Supreme Court No. 102092-9
COA No. 38524-8-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW SIMON GAROUTTE,

Petitioner.

PETITION FOR REVIEW

ON APPEAL FROM THE SUPERIOR COURT
FOR GRANT COUNTY

Grant County Superior Court 13-1-00420-1

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A. IDENTITY OF PETITIONER

Matthew Garoutte seeks review of the decision entered by the Court of Appeals on May 11, 2023.

B. COURT OF APPEALS DECISION

COA No. 38524-8-III, the decision as to which review is sought, is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. May a bail-jumping charge be predicated on failing to appear for a hearing on a charge premised on innocent conduct – simple possession – which statute was voided by State v. Blake, 197 Wn.2d 170, 195, 481 P.3d 521 (2021)?

2. Did this Court's holding in Blake, that the Washington drug possession statute was void because it criminalized wholly innocent conduct, deprive the trial court of jurisdiction over the defendant when he was charged and convicted?

3. As a result, are convictions, like bail-jumping, premised on the void crime also void, where the Blake holding that the statute is void is unprecedented, and previous decisions

regarding trial court jurisdiction over the defendants for convictions merely reversible are of little value?

D. STATEMENT OF THE CASE

In 2013, the State charged Matthew Garoutte with possession of a controlled substance under RCW 69.50.4013. The trial court released him on bail. The order setting his conditions of release required him to appear at the next court hearing on October 8, 2013. Mr. Garoutte did not appear for that hearing, and the State charged him with bail jumping under former RCW 9A.76.170 (2001). Mr. Garoutte was convicted of the possession charge in a bench trial and the bail jumping charge in a jury trial. After our Supreme Court's decision in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), declaring RCW 69.50.4013 unconstitutional and void, Mr. Garoutte filed a CrR 7.8 motion to vacate his conviction for possession of a controlled substance; he also raised the issue of whether the bail jumping conviction should be dismissed. The court granted the motion on the possession charge, and Mr. Garoutte appealed.

Mr. Garoutte then filed a CrR 7.8 motion to vacate his conviction for bail jumping, which the trial court denied. Mr. Garoutte appealed that decision and the Court of Appeals consolidated the appeals on his motion. CP 26-29, 30-35; RP 23-26.

In its decision issued May 11, 2023, the Court of Appeals addressed the issues by looking to State v. Paniagua, 22 Wn. App. 2d 350, 511 P.3d 113, review denied, 200 Wn.2d 1018, 520 P.3d 970 (2022). Appendix A.

E. ARGUMENT IN FAVOR OF REVIEW

1. Whether a bail-jumping charge predicated on missing court for a possession of a controlled substance charge was voided by Blake is a substantial and recurring constitutional issue.

This Court should accept review because this case raises a substantial and recurring constitutional question: May a bail-jumping charge be predicated on missing court for a possession of a controlled substance charge voided by Blake? RAP 13.4(b)(1), (4).

This Court recently denied review of the issue in State v. Paniagua, 22 Wn. App. 2d 350, 511 P.3d 113, review denied, 520 P.3d 970 (2022). But denial of review by this Court petition does not constitute an adjudication on the merits of the claim. See, e.g., Matia Contractors, Inc. v. City of Bellingham, 144 Wn. App. 445, 452, 183 P.3d 1082 (2008) (denial of review has never been taken as an expression of the court's implicit acceptance of an appellate court's decision).

The question will continue to be raised for because many defendants have prior convictions for bail-jumping premised on a missed a court date for a drug possession offense. Those defendants will continue to challenge the inclusion of bail-jumping charges in their offender scores. A definitive answer from this Court is necessary.

2. The trial courts have jurisdiction only over a person who commits a crime.

Washington courts have jurisdiction only over a person who commits a crime. RCW 9.04.030. "Jurisdiction means the

power to hear and determine." State ex rel. McGlothern v. Superior Court, 112 Wn. 501, 505, 192 P. 937 (1920). The trial court's power to order a defendant to appear in court to answer for the crime arises only when the court's jurisdiction over the person has been established by filing an affidavit establishing probable cause to believe that an offense has been committed. RCW 10.16.080. Only then can the court order the defendant to appear either with a summons or an arrest warrant. On the other hand: "If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he or she shall be discharged." Id.

RCW 69.50.4013 never defined a crime. It criminalized "innocent passivity" and violated the federal and state rule that "passive and wholly innocent nonconduct falls outside the State's police power to criminalize." Blake, 197 Wn.2d at 185.

The first line of the bail-jumping statute, RCW 9A.76.010, presumes the defendant has "been released by court

order or admitted to bail." This can only be read to mean the State has filed a valid information or arrest warrant establishing probable cause to believe a crime has been committed. But if no offense has been committed the trial court lacks any power over the person and cannot compel that person, much less punish them, for violating a court order from a judge who had no personal jurisdiction over the defendant. Any conviction based on an order to appear when the trial court lacked jurisdiction over the defendant is void.

2. The commission of a felony is an express element of the crime of bail-jumping.

The second element of bail jumping requires the State to prove beyond a reasonable doubt that the defendant was charged with a "B or C felony." The former bail-jumping statute, RCW 9A.76.170, stated:

> Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to

> surrender for service of sentence as required is guilty of bail-jumping.

However, because the possession of a controlled substance statute was void, no offense has been committed despite the fact an information was filed. Because the possession statute was void when Mr. Garoutte was charged, he was not charged with a crime at all. Without a valid criminal charge, the court had no jurisdiction over Mr. Garoutte such that it could force him to appear. And, without that authority, there is no basis to convict or punish the defendant for bail-jumping.

3. The *Blake* decision is unprecedented and earlier cases discussing bail-jumping are inapplicable here.

Blake was an unprecedented decision. Petitioner cannot find any other instance in which Court has held a criminal statute void because it criminalized innocent conduct. The Court of Appeals failed to recognize the holding in Blake is unprecedented. Because of this failure, the Court of Appeals relied on cases that do not apply because they do not discuss the

present or future use of a statute that was void because it criminalized innocent conduct.

The Court of Appeals relied on State v. Downing, 122 Wn. App. 185, 93 P.3d 900 (2004). But Downing clearly differs. There the defendant was charged under a statute – unlawful issuance of bank checks - that properly defined a crime and has never been deemed void. From the start of his prosecution until the charges were later dismissed the trial court had jurisdiction over Mr. Downing and had the power to order him to appear and punish him for failing to do so.

Notably, United States v. Williams, 341 U.S. 58, 59, 71 S. Ct. 595, 596, 95 L. Ed. 747 (1951), would not warrant this Court's denial of review. There the defendants were charged with perjury. In dicta, the Court held a perjury charge can be sustained even if the statute out of which the perjury proceedings arose is "unconstitutional." Id. at 68. But a finding of "unconstitutionality" is not the same as a finding of voidness because it criminalized innocent conduct.

In sum, no one disagrees that Mr. Garoutte's underlying charge is now void. It was already vacated by the trial court on this basis. (CP 16-17; RP 14-18). It is unfair for Mr. Garoutte to maintain a conviction for missing a court date for a pretrial proceeding on a crime that is now void. Mr. Garoutte's conviction for bail jumping based on a failure to appear on a void charge should be vacated.

F. CONCLUSION

This Court should grant review and provide a definitive answer to this recurring question.

This document complies with RAP 18.17 and contains 1,509 words.

Respectfully submitted this his 12th day of June, 2023.

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APPENDIX A

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. MATTHEW SIMON GAROUTTE, Appellant.	)))))))))	No. 38524-8-III (consolidated with No. 38411-0-III) UNPUBLISHED OPINION

LAWRENCE-BERREY, J. — Matthew Garoutte appeals the trial court's orders to the extent they denied his CrR 7.8 request to vacate his bail jumping conviction. That conviction was due to him failing to appear for a hearing for a simple possession charge. Mr. Garoutte argues his bail jumping conviction is facially invalid because the underlying charge was void. For the reasons set forth in our recent opinion of *State v. Paniagua*, 22 Wn. App. 2d 350, 511 P.3d 113, *review denied*, 200 Wn.2d 1018, 520 P.3d 970 (2022), we affirm the trial court.

FACTS

In 2013, the State charged Matthew Garoutte with possession of a controlled substance under RCW 69.50.4013. The trial court released him on bail. The order setting his conditions of release required him to appear at the next court hearing on October 8, 2013. Mr. Garoutte did not appear for that hearing, and the State charged him with bail jumping under former RCW 9A.76.170 (2001). Mr. Garoutte was convicted of the possession charge in a bench trial and the bail jumping charge in a jury trial.

After our Supreme Court's decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), declaring RCW 69.50.4013 unconstitutional and void, Mr. Garoutte filed a CrR 7.8 motion to vacate his conviction for possession of a controlled substance; he also raised the issue of whether the bail jumping conviction should be dismissed. The court granted the motion on the possession charge, and Mr. Garoutte appealed. Mr. Garoutte then filed a CrR 7.8 motion to vacate his conviction for bail jumping, which the trial court denied.[1] Mr. Garoutte appealed that decision as well, and we consolidated the appeals on his motion.

[1] This second motion should have been transferred to us as a personal restraint petition.

VALIDITY OF BAIL JUMPING CONVICTION

Under CrR 7.8(b), a defendant may move to vacate a conviction for a number of reasons, including that it is void. Mr. Garoutte contends his bail jumping conviction is void because the underlying felony offense, possession of a controlled substance, did not exist at the time he failed to attend his hearing. We disagree.

During the pendency of Mr. Garoutte's appeals, we rejected this same argument in *Paniagua*. There, we considered whether, in the context of an offender score, a conviction for bail jumping under former RCW 9A.76.170 (2001) was void when the underlying charge was possession of controlled substances. *Paniagua*, 22 Wn. App. 2d at 352. We concluded that the defendant's bail jumping conviction was not invalid on its face because the crime of bail jumping remained in existence. *Id.* at 356. We rejected his implicit argument that "charges under a constitutionally valid statute serve as a predicate to a bail jumping conviction," noting that "under the universal rule, the unconstitutionality of a statute under which the defendant was convicted or charged does not justify escape from imprisonment." *Id.* at 356, 358.

Mr. Garoutte argues that we wrongly decided *Paniagua*. He contends that because the simple possession statute is and has always been a legal nullity, the trial court lacked jurisdiction to hold him on those charges as "Washington courts only have jurisdiction

over a person who commits a crime." Appellant's Reply Br. at 5.[2] Mr. Garoutte's contention has no support and would mean that a court lacks jurisdiction over a defendant who has only been *accused* of a crime. That would be an absurd and unworkable result. Further, we discussed and rejected that argument in *Paniagua*, relying in part on our decision in *State v. Downing*, 122 Wn. App. 185, 93 P.3d 900 (2004), to conclude that in a bail jumping conviction, the State need not prove the defendant was held on a constitutionally valid charge. *Paniagua*, 22 Wn. App. 2d at 356-58.

Mr. Garoutte is correct that one panel of this court may depart from the decision of another panel, but provides no persuasive reason for us to do so here. As in *Paniagua*, we follow the "universal rule" and reject Mr. Garoutte's claim that his conviction for bail jumping is void because the underlying charge was based on an unconstitutional statute.

Mr. Garoutte was required to "submit to confinement until discharged by due process of law." *Id.* at 358. His remedy for being charged with an unconstitutional statute was "to seek a declaration of the unconstitutionality of the statute, not flee from

[2] Mr. Garoutte relies on RCW 9A.04.030 for this assertion, which is titled "State criminal jurisdiction." The title of the section has no legal weight, however, and the text of the section defines who is subject to punishment, not who is subject to the court's jurisdiction. *See* RCW 9A.04.010(5) ("Chapter, section, and subsection captions are for organizational purposes only and shall not be construed as part of this title.").

justice." *Id.* at 359. Because he fails to show his conviction for bail jumping was void, we affirm the trial court's orders.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, J.

WE CONCUR:

Fearing, C.J.

Siddoway, 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 – Division Three** under **Case No. 38524-8-III**, 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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