

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
Respondent,  
v.  
TIMOTHY MICHAEL KELLY,  
Petitioner.

No. 102003-1  
RESPONSE TO JULY 27,  
2023, STATEMENT OF  
ADDITIONAL  
AUTHORITIES

Pursuant to RAP 10.8, the State respectfully submits the following response to Timothy Kelly’s July 27, 2023, statement of additional authorities.

Kelly contends that Division III’s published opinion in *State v. Dunbar*, \_\_\_ Wn. App. 2d \_\_\_, 532 P.3d 652 (2023), requires a remand for resentencing. He is wrong.

The *Dunbar* opinion does not mention or discuss RCW 10.73.090’s facial invalidity exception. The *Dunbar* opinion

does not identify any RCW 10.73.100 exception to RCW 10.73.090's one-year time-bar. The *Dunbar* opinion does not cite or distinguish this Court's decision in *In re Pers. Restraint of Richardson*, 200 Wn.2d 845, 525 P.3d 939 (2022).

This Court's decision in *Richardson* is dispositive in this case. Division III lacked the power to overrule, revise, or abrogate it in *Dunbar*. *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984); *Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 211, 444 P.3d 1235 (2019). Kelly's petition for review must be denied.

This document contains 158 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully Submitted this 8th day of August, 2023.

*s/ Pamela B. Loginsky*  
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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to the attorney of record true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8/8/2023

Date

*s/ Kimberly Hale*

Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**August 08, 2023 - 11:56 AM**

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**Comments:**

RESPONSE TO JULY 27, 2023, STATEMENT OF ADDITIONAL AUTHORITIES

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