SUPREME COURT NO. 100738-8

NO. 81955-1-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MELVIN JOHNSON,

Petitioner.

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

The Honorable Laura M. Riquelme & David R. Needy, Judges

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Melvin Johnson asks this Court to grant review pursuant to RAP 13.4 of the Court of Appeals' decision in State v. Johnson, 2022 WL 152257 (No. 81955-1-I, filed January 18, 2022).[1]

B. ISSUES PRESENTED FOR REVIEW

1. Johnson's motion to vacate his 1997 conviction for third degree assault of a law enforcement officer under RCW 9A.36.031(1)(g) for punching a store security guard, was denied in part based on the trial court's conclusion that the conviction was ineligible for vacation under RCW 9.94A.640(2)(b)(ii). Johnson's guilty plea, however, did not establish a legal or factual basis that the security guard was a law enforcement officer or employee of a law enforcement agency within the meaning of former RCW 9A.36.031(1)(g).

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[1] A copy of the opinion is attached as an appendix. Johnson's motion for reconsideration was denied on February 11, 2022.

The Court of Appeals rejected this argument, concluding that RCW 9.94A.640(2) did not task a trial court with assessing the validity of an underlying conviction in determining whether it is eligible for vacation. Is review appropriate under RAP 13.4(b)(2) and (4) where the Court of Appeals' opinion conflicts with State v. Kopp[2] and the plain language of RCW 9.94A.640 which vests a trial court with discretion to vacate prior qualifying felony convictions?

2. Is review appropriate under RAP 13.4(b)(4) to determine whether the trial court also erred in relying on Johnson's current incarceration for a different crime as a basis to deny his petition to vacate under RCW 9.94A.640(2)(f)?

C. STATEMENT OF THE CASE

Melvin Johnson was charged in 1995 with third degree assault under RCW 9A.36.031(1)(g). CP 1-2. The affidavit of probable cause alleged that Johnson punched Tony Watkins, a "Sears store security [guard]" in the head after being confronted

[2] 15 Wn. App. 2d 281, 288, 475 P.3d 517 (2020).

about removing items from the store without paying for them. CP 49.

Johnson pled guilty to third degree assault on December 18, 1997. CP 3-10. Johnson's statement on plea of guilty, acknowledged the elements of the charged offense as follows:

> Knowingly [and] intentionally [and] without permission striking another and causing substantial bodily harm, the person I hit was a security guard at the time. This happened in Skagit County.

CP 3.

Johnson was sentenced on January 8, 1998 to 9 months confinement to be served on work release. CP 14, 17. The judgement and sentence lists his conviction as third degree assault under former RCW 9A.36.031(1)(g). CP 11. An order modifying Johnson's judgment and sentence was entered on March 3, 1998 to reflect that restitution was neither requested nor required to be paid. CP 20-22.

The trial court issued a "certificate and order of discharge and order quashing warrants" on May 1, 1998. The order

confirmed Johnson had completed all the requirements of the judgement, including all court-ordered monetary obligations, and that he was discharged from confinement. CP 52-53.

On February 16, 2005 Johnson was convicted of three counts of aggravated first degree murder and unlawful possession of a firearm for an unrelated incident alleged to have occurred in June 1999. Johnson remains in prison consistent with the imposed judgment and sentence of life in prison without the possibility of parole. CP 28.

Johnson moved to vacate his third degree assault conviction in July 2020. CP 23-27, 31-33. Johnson's proposed order indicated that he had no pending criminal charges and that it had been at least five years since his release from full and partial confinement for the third degree assault. CP 26.

The Skagit County prosecutor opposed Johnson's motion to vacate. The prosecution argued Johnson did not qualify for vacation because his third degree assault conviction was pursuant to the subsection that protects law enforcement officers, he was

currently in custody and could not satisfy the five years since confinement release requirement, and his current life sentence did not warrant discretionary vacation. CP 28-30; RP 3-4.

The trial court denied Johnson's motion to vacate, reasoning:

> [P]articularly in light of the fact that Mr. Johnson is still in custody, and it appears as though he will be serving a life sentence, so just on that basis, that he has not had the time in the community to be able to vacate this, I will use that as the basis. This one is the most clean, although the other two bases also have some merit.

RP 4; CP 34-36. Johnson's motion to reconsider was denied by the trial court. CP 37-40.

On appeal Johnson argued the trial court erred in denying his motion to vacate the 1997 conviction because he satisfied the criteria of RCW 9.94A.640. Johnson argued that his conviction under RCW 9A.36.031(1)(g) was not a disqualifying offense under RCW 9.94A.640 because his guilty plea was facially invalid, and he did not assault a law enforcement officer within the meaning of the statute. Johnson also argued that his current

incarceration on unrelated murder convictions did not disqualify him from vacation because the plain language of RCW 9.94A.640(2)(f) required only that the offender have been released from confinement for the offense sought to be vacated.

The Court of Appeals rejected Johnson's arguments, concluding that he was statutorily disqualified from vacating a conviction for assaulting a law enforcement officer under the plain language of RCW 9.94A.640(2)(b)(ii).[3] Op. at 4-6. The Court of Appeals recognized that a trial "court may consider 'the facts of the crime' and any other relevant aggravating or mitigating circumstances" in exercising its discretion to vacate. Op. at 4, n.4 (citing State v. Kopp, 15 Wn. App. 2d 281, 288, 475 P.3d 517 (2020)). The Court of Appeals nonetheless concluded that "nothing in RCW 9.94A.640" tasked a trial court with

[3] The Court of Appeals agreed with Johnson's argument, and the State's concession, that the 2019 amendments to RCW 9.94A.640 applied to his 1997 conviction. Op. at 4, n.3 (citing LAWS OF 2019, ch. 331, § 3).

assessing the validity of an underlying conviction in determining its eligibility for vacation. Op. at 5.

In rejecting Johnson's argument, the Court reasoned that Johnson had cited "no authority to support his proposition" that the trial court should have looked beyond the elements of the offense in determining whether his conviction was eligible to be vacated under RCW 9.94A.640(2). Op. at 5, n. 6. The Court of Appeals did not reach Johnson's argument that the trial court erred in relying on his current incarceration for a different crime in denying his petition to vacate. Op. at 6, n.8.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Review is appropriate because the Court of Appeals' opinion conflicts with *State v. Kopp* and a trial court's inherent discretion under RCW 9.94A.640.[4]

RCW 9.94A.640(1) sets forth a two-step process for vacating a qualified petitioner's felony conviction. First, the court must determine whether the conviction meets the legal requirements for eligibility under RCW 9.94A.640(2). If a court finds the conviction meets the tests prescribed in subsection (2) of the statute, the court may exercise its discretion to "clear the record of conviction." RCW 9.94A.640(1).

RCW 9.94A.640(2)(b) precludes a trial court from vacating "crime[s] against persons." "Crimes against persons" include convictions for third degree assault. RCW 43.43.830(7). Even so, the plain language of the statute allows an offender to

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[4] An issue concerning the extent of a trial court's discretion to vacate a felony under RCW 9.94A.640 is currently pending before this Court in State v. Hawkins, No. 100060-0. Oral argument in Hawkins is scheduled for May 19, 2022.

petition the court to vacate a third degree assault conviction if "the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement" and the offense was "not committed against a law enforcement officer or peace officer." RCW 9.94A.640(2)(b)(ii).

Under former RCW 9A.36.031(1)(g),[5] a person is guilty of third degree assault if he "[a]ssaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her office duties at the time of the assault." Assault in third degree is a class C felony. RCW 9A.36.031(2).

Johnson was charged and convicted under former RCW 9A.36.031(1)(g). CP 1-2, 11 (citing RCW 9A.36.031(1)(g)). But Johnson's plea statement reflects only an understanding that he was "charged with the crime of Assault 3" for "Knowingly [and] intentionally [and] without permission striking another and causing substantial bodily harm," to a "security guard." CP 3. The plea statement does not list the specific subsection of third

[5] The statute subsection remains unchanged today.

degree assault that Johnson is pleading guilty to. And none of the listed elements pertain to third degree assault of a law enforcement officer. Compare CP 3 with RCW 9A.36.031 (1)(g); Washington Pattern Jury Instructions: Criminal 35.23.02 (5th ed. 2021).

Due process requires that a defendant who pleads guilty must be informed of the elements of the charged crime and understand that his conduct falls within that charge. In re Pers. Restraint of Hewes, 108 Wn.2d 579, 590-91, 741 P.3d 983 (1987). Johnson's plea is facially invalid because it does not prove that he understood the elements of the charge, nor does it contain a sufficient factual or legal basis to establish the elements of the crime. See CrR 4.2(d) ("a court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea").

Notwithstanding the facial invalidity of Johnson's plea, his conduct of hitting a "Sears store security [guard]" does not satisfy the element that he assaulted a "law enforcement officer

or other employee of a law enforcement agency." The terms "law enforcement officer" and "law enforcement agency" are not defined by RCW 9A.36.031 or by RCW 9A.04.110, the criminal code's definitional statute.[6] "Peace officer" "means a duly appointed city, county, or state law enforcement officer." RCW 9A.04.110(15).

Case law establishes that absent some affirmative arrangement, security officers for private entities do not act as state agents for law enforcement agencies. See State v. Gonzales, 24 Wn. App. 437, 440, 604 P.2d 168 (1979) (holding that private security guard was not a state agent for purposes of Fourth Amendment where there was no evidence the state "instigated, encouraged, counseled, directed or controlled" his actions), rev. denied, 93 Wn.2d 1028 (1980); State v. Wolfe, 5

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[6] Under RCW 9A.76.020(2) (obstructing a law enforcement officer),"'Law enforcement officer' means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes."

Wn. App. 153, 486 P.2d 1143, rev. denied, 80 Wn.2d 1002 (1971) (same).

Similarly, even when an off-duty police officer is working as a private security guard, whether the officer was performing his or her "official" duties at the time of the assault turns on whether the officer was "acting in vindication of the public right and justice or ... merely performing acts of service to their private employer." State v. Graham, 130 Wn.2d 711, 719-20, 927 P.2d 227 (1996) (citing State v. Kurtz, 78 Ariz. 215, 278 P.2d 406 (1954)).

As the Court of Appeals recognized, when exercising its discretion under RCW 9.94A.640, the vacating court may consider "the facts of the crime' and other relevant aggravating or mitigating circumstances." See Op. at 4, n. 4. (citing Kopp, 15 Wn. App. 2d at 287-88). Still, the Court of Appeals concluded that RCW 9.94A.640 did not "task" a trial court with assessing the validity of the underlying conviction. Op. at 5. The Court of Appeals also reasoned that Johnson had cited "no authority" to

support the argument that the trial court should have looked beyond the elements of the crime in determining whether his conviction was eligible to be vacated. Op. at 5, n. 6.

As Johnson argued, and the Court of Appeals appeared to recognize, however, Kopp, supports his argument. Kopp, who was charged with second degree rape, pleaded guilty to amended charge of third degree assault. Kopp, 15 Wn. App. 2d at 283. In his plea agreement, Kopp also stipulated to the facts contained in the probable cause certification as "real and material" for the purposes of sentencing. Id. at 288. The trial court denied Kopp's subsequent motion to vacate the conviction, citing his plea agreement and facts contained in the probable cause certification. Id. at 283-84.

On appeal, Kopp agued the trial court abused its discretion by relying on the stipulated facts in the probable cause certification to deny the motion to vacate. Kopp, 15 Wn. App. 2d at 287. Division One of the Court of Appeals disagreed, reasoning that "[i]f Kopp agreed that the sentencing court rely on

the facts in the probable cause certification when determining the appropriate sentence, we can see no abuse of discretion in relying on those same facts when deciding whether to vacate that conviction." Id.

Kopp thus establishes that, where a defendant stipulates to a set of facts for the purpose of sentencing, the sentencing court may rely on those facts in subsequent vacation proceedings. Like Kopp, here Johnson "stipulate[d] to affidavit jurisdictional facts on file" for purposes of sentencing. Supp CP ___ (sub no. 41, Clerk's Minutes, dated 12/18/97).[7] Thus, the facts of Johnson's offense were real and material for purposes of both sentencing and his motion to vacate.

Based on Kopp, and Johnson's stipulation, the trial court was therefore well within its discretion to consider the facts and elements of Johnson's 1997 crime in determining whether the conviction was eligible to be vacated.

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[7] Johnson has filed a contemporaneous RAP 9.6(a) motion to supplement the designation of these clerk's papers.

Because the Court of Appeals' opinion in Johnson's case conflicts with its prior decision in Kopp, and a trial court's inherent discretion under RCW 9.94A.640, review is appropriate under RAP 13.4(b)(2) and (4).

2. Review is appropriate to determine whether incarceration for a different crime is a valid basis for denying a petition to vacate under RCW 9.94A.640(2)(f).[8]

RCW 9.94A.640(2)(f) provides that a person may not have a prior conviction vacated if "the offense was a class C felony[...] and less than five years have passed since the later of: (i) the applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date[.]" If a statue is not ambiguous, courts do not consider statutory construction, but instead the statute's meaning is "derived from the wording of the statute

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[8] The Court of Appeals did not reach Johnson's argument on this point because it concluded that Johnson was disqualified from vacating the conviction for assaulting a law enforcement officer under the plain language of RCW 9.94A.640(2)(b)(ii). See Op. at 6, n.8.

itself." State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005); State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001).

In opposing Johnson's motion to vacate, the prosecution argued that his current imprisonment for an unrelated conviction precluded him from satisfying the condition that five years had passed since release from confinement. CP 29. The trial court agreed, reasoning that Johnson's current imprisonment rendered him ineligible for vacation. RP 4.

But the statutory language does not support this conclusion. Under RCW 9.94A.640 (2)(f) the "applicant's release from full and partial confinement" is specifically tied to the class C conviction sought to be vacated. Put differently, the plain language of the statute requires only that at least five years have passed since the applicant's release from confinement related to the class C conviction at issue. Because more than five years have passed since Johnson's release from

confinement on the third degree assault conviction, he remains statutorily eligible to vacate the conviction.

RCW 9.94A.640 (2)(f) is clear on its face and the court should assume that the legislature means exactly what it says. Plain words do not require construction." Davis v. State ex. Rel., Dep't of Licensing, 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999). Even assuming RCW 9.94A.640 is ambiguous on this point however, principles of statutory construction support Johnson.

"If the plain language of the statute is susceptible to more than one reasonable interpretation, the statute is ambiguous." State v. Reeves, 184 Wn. App. 154, 158, 336 P.3d 105 (2014) (citing State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010)). In such situations, the court may look at the legislative history, principles of statutory construction, and relevant case law. Roggenkamp, 153 Wn.2d at 621. Questions of statutory interpretation are reviewed de novo. State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003). The purpose of statutory

interpretation is to give effect to the Legislature's intent. State v. Elgin, 118 Wn.2d 551, 555, 825 P.2d 314 (1992). If the court concludes that a statute is ambiguous after applying the rules of statutory construction, "the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary." City of Seattle v. Winebrenner, 167 Wn.2d 451, 461, 219 P.3d 686 (2009) (quoting State v. Jacobs, 154 Wn.2d 596, 601, 115 P.3d 281 (2005)).

RCW 9.94A.640 was amended in 2019 pursuant to the "new hope act." Laws of 2019, ch. 331, §§ 1, 3 (HB 1041). The "new hope act" was explicitly enacted "to promot[e] successful reentry by modifying the process for obtaining certificates of discharge and vacating conviction records." Laws of 2019, ch. 331; Substitute House Bill 1041, 66th Leg., Reg. Sess. (Wash. 2019) (HB 1041).

Consistent with the "successful reentry" legislative intent, the amendments made it easier to vacate conviction records. For example, a person is no longer automatically

disqualified from seeking to vacate any "crime against persons," but rather, may still vacate certain crimes falling within that definition "if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second degree under RCW 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree under RCW 9A.56.210[.]" RCW 9.94A.640(2)(b); Compare with RCW 43.43.830(7) (defining crimes against persons).

Additionally, a person is no longer automatically disqualified from seeking to vacate a class C felony if they had any subsequent criminal conviction, but only if they had a subsequent conviction "in the five years prior to the application for vacation." Id. Similarly, subsection (2)(f) was amended to allow for vacation when at least five years had passed from the later of one of three conditions instead of a minimum five years from the date that a certificate of discharge was entered. Id.

Adopting the prosecution and trial court's interpretation that imprisonment on an unrelated conviction rendered Johnson ineligible for vacation would be inconsistent with "successful reentry" and the legislature's intent to make it easier to vacate conviction records. Interpreting the statute in Johnson's favor is the only way to align the statute with the principles of statutory construction. Review is appropriate under RAP 13.4(b)(4).

E. CONCLUSION

Johnson respectfully asks this Court to grant review and reverse the Court of Appeals.

I certify that this document contains 3,170 words, excluding those portions exempt under RAP 18.17.

DATED this 11th day of March, 2022.

Respectfully submitted,

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APPENDIX

FILED
1/18/2022
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. MELVIN MARCUS JOHNSON, Appellant.	)	No. 81955-1-I UNPUBLISHED OPINION

BOWMAN, J. — Melvin Marcus Johnson appeals a trial court order denying his petition to vacate a 1997 conviction for third degree assault of a law enforcement officer. Because RCW 9.94A.640(2)(b)(ii) prohibits the trial court from vacating this kind of conviction, it did not err in denying his petition. We affirm.

FACTS

In 1995, Johnson punched a Cascade Mall[1] Sears security guard when he and a companion tried to leave the store with stolen items. The State charged Johnson with third degree assault of a law enforcement officer or other employee of a law enforcement agency while performing his official duties under RCW 9A.36.031(1)(g), a class C felony. Johnson pleaded guilty as charged in December 1997 and the court sentenced him on January 8, 1998.

[1] The Skagit County Cascade Mall permanently closed in June 2020.

The court issued Johnson a certificate of discharge on May 1, 1998. A year later, Johnson murdered three people in a separate incident. As a result, he has been serving a term of life imprisonment without the possibility of parole since July 26, 1999.

On July 4, 2020, Johnson petitioned the court to exercise its discretion under RCW 9.94A.640(1) and vacate his 1997 assault conviction. The State opposed Johnson's motion, arguing that the court could not vacate the crime of assaulting a law enforcement or peace officer because RCW 9.94A.640(2)(b)(ii) disqualifies that offense as eligible for vacation. The State also asserted the court could not vacate the 1997 class C felony conviction under RCW 9.94A.640(2)(f) because Johnson was incarcerated and "less than five years have passed since the defendant's release from confinement." Finally, the State argued that even if the court determined Johnson's crime was eligible for vacation, the court should exercise its discretion under RCW 9.94A.640(1) and deny Johnson's petition.

No one appeared on Johnson's behalf at the hearing on his petition to vacate. The trial court found that "particularly in light of the fact that Mr. Johnson is still in custody," it was denying his petition under RCW 9.94A.640(2)(f). The court also found the State's argument that the crime of third degree assault of a law enforcement officer is not eligible for vacation under RCW 9.94A.640(2)(b)(ii) had "some merit." The court denied Johnson's petition to vacate his 1997 conviction.

Johnson moved to reconsider, arguing for the first time that the security guard he assaulted was "a private entity," not a law enforcement officer, and that the court should allow him to withdraw his guilty plea if it did not vacate his conviction. The court denied the motion to reconsider without prejudice because Johnson filed it in the wrong judicial department and did not provide notice to the State.

ANALYSIS

Johnson argues that the trial court erred by denying his petition to vacate the 1997 third degree assault conviction under RCW 9.94A.640.[2] We disagree.

We review a trial court's refusal to vacate for abuse of discretion. State v. Kopp, 15 Wn. App. 2d 281, 287, 475 P.3d 517 (2020). A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. Kopp, 15 Wn. App. 2d at 287-88.

We review questions of statutory interpretation de novo. State v. Conover, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015). Our purpose is to discern and implement the intent of the legislature. State v. Alvarado, 164 Wn.2d 556, 561-62, 192 P.3d 345 (2008). When the meaning of a statute is plain, we must give effect to that meaning. Alvarado, 164 Wn.2d at 562. We determine the plain meaning by considering the statute in its entirety along with any related statutory provisions. Alvarado, 164 Wn.2d at 562.

[2] Johnson does not appeal the trial court's ruling denying his motion to reconsider.

RCW 9.94A.640(1) sets forth a two-step process for vacating a qualified petitioner's felony conviction.[3] First, the court must determine whether the conviction meets the legal requirements for eligibility under RCW 9.94A.640(2). If a court finds the conviction meets the tests prescribed in subsection (2) of the statute, the court may exercise its discretion to "clear the record of conviction." RCW 9.94A.640(1).[4]

RCW 9.94A.640(2)(b) precludes a trial court from vacating "crime[s] against persons." "Crimes against persons" include convictions for third degree assault. RCW 43.43.830(7). Even so, the plain language of the statute allows an offender to petition the court to vacate a third degree assault conviction if "the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement" and the offense was "not committed against a law enforcement officer or peace officer." RCW 9.94A.640(2)(b)(ii).

Here, the State charged Johnson with third degree assault "in violation of RCW 9A.36.031(1)(g)." A person commits assault under that statute when 1) under circumstances not amounting to assault in the first or second degree, 2) he assaults a law enforcement officer or other employee of a law enforcement agency 3) who was performing official duties at the time of the assault. RCW 9A.36.031(1)(g). Johnson pleaded guilty to the offense as charged. Johnson

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[3] The statute applies equally to convictions resulting from guilty pleas and those following jury verdicts. RCW 9.94A.640(1). We agree with Johnson and the State that the 2019 amendments to RCW 9.94A.640 apply to Johnson's 1997 conviction. See LAWS OF 2019, ch. 331, § 3.

[4] In exercising its discretion, the court may consider "the facts of the crime" and any other relevant aggravating or mitigating circumstances. See Kopp, 15 Wn. App. 2d at 287-88.

was thus convicted[5] of an assault committed against a law enforcement officer, an offense the court cannot vacate under RCW 9.94A.640(2)(b)(ii).[6]

Johnson argues on appeal that he "did not commit a disqualifying crime because his guilty plea [to assaulting a law enforcement officer] is facially invalid." According to Johnson, his plea is defective because "it does not prove that he understood the elements of the charge, nor does it contain a sufficient factual or legal basis to establish the elements of the crime."[7] But nothing in RCW 9.94A.640 tasks a trial court with assessing the validity of an underlying conviction in determining whether it is eligible for vacation under subsection (2) of the statute. And Johnson had several opportunities to challenge the validity of his guilty plea. Johnson could have sought postconviction relief, appeal, or collateral attack. See CrR 4.2(f) (withdrawal of plea), 7.4 (arrest of judgment); RAP 2.1 (appeal), 16.4 (personal restraint petition). He did not pursue any of those available remedies.

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[5] Under RCW 9.94A.030(9), "conviction" means "an adjudication of guilt," including "a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty." We treat a guilty plea the same as we would a jury verdict to determine whether a defendant has been convicted. Woods v. Rhay, 68 Wn.2d 601, 605, 414 P.2d 601 (1966); State v. Schimmelpfennig, 92 Wn.2d 95, 104, 594 P.2d 442 (1979).

[6] Johnson suggests that the court should have looked beyond the elements of the crime in determining whether his conviction was eligible to be vacated under RCW 9.94A.640(2). But he cites no authority to support his proposition. " 'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.' " State v. Logan, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

[7] Johnson argues, as he did in his motion to reconsider below, that a private store security guard is not a law enforcement or peace officer under Washington law.

Because Johnson is statutorily disqualified from vacating a conviction for assaulting a law enforcement officer under the plain language of RCW 9.94A.640(2)(b)(ii), the trial court did not err in denying his petition. We affirm.[8]

Brennan, J.

WE CONCUR:

Andrus, A.C.J.

Coburn, J.

[8] Because we affirm on this ground, we need not reach Johnson's argument that the court erred in relying on his current incarceration for a different crime in denying his petition to vacate under RCW 9.94A.640(2)(f).

NIELSEN KOCH & GRANNIS P.L.L.C.

March 11, 2022 - 11:06 AM

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