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No. 84015-1

Supreme Court No. 100331-5
King County Superior Court No 21-2-03266-1 SEA

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I

THE CIVIL SURVIVAL PROJECT, ET AL.,

Petitioners,

v.

THE STATE OF WASHINGTON, ET AL.,

Respondents.

PETITION FOR DISCRETIONARY REVIEW

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IDENTITY OF PETITIONERS

This petition is brought by the Civil Survival Project ("CSP"), individually and on behalf of its members and clients, and Irene Slagle, Christina Zawaideh, Julia Reardon, Adam Kravitz, Laura Yarbrough, and Deighton Boyce, individually and on behalf of the proposed class ("Petitioners").

COURT OF APPEALS DECISION

Petitioners seek review of the Court of Appeals' ("CoA") November 28, 2022, opinion affirming the superior court order granting dismissal under Civil Rule 12(b)(6). Appendix to Petitioners' Petition for Discretionary Review ("App."), Ex. A (CoA opinion, hereinafter "Decision").

ISSUES PRESENTED FOR REVIEW

Petitioners present the following issues for review:

1. Does the Decision conflict with *State v. Jennings*, 199 Wn.2d 53 (2022), and *State v. Ammons*, 105 Wn.2d 175 (1986)?

2. Does the Decision raise substantial issues concerning public interest, access to justice, and geographic discrimination?

3. Does the Decision raise due process concerns?

4. Should the Court exercise its inherent supervisory authority to address the public's interest in fair restitution to impacted individuals?

5. Does the Decision otherwise comply with binding precedent?

STATEMENT OF THE CASE

I. Factual Background

On February 25, 2021, this Court struck down Washington's former felony drug possession statute, RCW 69.50.4013, as unconstitutional. *State v. Blake*, 197 Wn.2d 170, 173 (2021). As a result, all parties in this action agree that thousands of individuals are now eligible for relief, including the refund of millions of dollars in legal financial obligations ("LFOs") imposed and collected pursuant to unconstitutional convictions. Appendix to Appellants' Petition for Direct Review ("Direct Review App.") Ex. 4 (Counties' Second Motion to Dismiss ("Mot.")) at 5-6; Direct Review App. Ex. 2 (Washington State's Statement of No Position ("Statement of No Position")).

Beyond that, there's a plethora of disagreement over the mechanism, means, and scope of LFO refunds. With limited assistance from the State, Washington counties have primarily been left to decide how to handle *Blake* refunds on their own – resulting in inconsistent, disparate refunding from county to county. *See, e.g.*, Statement of No Position at 3-4. Crucially, there is neither an established mechanism to provide notice to people impacted by *Blake*, nor means to achieve meaningful systemic relief.

II. Procedural Background

On March 11, 2021, CSP sued Washington State ("State") and King and Snohomish counties ("Counties"), seeking to restore LFO payments, cancel pending LFOs, and prevent future LFOs from being imposed as a result of *Blake* and *Blake*-related convictions. Petitioners then added individual plaintiffs and the remaining 37 Counties as Defendants, and asserted additional individual, class, and organizational claims. Direct Review App. Ex. 1 (Second Amended Complaint, or "SAC")). On August 27,

2021, the Counties filed a motion to dismiss under CR 12(b)(6). The State did not join in the Counties' motion, instead filing a "Statement of No Position." On September 24, 2021, the Superior Court dismissed the action in its entirety. After this Court denied direct review, the CoA heard oral argument on July 13, 2022, and issued an opinion affirming the Superior Court in its entirety on November 28, 2022.

ARGUMENT

Blake constituted a watershed moment for criminal justice, but 22-plus months later, many individuals have not received recovery for their unlawful convictions, and relief has become a balkanized affair where individuals' chance to recover (and the extent of that recovery) largely depends on the county in which they reside or were convicted. The CoA endorsed this state of affairs, incorrectly holding that *Williams*, a case about traffic infractions – rather than *Jennings*, a case about the facial invalidity of *Blake* convictions – controls and mandates this unfair outcome. *See Williams v. City of Spokane*, 199 Wn.2d

236, 245 (2022); *State v. Jennings*, 199 Wn.2d at 67. In reaching this holding, the CoA created a significant conflict in precedent and ignored Petitioners' unrebutted claims of geographic disparities, procedural morass, and justice denied that stem directly from its decision.

This Court has previously "recognized the judiciary's role in perpetuating racism within the justice system" and "committed to changing that." *State v. Hawkins*, 200 Wn.2d 477, 501 (2022). But while *Blake* was intended to help rectify such injustice, its application has fallen woefully short, and Washington has failed many of its residents who it previously unlawfully convicted. Unfortunately, it is now clear that there will be no justice for many individuals *Blake* harmed absent this Court's intervention, especially for Washingtonians of color.

Consistent with the factors articulated in RAP 13.4(b), discretionary review is warranted for at least five separate, significant, reasons.

First, the CoA's Decision overturned decades of Washington precedent holding that a facially unconstitutional conviction is null and void regardless of whether that conviction has been independently vacated. The Decision thus effects a sea change in Washington law and will adversely impact the remedies for unconstitutional convictions in ways yet to be determined.

Second, this is a case of the utmost public interest, as to how *Blake* relief will be effectuated, whether this Court will give judicial imprimatur to intra-state discrimination related to *Blake* relief, and whether this Court will permit narrow prior rulings to cutoff any hope for systemic relief here.

Third, this case raises significant due process concerns over whether a CrR 7.8 process designed for the correction of *individual* error in an *individual* case can function, without constitutional violation, when the total number of impacted individuals is in the hundred-thousands, and many of these

individuals simply will not receive justice under the current one-off process.

Fourth, like its sister court in Massachusetts, this Court has the obligation and moral duty to supervise and correct the systemic and unconstitutional injustice caused by the State's criminal justice system. *See generally Commonwealth v. Martinez*, 480 Mass. 777, 797 (2018).

Fifth, the CoA's opinions directly conflict with other binding precedent in the state, creating troubling errors with compounding systemic concern as to Washington's standards for pleading, organizational standing, class certification, and equitable relief.

I. The CoA Erred by Holding *Williams*, Not *Jennings*, Controls.

In *State v. Jennings*, this Court explained that *Blake* "convictions are constitutionally invalid." 199 Wn.2d at 67. This ruling was based on decades of well-established precedent holding that, for sentencing purposes, "a prior conviction which

has been previously determined to have been unconstitutionally obtained or which is constitutionally invalid on its face may not be considered." *Ammons*, 105 Wn.2d at 187-88 (collecting cases). *Ammons* also articulated the broader constitutional rule undergirding the analysis, that "[c]onstitutionally invalid on its face means a conviction which without further elaboration evidences infirmities of a constitutional magnitude." *Id.* at 188; *see also Nelson v. Colorado*, 581 U.S. 128, 136 n.10 (2017) ("an invalid conviction is no conviction at all") (citation omitted).[1] Thus, where a conviction is constitutionally invalid on its face, the normal requirement that the defendant obtain an independent determination that the conviction is invalid does not apply.

[1] *Ammons* addressed whether the State had to prove the constitutionality of a prior conviction before it could be considered in sentencing. 105 Wn.2d at 186-87. The Court held that the State did not have to do so, noting that there are "established avenues of challenge" for addressing a conviction's constitutionality. *Id.* at 188. But *Ammons* made clear an inmate need not resort to a separate avenue of challenge with respect to a conviction that is constitutionally invalid on its face. *Id.* at 188-89. *Jennings* holds that *Blake* convictions fall into that special category.

The Decision directly conflicts with this well-established line of cases because it relied instead on *Williams* to hold that an individual *must* seek to vacate a void *Blake* conviction through CrR 7.8 before obtaining a refund of LFOs despite the statute's facial (and declared) unconstitutionality. Decision at 15. This created a conflict because *Blake* convictions clearly fall within the category of convictions that are constitutionally infirm without further elaboration, given that this Court held that Washington's strict liability statute "exceed[ed] the legislature's police power" and thus was entirely unconstitutional as drafted. 197 Wn.2d at 173.

Rather than following this principle, the CoA viewed itself as bound to apply CrR 7.8 as the exclusive remedy by an overly technical and broad reading of *Williams* and *Doe* (the CoA decision that *Williams* was based on). *See* Decision at 12-15. But *Williams/Doe* analyzed discrete judgments imposed by courts of limited jurisdiction in narrow circumstances. *See Williams*, 199 Wn.2d at 241-42 (costs imposed by traffic

infractions); *Doe v. Fife Mun. Court*, 74 Wn. App. 444, 446 (1994) (deferred prosecution costs for alcohol-related offenses). *Blake* involves a far-reaching criminal statute – under which thousands upon thousands of people were convicted over the course of decades – that was ruled facially unconstitutional. *Doe* and *Williams* did not involve convictions constitutionally invalid on their face.

The CoA sought to avoid the legal conflict between its reliance on *Williams*/*Doe* by reading *Jennings* very narrowly, as standing only for the proposition that *Blake* convictions cannot be used in sentencing, and nothing more. Decision at 14-15. The principle set forth in *Ammons* – that different rules govern the collateral consequences of facially unconstitutional convictions – is broader than sentencing.[2] The CoA's reasoning does not provide a limiting principle for why CrR 7.8 vacation is not

[2] If the Court intends to limit *Ammons*/*Jennings* to the sentencing context, it should make that decision only after full briefing, further underscoring the need for discretionary review in this case.

required in resentencing, but is required for LFO refunds. Instead, the CoA mandated a person-by-person vacation procedure for LFO refunds that, in practical effect, is not meaningfully different than the position articulated by the *Blake* dissent, which advocated for an as-applied rule focused on Blake herself and not the broader statute. *See Blake*, 197 Wn.2d at 195-96, 211-12 (Stephens, J., concurring in part, dissenting in part). But a person-by-person approach was rejected by the *Blake* majority. *See id.* at 192 n.14.

Ultimately, with its formalistic application of CrR 7.8, the CoA elevated a rule of criminal procedure over constitutional rulings by this Court, and treated *Blake*'s constitutional deprivations like a traffic violation. This was an error with significant implications for the entire Washington legal system. *See Freedom Found. v. Gregoire*, 178 Wn.2d 686, 695 (2013) ("the constitution supersedes contrary statutory laws"); *see also In re Det. of Young*, 163 Wn.2d 684, 693 (2008) (holding proceedings at issue were "not governed by the civil rules where

the rules conflict with [applicable] statutory provisions").[3]

Accordingly, discretionary review is needed to clarify the status of *Blake* convictions (and, indeed, the remedies for any constitutionally inform conviction) within the justice system.

II. *Blake* Presents Issues of Substantial Public Interest *Only* Resolvable by this Court.

This petition also presents several issues of utmost public interest that can only be resolved by this Court. *First*, the Decision will result in severe county-by-county disparities for the amount and scope of LFO refunds. *Second*, Washingtonians continue to be harmed by CrR 7.8's exclusivity, which makes the return of their property harder for some and impossible for others – an issue only this Court can and should correct. *Third*, at a

[3] The CoA also supported its narrow reading of *Jennings* by pointing to the text of CrR 7.8, which was amended after *Blake* to provide that one ground for vacation is where a person is "serving a sentence for a conviction under a statute determined to be void, invalid, or unconstitutional." Decision at 15. But CrR 7.8 does not trump a constitutional ruling by the Washington Supreme Court. Moreover, those amendments were in place when this Court decided *Jennings*, and yet this Court did not require Jennings – or any other *Blake* defendant – to vacate his conviction before granting relief from sentencing enhancements.

minimum, this Court should allow Petitioners' case to proceed on behalf of individuals whose *Blake* convictions were already formally vacated, where there is no need for a CrR 7.8 hearing.

In its Decision, the CoA gave the judicial imprimatur to an inequitable, arbitrary system that stands to perpetuate further injustice for generations to come. For *Blake* to be more than just words on paper, it requires continued, concerted effort from this Court, the State, and civil society. Extensive, unrebutted allegations show that the State's efforts so far have been woefully insufficient and inconsistent, and individuals unfairly convicted, fined, and incarcerated by this State are continuing to be ignored.

A. The Decision Creates Different Levels of Access to Justice Across Washington State.

The CoA's decision requiring individuals with *Blake* convictions to file for vacation under CrR 7.8 to receive LFO relief has and will result in Washingtonians experiencing drastically different levels of access to justice based on the

happenstance of the county in which they live, creating an issue of significant public interest across Washington.

There can be no serious dispute on this point. The State itself has conceded that "some county prosecutors are proactively reaching out to individuals known to be affected by *Blake*," while others have failed to "refund[] LFOs even when a conviction is vacated, citing a lack of resources." Statement of No Position at 3-4. CrR 7.8's case-by-case approach "raises logistical and access-to-justice concerns – particularly for individuals who are subject to different practices in different counties, and who may not be aware of their legal rights or have available means to vindicate them." *Id.* at 8; *see Lane v. City of Seattle*, 164 Wn.2d 875, 888 (2008) ("'Justice delayed is justice denied' is literally true for money."). These concerns were echoed by the amici on appeal. *See* Direct Review App., Amicus Memorandum from ACLU et al. ("ACLU Mem.") 2-5, 12; Direct Review App., Amicus Memorandum from Washington Defender Association ("WDA Mem.") 1-5, 7-9.

Review by this Court is the only way to ensure uniformity of access to justice in Washington for the victims of *Blake*.

B. Interpreting CrR 7.8 as Exclusive Is Inequitable.

Applying CrR 7.8 as the *exclusive* remedy for the harms caused by *Blake* convictions is inequitable, inefficient, and inconsistent with the Rule's intent, creating a further issue of substantial public concern. And yet, because of the CoA's Decision, only this Court is positioned to address and rectify the harm.

As Petitioners have alleged in well-pleaded allegations, there are more than 100,000 impacted individuals throughout Washington. SAC ¶¶ 1.23-24, 4.2; *see also* Decision at 3 (noting scale of individuals impacted by *Blake*). Because of this, the one-off vacation process required by the CoA could take 4,000 years. SAC ¶ 1.23. If CrR 7.8 is the exclusive means to seek LFO refunds, it will lead to the denial of justice for many.

Although the CoA acknowledged that it "may or may not be" true that *Blake*'s "demands on the judicial system create

different concerns of judicial efficiency" than those raised in *Williams*/*Doe*, it held that concern "cannot rebut *Williams*'s textual reading" of CrR 7.8 that its use of "the court" conferred exclusivity. Decision at 15. However, the key tenet undergirding *Doe*/*Williams*'s reasoning was "the strong policy reason" of judicial efficiency in litigating and voiding convictions in the same court, individually. *Doe*, 74 Wn. App. at 454; *see also Williams*, 199 Wn.2d at 245 (noting that the Court saw no "barrier to a party obtaining effective relief" even without a class action) (quotation omitted). The *Doe* court specifically emphasized that it did not anticipate that the "district and municipal courts [would] be overwhelmed with litigants," a concern that the CoA seemingly ignored. 74 Wn. App. at 455. *Blake*, which impacts thousands of persons, presents the dire situation *Doe*/*Williams* sought to avoid. One-by-one adjudication will completely "overwhelm[]" the judicial system. *Doe*, 74 Wn. App. at 454.

In addition, the CoA erred in dismissing clear indicators in both the text and legislative history of CrR 7.8 that the rule is not intended as exclusive.[4] *First*, CrR 7.8's plain language does not include the language Washington typically uses when identifying an area of exclusive jurisdiction over particular claims. *See, e.g.*, RCW 3.50.020 ("The municipal court shall have *exclusive original jurisdiction* over traffic infractions arising under city ordinances . . .") (emphasis added).

Second, CrR 7.8's drafting history establishes "that the drafters [purposefully] left out" proposed language that would have made the Rule an exclusive remedy. *See* Editors' Notes to CrR 7.8; *State v. Evans*, 177 Wn.2d 186, 193 (2013) (if a statute or rule is ambiguous, a court "may then look to legislative history for assistance in discerning legislative intent"). In fact, in March 1985, a member of the drafting committee proposed amending CrR 7.8(c) to explicitly provide that the Rule is the exclusive

[4] Even the CoA noted CrR 7.8's "ambiguity." Decision at 14.

mechanism for reviewing a superior court's judgment in a criminal case, and the Committee rejected the proposal. Editors' Notes to CrR 7.8. One of the motivating reasons for the Committee's rejection was a caution that "it seemed inappropriate and unnecessary to limit a superior court's power without fully understanding the impact of the limitation." *Id.*

This concern, which was cast aside by the CoA, rings especially true here. As discussed *supra*, *Blake* involves *thousands* of convictions made across the entire state, some of which are decades old. The impact of limiting superior courts' power over LFO refunds in this case is far-reaching and of a constitutional magnitude. This Court must intervene to correct the CoA's error in interpreting the rule.

C. The Decision Ignores Individuals With Already Vacated Convictions.

At a minimum, even if the Court were to find that CrR 7.8 is exclusive, the CoA erred by ignoring that individuals whose convictions are already vacated need not file CrR 7.8 motions to

receive LFO refunds. The added and entirely unnecessary burdens imposed by the CoA's ruling on these individuals create an additional, significant issue of public concern.

Respondents admit that prosecutors in certain counties have vacated *Blake* convictions for individuals but have not refunded LFOs. *See* Direct Review App. Reply Br. at 5-6 (citations omitted). There is no basis for requiring these individuals to file CrR 7.8 motions, as their convictions are already vacated, and their LFOs are tied directly to the now-vacated convictions. There is nothing further for them to do. Their property (*i.e.*, their money) must be promptly refunded, and Respondents continued withholding of that property violates due process. *See infra*, Argument § III.[5] "'Justice delayed is justice denied' is literally true for money." *Lane*, 164 Wn.2d at 888 (citation omitted).

[5] Thus, even if this Court agrees with the CoA, the lawsuit must move forward on behalf of CSP's members whose sentences are already vacated, and Petitioners also should be given the opportunity to amend their Complaint to add allegations for others.

III. Applying CrR 7.8 to *Blake* Raises Significant Due Process Questions.

This Court's review is additionally necessary because this case raises a significant constitutional issue: Petitioners allege that the CoA's mandated application of CrR 7.8 to *Blake* violates due process under the federal and Washington constitution, because CrR 7.8 "impose[s] . . . more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated." *Nelson*, 581 U.S. at 139 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976) in reaching holding); *see also City of Redmond v. Moore*, 151 Wn.2d 664, 670 (2004) (adopting *Mathews* standard). The CoA's Decision raises significant questions about whether due process has been violated when relief is simply unavailable to large swaths of impacted individuals, which can *only* be resolved by the Court.

First, the CoA erred by understating the burden CrR 7.8 places on individuals with *Blake* convictions, describing it as requiring "*only* a motion and affidavits." Decision at 17

(emphasis supplied). But CrR 7.8 continues to place the burden of proof on the defendant, which is the unconstitutional infirmity *Nelson* identified. 581 U.S. at 137 (holding that "to get their money back, defendants should not be saddled with *any proof burden*" (emphasis supplied)).[6] And, for that matter, the CrR 7.8 process is strikingly similar to Colorado's unconstitutional process. *See id.* at 149 (Thomas, J., dissenting) (Colorado required petitioners "prove only that their convictions had been reversed and that they had paid a certain sum of money").

The CoA also failed to fully account for the significant procedural and logistical burdens of CrR 7.8 in the context of *Blake*, which further highlights the due process violations. Many individuals impacted by *Blake* face compounded obstacles to

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[6] The CoA also overstated Petitioners' argument, suggesting it is Petitioners' position that "*any* onus on defendants to initiate the return of their own fees violates due process." Decision at 17. But that is not Petitioners' position. Petitioners are focused on CrR 7.8's burden of proof, which undisputedly rests with a defendant, and the point that while individuals should be permitted to make individual CrR 7.8 motion as warranted, that should not be their *exclusive* remedy. Moreover, the appropriate review standard is notice pleading – not that Petitioners need demonstrate a constitutional violation. The CoA may not impose its own views on this issue based on its own experiences outside the record.

justice, including those stemming from language barriers, poverty, and incarceration. Additionally, CrR 7.8 does not guarantee counsel or address LFOs collected by collection agencies. And for *Blake* defendants facing disadvantageous post-vacation resentencing prospects, filing a CrR 7.8 motion is untenable, leaving them with *no* means of obtaining *Blake*-related LFO refunds. *See, e.g.*, ACLU Mem. at 7-8; WDA at 1-5, 7-11. Further, significant notice issues remain because of the inconsistent, county-by-county, determinations as to what types of convictions qualify for relief. *Cf.* Decision at 3-4.

Even if an individual manages to overcome such barriers, given the 100,000-plus impacted individuals, a one-off process will result in many motions going unheard due to lack of time and judicial resources. Plus, courts face the serious risk of becoming overwhelmed with an unmanageable number of CrR 7.8 motions. SAC ¶ 4.2. This creates an unacceptable (and unconstitutional) risk that a significant number of individuals will never recover anything, and many others will have

recoveries significantly delayed. *See Nelson*, 581 U.S. at 137-39 (statute unconstitutional when posing unacceptable "risk of erroneous deprivation of those funds" to which an individual is entitled); *Lane*, 164 Wn.2d at 888.

Second, the CoA further erred by grafting a new test onto the due process standard, which has significant systemic implications. Three well-accepted factors guide the due process inquiry: "(A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the governmental interest at stake." *Nelson*, 581 U.S. at 135. All three weigh heavily in Petitioners' favor. *See* App. for Direct Review, Opening Br., 37-41. The CoA failed to address *any* of these factors. Instead, it imposed and privileged a fourth inquiry that appears in no caselaw: whether Petitioners' proposed method of relief is "better" than the procedure they challenge. Decision at 18-20. The CoA's "weighing" of preferred procedure is entirely detached from any record evidence (since there is none).

The constitutional right to due process is not a relative one. Petitioners maintain that a class action, in addition to the government's existing efforts, would be efficient in addressing *Blake* relief. But even if Petitioners cannot show at this stage that their proposed relief would be better than CrR 7.8 at preventing constitutional deprivations, that has no bearing on whether the government's process is violating the Constitution in the first instance. Such a standard would be untenable. The validity of a due process claim would turn not on its own merits, but on the ingenuity of the lawyers bringing the claim in crafting a proposed alternative. This cannot be, and is not, the law.

IV. Like Its Massachusetts Sister Court, This Court Should Exercise Its Supervisory Authority Over This Issue of Significant Public Interest.

Furthermore, this Court should use its supervisory authority to address the significant disruptions to the judicial system and the lives of Washingtonians caused by *Blake*. As the CoA expressly acknowledged, this Court – unlike the CoA – has an "inherent independent 'supervisory' authority" that it can use

to address compelling judicial issues. Decision at 7 n.10. The ramifications of *Blake* present systemic, statewide access-to-justice concerns, which require high-level judicial oversight. As shown in *State v. Gregory*, where this Court proclaimed all death penalty sentences unconstitutional and converted them to life imprisonment, this Court has the power to make universal decisions that apply across cases. 192 Wn.2d 1, 35-36 (2018); *see also State v. Wadsworth*, 139 Wn.2d 724, 740-41 (2000) (highlighting "inherent power and obligation of the judiciary to control all its necessary functions to promote the effective administration of justice"); *State v. Bennett*, 161 Wn.2d 303, 305 (2007) (exercising "inherent supervisory powers to maintain sound judicial practice").

Here, supervision has a uniquely important public interest, given the degree to which *Blake* convictions disproportionately impact Black, Latino, and Indigenous persons. *Blake*'s reasoning is rooted in acknowledging these injustices, including that the "drug statute [at issue] . . . has affected thousands upon

thousands of lives, and its impact has hit young men of color especially hard." 197 Wn.2d at 192 (citation omitted). This Court has elsewhere "recognized the judiciary's role in perpetuating racism within the justice system and ha[s] committed to changing that." *Hawkins*, 200 Wn.2d at 501. Oversight of *Blake* relief, whether in the form of direct supervision or allowing Petitioners' lawsuit to proceed, is necessary to make good on that commitment.

The Supreme Judicial Court of Massachusetts' rulings in *Commonwealth v. Martinez* provide an instructive model. There, the court was faced with massive corruption in state crime labs that resulted in over 21,000 invalid convictions, and "a collective burden" that "would threaten the administration of criminal justice in our courts." 480 Mass. 777, 797 (2018). In response, the court exercised its general "superintendence authority" to fashion a remedy to vacate thousands of convictions *en masse*. *See Bridgeman v. Dist. Att'y for Suffolk Dist.*, 476 Mass. 298, 325-26 (2017); *Comm. For Pub. Counsel Servs. v. Att'y Gen.*,

480 Mass. 700, 701-05 (2018). The court also created a process for individual refund applications designed to satisfy *Nelson v. Colorado*'s due process standard (*see supra* Argument § III). *Martinez*, 480 Mass. at 793-96. Finally, the court temporarily withheld further action in deference to a related civil class action addressing refunds and restitution in hopes that the class action parties would reach a "global remedy" (while also recognizing the good policy sense in allowing public/private remedies to work in tandem). *Id.* at 797-98.

V. The Decision Creates Additional Conflicts.

Discretionary review is additionally warranted to resolve additional serious conflict with longstanding precedent.

Pleading. The CoA created a conflict with Washington's pleading standard because it required more than "a simple, concise statement of the claim and the relief sought." *Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352 (2006). Rather than apply the "liberal notice pleading rules [that are] intended to facilitate the full airing of claims having a legal

basis," *State v. LG Elecs., Inc*., 186 Wn.2d 169, 183 (2016) (cleaned up), the CoA instead opined on the merits. *See, e.g.*, Decision at 18-20. If Petitioner's claims are accepted as true (as they must), the CoA's Decision would make it impossible to provide full *Blake* recovery because individual petitions would take longer than the lifespan of anyone currently alive to achieve, there is insufficient money allocated to refund all LFOs, and a person's chance for full relief relies on where in Washington they happen to live. SAC ¶¶ 1.17-1.26.

Organizational Standing. The CoA also erred by too narrowly considering CSP's standing, creating a conflict with existing law. *First*, the CoA neglected to analyze whether CSP had standing "in its own right" based on Plaintiffs-Petitioners' allegations of the "drain on the organization's resources" caused by responding to the burdens stemming from Defendants-Respondents' inadequate processes for relief. *Glob. Neigh. v. Respect Wash.*, 7 Wn. App. 2d 354, 387 (2019); *see* SAC ¶¶ 3.1-3.1.4, 5.4-5.4.3. *Second*, the CoA ignored that CSP has

representational standing on behalf of members whose convictions have already been vacated but who have not received LFO refunds. *See* App. for Direct Review, Reply Br. 22-23; *see also, e.g.*, *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 851 (2020). Regardless of the application of CrR 7.8 to any particularized request for *Blake* relief, CSP clearly has standing to seek standardized, state-wide relief relating to the contours of the LFO refunds.

CR 23. The CoA also opined prematurely – with no record evidence – on the suitability of a class action, Decision at 18-20, and created a conflict with this Court's instruction that courts are to "liberally interpret CR 23" and "err in favor" of certification. *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 515 (2018); *see also Wash. Educ. Ass'n v. Shelton Sch. Dist.*, 93 Wn.2d 783, 793 (1980) (reversing premature denial of class certification). Moreover, the CoA failed to consider that a class action can proceed in parallel with governmental action, *see, e.g.*, *Martinez*, 480 Mass. at 793-97,

and manageability concerns should be addressed at class certification, *see Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App. 245, 256 (2003).

Equitable Relief. Although Petitioners detailed the injunctive/declaratory relief they sought that was distinct from CrR 7.8 refunds, *see* Direct Review App. Opening Br. 59-60 (citing SAC), the CoA analyzed Petitioners' UDJA standing as if the only relief they sought was intertwined with relief available under CrR 7.8. Decision at 21-22. Despite the CoA's analogy to *Williams*, Petitioners' equitable relief here stands alone because it does not merely duplicate a request for reimbursement of LFOs. *Compare with Williams*, 199 Wn.2d at 245-46 (petitioner's equitable claims "precisely the same" as damages). And, even if there were no justiciable controversy, the CoA should have applied the public importance exception recognized by this Court, *see League of Educ. Voters v. State*, 176 Wn.2d 808, 816 (2013), given the broad swath of Washington residents

who continue to be denied relief *despite* the "significant attention" received to date, Decision at 23.

CONCLUSION

For these reasons, Petitioners respectfully request that this Court grant discretionary review.

RESPECTFULLY SUBMITTED this 28th day of December 2022.

I certify that in Compliance with RAP 18.17(c)(10) that the foregoing contains 4,579 words not including the sections excluded by RAP 18.17(b).

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APPENDIX

Exhibit A

FILED
11/28/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE CIVIL SURVIVAL PROJECT, individually and on behalf of its Members and Clients, and Irene Slagle, Christina Zawaideh, Julia Reardon, Adam Kravitz, Laura Yarbrough, and Deighton Boyce, individually and on behalf of the Proposed Plaintiff Class,

Appellants,

v.

STATE OF WASHINGTON, individually, and KING COUNTY and SNOHOMISH COUNTY, individually and on behalf of the Proposed Defendant Class,

Respondents,

ADAMS COUNTY, ASOTIN COUNTY, BENTON COUNTY, CHELAN COUNTY, CLALLAM COUNTY, CLARK COUNTY, COLUMBIA COUNTY, COWLITZ COUNTY, DOUGLAS COUNTY, FERRY COUNTY, FRANKLIN COUNTY, GARFIELD COUNTY, GRANT COUNTY, GRAYS HARBOR COUNTY, ISLAND COUNTY, JEFFERSON COUNTY, KITSAP COUNTY, KITTITAS COUNTY, KLICKITAT COUNTY, LEWIS COUNTY, LINCOLN COUNTY, MASON COUNTY, OKANOGAN COUNTY, PACIFIC COUNTY, PEND OREILLE COUNTY, PIERCE COUNTY, SAN JUAN COUNTY,

No. 84015-1-I

DIVISION ONE

PUBLISHED OPINION

SKAGIT COUNTY, SKAMANIA COUNTY, SPOKANE COUNTY, STEVENS COUNTY, THURSTON COUNTY, WAHKIAKUM COUNTY, WALLA WALLA COUNTY, WHATCOM COUNTY, WHITMAN COUNTY, and YAKIMA COUNTY, individually and as putative Defendant Class Members,

Defendants.

SMITH, A.C.J. — The Civil Survival Project, on behalf of its members, and the named plaintiffs, on behalf of themselves and a putative class, sued Washington State and King and Snohomish Counties. They sought the return and cancellation of legal financial obligations arising from convictions rendered retroactively unconstitutional by State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021). To this end they pleaded theories of unjust enrichment and rescission and requested injunctive relief under Washington's Uniform Declaratory Judgment Act, ch. 7.24 RCW. The trial court dismissed without deciding whether to certify the class.

Williams v. City of Spokane, 199 Wn.2d 236, 505 P.3d 91 (2022), controls the resolution of this appeal. It clarifies, first, that Criminal Rule 7.8 and analogous rules provide the exclusive remedy to revisit judgment and sentences and, second, that no dispute exists under the Uniform Declaratory Judgment Act sufficient to permit injunctive relief. We therefore affirm.

FACTS

In February 2021, the Washington State Supreme Court created a sea change in our state criminal law when it issued its decision in Blake. Blake held

unconstitutional Washington's strict liability drug possession statute, voiding it and vacating Blake's conviction. 197 Wn.2d at 195. The rippling impacts of this decision have yet to be fully realized, let alone resolved, and will not likely be for many years. Because of the interaction between the strict liability drug possession statute and other criminal statutes—such as crimes that incorporate other crimes as an element[1] or the use of Blake-related convictions when calculating a defendant's offender score[2]—it is possible that more than 100,000 individuals were affected by Washington's decades-long enforcement of the now void law.[3] Unspooling Blake's practical consequences for all affected individuals is, as a result, a considerable task by virtue of both its scale and its complexity.

Counties across the State, coordinating with the State itself, have sought to address Blake by vacating convictions both proactively and, in response to individual's motions to the court, reactively. Efforts to ensure that Blake's promise is fulfilled have not, however, been limited to the executive branch of our government. Our state Supreme Court has actively promulgated changes to court rules to enable easier access to counsel to address voided convictions.[4]

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[1] See, e.g., RCW 69.50.407 (conspiracy).

[2] See generally ch. 9.94A RCW (Sentencing Reform Act).

[3] Throughout the course of this opinion, use of the phrases such as "Blake convictions," "Blake sentences," or "Blake LFOs" is intended to reference all convictions, sentences, or LFOs affected the Blake decision, not just those that were directly the result of strict liability drug possession convictions.

[4] These rule changes, only proposals at the outset of this litigation, have now come into effect. See CrR 3.1(b)(2)(B) (appointment of counsel); CrR 7.8(c)(2) (vacation of judgment). As the plaintiffs in this case point out, the amended rules apply in this instance to those "serving a sentence" as the result of the voided conviction.

And our state legislature has passed multiple bills that touch on the issues arising in Blake's wake, the first only two months after issuance of the decision. S.B. 5092, 67th Leg., Reg. Sess. (Wash. 2021); ENGROSSED SUBSTITUTE S.B. (ESSB) 5693, 67th Leg., Reg. Sess. (Wash. 2022). The most recent legislative appropriation directs more than $100 million towards the administrative and other costs of addressing Blake. ESSB 5693, at 12-13.

Prioritized above all by the various governmental entities responding to Blake are currently imprisoned individuals for whom vacation of their Blake conviction would result in immediate release. However, the return and discharge of legal financial obligations (LFOs) imposed as a part of Blake sentences is also of great concern. LFOs comprise the gamut of fees, fines, and other financial assignments related to a criminal conviction.[5] They can range from seemingly small amounts to considerably larger ones, and can be mandatory or discretionary on the part of the trial court. Collectively, they can constitute a severe burden on a population that already faces disproportionate financial struggles; failure to pay has in some counties resulted in the debtor's incarceration.[6] Increasingly the subject of scrutiny, the harsh consequences of

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[5] RCW 9.94A.030(31) specifically defines LFOs as that "sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees . . . court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction." As used by the plaintiffs and in this memorandum, LFOs are the broader collection of *all* financial obligations resulting from Blake convictions.

[6] Alexes Harris, *After Blake, will Washington state repay victims of the war on drugs?* CROSSCUT (Apr. 8, 2021) https://crosscut.com/opinion/2021/04/after-

LFOs were referenced in the Blake decision itself, though they were not its focus. 197 Wn.2d at 184.

This lawsuit was initiated on March 11, 2021, only two weeks after Blake's issuance. Brought at first by the Civil Survival Project (CSP)—a statewide nonprofit dedicated to advancing the interests of formerly incarcerated people—on behalf of its clients and members, the suit's collection of plaintiffs was supplemented to include Irene Slagle, Christina Zawaideh, Julia Reardon, Adam Kravitz, Laura Yarbrough, and Deighton Boyce, each of whom has borne Blake LFOs. This group of individuals was meant to be the named members of a proposed plaintiff class representing all people affected by Blake LFOs.[7] The lawsuit's original defendants were the State of Washington and King and Snohomish Counties. This group, too, would be expanded, eventually encompassing all Washington counties.

The plaintiffs' goal is the return of any money paid towards an LFO downstream of a Blake conviction and the cancellation of any outstanding obligation. To this end they plead several legal causes of action, all couched within the framework of a putative class action. First, they bring unjust enrichment and rescission claims as to both paid and unpaid LFOs. Second, they request declaratory relief pursuant to the Uniform Declaratory Judgment Act

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blake-will-washington-state-repay-victims-war-drugs [https://perma.cc/NGM9-6QV8].

[7] Plaintiffs proposed this definition of the class: "All individuals who, as a result of any *Blake* or *Blake*-Related Convictions, had LFOs imposed against them and/or paid LFOs that were charged, collected, received, or retained by or on behalf of Defendants and/or Defendant Class Members."

(UDJA). Through this avenue they pursue declarations from the court that: (1) their class's convictions are "void and vacated"; (2) they are entitled to recover Blake LFOs collected by the defendants; (3) defendants must cancel any unpaid LFO debt; (4) defendants must not reallocate Blake-related payments to cover other LFO balances; and (5) they request any further equitable relief deemed proper.

The case comes to us on appeal from the superior court's grant of King and Snohomish Counties' motion to dismiss, which was decided before consideration of the plaintiffs' request for class certification. The court dismissed the plaintiffs' claims of unjust enrichment and rescission after determining that Criminal Rule (CrR) 7.8 in superior courts—or its equivalent rules in courts of limited jurisdiction—is the "exclusive mechanism" to obtain the relief requested through those claims. It dismissed the request for declaratory relief after determining that CrR 7.8 and its alternatives are an "adequate alternative remedy" to declaratory relief. The court concluded that the rules of procedure do not entitle the plaintiffs' to their requested relief other than through individual motions under CrR 7.8 or its alternatives; it concluded that civil class action is an improper vehicle.

The plaintiffs appeal.[8]

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[8] Plaintiffs initially moved for direct review from the Supreme Court. Numerous interested parties filed two amicus briefs supporting this effort, including the American Civil Liberties Union of Washington, Columbia Legal Services, the Korematsu Center, the King County Department of Public Defense, and the Washington Defenders Association. The Supreme Court denied the motion on May 4 of this year.

ANALYSIS

We are presented with two questions. First, whether CSP and the individual plaintiffs are barred from bringing civil class action claims to address the burden of their Blake LFOs because CrR 7.8 and its equivalent rules prohibit other avenues of relief. Second, whether the plaintiffs are nonetheless entitled to declaratory judgment. We conclude that the Washington Supreme Court definitively resolved these issues earlier this year with its holding in Williams[9] and therefore we affirm the trial court's dismissal. 199 Wn.2d at 244-49.[10]

Standard of Review

We review a trial court's CR 12(b)(6) dismissal de novo. FutureSelect

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[9] Notably, this opinion was issued only shortly before the Supreme Court denied the plaintiffs' motion for direct discretionary review.

[10] Plaintiffs' brief on appeal also spends time addressing two ancillary claims. First, they contend that the trial court "misapplied the pleading standard" by considering certain factual claims made by the defendants. Regardless of whether the trial court took certain factual claims into account, its order of dismissal is supportable on the basis purely of legal argument, as this analysis section will demonstrate.

Second, they urge the court—which, at the time they wrote their opening brief, was the Washington State Supreme Court—to exercise its inherent "superintendence authority" to act promptly to address Blake-related quandaries. Their argument is brief and cites to two Washington cases—State v. Wadsworth, 139 Wn.2d 724, 991 P.2d 80 (2000) and State v. Bennett, 161 Wn.2d 303, 165 P.3d 1241 (2007)—neither of which explicitly discusses any "superintendence authority." Both cases do, however, mention certain inherent powers of the courts. Wadsworth, 139 Wn.2d at 740-42 (referencing inherent powers of the courts control their functions, such as by granting bail, compelling production, regulate the practice of law, and adopt rules of procedure); Bennett, 161 Wn.2d at 317, n.10 (referencing specifically the Washington Supreme Court's power, with the United States Supreme Court as an analogue). These cases seem to show that any inherent independent "supervisory" authority capable of addressing plaintiffs' claims does not reside in the Washington Court of Appeals, but rather in the Washington Supreme Court.

Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 180 Wn.2d 954, 962, 331 P.3d 29 (2014). "Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff[s] cannot prove any set of facts which would justify recovery." FutureSelect, 180 Wn.2d at 962 (internal quotation marks omitted) (quoting Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)). We view all facts alleged in the complaint as true. FutureSelect, 180 Wn.2d at 962.

CrR 7.8 as the Exclusive Remedy

The central issue of the case is by what means those burdened by Blake LFOs may be relieved of that burden and regain any money already paid towards their LFOs. Plaintiffs contend that a civil class action is an appropriate vehicle, asserting first, that case law indicating CrR 7.8 is the exclusive remedy to alter judgment and sentences in criminal cases does not apply and second, that due process weighs against the inefficiencies of case-by-case resolution required if CrR 7.8 is the exclusive remedy. Defendants disagree, citing primarily to Williams, in which the Washington Supreme Court recently addressed the proper remedy for widespread violations in the criminal context. 199 Wn.2d at 241-47. We agree with the defendants that Williams controls and conclude that CrR 7.8 does not violate due process.

1. CrR 7.8

CrR 7.8 is the mechanism by which the superior courts provide for relief from a criminal judgment or order. See CrR 1.1 (scope of criminal rules encompasses superior courts). It allows vacation of judgments on "[a]pplication . . . made by motion stating the grounds upon which relief is asked, and

supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based." CrR 7.8(c)(1). The rule was originally adopted to codify the Supreme Court's 1979 holdings in State v. Scott, 92 Wn.2d 209, 595 P.2d 549 (1979), and its progeny cases that Civil Rule (CR) 60(b) "applied to the vacation of judgments or orders in criminal cases." Purpose statement to proposed amendment to CrR 7.8, 104 Wn.2d at xxxiv (Official Advance Sheet No. 13, Jan. 3, 1986).

CrR 7.8's drafting committee did not simply copy CR 60 into the criminal rules, but instead selectively excluded incorporation of those sections of CR 60 not relevant in criminal cases. Purpose statement, 104 Wn.2d at xxxiv-xxxv (giving example of CR 60(b)(7), providing relief in certain circumstances where the defendant was served by publication). Of particular concern here, the committee decided against incorporation of CR 60(c), which states that the rule "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." CR 60(c). But the committee also rejected a proposed subsection (c) that would have explicitly made CrR 7.8 the "exclusive means whereby the court may review a judgment rendered by a superior court in a criminal case." Purpose statement, 104 Wn.2d at xxxv. This rejection was supported at the time by several arguments: that it exceeded the scope of the holdings of the Scott cases; that it ignored existing avenues for collateral attack in RCW 7.36 (Washington State's habeas statute) and RAP 16.3 (personal restraint petitions); that the committee did not wish to limit the power of

the superior courts without full consideration; and that CR 60's application in the criminal context was already narrow. Purpose statement, 104 Wn.2d, supra.

2. Case Law Interpreting CrR 7.8's Related Provisions

The text of CrR 7.8 does not, therefore, speak directly on the question of whether it is the exclusive remedy available to those seeking to vacate a criminal judgment. Case law has developed to address this ambiguity. In a series of cases from the past decades, the Court of Appeals has repeatedly affirmed that provisions similar to CrR 7.8 but operative in courts of limited jurisdiction, rather than superior courts, are the exclusive means to remedy problems in criminal judgments that emerge from those courts. Doe v. Fife Mun. Court, 74 Wn. App. 444, 451, 874 P.2d 182 (1994) (Division I addressing Criminal Rule for Courts of Limited Jurisdiction (CrRLJ) 7.8, applicable in courts of limited jurisdiction per CrRLJ 1.1, dismissing putative class action); Boone v. City of Seattle, No. 76611-2-I, slip op. at 6, (Wash. Ct. App. July 9, 2018) (unpublished), https://www.courts.wa.gov/ opinions/pdf/766112.pdf (Division I addressing Civil Rule for Courts of Limited Jurisdiction (CRLJ) 60, applicable in courts of limited jurisdiction per Infraction Rule for Courts of Limited Jurisdiction (IRLJ) 6.7(a) and IRLJ 1.1(a), dismissing putative class action); Karl v. City of Bremerton, No. 50228-3-II, slip op. at 6-7, (Wash. Ct. App. Feb. 20, 2019) (unpublished), https://www.courts.wa.gov/ opinions/pdf/D2%2050228-3-II%20Unpublished%20Opinion.pdf (Division II addressing CRLJ 60, dismissing putative class action); Williams v. City of Spokane, No. 36508-5-III, slip op. at 16-17 (Wash. Ct. App. June 18 2020) (unpublished), https://www.courts.wa.gov/

opinions/pdf/365085_unp.pdf (Division III addressing CRLJ 60, dismissing putative class action).[11]

Doe, the first of these cases, relied on by the others and holding that CrRLJ 7.8—CrR 7.8's equivalent in criminal proceedings in courts of limited jurisdiction—excludes other remedies, ruled on the basis of three factors: (1) the difference between CR 60(c)'s language explicitly permitting alternative remedies and CrRLJ 7.8's, lacking that language, implied that CrRLJ 7.8 was exclusive; (2) CrRLJ 1.1 and 1.2 indicate respectively the relevant rules govern "all" and "every" criminal proceeding; and (3) CrRLJ 1.2, directing the rules be interpreted to "secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay," supported individualized vacation, which more effectively employed judicial resources. 74 Wn. App. at 453-55. The court wrote: "when rules are set out in detail in criminal rules, they need not be supplemented by civil rules." 74 Wn. App. at 453 (citing State v. Pawlyk, 115 Wn.2d 457, 476-77, 800 P.2d 338 (1990)).[12]

Williams, which was decided earlier this year, saw this line of precedent affirmed for the first time by the Supreme Court. 199 Wn.2d at 244 ("Williams

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[11] GR 14.1(c) ("Washington appellate courts should not, unless necessary for a reasoned decision, cite or discuss unpublished opinions in their opinions.")

[12] In their opening brief, the plaintiffs contend that Orwick v. City of Seattle, 103 Wn.2d 249, 692 P.2d 793 (1984) stands for the "broad proposition that a superior court has authority to address 'system-wide violations' of individual rights," urging that it supervenes Doe. But Orwick instead stands for the proposition that the superior courts have *jurisdiction* over claims for equitable relief from certain systemwide violations arising in courts of limited jurisdiction. 103 Wn.2d at 252. The jurisdiction of the court is not in question here, only the available paths to relief.

would have us reject the analysis of all three divisions of the Court of Appeals and hold that *Boone*, *Karl*, and *Williams* were wrongly decided. We decline."). It also added another pillar to Doe's reasoning, saying that CRLJ 60(b)—applicable in civil proceedings in courts of limited jurisdiction—which references "the court" when describing who may relieve a party of a final judgment, refers not to any court but specifically to "the court that issued the underlying judgment." Williams, 199 Wn.2d at 242-43. It also emphasized that the purposes of judicial efficiency with which Doe was concerned applied just as directly in Williams. 199 Wn.2d at 244. In both, the plaintiffs sought to bring class actions in superior court to vacate a large number of allegedly erroneous judgments originating in courts of limited jurisdiction. Williams, 199 Wn.2d at 238 (concerning speeding tickets); Doe, 74 Wn. App. at 446-47 (concerning deferred prosecution for alcohol related criminal offenses). Williams, quoting Doe, concludes " 'that judicial resources are employed more efficiently if the party who asserts a judgment or order as being void is first required to address its concerns to the court that issued the judgment or order.' " 199 Wn.2d at 244 (quoting 74 Wn. App. at 454).

3. Applicability of Precedent to CrR 7.8

Williams's reading of the definite article in "the court,"[13] even if not extended to CrR 7.8, means at a minimum that any of the plaintiffs' claims regarding Blake LFOs springing from courts of limited jurisdiction *cannot* be addressed in the first instance by this class action in superior court. 199 Wn.2d at 242-43. Such claims would instead have to be severed from it for individual

[13] Which appears in subsection (b) of both CrRLJ 7.8 and CRLJ 60.

treatment in the relevant court of limited jurisdiction under CrRLJ 7.8 and CRLJ 60. The question then becomes whether CrR 7.8 should be read—like CRLJ 60 and CrRLJ 7.8 in courts of limited jurisdiction—as the exclusive remedy to vacate judgments in superior court. We conclude that there is not a sufficient basis to deviate from the reasoning of Doe, Boone, Karl, and Williams.

The difference between the text of the relevant rules—CrR 7.8, CrRLJ 7.8, and CRLJ 60—is negligible and does not provide a basis to read CrR 7.8 separately. The Supreme Court has already dismissed as irrelevant the differences between CrRLJ 7.8 and CRLJ 60. Williams, 199 Wn.2d at 244 (the two rules "are not distinguishable in any relevant way"). And CrR 7.8 and CrRLJ 7.8 are nearly identical.[14] Given that, Williams's conclusion that the language of CRLJ 60 and CrRLJ 7.8 requires a motion be brought in "the court that issued the underlying judgment" is controlling; it applies equally to CrRLJ 7.8 and the textually indistinguishable CrR 7.8. 199 Wn.2d at 242-43.

Hoping to avoid this reading of CrR 7.8, the plaintiffs make several arguments in an attempt to distinguish Williams and Doe. First, they invoke the above-mentioned Purpose statement regarding the rule-drafters discussion about whether to include an exclusion provision. They point out that CrRLJ 7.8 and CRLJ 60 did not have equivalent notes for the Doe and Williams's courts to

[14] Save for two differences, neither relevant. First, procedures for review—found in CrRLJ 7.8(a), (c)(2) and CrR 7.8(a), (c)(2). Second, CrRLJ 7.8(b) reads, in part, "[a] motion under this section does not affect the finality of the judgment or suspend its operation" while CrR 7.8(b) reads, in similar part, "[a] motion under section (b) does not affect the finality of the judgment or suspend its operation."

consider. This is true, and provides support for the conclusion that the drafters of CrR 7.8 did not wish to address whether CrR 7.8 was exclusive. CRLJ 60; CrRLJ 7.8. But regardless of the strength of this argument, we are bound by Williams's interpretation of "the court" as an independent unambiguous basis for exclusivity, which is just as forceful regarding CrR 7.8 as it is regarding CRLJ 60 and CrRLJ 7.8. See State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (courts interpreting statutes look to legislative history and other guidelines of construction only to resolve ambiguous language).

Second, the plaintiffs contend that Williams and Doe are distinguishable because they concerned relief from allegedly statutorily invalid municipal judgments imposing traffic fines and "facially unconstitutional convictions are different."[15] Citing to language in State v. Jennings, 199 Wn.2d 53, 67, 502 P.3d 1255 (2022), calling Blake convictions "constitutionally invalid," they assert the CrR 7.8 process is therefore not a prerequisite for relief, that the effect of Jennings has been to in some fashion already invalidate Blake convictions.[16] This is not Jennings's holding, and is contradicted by the plain language of CrR 7.8. Jennings held only that "[a] prior conviction that is constitutionally invalid on its face may not be included in a defendant's offender score." 199

[15] Wash. Court of Appeals oral argument, Civil Survival Project v. Washington, No. 84015-1-I (July 13, 2022), at 20 mins., 15 sec., audio recording by TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-2022071042/?eventID=2022071042.

[16] Wash. Court of Appeals oral argument, supra, at 1 min, 10 sec.

Wn.2d at 67 (citing State v. Ammons, 105 Wash.2d 175, 187-88, 713 P.2d 719 (1986)).

Meanwhile, CrR 7.8, contrary to the thrust of plaintiffs' argument, clearly applies to the reconsideration of constitutionally invalid convictions. It explicitly contemplates being used to address precisely this sort of issue: "A defendant is entitled to relief under subsection (i) where the person . . . is serving a sentence *for a conviction under a statute determined to be void, invalid, or unconstitutional by [the courts]*." CrR 7.8(c)(2) (emphasis added). This language was added through the amendment process initiated in the wake of Blake. Jennings cannot be read as broadly as plaintiffs suggest.

Third, the plaintiffs assert that the sheer scope of Blake's demands on the judicial system create different concerns of judicial efficiency than those present in Doe and Williams. This argument, though, however true it may or may not be, cannot rebut Williams's textual reading of the definite article in "the court." Nor does it sit well with Williams's conclusion that individualized vacations in separate courts *serve* the purposes of efficiency. 199 Wn.2d at 244. Moreover, Williams aside, plaintiffs' efficiency argument does not clearly withstand scrutiny on its merits, as discussed below in the context of their due process arguments.

We therefore hold that Williams controls. CrR 7.8 is the exclusive procedural means by which to seek refund and cancellation of superior court imposed Blake LFOs, just as CrRLJ 7.8 and CRLJ 60 are the exclusive means in courts of limited jurisdiction.

4. Due Process and Nelson v. Colorado

Plaintiffs next argue that Nelson v. Colorado establishes that requiring those with Blake LFOs to individually file motions under CrR 7.8 or its equivalents is a violation of due process. ___ U.S. ___, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017). We disagree. Nelson, though it also concerned the mechanisms by which wrongly convicted individuals could recoup LFO payments made to the State, addressed a wholly different, and considerably more onerous, procedural structure.

Nelson saw the United States Supreme Court applying the Mathews v. Eldridge[17] balancing test to a Colorado post-conviction statute. 137 S. Ct. at 1255. The Mathews factors determine whether a process deprives individuals of protected rights by looking to: (1) the private interest affected by the official action; (2) the risk of that interest's erroneous deprivation through the procedures used; and (3) the governmental interest at stake. 424 U.S. at 335. Colorado required defendants whose convictions had already been reversed to "prove [their] innocence by clear and convincing evidence to obtain the refund of costs, fees, and restitution paid pursuant to an invalid conviction." Nelson, 137 S. Ct. at 1253-55. The opinion in Nelson focused on the injustice done by placing the burden on defendants to prove their innocence when their presumption of innocence had been returned at their convictions' reversal. 137 S. Ct. at 1255-56. "To comport with due process," it held, "a State may not impose anything

[17] 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated." Nelson, 137 S. Ct. at 1258.

Nelson did not concern whether prohibiting LFO recovery by means of a class action violated due process. It addressed the permissibility of placing a significant burden of proof on individuals whose judgments had been reversed, requiring them to demonstrate innocence even where individualized determinations as to their guilt had already been made and reversed. Though Nelson does not set forth precisely the sort of "minimal procedures" it might allow, CrR 7.8 and related rules—which require only a motion and affidavits stating the facts upon which that motion is made[18]—do not place such a burden on defendants as was present in Nelson, and could not easily be more minimal. To the extent that the plaintiffs here argue that placing *any* onus on defendants to initiate the return of their own fees violates due process, Nelson does not support them.

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[18] The rules' sections on procedure when filing a motion to vacate, with differences italicized, read:

- CrR 7.8(c)(1): "Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based."
- CrRLJ 7.8(c)(1): "Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based."
- CRLJ 60(e)(1): "Application shall be made by motion *filed in the cause* stating the grounds upon which relief is asked, and supported by the affidavit of the applicant *or his attorney* setting forth a concise statement of the facts or errors upon which the motion is based, *and if the moving party be a defendant, the facts constituting a defense to the action or proceeding*."

5. Relative Efficiency of CrR 7.8 and a Class Action

In this context, plaintiffs and amici spend considerable time urging that an approach to refunding and cancelling LFOs based in CrR 7.8 offends due process because it is so inefficient that a number of Blake-affected individuals will ultimately receive refunds too late or not at all. Here, the relative merits of refunding Blake LFOs through a class action or an approach based in CrR 7.8 are relevant under Mathews. Plaintiffs and amici compellingly argue that CrR 7.8 is an imperfect method of refunding and cancelling Blake LFOs, but they do not attempt to show how a civil class action would do better. In fact they do not, in any comparative analysis, demonstrate how a class action is a process less likely to cause erroneous constitutional deprivations.

Those seeking LFO repayment will require a similar amount of individual treatment even through a class action. Their volume of fines is individual, will have been paid to different degrees, and those fines may be interwoven with the requirements of other convictions. For some, revisiting a judgment may leave them open to re-prosecution at the discretion of the local prosecutor. Plaintiffs have not suggested a manner in which individuals will be able to receive personalized advice on how to navigate this thicket more readily in the midst of a class action than if they file CrR 7.8 motions.[19] Similarly, though the plaintiffs express concern about the burden placed on pro se individuals under CrR 7.8,

[19] Class actions typically resolve issues that are shared similarly among class members. CR 23(2) (members of a class may sue or be sued only if "there are questions of law or fact common to the class"). Here, the individualized nature of each affected person's LFO-burden makes it difficult to imagine what question of law or fact is truly common among putative class members.

they do not explain how this burden would be alleviated by a class action, which requires class members to either accept or reject whatever class relief is ordered, typically without aid of counsel.

The class action approach has drawbacks even aside from its one-size-fits-all treatment of the problems associated with refunding Blake LFOs. Some of the funds generated by a class action would undoubtedly have to go towards paying class counsel, representatives, and expenses. And a class action focusing exclusively on refunding and cancelling LFOs risks complicating efforts down the line by affected individuals to vacate convictions.

The end result of a class action, as opposed to individualized vacation, may therefore be the provision of less individualized advice, the return of less of the class members' LFO payments, and complications in other Blake proceedings. These are not indicia of a process that is definitively more efficient and less likely to cause further constitutional harm than the individualized approach of CrR 7.8

On the other hand, a civil class action enjoys one major benefit: it would require the defendants to notify the proposed class members of their right to the return of their paid LFOs and cancellation of outstanding debts. That the putative class receives this sort of notice is certainly the goal. However, it is hardly clear that a class action would be more efficient in this regard than the efforts already funded by the State, which has devoted millions of dollars to public outreach about Blake. ESSB 5693, § 116(8). Plaintiffs do not attempt to explain how providing notice would be practically easier through a class action. The same

prudential concerns would be present, but addressed through a different process with purposes orthogonal to the existing efforts, creating risk of confusion.

Plaintiffs and amici have ably demonstrated CrR 7.8's shortcomings, particularly regarding pro se individuals and the possibility that placing an onus on affected individuals to bring their own motions will result in racially disparate outcomes. But they have not shown that a class action is, on balance, a more efficient process by which to refund Blake LFOs or one less likely to cause similar harms. They have not demonstrated that the difference in outcomes between the two approaches is so stark as to find application of CrR 7.8 a due process violation under Mathews, overriding the legislature's preferred approach.

We conclude that the use of CrR 7.8 and its equivalent rules as the exclusive remedy by which to revisit Blake LFOs does not violate due process.[20]

Availability of Declaratory Relief

Plaintiffs finally argue that even if CrR 7.8 is the exclusive mechanism to vacate criminal convictions affected by Blake, they are entitled to equitable and injunctive relief under the UDJA. Williams speaks on this issue as it did on the exclusivity of CrR 7.8, saying that no dispute exists to confer standing under the

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[20] CSP asserts that it, as an organizational plaintiff, has no means to file a CrR 7.8 motion, but nonetheless has standing to bring this lawsuit. Associational standing allows a " 'non-profit corporation or association which shows that one or more of its members are specifically injured by a government action [to] represent those members in proceedings for judicial review.' " Washington Educ. Ass'n v. Shelton Sch. Dist. No. 309, 93 Wn.2d 783, 791, 613 P.2d 769 (1980) (quoting Save a Valuable Env't v. City of Bothell, 189 Wn.2d 862, 867, 576 P.2d 401 (1978)). To the extent that associational standing is based in the standing of its members to bring actions, CSP cannot assert the ability to bring a civil claim when none of its members would individually enjoy recourse through a similar procedure.

UDJA. 199 Wn.2d at 247-49. We therefore conclude that the trial court did not err in dismissing the plaintiffs' equitable claims.[21]

To have standing to bring a claim under the UDJA, there must be " 'an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement.' " Williams, 199 Wn.2d at 248-49 (internal quotation marks omitted) (quoting League of Educ. Voters v. State, 176 Wn.2d 808, 816, 295 P.3d 743 (2013)). The existence of a final judgment closes the underlying contested case, foreclosing standing on the basis of that dispute. Williams, 199 Wn.2d at 248. In Williams, for a new dispute to arise sufficient to enable standing for the purposes of the UDJA, the plaintiff had to first seek to " 'reverse any ticket penalty by bringing a motion to vacate in the municipal court' " and thereby create a new dispute. 199 Wn.2d at 248 (quoting Williams, No. 36508-5-III, slip op. at 28.). The court addressed the possibility that Williams might have standing as a class representative for putative class members who might meet this requirement.

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[21] The trial court dismissed the plaintiffs' claims for declaratory relief because CrR 7.8 "is a completely adequate alternative remedy." To support this proposition, it cited Grandmaster Sheng-Yen Lu v. King County, 110 Wn. App. 92, 98 n. 3, 38 P.3d 1040 (2002). Grandmaster relies in turn on Reeder v. King County, 57 Wn.2d 563, 564, 358 P.2d 810 (1961) (holding that "a plaintiff is not entitled to relief by way of a declaratory judgment if, otherwise, he has a completely adequate remedy available to him."). But Reeder has been superseded by CR 57, which states: "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." New Cingular Wireless PCS, LLC v. City of Clyde Hill, 185 Wn.2d 594, 605, 374 P.3d 151 (2016) (recognizing supersession). Because we may affirm on any basis supported by the record, the precise basis for the trial court's dismissal of these claims has no impact on appeal. See Bavand v. OneWest Bank, 196 Wn. App. 813, 825, 385 P.3d 233 (2016).

Williams, 199 Wn.2d at 248. He did not: "as the only named plaintiff, Williams 'must have a personal claim' for his superior court action to proceed." Williams, 199 Wn.2d at 248 (quoting Wash. Educ. Ass'n v. Shelton Sch. Dist. No. 309, 93 Wn.2d 783, 790, 613 P.2d 769 (1980)).

The same holds true here. No party demonstrates the existence of a dispute recognizable under the UDJA.

The plaintiffs argue that even if they lack standing under the normal analysis, they may alternatively enjoy recourse to the UDJA because the dispute pertains to an issue of major public importance. For this proposition they cite to League of Education Voters, 176 Wn.2d at 816. There, the court wrote: "[u]nless a dispute involves 'issues of major public importance, a justiciable controversy must exist before a court's jurisdiction may be invoked under the [UDJA].' " 176 Wn.2d at 816 (quoting Nollette v. Christianson, 115 Wn.2d 594, 598, 800 P.2d 359 (1990)). Applying this exception to the normal rules of standing is discretionary on the part of the court. Snohomish County v. Anderson, 124 Wn.2d 834, 840, 881 P.2d 240 (1994) (challenging constitutionality of Growth Management Act). "Whether an issue is one of major public importance depends on the extent to which public interest would be enhanced by reviewing the case." City of Edmonds v. Bass, 16 Wn. App. 2d 488, 496, 481 P.3d 596 (2021) (challenging city gun storage ordinance).

Here, we conclude that the public interest would not be enhanced by reviewing the case and so decline to extend standing under the public importance doctrine. Unlike other cases that apply the doctrine, this dispute is

not the sort of policy that lends not lends itself to quick and easy resolution through a legal ruling. It instead presents complex, fact-dependent questions of public administration in an area that has already received significant attention from many aspects of our state government. To review this case, permitting declaratory judgment and its unclear consequences, would not enhance the public interest but instead further complicate an already complicated problem.

Because the trial court correctly concluded that CrR 7.8 and similar rules are the exclusive means for plaintiffs to address their claims and because the plaintiffs are not entitled to declaratory relief, dismissal was appropriate.

We affirm.

Smith, A.C.J.

WE CONCUR:

Hasse, J.

Mann, J.

Exhibit B

Wash. CRR 7.8

Current with rules received through November 15, 2022

WA - Washington Local, State & Federal Court Rules > PART IV RULES FOR SUPERIOR COURT > SUPERIOR COURT CRIMINAL RULES (CrR) > 7. PROCEDURES FOLLOWING CONVICTION

Rule 7.8. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Procedure on vacation of judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that they are entitled to relief or (ii) resolution of the motion will require a factual hearing. A defendant is entitled to relief under subsection (i) where the person (A) is serving a sentence for a conviction under a statute determined to be void, invalid, or unconstitutional by the United States Supreme Court, the Washington Supreme Court, or an

appellate court where review either was not sought or was denied or (B) is serving a sentence that was calculated under RCW 9.94A.525 using a prior or current conviction based on such a statute.

(3) Order to show cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

History

Adopted June 11, 1986, effective Sept. 1, 1986; amended, adopted June 6, 1991, effective Sept. 1, 1991; adopted June 12, 2003, effective June 24, 2003; amended, effective September 1, 2007; amended effective December 28, 2021.

End of Document

Exhibit C

Wash. Const. Art. I, § 3

Current through January 1, 2022

Annotated Constitution of Washington > Constitution of the State of Washington > Article I Declaration of Rights

§ 3 Personal rights.

No person shall be deprived of life, liberty, or property, without due process of law.

End of Document

Exhibit D

USCS Const. Amend. 5, Part 1 of 13

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

End of Document

CERTIFICATE OF SERVICE

I hereby certify that on the date stated below, I caused the foregoing brief to be served via the Washington State Appellate Court electronic filing system to all counsel of record.

I certify under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

DATED this 28th day of December 2022.

s/ Hannelore Ohaus
Hannelore Ohaus

FRANK FREED SUBIT & THOMAS LLP

December 28, 2022 - 2:38 PM

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