FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

Case #: 1029900

IN THE SUPREME COURT OF WASHINGTON

In re Personal Restraint Petition of SHERYL MARTIN , Petitioner.	No. CoA No. 587289 PETITION FOR REVIEW

I. IDENTITY OF PETITIONER

Sheryl Martin, Petitioner, seeks the relief designated below.

II. DECISION BELOW

On April 2, 2204, the Court of Appeals issued an opinion dismissing Ms. Martin's appeal. A copy is attached. A motion to publish is pending.

III. ISSUES PRESENTED FOR REVIEW

Does a defendant have a procedural due process right under the state and/or federal constitution to bring a motion for resentencing pursuant to RCW 36.27.130?

Does the statutory creation of a right to resentencing create a due process right for a defendant to bring such a motion when the prosecutor declines?

IV. STATEMENT OF THE CASE

This is an appeal from the denial of a motion brought by Sheryl Martin seeking a preliminary hearing and ultimately resentencing pursuant to RCW

36.27.130. The trial court summarily dismissed Ms. Martin's motion ruling that only the prosecutor could bring such a motion. CP 14. Because the trial court did not reach the facts or merits of Ms. Martin's motion, this appeal largely focuses on the legal issue. However, some background facts are helpful.

In the early morning hours of September 8, 2007, Sheryl Martin called 911 and stated that she had shot her husband, Eddie Martin. The shooting occurred shortly after Eddie had told her that he had been having an affair. *State v. Martin*, 169 Wash. App. 620, 623, 281 P.3d 315 (2012).

Sheryl notified the State that she intended to rely on a mental health defense. The State requested a *Frye* hearing to determine whether the defense's betrayal trauma theory (BTT) is generally accepted in the psychological community. The direct appeal opinion summarizes:

> At the hearing Dr. Brown testified that the depressive disorder and histrionic personality disorder led to symptoms of dissociation at the time of the incident. Dr. Brown also testified that BTT helped to explain the reasons for the dissociative state. Dr. Freyd had developed BTT and testified extensively about the negative impacts of betrayal trauma, including dissociation and depression. She theorized that Sheryl's dissociation enabled her to stay in an abusive relationship for several years.
>
> The State presented two experts, psychologists Dr. Marilyn Ronnei and Dr. Richard Packard. Dr. Ronnei, who evaluated Sheryl at the State's request, diagnosed posttraumatic stress disorder, major depressive disorder, and alcohol and cannabis abuse.

> Dr. Ronnei agreed that Sheryl was dissociating at times but did not believe that the dissociation impaired Sheryl's ability to form the requisite intent. Dr. Packard conducted a forensic evaluation of Sheryl. Dr. Packard researched BTT and testified that Dr. Freyd and her associates were the only ones who had developed significant data supporting it, and many of their colleagues questioned the reliability of the theory.
>
> The trial court reviewed a number of articles discussing the theory, including more than a dozen submitted by Sheryl. Although the court found references to research on the subject of domestic violence in the context of betrayal trauma, it found that the theory was not widely studied in this context. The trial court found that BTT remained very controversial, and that even if it met the Frye standard for delayed reporting of childhood sexual abuse, its relevance to adult domestic violence had not been established.
>
> The trial court ruled inadmissible four declarations by psychologists that BTT was widely accepted in the scientific community. The court found that BTT was inadmissible under ER 702, ER 401, or ER 402.

Martin, 169 Wash. App. at 624–25. Ms. Martin was sentenced to 20 years in prison.

After RCW 36.27.130 was enacted, Ms. Martin sent a letter to the prosecutor seeking a resentencing. That letter noted her age (Ms. Martin is now 67 years old). In addition, the letter and its referenced attachments noted that Ms. Martin's defense was mitigating, even if inadmissible at trial and that Ms. Martin had engaged in years of rehabilitation:

> She has spent more than a decade dedicated to self-improvement. It is questionable whether she will survive her current sentence. She has the full support of her family. As we understand it, the victim (her ex-husband) does not object to her release.
>
> The State declined to bring such a motion, concluding:

> This statute was primarily enacted to address changes in the law, such as the fact that Robbery 2 is no longer a strike offense, or changes in prosecution. Neither the law nor our office's policies towards the crime Ms. Martin committed have significantly changed.

CP 6-7. Ms. Martin next brought a motion requesting a hearing. CP 1-5. The State contested the motion. CP 9-13. The trial court summarily denied the motion. CP 14; RP 16 ("So, I'm gonna deny the motion. If I'm incorrect, I'm sure the appellate court will -- will correct me.").

This appeal follows. CP 15.

V. ARGUMENT

Introduction

Our system of justice is adversarial. The adversarial system aims to determine the truth of a dispute by presenting both sides to an impartial factfinder. "The purpose of a lawsuit is to arrive at the truth of the controversy, in order that justice may be done." Edward F. Barrett, *The Adversary System and the Ethics of Advocacy*, 37 Notre Dame L. Rev. 479 (1962). It is one of the "decencies of civilization that no one would dispute." *Mich. Trust Co. v. Ferry*, 228 U.S. 346, 353 (1913). Put another way, the Sixth Amendment "recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results." *Strickland v. Washington*, 466 U.S. 668, 685 (1984)

Judges sentence. Judges resentence. And, when presented with a motion filed pursuant to RCW 36.27.130(1), a judge is the arbiter of whether "the original sentence no longer advances the interests of justice." A motion for resentencing is decided by the sentencer, a judge.

RCW 36.27.130 eliminates the adversarial system by providing that only the prosecutor can file a motion for resentencing. If the adversarial process Is entrusted to produce "a just result," *Strickland*, 466 U.S. at 686, then RCW 36.27.140 is a recipe for injustice and unconstitutionality. For that reason, Ms. Martin seeks a ruling that procedural due process gives her the right to bring such a motion, even if the prosecutor declines to do so.

The Court of Appeals disagreed. The lower court's holding, however, is a classic example of circular reasoning because it concludes that a defendant does not have the right to bring a motion pursuant to RCW 36.27.130 because the statute provides that right only to the prosecutor, making it procedural in nature. *Opinion*, p. 6. ("Martin is arguing that she has due process rights to a hearing even though the prosecutor has declined to petition to the sentencing court. Unlike in *Pillsbury*, the matter never reached the sentencing court because of the prosecutor's exercise of discretion. Therefore, we hold that RCW 36.27.130 does not give Martin a liberty interest and so she is not entitled to procedural due process."). The question is not what the statute says. The question is what the constitution requires.

How the Statute Operates

RCW 36.27.130 creates a right to move for resentencing with one anomaly: only a prosecutor can bring such a motion. For that reason, it is sometimes called Prosecutor Initiated Resentencing (PIR). RCW 36.27.130(1) allows a judge to resentence an individual when the judge determines "the original sentence no longer advances the interests of justice." The statute sets forth specific factors used to determine whether the "interests of justice" standard has been met:

> The court may consider postconviction factors including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice.

RCW 36.27.130(3).

In sum, a judge (either the original sentencing judge or her successor) decides whether to grant the motion and, if granted, the terms of the new sentence.

As noted previously, the statute gives only the prosecution the right to bring a motion for resentencing: "The prosecutor of a county in which an offender was sentenced for a felony offense may petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice." RCW 36.27.130(1).

What Due Process Requires

Ms. Martin first sought to convince the State to bring a motion. The State declined. Then, Ms. Martin sought to bring the motion herself. She argued that the judge should employ the substantive standard for relief set forth in the statute and that the State had the right to contest the motion. The prosecutor objected and the judge refused to consider the motion or any of the facts in support. Ms. Martin contends—both then and now—that procedural due process requires that she be given an opportunity to be heard.

To begin, Ms. Martin sets forth the procedural due process she contends she is entitled to receive. First, Ms. Martin should be allowed to file a motion for resentencing when the prosecutor will not do so. Then, she is entitled to an initial review by a court to determine whether she has made a substantial showing that she is entitled to relief. If the court so finds, then the court should direct the State to appear and "show cause" why the motion should not be granted.

"Procedural due process requires the government to meet certain constitutional minimum standards before it may lawfully make decisions that affect an individual's liberty interests." *In re Welfare of M.B.*, 195 Wash.2d 859, 867, 467 P.3d 969 (2020).

In determining what procedural due process requires in a given context, Washington courts employ the *Mathews v. Eldridge*, 424 U.S. 319

(1976) test, which balances: (1) the private interest affected; (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards; and (3) the governmental interest, including costs and administrative burdens of additional procedures. *Id.* At its core is a right to be meaningfully heard, but its minimum requirements depend on what is "fair in a particular context." Id. See also *Matter of Det. of L.H.*, 18 Wash. App. 2d 516, 522–23, 492 P.3d 192 (2021); *In re Det. of Stout*, 159 Wash.2d 357, 370, 150 P.3d 86 (2007).

A valid conviction extinguishes the liberty interest derived directly from the Constitution. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). However, state law or policy can revive that interest. "For a state law to create a liberty interest, it must contain 'substantive predicates' to the exercise of discretion and 'specific directives to the decisionmaker that if the [law's or policy's] substantive predicates are present, a particular outcome must follow'." *In re Pers. Restraint of Cashaw*, 123 Wash.2d 138, 144, 866 P.2d 8 (1994) (quoting *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 463 (1989)). See also *In re Bush*, 164 Wash. 2d 697, 702, 193 P.3d 103 (2008). Liberty from bodily restraint is at the core of the due process clause. *In re Lain*, 179 Wash. 2d 1, 16, 315 P.3d 455 (2013).

Our adversarial system relies on diverging interests to provide the sharpest presentation of the law and facts. *Racing Guild of Ohio, Local 304,*

Service Employees Intern. Union, AFL-CIO v. Ohio State Racing Comm'n, 28 Ohio St.3d 317, 321 (1986) ("[C]oncrete adverseness [] sharpens the presentation of issues upon which the court so largely depends for illumination.") (quotation omitted). Procedural due process still plays a role in sentencing. "Sound practice dictates that judges in all cases should make sure that the information provided to the parties in advance of the hearing, and in the hearing itself has given them an adequate opportunity to confront and debate the relevant issues." *Irizarry v. United States,* 553 U.S. 708, 716, (2008).

People v. Pillsbury, 69 Cal. App. 5th 776, 284 Cal. Rptr. 3d 824 (2021) presents a similar situation and is persuasive. In that case, as permitted under a recent statutory provision, the California Secretary of Department of Corrections and Rehabilitation (CDCR) submitted letter to trial court recommending that defendant's aggregate sentence of 13 years be vacated and that defendant be resentenced under the new provision authorizing courts to strike or dismiss firearm enhancements in interest of justice. In response, the judge summarily declined to recall and resentence without providing the defendant notice or opportunity to provide additional information. On appeal, the defendant contended that he had a procedural due process right to notice, to appear, and to be heard.

The court began by noting that the statute created at least a limited liberty interest:

> Defendant's private interest at stake is his liberty. Under the particular circumstances of this case, if the trial court were to recall defendant's sentence, resentence him, and strike the firearm enhancement pursuant to sections 12022.53, subdivision (h) and 1385, subdivision (a), and decline to resentence him on the concurrent sentence for the commercial burglary, defendant would be subject to release as he would have served the entirety of his three-year term imposed on count one, robbery in the second degree.

Pillsbury, 69 Cal. App. 5th at 790–91. Ms. Martin has a similar liberty interest.

The court then analyzed the value of the right to appear and be heard:

> The risk of an erroneous deprivation of defendant's freedom through a procedure that denies a defendant the opportunity to be heard lies in the possibility that the court will not be apprised of additional information from defendant it should consider in exercising its discretion.

Id. The court continued:

> Thus, the probable value of notice and an opportunity to be heard is clear. If defendant were afforded the opportunity to be heard, it is far more likely that all relevant facts, circumstances, and arguments could be considered by the trial court before it considered whether to grant a hearing or summarily decline to recall and resentence.

Id. at 791.

Procedural due process requires, at a minimum, that a person seeking to litigate "be given a meaningful opportunity to participate in the

adversarial system." *Id.* The court then balanced the identified interests against any countervailing interests:

> The state has a legitimate financial interest in, and an interest in preserving, its scarce justice system resources. The advent of an enhanced review procedure will tap into these resources. However, the enactment of the 2018 amendments to section 1170(d) signals that a legislative determination has been made that the use of judicial resources to provide second chances to some individuals is warranted. Consequently, we conclude the fiscal and administrative burden of providing notice and an opportunity to be heard is not an overriding consideration.

Id. The reviewing court continued:

> True, in providing an opportunity to be heard, judges must devote time to reviewing whatever materials are submitted by defendant, but this is as it should be—judges should be provided all relevant evidence and information before summarily declining to recall and resentence.

Id. at 792.

Thus, on balance, the governmental interest factor weighs in favor requiring notice and an opportunity to be heard.

Ms. Martin concedes that there may be a slightly greater administrative burden here if a court were required to review any cases where a defendant seeks to challenge a prosecutor's denial of a 6164 petition. However, there is no other means for a judge to examine whether a defendant has met the statutory burden. In other words, the balance here remains firmly in favor of the right for a defendant to file and receive meaningful

consideration by the authority who sentenced and who bears the responsibility of determining whether resentencing is warranted.

Without notice and an opportunity to be heard, people in defendant's position are "relegate[d] ... to the role of a mere spectator, with no power to attempt to affect the outcome." And as our high court has noted: " 'For government to dispose of a person's significant interests without offering him [or her] a chance to be heard is to risk treating him [or her] as a nonperson, an object, rather than a respected, participating citizen.' " This is not to say that people serving state prison sentences have all of the same rights as people who are not incarcerated*, but they are people and they are entitled to respect and to participate in proceedings affecting their liberty interests.* *Pillsbury*, 69 Cal. App. 5th at 793 (emphasis added and internal citations removed).

Pillsbury recognized that a defendant subject to the resentencing law "is constitutionally entitled to notice and an opportunity to be heard as a matter of due process." *Id.* at 795.

So should this Court.

VI. CONCLUSION

This Court should grant review.

CERTIFICATE OF COMPLIANCE

This Petition for Review has 2868 words.

DATED this 22nd day of April 2024.

/s/Jeffrey E. Ellis
Jeffrey E. Ellis, WSBA #17139
Attorney for Ms. Martin
Law Office of Alsept & Ellis
621 SW Morrison St. Ste 1025
Portland, OR 97205
206/218-7076 (o)
JeffreyErwinEllis@gmail.com

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Washington State
Court of Appeals
Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SHERYL JEAN MARTIN, Appellant.	No. 58728-9-II UNPUBLISHED OPINION

MAXA, P.J. – Sheryl Martin appeals the trial court's denial of her motion for resentencing based on RCW 36.27.130.

RCW 36.27.130(1) states that a prosecutor "may" petition the sentencing court to resentence an offender if the original sentence no longer advances the interests of justice. If the prosecutor files a petition, the court has discretion to grant or deny the petition. RCW 36.27.130(2).

Here, Martin requested that the prosecutor petition for resentencing under RCW 36.27.130(1), but the prosecutor declined. Martin argues that procedural due process entitles her to bring a motion for resentencing pursuant to RCW 36.27.130 if the prosecutor declines.

We conclude that RCW 36.27.130 does not give Martin a liberty interest and so she is not entitled to procedural due process. Accordingly, we affirm the trial court's denial of Martin's resentencing motion.[1]

[1] Martin also filed a statement of additional grounds (SAG). The SAG includes a letter updating her achievements and general well-being while in prison. Although Martin's progress in prison is laudable, she does not make any argument regarding the updates. Because the SAG claim

FACTS

In 2010, a jury found Martin guilty of first degree attempted murder – domestic violence. Martin shot her husband after learning that he was having an affair. The trial court sentenced her to 240 months of confinement, which included 60 months for a firearm enhancement.

In 2020, Martin wrote a letter to the State, requesting Clark County's prosecuting attorney to seek resentencing for her pursuant to his authority under RCW 36.27.130.[2] The State denied Martin's request, stating that the "statute was primarily enacted to address changes in the law . . . or changes in prosecution," and that she was "free to renew a request in the future."

Martin then filed in the trial court a motion for resentencing pursuant to RCW 36.27.130. She claimed that the statute created a right to "correct an unjust sentence" and due process entitled her to a remedy. She asked the court to consider the motion on its merits. The State filed a response to Martin's motion, arguing that RCW 36.27.130 did not create a right to be resentenced. After reviewing briefing and hearing oral argument, the trial court denied Martin's motion for resentencing pursuant to RCW 36.27.130.

Martin appeals the trial court's denial of her resentencing motion.

ANALYSIS

Martin argues that procedural due process entitles her to bring a motion for resentencing pursuant to RCW 36.27.130. The State argues that RCW 36.27.130 does not create a protected liberty interest for which an offender is entitled to procedural due process protections. We agree with the State.

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does not "inform the court of the nature and occurrence of alleged errors," we decline to address it. RAP 10.10(c).

[2] Martin referred to SB 6164 in her letter. SB 6164 was codified as RCW 36.27.130. LAWS OF 2020, ch. 203, § 2.

A. STATUTORY OVERVIEW

RCW 36.27.130(1) states that the "prosecutor of a county in which an offender was sentenced for a felony offense may petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice."

The sentencing court "may grant or deny" a prosecutor's petition. RCW 36.27.130(2). When determining whether to grant or deny the petition,

> [t]he court may consider postconviction factors including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice.

RCW 36.27.130(3).

B. LEGAL PRINCIPLES

The due process clause in the Fourteenth Amendment of the United States Constitution provides that "no state shall . . . deprive any person of life, liberty, or property, without due process of law." Procedural due process requires an opportunity to be meaningfully heard, but the minimum requirements depend on what is fair in a given context. *State v. Derenoff*, 182 Wn. App. 458, 466, 332 P.3d 1001 (2014).

When determining whether due process is required in a given context, we consider " '(1) the private interest affected; (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards; and (3) the governmental interest, including costs and administrative burdens of additional procedures.' " *Id.* (quoting *In re Det. of Stout*, 159 Wn.2d 357, 370, 150 P.3d 86 (2007)).

Offenders do not have a liberty interest in being released before serving their full maximum sentence. *In re Pers. Restraint of Cashaw*, 123 Wn.2d 138, 144, 866 P.2d 8 (1994). However, state statutes can create a due process liberty interest where one otherwise would not have existed. *Id.*

"For a state law to create a liberty interest, it must contain 'substantive predicates' to the exercise of discretion and 'specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow.' " *Id.* (quoting *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 463, 109 S. Ct. 1904, 1910, 104 L. Ed. 2d 506 (1989)). In other words, "laws that dictate particular decisions given particular facts can create liberty interests, but laws granting a significant degree of discretion cannot." *Cashaw*, 123 Wn.2d at 144.

For example, an offender's ability to be released on parole is not guided by substantive predicates or specific directives; it concerns the degree to which an offender has become rehabilitated, and so involves " 'subjective appraisals' and 'discretionary assessment of a multiplicity of imponderables.' " *Id.* at 146 (quoting *In re Pers. Restraint of Ayers*, 105 Wn.2d 161, 165-66, 713 P.2d 88 (1986)). Parole decisions do not contain any consistent set of facts that mandate a favorable decision for the offender. *Cashaw*, 123 Wn.2d at 147. A parole board's discretion in determining rehabilitation "cannot be reduced to a simple equation under which predictable outcomes flow from specific factual predicates." *Id.* Therefore, the court in *Cashaw* held that the parole board's regulations regarding the procedures to be followed in reaching the parole decision did not create a liberty interest. *Id.*

In addition, procedural laws cannot create liberty interests; only substantive laws can. *Id.* at 145. "[S]tate regulations that establish only the procedures for official decisionmaking, such as those creating a particular type of hearing, do not by themselves create liberty interests." *Id.*

We review the constitutionality of a statute de novo. *State v. Watkins*, 191 Wn.2d 530, 535, 423 P.3d 830 (2018). Statutes are presumed to be constitutional, and the challenging party must prove beyond a reasonable doubt that a statue is unconstitutional. *Id.*

C. DUE PROCESS ANALYSIS

Martin argues that she is entitled to (1) file a motion for resentencing if the prosecutor refuses to do so, (2) receive an initial review by the sentencing court to determine whether she has made a substantial showing that her original sentence no longer advances the interests of justice, and (3) have the court direct the State to show cause why the motion should not be granted if a substantial showing has been made.

Martin is confined and so she does not have a liberty interest in being released before serving her full sentence. *See Cashaw*, 123 Wn.2d at 144. But she claims that RCW 36.27.130 created a due process liberty interest because she can satisfy one or more of the statutory factors.

However, RCW 36.27.130 does not dictate particular decisions given particular facts, but instead grants a significant degree of discretion to the prosecutor. A prosecutor "*may* petition the sentencing court" if the offender's original sentence "no longer advances the interests of justice." RCW 36.27.130(1) (emphasis added). The statute does not contain any substantive predicates to the prosecutor's exercise of discretion in deciding when to petition the court. *See Cashaw*, 123 Wn.2d at 144.

In addition, at its core, RCW 36.27.130 creates a hearing where the court may consider whether to resentence an inmate. This makes the statute a procedural law, which cannot create liberty interests. *Cashaw*, 123 Wn.2d at 145.

Martin cites to *People v. Pillsbury*, 69 Cal. App. 5th 776, 284 Cal. Rptr. 3d 824 (2021) to support her argument that she has a liberty interest. In *Pillsbury*, a statute – Penal Code section 1170(d) – authorized the Secretary of the Department of Corrections and Rehabilitation to recommend resentencing at any time and gave the sentencing court jurisdiction to resentence. *Id.* at 784. The Secretary sent a letter to the court recommending resentencing pursuant to the statute, but without notice to the defendant, the court without explanation declined to resentence. *Id.* at 783. The court held that section 1170(d) gave defendants a liberty interest entitled to due process protection because it provided a mechanism for releasing them from custody. *Id.* at 789-90. After extensive analysis, the court stated, "Accordingly, we conclude that a defendant for whom the Secretary has written a section 1170(d) recommendation based on a change in the law is constitutionally entitled to notice and an opportunity to be heard as a matter of due process." *Id.* at 795.

However, the facts differ here. In *Pillsbury*, the court held that defendants have due process rights to notice and a hearing only *after* the Secretary in the exercise of their discretion recommended for the trial court to recall and resentence a defendant. Martin is arguing that she has due process rights to a hearing even though the prosecutor has declined to petition to the sentencing court. Unlike in *Pillsbury*, the matter never reached the sentencing court because of the prosecutor's exercise of discretion.

Therefore, we hold that RCW 36.27.130 does not give Martin a liberty interest and so she is not entitled to procedural due process.

CONCLUSION

We affirm the trial court's denial of Martin's resentencing motion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, P.J.

We concur:

PRICE, J.

CHE, J.

ALSEPT & ELLIS

April 22, 2024 - 7:50 AM

Filing Petition for Review

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