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SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 102131-3
Court of Appeals No. 56574-9-II (consolidated)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington, Respondent
v.
Christopher Olsen, Petitioner

Thurston County Superior Court

Cause No. 03-1-01537-1

The Honorable Judge James Dixon

Reply to State's Answer/Cross-Petition

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ARGUMENT

THE SUPREME COURT SHOULD DENY THE STATE’S CROSS-PETITION BECAUSE IT DOES NOT RAISE ANY ISSUES OF SUBSTANTIAL PUBLIC INTEREST.

The Supreme Court should grant Mr. Olsen’s Petition and vacate his convictions. Petition for Review, pp. 9-41. It should deny Respondent’s Cross-Petition.

Respondent incorrectly suggests that Mr. Olsen’s claims are time-barred. Respondent also argues—without any support in the record—that Mr. Olsen would receive an “unfair windfall” if granted relief. Respondent’s arguments do not merit review under RAP 13.4.

- A. Respondent’s erroneous claims regarding waiver and the time bar do not qualify for review under RAP 13.4(b)(3).

The trial court determined that “[t]he time limit prescribed by RCW 10.73.090 does not apply to this matter,” and cited a significant material change in the law under RCW 10.73.100(6). CPA 96; CPB 90; CPC 86.

Respondent did not cross-appeal this finding. Nor did Respondent assign error to the trial court's decision. Response Brief (Court of Appeals) pp. 8-11.

The Respondent now makes an argument combining issues of waiver with the time bar. Respondent claims that the trial court's decision regarding the time bar doesn't apply to Mr. Olsen's claim that his pleas were involuntary. Answer, pp. 33-34.

Respondent implies that Mr. Olsen waived this claim. Answer, pp. 33-34. This is false. In the trial court, the State raised the issue of voluntariness. CPA 62; CPB 65; CPC 54. In each case, the trial court found that Mr. Olsen's "guilty plea was voluntary, knowing and competent." CPA 96-97; CPB 90-93; CPC 86-87. The trial court concluded that Mr. Olsen "understood the nature of the charge, there was a factual basis for the plea, and the Defendant understood the rights he was giving up as a result of the plea." CPA 96-97; CPB 90-93; CPC 86-87.

Mr. Olsen appealed that decision. The issue is preserved.

Significant change in the law. Furthermore, under established principles, Mr. Olsen’s claims are not time-barred. The *Blake* decision¹ is unquestionably “a significant change in the law.” RCW 10.73.100(6). Respondent does not argue otherwise. Answer, pp. 3-4.

Materiality. *Blake* is material to Mr. Olsen’s case—not merely to the possession convictions, but also to the companion charges. RCW 10.73.100(6) provides that the time bar does not apply when “[t]here has been a significant change in the law... which is material to the conviction, sentence, or other order” entered in a criminal case. RCW 10.73.100(6).

The significant change wrought by *Blake* is material to Mr. Olsen’s convictions. This is because each of his convictions were the result of an indivisible plea agreement that included a void possession charge. Petition, pp. 33-34. *Blake*’s invalidation

¹ *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

of each possession conviction impacts each entire indivisible plea agreement. This includes the forgery charge and the firearms charge. Thus, *Blake* is “material to [all of Mr. Olsen’s] conviction[s].” RCW 10.73.100(6).

Blake is also “material to [Mr. Olsen’s] sentence.” RCW 10.73.100(6). The possession conviction added a point to his offender score on each of the companion charges. CPA 3, 10; CPB 3; CPC 2-3, 12-13. That point affected his standard range on each charge, and thus had a direct impact on the sentences available to the sentencing judge. *See* RCW 9.94A.525.

Retroactivity. *Blake* is necessarily retroactive.

Montgomery v. Louisiana, 577 U.S. 190, 203-204, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), *as revised* (Jan. 27, 2016). A court “has no authority to leave in place a conviction or sentence that violates a substantive rule [of constitutional law], regardless of whether the conviction or sentence became final before the rule was announced.” *Id.*, at 203. Put another way,

“[t]here is no grandfather clause that permits States to enforce punishments the Constitution forbids.”² *Id.*, at 204.

Under well-established principles, Mr. Olsen’s claim is not time-barred. Contrary to the State’s argument, there is no basis nor reason to review Respondent’s unpreserved time-bar argument under RAP 13.4(b)(4). Answer, p. 36.

B. Respondent’s erroneous argument that Mr. Olsen might receive an “unfair windfall” does not qualify for review under RAP 13.4(b).

Respondent argues that Mr. Olsen would receive an “unfair windfall” if his indivisible plea agreements were set aside. Answer, pp. 34-36. Respondent did not make this argument in the trial court. CPA 60-69; CPB 63-70; CPC 52-61.

Respondent’s argument seems to be that Mr. Olsen would receive a windfall because he served his sentences

² In addition, retroactive application of the rule in *Blake* “does not implicate [the] State’s weighty interests in ensuring the finality of convictions and sentences.” *Id.*, at 205.

“many years before the *Blake* decision,” and that he has since been convicted of a homicide. Answer, p. 33. It is not clear how either of these facts support the State’s windfall argument. Mr. Olsen remains in custody.

The injustice here—multiple convictions of a nonexistent crime— is actually a “windfall” for the State, if it can be called that: Mr. Olsen was punished for conduct that was not illegal. He lived for years with invalid convictions on his record. He spent time in custody based on convictions that violated the constitution.

The State got more from Mr. Olsen than it was entitled to. Correcting this injustice cannot be described as a “windfall.”

Furthermore, Respondent does not supply any facts supporting its claim that Mr. Olsen would receive an “unfair windfall.” Answer, p. 34. It does not show that the State “has detrimentally relied on the bargain and has lost essential witnesses or evidence.” Answer, p. 35. If this court is inclined to accept Respondent’s windfall argument, it should remand the

case so the trial court can hold an evidentiary hearing to determine these questions.

Otherwise, the court should deny review. Respondent's arguments do not involve issues of substantial public interest that should be reviewed by the Supreme Court. RAP 13.4(b)(4).

CONCLUSION

The Supreme Court should grant review of the issues raised in Mr. Olsen's Petition. It should vacate his convictions and remand his cases for further proceedings. It should deny the State's cross-petition.

CERTIFICATE OF COMPLIANCE

I certify that this document complies with RAP 18.17, and that the word count (excluding materials listed in RAP 18.17(b)) is 996 words, as calculated by our word processing software. The font size is 14 pt.

Respectfully submitted August 7, 2023.

BACKLUND AND MISTRY



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CERTIFICATE

I certify that on today's date, I mailed a copy of this document to:

Christopher Olsen DOC# 831898
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 68520

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia Washington on August 7, 2023.



Jodi R. Backlund, No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

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