough to overcome the state's claim of mootness.

There is more than a potential impact on Mr. Tarrer's future sentencing in some other case if this appeal is decided. The credit issue decided in this appeal would control at the resentencing he has sought in this very same criminal case. The issue is less moot in Mr. Tarrer's case than it was in Raines.

Other cases support Mr. Tarrer's position that the mere potential for relief is all that is required to defeat mootness. See, e.g., Seattle Police Dep't v. Jones, 18 Wn. App. 2d 931, 943, 496 P.3d 1204 (2021) (extreme risk protection order's expiration did not render a challenge to order moot because of the possibility that order's invalidity could affect prosecution for unlawful possession of a firearm); State v. Ford, 99 Wn. App. 682, 687, 995 P.2d 93 (2000) (dismissal on juvenile diversion agreement completion not moot because diversion agreement remains part of criminal history under Juvenile Justice Act and there was a

possibility that challenge to compromise misdemeanor statute excluding juveniles might make it so no criminal history would remain); State v. Sulayman, 97 Wn. App. 185, 190, 983 P.2d 672 (1999) (appeal not moot where it cannot be determined from the record that the sentencing court would have imposed the same length of sentence had it known that community service was unavailable).

Furthermore, just because Mr. Tarrer might be able to make the same credit for time served argument at a future resentencing hearing does not render this appeal moot. "The possibility of another remedy in the future cannot displace [Mr. Tarrer]'s right to appeal his sentence on the basis that it was unlawfully imposed in the first instance." State v. Ramos, 187 Wn.2d 420, 436, 387 P.3d 650 (2017). Where the court can determine a sentence was unlawfully imposed leading to potential resentencing, the case is not moot. Id.

The Court of Appeals did not provide analysis to support its order that Mr. Tarrer's appeal is moot. Regardless, its

decision conflicts with the decisions cited above because the possibility remains that Mr. Tarrer may be resentenced at which the sentencing court would need to correctly apply the credit for the concurrent time he served between 1991 and 2007. Due to the conflict with Supreme Court and Court of Appeals mootness decisions, review is warrant under RAP 13.4(b)(1) and (2). Mr. Tarrer asks that this review be granted and that the Supreme Court either undertake review of the merits of his appeal or order the Court of Appeals to do so.

2. **Even if this appeal were moot, it presents a matter of continuing public interest that should be addressed on the merits by a Washington court**

The Court of Appeals decision dismisses for mootness without addressing the continuing public interest criteria that permit it to consider even a technically moot matter. Because the public interest criteria are amply met and because no Washington court has addressed the double jeopardy issue presented by this appeal, this appeal should not be dismissed.

In considering whether a continuing and substantial public interest is at stake, the appellate court considers (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination to provide guidance to public officers; and (3) the likelihood the question will recur. Enriquez Martinez, 198 Wn.2d at 103 n.1. "A fourth factor may also play a role: 'the level of genuine adverseness and the quality of advocacy of the issues.'" Westerman v. Cary, 125 Wn.2d 277, 286, 885 P.2d 827, 892 P.2d 1067 (1994) (quoting Hart v. Dep't of Soc. & Health Servs., 111 Wn.2d 445, 448, 759 P.2d 1206 (1988)).

The Court of Appeals decision arguably conflicts with these continuing public interest decisions by failing even to acknowledge let alone apply these factors. RAP 13.4(b)(1) and (2) review is appropriate on this basis alone.

In any event, the public interest factors are met, and the Court of Appeals, to the extent it considered the factors, conflicts with these decisions, and does so on publicly

important constitutional questions, satisfying all RAP 13.4(b) criteria. Mr. Tarrer presents a double jeopardy claim regarding the application of credit for concurrent time served in prison on two counts to subsequent consecutive sentences imposed on the same counts after resentencing. This involves the interpretation and application of the double jeopardy clause based on United States and Washington Supreme Court precedent. This issue is public in nature.

A Washington appellate court's guidance on this issue is necessary to clarify the issue for both the courts and prosecutors, the latter of which in this case have never substantively responded to Mr. Tarrer's claims. The trial court ruled that any time that Mr. Tarrer previously served concurrently was voided completely by his subsequent consecutive sentences for the same counts. This is directly contrary to North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). To prevent being punished twice for the same offense, prior punishment served before reversal on appeal, reconviction, and resentencing

on the same offense must be "fully credited." Id. at 718-19. "If, upon a new trial, the defendant is acquitted, there is no way the years he spent in prison can be returned to him. But if he is reconvicted, those years can and must be retuned—by subtracting them from whatever new sentence is imposed." Id. at 719.

The Court explained that when an initial conviction has been overturned, the defendant's sentence has "been wholly nullified and the slate wiped clean." Id. at 721. However, "[a]s to whatever punishment has actually been suffered under the first conviction, that premise is, of course, an unmitigated fiction, as we have recognized in Part I of this opinion." Id. The Court clarified that the only portion of the sentence that has been "wiped clean" after an appellate reversal, reconviction, and resentencing is "that part of the sentence that has not yet been served[.]" Id.

The refusal to credit the time Mr. Tarrer already served on both counts toward his new sentences also calls out for guidance in light of the recent Enriquez Martinez decision. "As a matter of

constitutional law, defendants are entitled to credit for all time served in confinement on a criminal charge, whether that time is served before or after sentencing." Enriquez Martinez, 198 at 101. "The legislature has attempted to capture that principle in RCW 9.94A.505(6)[.]"[5] Enriquez-Martinez, 198 Wn.2d at 101. These principles apply "regardless of how many charges they were held on." Id. at 103. In Enriquez Martinez, the issue was crediting concurrent pretrial jail time on multiple counts, id. at 100-03; here, the issue is crediting concurrent posttrial prison time on multiple counts. The continuing and substantial public interest exception to mootness was satisfied in Enriquez Martinez, so it is also satisfied here.

The issue is likely to recur given several major changes in the law that are requiring resentencings through the state, from State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), to

[5] Although codified differently, the language of this statute was the same in 1991 when the crimes at issue here were committed. Former RCW 9.94A.120(13) (1990) was recodified without amendment by the Laws of 2001, ch. 190, § 6.

three strikes reform that eliminates certain strike offenses. Sentencing courts will be asked to decide how to credit previous concurrent time served. This issue will recur, meriting a decision now.

Mr. Tarrer's arguments rise to the level of "genuine adverseness" and he has attempted to carefully analyze concurrent-followed-by-consecutive sentences under the double jeopardy clauses based on Pearce, Enriquez Martinez, and other Washington authority. Br. of Appellant at 18-41. He also has found case law from the high courts of other states that have considered and granted relief on nearly identical claims. Br. of Appellant at 30-32 (citing State v. Christian, 159 Ohio St. 3d 510, 516-17, 162 N.Ed. 3d 216 (2020) ("Because Christian served prison time on those counts simultaneously, she is entitled to have that time credited toward both of her new sentences on those counts."); State v. Njano, 427 N.J. 533, 541, 255 A.3d 1165 (2021) ("'[F]ailing to award [Njango] prior service credit from the two vacated concurrent sentences to both of the resentenced

consecutive terms would violate [his] Fifth Amendment rights.'" (alterations in original) (quoting Appellate Division decision)). A genuinely adverse issue that is likely to recur and in need of a definitive decision is presented by Mr. Tarrer's case.

The issue this case presents overcomes any technical mootness based on its important public and constitutional questions, and thus the Court of Appeals decision to the contrary merits review under all RAP 13.4(b) criteria. The Supreme Court should grant review and either retain the case for consideration on the merits or remand for the Court of Appeals to consider the case on the merits.

E. CONCLUSION

The Court of Appeals decision conflicts with mootness precedent holding that where effective relief potentially remains, the case is not moot. By not even addressing the potential that this case presented a matter of continuing public interest on a constitutional question, the Court of Appeals conflicts with decisions conducting such analysis. Because all RAP 13.4(b) criteria are met, Mr. Tarrer asks that review be granted, that the Court of Appeals order be reversed, and the issues in this case be decided on their merits by the Court of Appeals or by the Washington Supreme Court.

DATED this 10th day of February, 2023.

I certify this document contains 4,947 words. RAP 18.17.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

KEVIN A. MARCH, WSBA No. 45397
Office ID No. 91051
Attorneys for Petitioner

APPENDIX

Filed
Washington State
Court of Appeals
Division Two

January 11, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. LARRY EDWARD TARRER, Appellant.	No. 57448-9-II ORDER GRANTING MOTION TO MODIFY AND DISMISSING APPEAL AS MOOT

Respondent State moves to modify a Commissioner's ruling dated November 10, 2022 in this case. Following consideration, the court grants the motion to modify and dismisses the appeal as moot. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Lee, Veljacic

FOR THE COURT:

Maxa, J.

MAXA, P.J.

NIELSEN, BROMAN & KOCH, PLLC

February 10, 2023 - 3:00 PM

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