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STATE OF WASHINGTON
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NO. 97375-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID BRENT HAGGARD,

Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

THE HONORABLE JULIE SPECTOR, JUDGE

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Did the legislature intend for “dismissal” and “vacation” to be two substantively different actions?

B. INTRODUCTION

David Haggard was convicted of a misdemeanor offense within 5 years of his release from custody on several prior felonies. Haggard argues that the wash out period was not interrupted, however, because the misdemeanor conviction was later dismissed after he completed a deferred sentence. But as both the trial court and the Court of Appeals correctly concluded, dismissal of a conviction does not forbid its use as criminal history in a future case. Rather, only by vacating a conviction can a defendant nullify its impact on his criminal history. Haggard never sought to vacate his conviction.

Haggard’s argument that the wash out statute is ambiguous thus requires this Court to assume that the legislature intended “dismissal” and “vacation” to be functionally synonymous. But unambiguous language in the vacation, scoring, and deferred sentencing statutes shows that this cannot be the case. With this foundation undercut, Haggard’s argument collapses. Haggard also argues that the legislature acquiesced to this Court’s decision in State v. Breazeale, *infra*. Haggard is mistaken because Breazeale’s logic was based on statutory language not present in this case.

Because a valid conviction interrupted the wash out period, the trial court correctly scored Haggard's prior felonies.

C. RELEVANT FACTS

Haggard's undisputed criminal history includes three prior felony convictions from California:

- People v. Haggard, #FMB004969. Haggard pled "no contest" to a charge of unlawful driving or taking of a motor vehicle on January 15, 2002.
- People v. Haggard, #FMB005756. Haggard pled guilty to possession of methamphetamine on August 17, 2004.
- People v. Haggard, #FMB007522. Haggard pled guilty to a subsequent charge of possession of methamphetamine on May 13, 2005.

CP 127.

Haggard eventually moved to Washington, where he was charged with fourth degree assault in 2011. CP 151. Haggard pled guilty to an amended charge of disorderly conduct, and the trial court imposed a six-month deferred sentence. CP 151-52; RP 600. In 2012, the misdemeanor court found Haggard in compliance with the conditions of his deferred sentence and dismissed the charge *sua sponte* without a hearing. CP 151-52. Haggard never petitioned to vacate the conviction. RP 622-23.

In this case, Haggard was convicted of second degree arson and second degree burglary following a bench trial. CP 104. Whether Haggard's California offenses scored at sentencing depended on whether

the wash out period was interrupted by his 2011 Washington conviction. RP 605. After conducting a thorough analysis of the statutory scheme, the trial court concluded that a dismissed, but not vacated, conviction does not interrupt the wash out period. RP 621-23. Haggard appealed the trial court's decision to score his California convictions. The Court of Appeals affirmed in a published decision.¹ State v. Haggard, 9 Wn. App. 2d 98, 442 P.3d 628 (2019). This Court granted Haggard's petition for review.

D. LEGAL ARGUMENT

DISMISSAL AND VACATION ARE NOT SYNONYMOUS. A CONVICTION THAT HAS BEEN DISMISSED, BUT NOT VACATED, DOES NOT INTERRUPT THE WASH OUT PERIOD.

Haggard claims that the dismissal of his misdemeanor conviction also had the effect of vacating it because, according to his argument, these concepts are functionally identical. Haggard's position is foreclosed by a plain reading of the statutory scheme. Of the individuals who receive a deferred sentence, all can obtain dismissal upon completion, but not all are eligible for vacation. The offender must seek an order vacating his conviction, and the court may order vacation only after a hearing.

Furthermore, vacating the conviction confers additional benefits compared

¹ The trial court also sentenced Haggard on a separate cause number where he raised the same offender score issue. The Court of Appeals affirmed in an unpublished opinion that cited back to its reasoning in this case. State v. Haggard, 9 Wn. App. 2d 2011, 2019 WL 2341632 (2019 Unpublished Decision).

to dismissal alone. Because this creates two distinct classes of offenders, it logically follows that dismissal and vacation are not interchangeable. Under Washington law, only vacation prevents the wash out period from being interrupted. Because it is uncontested that Haggard's 2011 misdemeanor was never vacated, the trial court properly scored his California convictions.

The computation of an individual's offender score is governed by RCW 9.94A.525. Subject to exceptions not relevant here, an offender score is composed of prior felony convictions, each of which counts as a single point. A basic offender score is determined by tabulating the sum of these points.

The legislature has provided offenders with a statutory mechanism, commonly referred to as "wash out" provisions, to lower their offender score through consistent law-abiding behavior:

...Class C prior felony convictions...shall not be included in the offender score if, since the last date of release from confinement...pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

RCW 9.94A.525(2)(c).²

² Class B felonies require a wash out period of 10 years, and Class A felonies never wash out. RCW 9.94A.525(2)(a)-(b). Because Haggard's California convictions appear equivalent to Class C felonies, the State addresses only RCW 9.94A.525(2)(c).

RCW 9.94A.525(2)(c) can be subdivided into two constituent parts: a “trigger” clause, and a “continuity/interruption” clause. State v. Ervin, 169 Wn.2d 815, 821, 239 P.3d 354 (2010) (citing In re Pers. Restraint of Nichols, 120 Wn. App. 425, 432, 85 P.3d 955 (2004)). The “trigger” is the point at which a defendant re-enters the community, thus commencing a potential wash out period. Ervin, 169 Wn.2d at 821. “Continuity/interruption” refers to the substantive requirements that must be satisfied in order to successfully complete the wash out period. Id.

In order for a Class C felony to wash out, an offender must spend five crime-free years in the community. RCW 9.94A.525(2)(c). When the date of violation for a misdemeanor occurs subsequent to the “trigger” date, but before five years has elapsed, a conviction resets the “trigger” date. Ervin, 169 Wn.2d at 821. The defendant must then complete a new five-year period before his prior felony convictions can wash out of his offender score. Id. The calculation of an offender score is reviewed *de novo*. State v. Mutch, 171 Wn.2d 646, 653, 254 P.3d 803 (2011).

1. Unambiguous Statutory Language Shows That Vacation Is Substantively Different Than Dismissal.

The primary goal of statutory interpretation is to carry out the intent of the legislature. In re Pers. Restraint of Cruz, 157 Wn.2d 83, 87-88, 134 P.3d 1166 (2006). This intent is determined from the statute’s

plain language, as well as the language in related enactments. Id. at 88. Courts look beyond the plain language of a statute only if it is ambiguous, meaning susceptible to multiple reasonable interpretations. State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). However, a statute is not ambiguous simply because variant interpretations are “conceivable,” or that “it disfavors a person in a particular situation.” State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003); State v. Teitzel, 109 Wn. App. 791, 793, 37 P.3d 1236 (2002). If a statute is ambiguous, the court turns to legislative history for meaning, followed by rules of statutory construction and case law. Payseno v. Kitsap County, 186 Wn. App. 465, 469, 346 P.3d 784 (2015).

If an ambiguity cannot be resolved by any other analytical device, the rule of lenity requires that it be settled in the defendant’s favor. State v. Sweat, 180 Wn.2d 156, 159, 322 P.3d 1213 (2014); State v. Avila, 102 Wn. App. 882, 891-92, 10 P.3d 486 (2000).³ However, courts must avoid unreasonable interpretations that contravene legislative intent. State v. Keller, 98 Wn.2d 725, 728, 657 P.2d 1384 (1983); State v. Horton, 59 Wn. App. 412, 417, 798 P.3d 813 (1990). Statutory interpretation is a question

³ See also City of Seattle v. Winebrenner, 167 Wn.2d 451, 469, 219 P.3d 686 (2009) (“To determine whether to apply the rule [of lenity], the court must first make a ‘serious investigation’ of the language of the statute and its purpose, its context, related statutes, the statutory scheme, and legislative history. It is improper to create or assume ambiguity and then turn to the rule of lenity to resolve it.”) (Madsen, J., concurring).

of law reviewed *de novo*. State v. Gonce, 200 Wn. App. 847, 855, 403 P.3d 918 (2017).

Courts of limited jurisdiction are authorized by statute to impose deferred sentences using the following procedure:

After a conviction, the court may impose sentence by...deferring the sentence of the defendant and may place the defendant on probation for a period of no longer than two years and prescribe the conditions thereof...During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges.

RCW 3.50.320.⁴

Vacation of misdemeanor offenses is governed by RCW 9.96.060, which states in part that:

When vacating a conviction under this section, the court effectuates the vacation by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

RCW 9.96.060(1).

Haggard argues that the difference between “dismissal” and “vacation” is mere semantics, or at most describes a procedural delineation. He asks “what does dismissal even mean if the judgment is

⁴ RCW 3.50.320 applies to municipal courts. A functionally identical statute outlines the same procedure for district courts. RCW 3.66.067.

not vacated, set aside, reversed, etc.?” Pet. for Rev. at 9-10. A great deal, it turns out.

“Dismissal” is defined as the “[t]ermination of an action or claim without further hearing.” Black’s Law Dictionary 502 (8th ed. 2004). To “vacate,” by contrast, is “[t]o nullify or cancel; make void; invalidate.” Id. at 1584; GR 15(b)(8) (“To vacate means to nullify or cancel”); 5 Am. Jur. 2d Appellate Review § 731 (2019). Thus, dismissing a conviction means simply that a defendant was previously convicted, but no longer is. Vacation, however, creates a legal fiction, at least for some purposes, that the defendant was never convicted in the first place. RCW 9.96.060(6)(a); State v. Schwab, 163 Wn.2d 664, 680, 185 P.3d 1151 (2008) (Sanders, J., dissenting). Several statutes demonstrate that the legislature considered vacation and dismissal to be substantively different.

RCW 9.96.060(2)(g), for example, prohibits vacation if “less than three years has passed since the person completed the terms of the sentence.”⁵ Although Haggard was entitled to have his misdemeanor conviction dismissed after six months, several additional years passed before he was eligible for vacation. Because dismissal, but not vacation, could occur prior to three years, the legislature cannot have intended for

⁵ A misdemeanor conviction involving domestic violence is not eligible for vacation until five years have passed. RCW 9.96.060(2)(f)(iv).

the terms to be interchangeable. Haggard argued below that “vacation” is simply the nomenclature for a dismissal that occurs after the court’s jurisdiction has ended. The court’s maximum period of jurisdiction is 2 years for most misdemeanors. RCW 3.66.068(b). Thus, there may be a period of time when the court has no jurisdiction, but also lacks the authority to vacate an offense. This suggests the terms are not defined simply by procedural posture.

RCW 9.96.060 contains numerous other limitations on vacation. For example, vacation is expressly prohibited for violent and sex offenses. RCW 9.96.060(c)-(e). Crimes of domestic violence cannot be vacated if, *inter alia*, the prosecutor’s office has not been notified in writing of the motion. RCW 9.96.060(f)(i). A defendant is also ineligible for vacation if he is subject to an active protection order. RCW 9.96.060(i).⁶ None of these burdens apply to dismissal. A court can defer and subsequently dismiss any misdemeanor, regardless of the defendant’s past or current criminal behavior.⁷ RCW 3.66.067; RCW 3.50.320. Vacation is a benefit that must be separately applied for, RCW 9.96.060(2), whereas dismissal can occur *sua sponte* or *ex parte*. At the time Haggard was sentenced, a person could only have one conviction vacated in their lifetime, whereas

⁶ This list is illustrative, not exhaustive. RCW 9.96.060 contains several other limitations not noted here.

⁷ The only exception is DUI. RCW 3.66.067; RCW 3.50.320.

there was never any limit on the amount of deferred sentences or dismissals one could receive. RCW 9.96.060(2)(h) (amended 2019),⁸ RCW 3.50.320. There is simply no way to reconcile these statutory provisions with Haggard’s position that “dismissal” and “vacation” were intended to be either interchangeable or solely related to procedural posture.

Haggard notes that RCW 9.96.060 does not explicitly discuss vacating a previously dismissed conviction, and argues that both must therefore be part of a single unified concept. Pet. for Rev. at 10. But RCW 9.96.060(1) clearly identifies “dismissing the information...*and* vacating the judgment and sentence” to be separate actions. (Emphasis added). As the Court of Appeals recognized, the legislature did not need to include specific language regarding previously dismissed convictions to show its intent in light of the distinct and irreconcilable procedures it created for vacation. Haggard, 9 Wn. App. 2d at 106.

Given the obvious differences between dismissal and vacation, the only reasonable interpretation is that some procedural steps in RCW 9.96.060(1) are unnecessary if the charge has already been dismissed. That part of the vacation procedure might be redundant in some cases does not

⁸ The portion of the statute limiting a defendant to one vacation in their lifetime appears to have been eliminated as of July 2019. 2019 Wash. Legis. Serv. Ch. 331 (S.H.B. 1041) (2019).

render the statute ambiguous. See In re Detention of Anderson, 185 Wn.2d 79, 86, n.4, 368 P.3d 162 (2016);⁹ see Porter v. Kirkendoll, -- Wn.2d --, 449 P.3d 627, 638-39 (2019) (inappropriate to ignore plain statutory language, even when doing so might render other wording superfluous); see Parents Involved in Community Schools v. Seattle School Dist., No. 1, 149 Wn.2d 660, 72 P.3d 151 (2003) (“the majority creates ambiguity where there is mere redundancy...” (Sanders, J., dissenting)).

This interpretation is supported by the legislative history of RCW 9.96.060. The legislature specifically stated that it was creating a new procedure that provided greater benefits than dismissal alone.¹⁰ WA H.R. B. Rep, 2001 Reg. Sess. H.B. 1174 (2001). Part of the justification for enacting a misdemeanor vacation statute was to relieve rehabilitated offenders of having to tell employers they had previously been convicted, a privilege that did not flow from dismissal. Id. Testimony in support of

⁹ “We acknowledge that if juvenile adjudications are convictions in the context of chapter RCW 71.09, these two statutes separately mentioning juvenile adjudications become somewhat redundant. However, these isolated redundancies are not sufficient to overcome the overall statutory context and purposes.” Anderson, 185 Wn.2d at 86, n.4.

¹⁰ “For felonies committed before the SRA, and for misdemeanor...offenses, there are no provisions equivalent to this vacation of record procedure. Pre-SRA felons may be “released from all penalties and disabilities” that resulted from conviction, **and misdemeanants may have their charges ‘dismissed’** after successful completion of a suspended sentence. However, **neither misdemeanants nor pre-SRA felons are authorized to respond to an employment application by saying they have never been convicted of an offense.**” WA H.R. B. Rep, 2001 Reg. Sess. H.B. 1174 (2001) (emphasis added).

the statute emphasized that “[t]he vacation procedure is not automatic,” and lamented that vacation existed for felonies, but not misdemeanors. Id.

Expressio unius est exclusio alterius is a maxim of statutory construction that also supports the State’s position. The expression means that when a statute “specifically designates the things...upon which it operates, an inference arises in law that all things...omitted from it were intentionally omitted by the legislature.” State v. Swanson, 116 Wn. App. 67, 75, 65 P.3d 343 (2003) (quoting Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1, 77 Wn.2d 94, 98, 459 P.2d 633 (1969)). As explained, *supra*, vacation and dismissal are plainly recognized by the legislature as distinct concepts. The deferred sentencing statutes provide only for dismissal. This Court can thus infer that the legislature intentionally omitted vacation as an automatic benefit of the deferred sentencing scheme.

Finally, Haggard argues that the legislature could not have intended to exclude from the wash out statute those offenders who had already shown themselves worthy of dispensation by completing a deferred sentence. Pet. for Rev. at 12. But separating the two is not, as Haggard claims, absurd; on the contrary, it makes perfect sense. Dismissing a deferred sentence ends that individual prosecution, but ensures past criminal history continues to score if the offender recidivates. By attaching numerous additional qualifications to vacation, such as a 3

year waiting period, the legislature may have intended that only those less likely to re-offend obtain the additional benefit of eliminating the conviction from the wash out period. Because it is “conceivable” that the legislature intended this result, it is not absurd. Ervin, 169 Wn.2d at 824.

2. Because “Dismissal” And “Vacation” Are Distinct Concepts, The “Wash Out” Provisions Of The Sentencing Reform Act Are Unambiguous.

RCW 9.94A.525(2)(c) plainly states that the wash out period is interrupted by any conviction. It is undisputed that Haggard was convicted of disorderly conduct before the wash out period expired. A completed deferred sentence results only in the conviction being dismissed, and “[n]othing in [the deferred sentencing statute] implies that a conviction is automatically deleted or expunged from the criminal record after dismissal.” State v. Gallaher, 103 Wn. App. 842, 844, 13 P.3d 875 (2000); RCW 3.50.320; RCW 3.66.067. Washington law is clear that a dismissed conviction can still be used to calculate a defendant’s criminal history. City of Kent v. Jenkins, 99 Wn. App. 287, 290-91, 992 P.2d 1045 (2000) (dismissed DUI deferred prosecution still considered a “prior offense”); RCW 9.41.040(3) (“Conviction” for purposes of unlawful firearm possession statute includes “a dismissal entered after a...deferral of sentence...”). Vacation is different because it nullifies the conviction such that it cannot be used to determine criminal history. RCW 9.96.060(6)(a);

see State v. Smith, 158 Wn. App. 501, 506, 246 P.3d 812 (2010) (vacated misdemeanor no longer counted as a subsequent conviction, thus allowing defendant to vacate earlier felony). Haggard's interpretation is not reasonable because it contravenes RCW 9.94A.525(2)(c)'s express language that any conviction interrupts the wash out period. Haggard has thus failed to demonstrate any ambiguity in the statute.

To support his claim that RCW 9.94A.525(2)(c) is ambiguous, Haggard argues that the wash out period might technically be interrupted by a case reversed on appeal, since there was still a "crime that subsequently result[ed] in a conviction." This argument, however, rests on the incorrect assumption that an overturned conviction has been merely "dismissed." But "[w]hen a court reverses a sentence it effectively *vacates* the judgment." In re Pers. Restraint of Skylstad, 160 Wn.2d 944, 954, 162 P.3d 413 (2007) (emphasis added). Thus, Washington courts generally refer to overturned convictions as being "vacated." E.g., State v. Cantu, 156 Wn.2d 819, 132 P.3d 725 (2006) ("We therefore reverse the Court of Appeals [and] vacate the conviction without prejudice..."); State v. Vasquez, 178 Wn.2d 1, 18, 309 P.3d 318 (2013) (after finding insufficient evidence, court reversed the conviction and remanded with instructions to

vacate).¹¹ Because a conviction overturned on appeal is vacated, it would not interrupt the wash out period.

The State's reading of RCW 9.94A.525 produces a rational statutory scheme. If a defendant completes his deferred sentence, he gains the immediate benefit of ending the prosecution against him. A defendant might later qualify for the additional benefits attendant to vacation if he satisfies the stringent statutory criteria, but this must be separately applied for. Only if an offense is vacated is it no longer a "conviction" for purposes of RCW 9.94A.525. Haggard's argument relies alternately on considerable mental gymnastics and simply ignoring inconsistencies in his position. This Court should affirm the Court of Appeals.

¹¹ Several other state courts have also observed that the effect of appellate reversal is vacation. Skinner v. State, 790 So.2d 218, 224 (2001) ("When an appellate court reverses...that conviction is vacated and voided *ab initio*."); State v. Apt, 319 Conn. 494, 126 A.3d 511 (2015) ("...when an appellate court reverses a judgment of conviction...the appropriate remedy is to vacate the judgment..."); P.B. v. T.D., 561 N.E.2d 749, 751, n.3 (1990) ("Our traditional view of the effect of an appellate court stating that the trial court's "judgment is reversed" is that it vacates and nullifies the trial court's judgment..."); Ward v. State, 288 Ga. 641, 647, n.3, 706 S.E.2d 430 (2011) ("But because the judgments of conviction are reversed, the sentences are also vacated..."); Leach v. State, 313 Ark. 80, 82, 852 S.W.2d 116 (1993) (when a case has been reversed and remanded the defendant "stands as though he had never been tried."); State ex rel. Frazier & Oxley, L.C. v. Cummings, 214 W.Va. 802, 809, 591 S.E.2d 728 (2003) (same) (quoting 5 Am. Jur. 2d Appellate Review § 787 (1995).

3. This Court's Decisions In State v. Breazeale And In re PRP of Carrier Do Not Support Haggard's Argument.

In State v. Breazeale, 144 Wn.2d 829, 832-33, 31 P.3d 1155 (2001), the defendants' 1970's-era felony convictions had been dismissed through former RCW 9.95.240, the pre-SRA dismissal statute. In the mid-1990's, the defendants moved to vacate their convictions under RCW 9.94A.230,¹² and the trial court granted their motion. Breazeale, 144 Wn.2d at 833-34. The Washington State Patrol refused to honor the court's order, arguing that former RCW 9.95.240 did not authorize "vacation" under the SRA, and RCW 9.94A.230 did not apply because the convictions predated that statute.¹³ Breazeale, 144 Wn.2d at 833-34. The trial court agreed and rescinded its vacation order. Id. at 834.

This Court disagreed, finding that the legislature intended RCW 9.95.240 and RCW 9.94A.230 [.640] to have "the same practical effect." Breazeale, 144 Wn.2d at 837. Thus, after Breazeale, dismissal of a pre-SRA offense under RCW 9.95.240 was, for all intents and purposes, also a vacation under RCW 9.94A.230 [.640]. Breazeale, 144 Wn.2d at 837-38; In re Pers. Restraint of Carrier, 173 Wn.2d 791, 806, 272 P.3d 209 (2012).

¹² Since re-codified as RCW 9.94A.640. Act of April 13, 2001, ch. 10, § 6 (reorganizing and clarifying sentencing provisions).

¹³ "The parties do not dispute that if the underlying felonies had been committed on or after July 1, 1984, Respondents would have been eligible for vacation under RCW 9.94A.230." Breazeale, 144 Wn.2d at 836.

The legislature amended RCW 9.95.240 in response to Breazeale, routing vacation specifically through RCW 9.94A.640. The amendment added the following subsection, referred to as the “Breazeale fix”:

After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant’s record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

RCW 9.95.240(2)(a).

After the “Breazeale fix,” vacation of a pre-SRA felony became a two-step process, requiring dismissal and then a subsequent motion to vacate. Carrier, 173 Wn.2d at 807. This Court determined that the plain language of the amendment specified RCW 9.94A.230 [.640] as the sole applicable statutory authority for vacation. Carrier, 173 Wn.2d at 807-08. Thus, this Court rejected Carrier’s argument, similar to Haggard’s, that the dismissal of a felony under RCW 9.95.240 is equivalent to vacation. Id.¹⁴

Haggard’s argument vis-à-vis Breazeale and Carrier can be summarized as follows: after amending RCW 9.95.240 to include the “Breazeale fix,” the legislature did not enact any similar amendment with regard to misdemeanors. Haggard thus contends that the legislature

¹⁴ However, the Court granted Carrier relief on the basis that the “Breazeale fix” amendment could not be applied retroactively. Carrier, 173 Wn.2d at 818.

intended for the reasoning of Breazeale, that dismissal is synonymous with vacation, to have continued applicability to misdemeanors.

But the reasoning in Breazeale and Carrier implicated the pre-SRA felony dismissal procedure, whereas Haggard's case involves entirely different statutes. Haggard, 9 Wn. App. 2d at 105-06. While courts can find meaning in statutory terms by examining closely related provisions, E.g., State v. Elmore, 143 Wn. App. 185, 188, 177 P.3d 172 (2008), this principle should not be applied here, where Haggard seeks to import reasoning previously applied to completely different enactments. In re Dependency of A.K., 162 Wn.2d 632, 649, 174 P.3d 11 (2007); Klassen v. Skamania County, 66 Wn. App. 127, 131-32, 831 P.2d 763 (1992); Matter of Detention of D.V., 200 Wn. App. 904, 908, 403 P.3d 941 (2017).

As the Court of Appeals acknowledged, the analysis in Breazeale and Carrier was based on specific language in the pre-SRA dismissal statute providing release "from all penalties and disabilities." Haggard, 9 Wn. App. 2d at 106 (citing Breazeale, 144 Wn.2d at 835-37). This language was critical to the Breazeale Court's reasoning because it also appears in the vacation statute, which led this Court to conclude that the two laws were intended to have the same effect. Breazeale, 144 Wn.2d at 836. But unlike in Breazeale, the statutes at issue here do not "differ[] in only minor respects." Breazeale, 144 Wn.2d at 836. Rather, the vacation

statute contains language regarding release from all penalties and disabilities, while the statutes granting dismissal do not.

Haggard argues that the legislature acquiesced to his proposed application of Breazeale by failing to amend the misdemeanor statute. The doctrine of legislative acquiescence assumes that the legislature will amend statutes if it disagrees with a judicial interpretation, and will not act if it accepts the court's analysis. State v. Ritchie, 126 Wn.2d 388, 393, 894 P.2d 1308 (1995); State v. Stalker, 152 Wn. App. 805, 813, 219 P.3d 722 (2009). This doctrine is problematic here for several reasons. First, legislative acquiescence is a principle of statutory construction, which courts do not use where, as is the case here, a statute is unambiguous. HomeStreet, Inc. v. State, Dept. of Revenue, 166 Wn.2d 444, 451, 210 P.3d 297 (2009). Second, legislative acquiescence cannot be the sole determinative factor in assessing legislative intent. State v. Sandoval, 8 Wn. App. 2d 267, 273, 438 P.3d 165 (2019). Most importantly, the legislature's inaction does not support Haggard's position. Because the differences between dismissal and vacation are already distinct and irreconcilable, a "Breazeale fix" was unnecessary to achieve the legislature's intent. The whole point of enacting RCW 9.96.060 was to create a vacation procedure that did not previously exist. WA H.R. B. Rep, 2001 Reg. Sess. H.B. 1174 (2001).

In sum, nothing in Breazeale and Carrier changes the fact that the plain language of the statutory scheme reveals that “dismissal” and “vacation” are distinct concepts. This is evidenced by each being available to different, albeit sometimes overlapping, classes of offenders. Furthermore, vacation confers material benefits that do not flow from dismissal alone. RCW 9.94A.525(2)(c) states unambiguously that a conviction interrupts the washout period even if subsequently dismissed. A vacated conviction does not, because such a conviction can no longer be used for that purpose. Because “vacation” is different than “dismissal,” and Haggard did not apply for vacation, his argument fails.

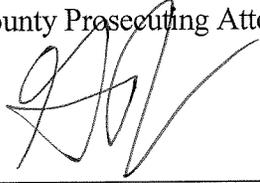
E. CONCLUSION

The State respectfully requests this Court affirm Haggard’s sentence.

DATED this 4 day of November, 2019.

Respectfully submitted,

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