NO. **1008856**

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
ERIC S. BARNETT,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

ANSWER TO PETITION FOR REVIEW

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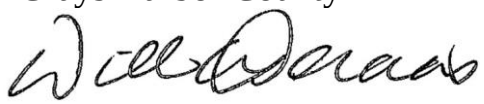
BY: 

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COUNTERSTATEMENT OF THE CASE

Petitioner was convicted in Grays Harbor County Superior Court of one count of assault in the second degree with a firearm enhancement and two firearms offenses. The firearm offenses were ordered to be served consecutive to each other, for a total of 86 months, and concurrent with the assault in the second degree conviction (57 months). Pursuant to RCW 9.94A.533(3)(e) the 36 month firearm enhancement was added to the end of the 86 month sentence for the firearm sentences (after the total period of confinement). Petitioner argues that pursuant to RCW 9.94A.533(3)(f) the enhancement should have been added to the end of the total sentence, as his firearm offenses are exempt from the enhancement, citing *State v. Pedro*, 148 Wn. App. 932, 946, 201 P.3d 398 (2009), for the

proposition that offenses in which possession of a firearm is an element are not subject to the firearm enhancement.[1]

The Court of Appeals affirmed the imposition of the enhancement at the end of the total period of confinement. *State v. Barnett*, 83434-7-I. Mr. Barnett now petitions this Court for review, alleging this case involves an issue of substantial interest. RAP 13.4(b).

ARGUMENT

The petition should be denied as the language of the statute is unambiguous and has been addressed by the appellate courts of this state in the past, and this case does not present an issue of substantial public interest under RAP 13.4(b).

"The goal of statutory interpretation is to discern and implement the legislature's intent." *State v. Armendariz,* 160 Wn.2d 106, 110, 156 P.3d 201 (2007) citing *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

[1] However, contrary to this argument, some offenses which have possession of a firearm as an element are subject to the firearm enhancement, e.g. Burglary in the First Degree, RCW 9A.52.020(1). *State v. Johnson*, 105 Wash. App. 655, 678-79, 342 P.3d 338 (2015).

> In interpreting the statute, this court looks first to its plain language. If the plain language of the statute is unambiguous, then this court's inquiry is at an end. The statute is to be enforced in accordance with its plain meaning.

Id. (citations omitted).

> "[W]e assume the statute means exactly what it says."

State v. Base, 131 Wn. App. 207, 213, 126 P.2d 79 (2006)

citing *State v. Salavea*, 151 Wn.2d 133, 86 P.3d 125 (2004).

> In interpreting statutory terms, a court should take into consideration the meaning naturally attaching to them and that best harmonizes with the context of the rest of the statute. Statutes relating to the same subject matter are to be construed and read together as a unified whole in ascertaining a legislative purpose so that a harmonious total statutory scheme emerges. "[A]pparently conflicting statutes must be reconciled to give effect to each of them.

Id. (citations omitted).

This Court and the courts of appeals have consistently

held and recognized that the language of RCW 9.94A.533

(3)(e) is plain and unambiguous: firearm enhancements are

mandatory and run consecutively to the base sentence and other

enhancements. *See, e.g., State v. Brown,* 139 Wn.2d 20, 25-29, 983 P.2d 608 (1999), *abrogated with respect to defendants tried in adult court for crimes committed prior to their eighteenth birthday by State v. Houston-Sconiers,* 188 Wn.2d 1, 391 P.3d 409 (2017); *State v. Wright,* 19 Wn. App. 2d 37, 50, 493 P.3d 1220 (2021), *review denied*, ____ Wn.2d ____(Feb 3, 2022) (Washington Supreme Court Cause No. 1002394); *State v. Mandefero,* 14 Wn. App. 2d 825, 836-37, 473 P.3d 1239 (2020); *State v. Brown,* 13 Wn. App. 2d 288, 466 P.3d 244, *review denied* 196 Wn.2d 1013 (2020).

Petitioner ignores the plain language of the statute, asking the Court of Appeals and now this Court to rewrite the statute, adding language to a plain and unambiguous statute. The Court of Appeals noted that while RCW 9.94A.533(3)(f) is silent as to how enhancements should be imposed when an offender has both convictions that are eligible for an

enhancement and those that are not, RCW 9.94A.533(3)(e) answers that question:

> The plain language of RCW 9.94A.533(3) specifies that if any firearm enhancement is imposed for an eligible crime, it must be added "to the *total period of confinement for all offenses*." (emphasis added). It does not say that the firearm enhancement is to be added to the total period of confinement for all "eligible offenses." Our interpretation is consistent with RCW 9.94A.533 (3)(e) which states that firearms enhancements "shall run consecutively to all other sentencing provisions." Again, the legislature did not choose to run the enhancement consecutively on to "all other sentencing provisions, except those relating to firearm offenses." When we interpret statutes, we will not "add words where the legislature has chosen not to include them. *Rest. Dev., Inc. v. Canawill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003).

State v. Barnett, 83434-7-I, page 4.

Adding the enhancement at the end of the total period of confinement effectuates the purpose of the statute: that those who possess firearms in the commission of their crimes be punished more harshly. It would hardly be an enhancement if, for instance, in this case, it was consecutive to the assault sentence but concurrent with the firearm offenses: Mr. Barnett

would only serve six months of a 36-month enhancement after the 86-month sentence for the firearm offenses was served (57 months plus 36 months equals 92 months). RCW 9.94A.533(3)(e) guards against this absurd result and effectuates the purpose of the statute: "to punish armed offenders more harshly to discourage the use of firearms, . . ." *Pedro*, 148 Wash. App. at 946.

Furthermore, the enhancement was not applied to the firearm offenses ("Because a person committing one of these exempt crimes is already being punished for possessing a firearm, the addition of an enhancement based on the same underlying act – possessing a firearm – would be an unfair and unnecessary double punishment." Brief of Appellant, pp. 8-9; Petition for Review, p. 5). It was applied to the assault conviction; Mr. Barnett just had to finish serving the sentences for the firearm offenses first.

Given the plain and unambiguous language of the statute and the fact that it has been addressed numerous times by the appellate courts of this state, this case does not present an issue of substantial public interest. RAP 13.4(b). The decision below is a *published* opinion, which will give precedential guidance to courts in the future; this Court need not weigh in on the matter.

In a different context (a no contact order and parental rights), one of the factors the court took into consideration in deciding that a case did not present an issue of substantial public interest was that there "already exist[ed] a substantial body of law regarding parental rights." *State v. Witt*, 199 Wn. App. 1050, p. 2 (COA Division II 2017) (not reported; cited as persuasive authority pursuant to GR 14.1(a)). The same is true here.

CONCLUSION

For the foregoing reasons the petition should be denied.

This document contains 1117 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 31st day of May, 2022.

Respectfully Submitted,

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WAL /

GRAYS HARBOR COUNTY PROSECUTING ATTORNEY'S OFFICE

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