Supreme Court No. 98248-1
(COA No. 51906-2-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SOCORRO VELAZQUEZ,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

PETITION FOR REVIEW

NANCY P. COLLINS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

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A. IDENTITY OF PETITIONER

Socorro Velazquez, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3(a)(2)(b) and RAP 13.4(b).

B. COURT OF APPEALS DECISION

Mr. Velazquez seeks review of the Court of Appeals decision dated February 11, 2020, a copy of which is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Despite the parties' agreed standard range sentencing recommendation, the trial court imposed an exceptional sentence that was close to double the high end of the standard range. The only reason it gave for its exceptional sentence was that two crimes were otherwise unpunished under the standard range. However, the court was wrong about this basic fact. RCW 9.94A.585 directs an appellate court to reverse an exceptional sentenced when the "reasons supplied" by the court are erroneous. Where the court's limited authority to impose an exceptional sentence based on judicially found facts rests on a

misunderstanding of those facts, should this Court review the trial court's mistaken application of the "free crimes" aggravating factor?

2. A fundamental tenet of the Sentencing Reform Act (SRA) is the imposition of proportionate punishment. When a judge imposes an exceptional sentence based solely on the fact that the offender score is higher than "9," does the SRA require a court to impose a proportionate term of confinement that adjusts the standard range incrementally to account for the single added offense that raises the offender score that raises the offender score above 9?

D. STATEMENT OF THE CASE

In exchange for Socorro Velazquez's guilty plea, the parties promised to recommend a 68-month sentence, the high end of the standard range. RP 4.[1] Pursuant to this plea agreement, Mr. Velazquez pled guilty to two counts of vehicular assault and one count of hit and run. CP 10. The prosecutor expressly informed the court he was recommending 68 months as agreed. RP 4.

Mr. Velazquez's attorney also told the court that both he and the prosecutor had extensive experience in the criminal justice system and had reached an appropriate agreed resolution. RP 39-40. Defense counsel clarified the record to explain Mr. Velazquez's non-violent criminal history and the lack of any drugs or alcohol involved in the car accident underlying the incident. RP 41-42. He told the court this agreed resolution was fair and should be imposed. RP 44, 43, 45.

Mr. Velazquez said he wanted "to apologize to the victims and say I'm sorry" and he "didn't mean to hurt anybody." RP 45.

Before the court imposed its sentence, several people affected by the vehicular accident spoke at length about the extent of their injuries or the effect of the victim's injuries on their own lives. RP 5-38. Two people were badly injured in the accident and these injuries greatly affected them and their loved ones. *Id.*

The judge said he typically follows agreed sentencing recommendations for people who plead guilty because the prosecution and defense attorneys would know more about the

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[1] The verbatim report of proceeding referred to herein is from

case than he did and he trusted their joint recommendations. RP 47. He also said Mr. Velazquez's waiver of his constitutional right to a jury trial significantly benefitted the victims and their families, because trials are difficult for them and can cause "havoc." RP 46-47.

However, the judge imposed an exceptional sentence above the standard range of 120 months, rather than the agreed 68-month high-end standard range sentence recommended. RP 47. The judge said the reason he was imposing this sentence was that he did not think 68 months was "enough to serve justice." RP 47. The judge said he was not sure that even "120 months or 10 years is enough to serve justice," but he wanted to recognize that Mr. Velazquez took "some responsibility" by admitting his guilt and because there was a significant benefit in not having a trial. RP 46.

The court created its 120-month sentence by imposing two consecutive 60-month terms for counts I and III (vehicular assault). RP 47. It also imposed a concurrent 60-month term for

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the sentencing hearing on May 8, 2018.

count II, which was the statutory maximum for this count, the class C felony of hit and run. RP 47; RCW 46.52.020(4)(b).

The prosecutor asked the court what legal basis it was using for this exceptional sentence because he needed to prepare findings. RP 49. The court cited RCW 9.94A.535(2)(c), where a high offender score results in some current offenses going unpunished. RP 49. The court said that "without an exceptional sentence," Mr. Velasquez was not being punished "for Count II or Count III, so those would be what we sometimes refer to in the legal field as free crimes." RP 49. The court did not elaborate further other than to say there are "substantial and compelling reasons" to impose an exceptional sentence. RP 49-50.

The facts are further explained in Appellant's Opening Brief, in the relevant factual and argument sections, and are incorporated herein.

E. ARGUMENT

This Court should address the judge's authority to order an exceptional sentence that grossly exceeds the standard range and rests only on the judge-found fact that the offender score is just above the "9 or more" that marks the top of the range.

1. A court's limited authority to impose a sentence greater than the standard range must comply with the purposes and structure of the SRA.

A court's sentencing authority stems strictly from statute, and is further restricted by the constitutional protections of due process, the right to jury determinations of all factual issues, and the prohibition on cruel punishment. *State v. Cawyer*, 182 Wn. App. 610, 616, 330 P.3d 219 (2014); *see Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *State v. Hunley*, 175 Wn.2d 901, 909, 287 P.3d 584 (2012); U.S. Const. amends. VI, VIII, XIV; Const. art. I, §§ 3, 14, 22.

The standard range presumptively governs the sentences imposed for felony under the SRA. *State v. Law*, 154 Wn.2d 85, 93, 110 P.2d 717 (2005). The SRA presumes current offenses will receive concurrent sentences. RCW 9.94A.589(1)(a). To impose consecutive sentences for current offenses, the court must

comply with the exceptional sentencing provisions of RCW 9.94A.535.

The imposition of standard range sentences presumptively governs felonies because they are based on the legislature's assessment of the appropriate punishment for certain offenses and are adjusted for a person's criminal history. *State v. Amo*, 76 Wn. App. 129, 133, 882 P.2d 1188 (1994). A judge's belief that the standard range is insufficient punishment is not a basis to depart from the standard range. *State v. Pascal*, 108 Wn.2d 125, 137-38, 736 P.2d 1065 (1987).

The SRA rests on a legislatively crafted sentencing grid that sets a range of punishment based on the offense and person's criminal history. *State v. Nelson*, 108 Wn.2d 491, 503, 740 P.2d 835 (1987). This grid supplies the standard range. The purpose of this standard range is to restrict judicial discretion so the sentences are proportionate state-wide, unless extraordinary circumstances occur.

To impose a sentence above the standard range, any factual determination justifying this sentence other than a prior conviction must be found by the jury and proven beyond a

reasonable doubt. *See State v. Hayes*, 182 Wn.2d 556, 562, 342 P.2d 1144 (2015).

2. The court's decision rested on a misapprehension of the standard range and disagreement with it, which are not valid reasons for an exceptional sentence.

The trial court's dissatisfaction with the sentencing structure of the SRA is not a basis for an exceptional sentence. *State v. Batista*, 116 Wn.2d 777, 789, 808 P.2d 1141 (1991). A court's assessment that the standard range is too lenient is a factual finding that must be made by the jury under the Sixth Amendment and must be tethered to a valid aggravating factor under RCW 9.94A.537. *State v. Alvarado*, 164 Wn.2d 556, 564, 192 P.3d 345 (2008).

Here, the court said its reason for departing from the SRA was its dissatisfaction with the high end of the standard range, because it believed more punishment should be imposed. RP 46-47. In the rare case where exceptional circumstances are involved that the legislature did not consider, this leniency must be found be the jury. *Alvarado*, 164 Wn.2d at 564.

When pronouncing his sentence, the judge explained he typically followed agreed recommendations because the

experienced lawyers "know the case better than I do," including the "strengths and weaknesses" of the case. RP 47. The judge said agreed recommendations are "extremely important for our legal system." RP 47. But he did not think the agreed recommendation of 68 months was "enough to serve justice," and instead imposed 120 months. RP 47.

The judge further said that even "120 months or 10 years is enough to serve justice," might not be enough to serve justice, but it wanted to recognize that Mr. Velazquez took "some responsibility" by admitting his guilt. RP 46. The judge also acknowledged that Mr. Velasquez's plea benefited the victims and their families, because he had the right to go to trial and it would have been "a much more difficult experience" for the victims and their families if he had not waived his right to a trial. RP 47.

The court did not mention any other reason to impose this exceptional sentence until later, after the prosecutor told the court it needed to prepare factual findings and needed a "basis" to list for this sentence. RP 49.

Because the court's primary motivation for an exceptional sentence was that the standard range was not enough punishment in light of the harm Mr. Velazquez caused by his conduct, the court relied on an impermissible, fact-based, subjective assessment of the case and dissatisfaction with the standard range. *Alvarado*, 164 Wn.2d at 564; *Batista*, 116 Wn.2d at 789.

The prosecution did not seek an exceptional sentence. RP 4. It did not allege or prove any fact-based aggravating factors beyond a reasonable doubt. Neither the Sixth Amendment nor the SRA permit the court to exceed the standard range based on judge's belief the ends of justice merit more punishment than called for by the standard range.

The Court of Appeals affirmed this exceptional sentence solely because the judge ultimately provided a legal basis for the exceptional sentence when he cited the "free crimes" aggravating factor. Slip op. at 4. But the judge misunderstood the application of this aggravating factor to this case, which undermines the factual predicate for departing from the standard range.

3. The court's belated claim that the "free crimes" aggravating factor rested on its misunderstanding of the offender score.

RCW 9.94A.535(2)(c) permits a court to impose an exceptional sentence without jury findings if it finds: (1) "[t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished"; and (2) "considering the purpose of this chapter [RCW 9.94A], that there are substantial and compelling reasons justifying an exceptional sentence."

When the prosecutor told the court they needed a legal basis for the exceptional sentence, the court cited the "free crimes" aggravating factor of RCW 9.94A.535(2)(c) as the sole reason to exceed the standard range. RP 49.

The court summarily stated that "without an exceptional sentence," Mr. Velasquez was not being punished for *either* "Count II or Count III, so those would be what we sometimes refer to in the legal field as free crimes." RP 49 (emphasis added). But this was an incorrect explanation of Mr. Velazquez's offender score. It is also a misuse of the aggravating factor

involving multiple current offenses going unpunished under RCW 9.94A.535(2)(c).

The legislature designed the maximum offender score to be "9 or more." RCW 9.94A.510.

The court incorrectly claimed Mr. Velazquez was not being punished for either "Count II or Count III" and both offenses were therefore "what we sometimes refer to in the legal field as free crimes." RP 49.

- Before this incident, not counting any current offenses, Mr. Velasquez had an offender score of 6.

- His conviction for count I scored as two points, making his offender score 8.

- When adding count one point for count II, his score increased to 9.

Consequently, his offender score only exceeded 9 when adding count III. Thus, the court was wrong when it concluded both counts II and III were "free crimes" for which Mr. Velazquez was not being punished under the standard range. RP 49.

If the record does not support the factual finding the court made to justify an exceptional sentence, the sentence should be

reversed. RCW 9.94A.585(4); *State v. Nordby*, 106 Wn.2d 514, 517-18, 723 P.2d 1117 (1986); *see State v. Williamson*, 72 Wn. App. 619, 623, 866 P.2d 41 (1994) ("When the reasons supplied by a sentencing court for an exceptional sentence are clearly erroneous based on the factual record before it, the sentence must be reversed.").

Here, the reasons supplied by the court as the basis for the exceptional sentence are not supported by the record. RP 49. The court erroneously found both counts II and III were unpunished under the standard range, but in fact, Mr. Velazquez's offender score only exceeded "9" when adding count III, not for counts I and II.

The Court of Appeals simply disregarded the court's flawed factual basis for the exceptional sentence. Slip op. at 4-5. However, the legislature directed the reviewing court to reverse a sentence outside the standard range when "the reasons supplied by the sentencing court are not supported by the record which was before the judge . . . ." RCW 9.94A.585(4). The Court of Appeals decision ignoring the flawed factual basis of the

reasons the court supplied to impose an exception sentence conflicts with this statutory mandate.

The trial court's factual reasoning is also not supported by the record because the statutory maximum for count II, hit and run, is 60 months, which is what Mr. Velaquez would have received regardless of other current offenses. RCW 9A.20.021(1)(c). The court could not have imposed a longer sentence for count II than what the court actually imposed. The "free crimes" aggravating factor would not have applied to count II, contrary to the trial court's reasoning for imposing this exceptional sentence.

Finally, Mr. Velazquez's offender score rested on a multiplier that elevated his offender score. The trial court did not acknowledge or address the multipliers used for his current offenses of vehicular assault. Under RCW 9.94A.525(11), counts I and III, vehicular assault, scored as two points each, rather than one, giving him a score of "11" because of this multiplier.

A sentencing court must take into account the use of multipliers for the "free crimes" aggravating factor because the use of a multiplier to increase a person's offender score means

the offenses are being counted in a person's offender score. *See State v. Phelps*, 2 Wash.App.2d 1051; 2018 WL 1151975, *4 (2018) (unpublished, cited as non-binding authority under GR 14.1); *see generally State v. France*, 176 Wn. App. 463, 469, 308 P.3d 812 (2013).

In *Phelps*, the Court of Appeals reversed an exceptional sentence imposed based on the "free crimes" aggravator where the defendant's offender score for taking a motor vehicle without permission was elevated to 19, largely because his prior six convictions for similar offenses counted as three points each. *Phelps*, 2018 WL 1151975 at *3. Without the multiplier, he would have had an offender score of 6. This Court ruled that the current offenses were punished because it was the nature of those offenses that triggered the multiplier and left the defendant with an offender score of 19. *Id.* at *4.

In *France*, the defendant was convicted of nine counts of felony harassment and had six prior convictions, giving him an offender score of 15. 176 Wn. App. at 466. The court imposed an exceptional sentence based on two aggravating factors: an officer of the court was a victim and some of the current offenses were

not punished under the standard range. *Id.* at 472-73. The Court of Appeals upheld this exceptional sentence, relying on the fact the standard range accounted for only three of the nine offenses of conviction.

Here, the sentencing court supplied factually incorrect reasons for treating two offenses as unpunished. It also ignored the multiplying effect of the vehicular offenses, and it never acknowledged that the multiplying effect showed the current offenses were being taken into account for purpose of punishment.

The factually inaccurate reasons for imposing a judge-found exceptional sentence requires this Court's intervention. It is contrary to the statutory mandate and treads on the Sixth Amendment right to have the jury find facts justifying the imposition of additional punishment when the reasons the judge gives for increasing the sentence are belied by the record. This Court should grant review.

4. *The "free crimes" aggravating factor does not authorize the court to impose punishment that is disproportionate to the standard range.*

The court's sentencing role is to carry out the legislative mandate. *In re Pers. Restraint of Acron*, 122 Wn. App. 886, 891, 95 P.3d 1272 (2004) (refusing to speculate about seriousness level for unranked offense because "[a]ppellate courts do not supply omitted language even when the legislature's omission is clearly inadvertent"). The legislative mandate includes proportionate sentences.

RCW 9.94A.535(2)(c) permits the court to impose an exceptional sentence when "*some of* the current *offenses*" are not punished by the standard range. (emphasis added). The statute does not say "one" or "any" offense above nine is grounds for an exceptional sentence. *See, e.g.*, RCW 9.94A.537(6) (providing "one or more of the facts" found by the jury may support an exceptional sentence).

RCW 9.9A.535 further requires the court to justify the substantial and compelling reasons for imposing the added punishment considering the purpose of the SRA. *Allert*, 117 Wn.2d at 169 (explaining, "The SRA was designed to provide proportionate punishment" for adults in this state).

Here, the only reason the court gave, and only potentially legal available grounds, for an exceptional sentence was that Mr. Velazquez's offender score was "11," due to the two points allotted for a single count of vehicular homicide. But rather than incrementally increase the sentence as the standard range grid provided for an increased offender score, the court imposed almost double the high end of the standard range.

The sentencing grid enacted by the legislature treated each added point of criminal history as a reason to impose a few more months of punishment. The 120 month sentence the court imposed grossly exceeded the 68-month top of the standard range for a person with an offender score of 9 or more.

There is no compelling reason for disregarding the carefully crafted sentencing grid for an incremental increase in a person's offender score.

This Court should grant review to address the trial court's authority to use the multiple current offense aggravating factor as a basis for imposing a sentence that greatly exceeds the top of the standard range.

5. *This Court should vacate the exceptional sentence because it is both legally and factually erroneous.*

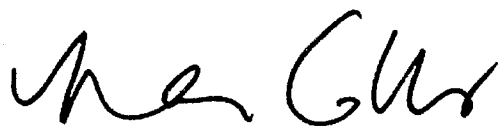
Where an exceptional sentence is not legally justified or is based on an improper reason for departing from the standard range, the exceptional sentence should be vacated. *Hayes*, 182 Wn.2d at 567. Here, the court misunderstood the nature of Mr. Velazquez's offender score, incorrectly believed two offenses were unpunished under the standard range, and was unaware of the multiplier used to account for the offenses in the offender score. The exceptional sentence should be vacated and a new sentencing hearing ordered.

F. CONCLUSION

Petitioner Socorro Velazquez respectfully requests that review be granted pursuant to RAP 13.4(b).

DATED this 9th day of March 2020.

Respectfully submitted,



NANCY P. COLLINS (28806)
Washington Appellate Project (91052)
Attorneys for Petitioner
nancy@washapp.org
wapofficemail@washapp.org

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SOCORRO ARMANDO VELAZQUEZ, Appellant.	No. 51906-2-II UNPUBLISHED OPINION

GLASGOW, J. – Socorro Armando Velazquez pleaded guilty to two counts of vehicular assault and one count of hit and run injury for his involvement in a head-on collision that seriously injured two people. The State recommended standard range sentences for each conviction, all running concurrently. The trial court determined that due to Velazquez's high offender score, one of the vehicular assaults would go unpunished, and it imposed exceptional consecutive sentences on Velazquez's vehicular assault convictions.

Velazquez appeals, arguing that the trial court relied on improper reasons in imposing an exceptional sentence and the basis that the court gave did not apply as a matter of law. He also challenges the imposition of certain legal financial obligations. The State concedes that the legal financial obligations were improperly imposed.

We affirm Velazquez's sentence and remand for the trial court to strike the improper legal financial obligations.

FACTS

Velazquez was involved in a head-on collision with another car. The collision resulted in serious injuries to two people. Immediately following the crash, Velazquez fled the scene yelling at onlookers to call 911.

Velazquez later pleaded guilty to two counts of vehicular assault and one count of hit and run injury. Considering his prior convictions and the current offenses, his offender score was over nine for each count. As part of Velazquez's plea deal, the State and Velazquez's attorney jointly recommended 68 months for each of the vehicular assault counts and 60 months for the hit and run count, all to run concurrently.

The court sentenced Velazquez to 60 months on each count, but ran the sentences on the two vehicular assault convictions consecutive to each other, for a total of 120 months. The court ordered that the sentence for the hit and run conviction would be served concurrently. The court explained, "I believe that 68 months would not be enough to serve justice, and I'm not sure that 120 months or 10 years is enough to serve justice, but I do want to recognize that Mr. Velazquez has taken some responsibility and has admitted to his violations." Verbatim Report of Proceedings (VRP) (May 8, 2018) at 47.

When the State asked the court to clarify its basis for imposing this exceptional sentence, the court responded that under RCW 9.94A.535(2)(c), the defendant committed "multiple current offenses, and the defendant's high offender score result[ed] in some of the current offenses going unpunished." VRP at 49. The court noted that without an exceptional sentence, Velazquez would have "free crimes." *Id.*

On Velazquez's judgment and sentence, the court found "substantial and compelling reasons that justify an exceptional sentence." Clerk's Papers at 25. The court reiterated the reasoning expressed in its verbal ruling. The court concluded that an exceptional consecutive sentence was "justified given the facts of this case and the defendant's prior criminal history." *Id.* Thus, the court required that the sentences for counts I and III would run consecutively to each other and the sentence for count II would run concurrently.

The court also imposed a $200 criminal filing fee and $100 DNA collection fee. At the time of sentencing, Velazquez was receiving public assistance and had no other source of income.

Velazquez appeals his sentence and the imposition of these fees.

ANALYSIS

I. EXCEPTIONAL SENTENCE

Velazquez argues that the trial court improperly imposed an exceptional sentence. We disagree.

We will reverse an exceptional sentence only if, "under a clearly erroneous standard, there is insufficient evidence in the record to support the reasons for imposing an exceptional sentence;" the reasons given do not justify an exceptional sentence under a de novo standard; or the sentence is clearly excessive or clearly too lenient under an abuse of discretion standard. *State v. France*, 176 Wn. App. 463, 469, 308 P.3d 812 (2013). A defendant's standard range sentence reaches its maximum limit at an offender score of "'9 or more,'" based on both prior and current convictions. *Id*. at 468; RCW 9.94A.510, .525(1). Where, as here, a defendant has multiple current offenses that result in an offender score greater than nine, additional increases in the score above nine do not increase the standard range. *France,* 176 Wn. App. at 468.

Under the free crimes aggravator in RCW 9.94A.535(2)(c), the trial court may impose an exceptional sentence when the defendant committed multiple current offenses and their high offender score results in some of the current offenses going unpunished. *Id.* at 469. Once the court determines that one or more of the defendant's current offenses will go unpunished, it has discretion to impose an exceptional sentence on all current offenses. *State v. Smith*, 7 Wn. App. 2d 304, 309-11, 433 P.3d 821 (2019), *review denied*, 193 Wn.2d 1010.

Velazquez first argues that the trial court's imposition of an exceptional sentence was improper because its primary motivation was dissatisfaction with the standard range. But the Sentencing Reform Act of 1981, chapter 9.94A RCW, requires the trial court to consider the act's purposes, including "providing punishment which is just," RCW 9.94A.010(2), before imposing an exceptional sentence, RCW 9.94A.535. That is precisely what the trial court did here. And the trial court explained in its findings of fact and conclusions of law that it was relying on the free crimes aggravator. We reject this argument.

Velazquez also argues that the free crimes aggravator does not apply to him as a matter of law because RCW 9.94A.535(2)(c) applies when "*some of* the current *offenses*" would go unpunished, and "some of" means more than one. Br. of Appellant at 15. We recently rejected this precise argument in *Smith*, concluding instead that "some" can be singular or plural. 7 Wn. App. 2d at 309-10.

Here, Velazquez would have been subject to the same standard sentence range had he committed only one vehicular assault. His offender score on each of the vehicular assault convictions was eleven, and each of those convictions counted as two points. RCW 9.94A.525(11). Therefore, Velazquez's offender score still would have been nine even if one of

the vehicular assault convictions were removed, resulting in an identical standard range sentence with or without the second vehicular assault conviction. The legislature has determined that the trial court may impose an exceptional sentence when the defendant's offender score is so high that the presumptive standard range does not account for one of their crimes, and that was the case here.

Velazquez finally contends that because the statutory maximum for his hit and run conviction is 60 months, the free crimes aggravator could not apply to that conviction, citing RCW 9A.20.021(1)(c). But contrary to Velazquez's assertion, he was not improperly sentenced beyond the 60-month maximum for his hit and run conviction; he received a sentence of 60 months running concurrently with the sentences imposed for his other convictions. The trial court did not apply the free crimes aggravator to the hit and run conviction.

We hold that the trial court did not err in applying the free crimes aggravator to impose the exceptional sentence.

II. LEGAL FINANCIAL OBLIGATIONS

Velazquez argues the criminal filing fee and DNA collection fee were improperly imposed. The State concedes that these fees must be stricken. We accept the State's concession and remand to strike the challenged fees.

RCW 36.18.020(h) now prohibits the imposition of the criminal filing fee if a defendant is indigent as defined in RCW 10.101.010(3) (a) through (c). RCW 43.43.7541 authorizes the imposition of a DNA collection fee "unless the state has previously collected the offender's DNA as a result of a prior conviction." Our Supreme Court has held that the newly amended versions

of these statutes apply to cases pending on direct review and not final when the amendments were enacted. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Here, the State concedes that Velazquez is indigent under RCW 10.101.010(3)(a) – (c) because the record shows he was receiving public assistance before he was incarcerated. The State also concedes that its records show that Velazquez's DNA was previously collected and is on file with the Washington State Patrol Crime Lab. The criminal filing fee and DNA collection fee must therefore be stricken from Velazquez's judgment and sentence.

CONCLUSION

We affirm Velazquez's sentence and remand for the trial court to strike the criminal filing fee and DNA collection fee.

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.

Glasgow, J.

We concur:

Maxa, C.J.

Melnick, 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 Two** under **Case No. 51906-2-II**, 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:

☒ respondent Sara Beigh, Lewis County Prosecuting Attorney [appeals@lewiscountywa.gov][sara.beigh@lewiscountywa.gov]

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: March 9, 2020

WASHINGTON APPELLATE PROJECT

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