SUPREME COURT NO. 102759-1

COURT OF APPEALS NO. 81723-0-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

V

ROOSEVELT REED,
Petitioner

ON APPEAL FROM THE SUPERIOR COURT OF THE

STATE OF WASHINGTON FOR KING COUNTY

The Honorable Ketu Shah, Judge

PETITION FOR REVIEW

Roosevelt Reed
Pro Se

Roosevelt Reed
SCCC/#
191 Constantine Way
Aberdeen, Washington 98520

A. IDENTITY OF PETITIONER/DECISION BELOW

Roosevelt Reed, appellant below, asks this Court to grant review, pursuant to RAP 13.4, of the decision of the Court of Appeals in State v. Reed, No. 84716-3-1 entered on November 20, 2023, a Motion to Reconsider was denied on January 8, 2024 by the Court of Appeals Division One. A copy of both opinions is attached as Exhibits One and Two.

B. ISSUES PRESENTED FOR REVIEW

i. This Court adjudged RCW 69.50.4013 as being State and Federally unconstitutional, in violation of the Due Process Clause of Article 1 Section 3 of the Washington State Constitution, and of the Fourteenth Amendment of the United States Constitution. Is a statute that is repugnant to both State and Federal Constitutions facially unconstitutional?

ii. Is A Facially Unconstitutional Statute Unconstitutional In Every Conceivable Application?

iii. Under Washington State Law, Can the State Present False Documents to Obtain A Guilty Plea?

C. STATEMENT OF THE CASE

On November 4 2022, Appellant was resentenced. Appellant filed appeal on June 27, 2023. On November 20, 2023 the appeal was denied and on December 8, 2023 appellant filed a Motion to Reconsider. On January 8, 2024 the Motion to Reconsider was denied and now appellant is filing a Petition for Review.

D. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

1. Pursuant to this Court's monumental ruling that RCW 69.50.4013 was contrary to both the State and Federal Constitutions "Blake". This ruling is binding on all lower courts in the State of Washington, that RCW 69.50.4013 is facially unconstitutional, and repugnant to the Constitutions where Washington and Federal governments are concerned, from the day of its enactment.

This Court has previously held "While the expiration of a sentence technically renders a case moot, we may retain and decide the appeal if it involves matters of continuing and substantial public interest". State v. Hunley, 175 Wn. 2d 901, 907, 287 P.3d 584 (2012). To determine whether the appeal presents issues of continuing and substantial public interest, we consider three factors: "'the public or private nature of the question presented, the desirability of an authoritative

determination for the future guidance of the public officers, and the likelihood of future recurrance of the question'" Sorenson v. City of Bellingham, 80 Wn. 2d 547, 558, 496 P.2d 512 (1972). (quoting People ex rel. Wallace v. Labrez, 411 Ill. 618, 622, 104 N.E.2d 769 (1952). This Court deciding whether it's permissible for the State to use a facially unconstitutional statute in plea negotiations violates due process rights presents an issue that is of public interest. See Washington Constitution article 1 section 3, and the 14th Amendment of the United States Constitution. This Court's ruling on this matter will provide a concrete ruling and guidance for the lower courts and judicial officers to adhere to when faced with the prospect of handling plea bargains that were constructed using RCW 69.50.4013 to enhance a offender score or sentence. Essentially strengthening the State's negotiating posture with a legal nullity.

Petitioner entered into three contracts with the State for assault in the first degree, unlawful imprisonment, and assault in the third degree. These three contracts with the State were offered by the State to induce Petitioner to change his plea of not guilty to guilty for what appeared to be a lessor sentence, if Petitioner risk challenging the State's allegations by exercising his Constitutional right to a jury trial, and lost. In each negotiated plea bargaining process the State used the facially unconstitutional statute (RCW 69.50.4013) to add points to Petitioner's offender score, and enhanced his sentence in violation of Petitioner's constitutional rights under both State and Federal due process rights as this Court and The United States Supreme Court has made abundantly clear, "But when a statute is facially unconstitutional, it follows that no set of circumstances exist in which the statute, as currently written, can be constitutionally applied" City of Redmond v. Moore 151 Wn.2d 664, 669, 91 P.3d 875 (2004); accord Hill, 482 U.S. at 459 ("Criminal statutes must be scrutinized with particular care; those that make unlawful a substantial amount of constitutionally protected conducted may be held facially invalid even if they also have legitimate application.") citation omitted.

Review is appropriate under RAP 13.4(b)(1),(2),(3),(4), because this case presents a significant opportunity for this Court to provide the lower courts with the guidance that will allow the lower courts to administer justice without continuing the violation of the citizens of Washington State constitutional rights with (RCW 69.50.4013).

2. The State's attempt to leave in place the three convictions that are negotiated plea agreements inwhich the facially unconstitutional statute (RCW 69..50.4013) was used in the plea bargaining process, the State is not adhering to this Court's ruling in Blake, that is binding on the lower courts. See

State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 227, 39 A.L.R. 4th 975 (1984) ("a decision of the Washington Supreme Court is binding on all lower courts in the state.")

Pursuant to this Court's holding "Under United States Supreme Court precedent, a sentencing court cannot consider an unconstitutionally obtained conviction for any purpose" State v. Brown, 193 Wn.2d 280 (Wash 2019), the State is not allowed to use any of Petitioner's prior convictions that encompasses the now facially unconstitutional statute, the fact that the three convictions in question are plea agreements (contracts) that the State used (RCW 69.50.4013) to bolster its negotiating posture places these convictions in the province of due process violations, "when an instrument is intimately connected with an illegal one, the former becomes tainted with that illegality and is likewise unenforceable". Miller v. Myers, 158 Wash. 643, 291 Pac.1115 (1930); Van Horn v. Kittitas Cy., 112 Fed. 1 (W.D.Wash 1901).

> The very definition of "Unconstitutional Statute":
> 1. A self-contradictory expression, since a statute in conflict with the constitution is not law but is wholly void and as inoperative in legal contemplation as if it had never been passed, notwithstanding it has the form and name of law.
>
> 2. When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it. Contracts which depend upon it for their construction are void..." (See Ballentine's Law Dictionary, 3rd Edition).

Lawful: (13c) Not contrary to law; permitted by law. (See BLACK'S LAW DICTIONARY FOURTH EDITION)

This means that the State is unlawfully leaving these unconstitutionally obtained convictions in place despite this Court's holding that (RCW 69.50.4013) is wholly unlawful, it is illegal to enforce anything or give validity to any agreements connected to (RCW 69.50.4013), "The nonenforcement of illegal contracts is a matter of common public interest, and a party to such contract cannot waive his right to set up the defense of illegality in an action thereon by the other party... Validity cannot be given to an illegal contract through any principle of estoppel." Reed v. Johnson, 27 Wash. 42, 55, 67 Pac. 381 (1901). Accord, Cooper v. Baer, 59 Wn.2d 763, 370 P.2d 871 (1962). "The face of all convictions includes any plea agreement" State v. Gimarelli, 105 Wn.App. 370, 375, 20 P.3d 430 (2001)

Petitioner asks this Court to accept review of this question and reverse his unconstitutionally obtained plea agreements

(contracts). This Court should find that any conceivable application of the facially unconstitutional statute (RCW 69.50.4013) is "illegal" or "unlawful", "a successful facial exchange is one where no set of circumstances exists in which the statute, as currently written, can be constitutionally applied. The remedy for holding a statute facially unconstitutional is to render the statute totally inoperative." In re Det. of Turay, 139 Wn.2d 379, 417 n. 27, 986 P.2d 790 (1999)

3. Pursuant to RCW 9.94A.500(1) ("A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein..."). The State's criminal history summary is what was relied on in the plea bargain agreement process, the unconstitutional statute was also presented in each plea bargain negotiation the Petitioner and State entered into.

> PRIMA FACIE EVIDENCE(1) Evidence which if unexplained or uncontradicted, is sufficient to carry the case to the jury and to sustain a verdict or finding in favor of the side of the issue which it supports, but which may be contradicted by other evidence.
>
> (2) That is prima facie just, reasonable, or correct until the presumption has been overcome by evidence which clearly rebuts it.
> (SEE BALLENTINE'S LAW DICTIONARY 3rd EDITION)

Under Washington State law prosecutors owe a duty not to use false evidence to convict a defendant. The duty is grounded in the due process clause of the Fourteenth Amendment to the United States Constitution, and Article 1 section 3 of the Washington State Constitution. State v. Finnegan, 6 Wn.App. 612, 616, 495 P.2d 674 (1972). The State also violates both State and Federal due process clauses when it allows false evidence to go uncorrected when it appears. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

Petitioner's plea agreements (contracts) were negotiated using (RCW 69.50.4013) which this Court decided violated State and Federal Due Process Clauses, and was therefore unconstitutional, Blake, 197 Wn.2d at 183-86. As this Court has consistently held "If a statute is unconstitutional, it is and has always been a legal nullity." State ex rel. Evans v. Bhd. of Friends, 41 Wn.2d 133, 143, 247 P.2d 787 (1952).

> NULLITY: Something without legal effect, being null. A proceeding of no effect whatsoever because of a defect therein. (SEE BALLENTINE'S LAW DICTIONARY THIRD EDITION)

If this Court accepts review of this issue, the Justices should consider the fact that, for the State to include a counterfeit statute in a plea negotiation process is the equivalent of including counterfeit currency in a business transaction, "Under Washington law, there is in every contract an implied duty of good faith and fair dealing that obligates the parties to cooperate with each other so that each may obtain the full benefit of performance." Petitioner received no benefit, he was duped by the State, and though (RCW 69.50.4013) was not adjudged to be unconstitutional at the time Petitioner entered into plea bargains with the State, it was nevertheless still repugnant to both State and Federal Constitutions. Such a statute "is as inoperative as if it had never been passed." Boeing Co. v. State, 74 Wn.2d 82, 88, 442 P.2d 970 (1968).

The Due Process violation of this issue has nothing to do with a guilty plea being knowing, voluntary, or intelligently made, and everything to do with, once this Court adjudged (RCW 69.50.4013) facially unconstitutional the State owe a obligation to revisit the negotiated plea agreements inwhich the counterfeit statute was used to bolster its bargaining posture by adding points to the Petitioner's offender score and enhancing Petitioner's sentences, essentially using a false statute to induce Petitioner to plead guilty (a conviction). If the State obtains a conviction with evidence that prosecutors know to be false, even though they did not solicit false evidence, the conviction "must fall under the Fourteenth Amendment" Jackson v. Brown, 513 F.3d 1057, 1075 (9th Cir. 2008) (quoting Napue) The "prima facie" evidence is now undisputably overcome by this Court's decision that (RCW 69.50.4013) is a legal nullity and the State's useage of these documents is an attestment to the falsities of those documents, "Due Process protects defendants against the knowing use of any false evidence by the State, whether it be by document, testimony, or any other form of admissible evidence." Hayes v. Brown, 399 F.3d 972 (9th Cir. 2005); See Phillips v. Woodford, 267 F.3d 966, 984-85 (9th Cir. 2001) ("It is well settled that the presentation of false evidence violates due process." (Citing Napue, 360 U.S. 296).

E. CONCLUSION

The Court of Appeals has issued an opinion that will affect many Washingtonian's, especially those who pled guilty to crimes where the State used (RCW 69.50.4013) to bolster their negotiating posture to induce individuals to change pleas of not guilty to guilty. The Supreme Court should grant review to address issues of substantial public interest. This Court should also grant review because the Court of Appeals decision conflicts with several Supreme Court cases and with published opinions of

the Court of Appeals.

Petitioner's plea agreements (contracts) must not be allowed to stand. Each conviction was constructed using (RCW 69.50.4013), a legal nullity. The Supreme Court should grant review, reverse the Court of Appeals, and remand with instructions to set aside the plea agreements, pursuant to this Courts holding that (RCW 69.50.4013) is facially unconstitutional.

EXECUTED This 25th day of January 2024

Respectfully Submitted

Roosevelt Reed

Roosevelt Reed Pro Se
SCCC/# 962757
191 Constantine Way
Aberdeen, Washington 98520

Exhibit A

FILED
11/20/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ROOSEVELT REED, Appellant,	No. 84716-3-I DIVISION ONE PUBLISHED OPINION

FELDMAN, J. — Roosevelt Reed appeals his sentence for assault in the first degree following resentencing pursuant to *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), which invalidated the statute criminalizing simple drug possession. While the resentencing court reduced Reed's offender score from nine to seven and reduced his term of confinement by seven years, it did not strike the provisions in the original judgment and sentence imposing the $500 crime victim penalty assessment (VPA), $100 DNA collection fee, and interest on restitution. For the reasons that follow, we remand for the superior court to (1) strike the VPA and DNA collection fees and (2) decide whether to impose interest on restitution after consideration of the relevant factors under RCW 10.82.090(2). We reject the argument in Reed's Statement of Additional Grounds (SAG) that the superior court incorrectly determined his offender score.

I. CRIME VICTIM PENALTY ASSESSMENT, DNA COLLECTION FEE, AND RESTITUTION INTEREST

Reed asks us to remand for the superior court to strike from his judgment and sentence the $500 VPA and the $100 DNA collection fee. He argues that recent amendments to RCW 7.68.035 provide that the VPA shall not be imposed against a defendant such as Reed who is indigent at the time of sentencing. LAWS OF 2023, ch. 449, § 1. He likewise argues that RCW 43.43.7541 was also amended to remove the DNA collection fee requirement. LAWS OF 2023, ch. 449, § 4. The State does not object to a remand for purposes of striking the VPA or the DNA collection fee from Reed's judgment and sentence. We accept the State's concession and, accordingly, remand for the superior court to strike the VPA and DNA collection fee from Reed's judgment and sentence.

Next, Reed asks us to remand for the superior court to consider waiving interest on restitution. A recent amendment to RCW 10.82.090 provides that the superior court "may elect not to impose interest on any restitution the court orders" and that this determination shall be based on factors such as whether the defendant is indigent. LAWS OF 2022, ch. 260, § 12. Reed argues that although this provision did not take effect until after his sentencing, it applies to him because his case is still on direct appeal. We agree.

Division Two's recent opinion in *State v. Ellis*, 27 Wn. App. 2d 1, 530 P.3d 1048 (2023), is persuasive on this point. Ellis argued there that statutory imposition of restitution interest violates the excessive fines clause of the Eighth Amendment to the United States Constitution and article 1, section 14 of the Washington Constitution. *Id.* at 13. The court declined to reach the constitutional

argument upon concluding that "this issue has been resolved by the recent enactment of a new statutory provision regarding restitution interest." *Id.* at 15 (citing RCW 10.82.090 effective January 1, 2023. LAWS OF 2022, ch. 260, § 12). Relevant here, the court added: "Although this amendment did not take effect until after Ellis's resentencing, it applies to Ellis because this case is on direct appeal." *Id.* at 16. The court therefore remanded the issue "for the trial court to address whether to impose interest on the restitution amount under the factors identified in RCW 10.82.090(2)." *Id.* We agree with *Ellis* and conclude that the same reasoning and result apply equally here.

The State claims we should not follow *Ellis* because the court there purportedly misapplied *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). To support this argument, the State emphasizes that the court in *Ramirez* referred in its opinion to "costs" imposed on criminal defendants following conviction. 191 Wn.2d at 749. From this, the State argues that *Ellis* was wrongly decided because "[t]here is no basis to extend the holding in *Ramirez* to financial obligations that are not costs, such as the restitution obligation at issue here."

We reject this argument. Like the costs imposed in *Ramirez*, restitution interest is a financial obligation imposed on a criminal defendant as a result of a conviction. *See* RCW 10.01.160(1); RCW 10.82.090(1). We therefore agree with *Ellis* that restitution interest is analogous to costs for purposes of applying the rule that new statutory mandates apply in cases, like this one, that are on direct appeal. 27 Wn. App. 2d 16. Thus, even though the amendment to RCW 10.82.090 regarding the superior court's authority to waive interest on restitution

did not take effect until after Reed's resentencing, it applies here because this case is on direct appeal. As in *Ellis*, we remand for the superior court to decide whether to impose interest on restitution after consideration of the relevant factors under RCW 10.82.090(2).

II. STATEMENT OF ADDITIONAL GROUNDS

Reed argues that his prior convictions for assault in the first degree, unlawful imprisonment, and assault in the third degree should not have been included in his offender score because "those judgment and sentences are facially invalid as they contain an unconstitutional conviction for simple drug possession" in their offender score calculations. We disagree.

Two of our prior opinions are instructive here. In *State v. French*, 21 Wn. App. 2d 891, 894, 508 P.3d 1036 (2022), we held that the superior court correctly declined to add one point to French's offender score as a result of his commission of an offense while on community custody[1] because the sentence condition of community custody was imposed on French as a "direct consequence" of a constitutionally invalid drug possession conviction. Then, in *State v. Paniagua*, 22 Wn. App. 2d 350, 359, 511 P.3d 113 (2022), we distinguished *French* and held that the superior court correctly declined to deduct one point from Paniagua's offender score corresponding to a bail jumping offense committed while he was being held on a constitutionally invalid drug possession charge because bail jumping is "an additional crime" that does not require the existence of a predicate crime as an element.

[1] *See* RCW 9.94A.525(19) ("If the present conviction is for an offense committed while the offender was under community custody, add one point.").

Applying *French* and *Paniagua*, the dispositive issue here is whether Reed's prior convictions for assault and unlawful imprisonment are (a) dependent on a conviction that is now invalid under *Blake* (as in *French*) or (b) separate from (or in addition to) a conviction that is now invalid under *Blake* (as in *Paniagua*). The latter is correct. Unlike the circumstances in *French*, Reed's prior convictions are not dependent on, nor are they a "direct consequence" of, a conviction that is invalid under *Blake*. To the contrary, similar to *Paniagua*, these are "additional crimes," and the facts and circumstances of each are wholly independent of any prior conviction that is now invalid under *Blake*. For these reasons, we reject Reed's argument that these prior convictions should have been excised in determining his offender score.

Lastly, Reed argues that (1) he must be resentenced because his exceptional sentence is unlawful as it is based on an incorrect offender score, (2) at a resentencing based on a corrected offender score, a jury must be impaneled if the State still seeks an exceptional sentence, and (3) even if the impaneled jury finds aggravating factors sufficient to warrant an exceptional sentence, the court should choose not to impose it because he has demonstrated years of rehabilitation. Each of these arguments is predicated on Reed's erroneous assertion that the superior court incorrectly determined his offender score. We need not address these issues because we have rejected Reed's arguments regarding his offender score.[2]

[2] Reed also raises two additional issues regarding (a) the timeliness of his offender score argument and (b) the evidentiary record that this court can properly consider in deciding the appeal. Because we address the merits of Reed's argument regarding his offender score based on the pertinent superior court documents, we do not address these preliminary issues.

III. CONCLUSION

We affirm Reed's offender score and remand for the superior court to (1) strike the VPA and DNA collection fees and (2) decide whether to impose interest on restitution after consideration of the relevant factors under RCW 10.82.090(2).

Feldman, J.

WE CONCUR

Díaz, J.

Mann, J.

You file

Motion to reconsider

Exhibit B

FILED
1/8/2024
Court of Appeals
Division I
State of Washington

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

STATE OF WASHINGTON, Respondent, v. ROOSEVELT REED, Appellant.	No. 84716-3-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Roosevelt Reed, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

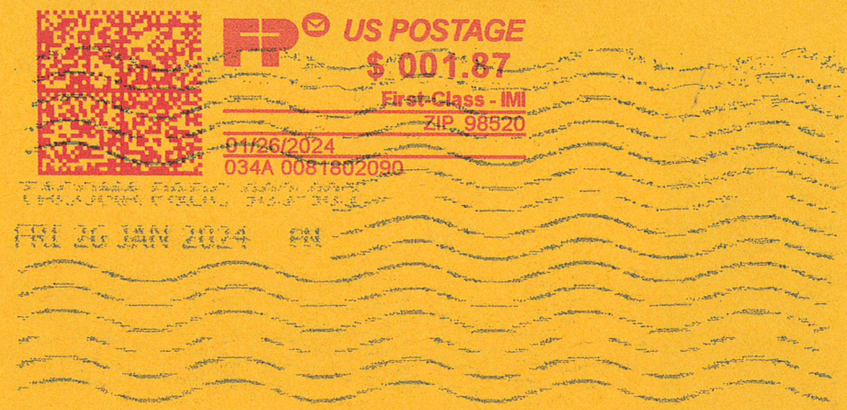
Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Feldman, J.

Judge

Roosevelt Reed #962757 H6-A12L
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, Wa. 98520



TEMPLE OF JUSTICE
P.O. BOX 40929
Olympia, Wa. 98504-0929

C/O Garza 1730 1/25/24

LEGAL MAIL