101846-1

COURT OF APPEALS, No. 833570

IN THE SUPREME COURT OF THE

STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

vs.

MAURICE VAN THROWER, Defendant

MOTION FOR DISCRETIONARY REVIEW

Treated as a Petition for Review

MAURICE VAN THROWER, Pro se

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SEATTLE, WASHINGTON 98121
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A. IDENTITY OF PETITIONER

Maurice Van Thrower, Pro se, asks this Court to accept review of the decisions or parts of the decisions designated in Part B of this motion.

B. DECISION

On February 12, 2023 The Court of Appeals Division One filed an UNPUBLISHED OPINION affirming Mr. Thrower's sentence for two counts of Child Molestation in the First Degree. Mr. Thrower's Statement of Additional Grounds (GROUND 2) Challenged his defense counsel's performance. Mr. Thrower contended that once his defense counsel argued to the Sentencing Court that Mr. Thrower had served (excessive sentences) in all of his prior convictions, his counsel's performance was deficient when he failed to object to the State using those same prior convictions as Mr. Thrower's Criminal History. The Court of Appeals opined that none of Mr. Thrower's prior convictions that encompassed RCW 69.50.4013 were used to calculate Mr. Thrower's offender score, and that defense counsel had nothing to object to.

Mr. Thrower then filed a Motion For Reconsideration, which also was denied by The Court of Appeals Acting Chief Judge Lori Smith an March 8, 2023. Where Mr. Thrower made manifest four objections that defense counsel failed to bring to the Sentencing Court's attention. Mr. Thrower now seeks review of these decisions by THE COURT OF APPEALS Acting Chief Judge Lori Smith. These decisions allowed Mr. Thrower to be sentenced with illegal and void judgment

and sentences. The Court of Appeals enaction in this appeal afforded Mr. Thrower to remain incarcerated under an unlawful restraint. A copy of the Opinion and Order Denying Mr. Thrower Motion for reconsideration is in Appendix A, Pages 8 through 17.

C. ISSUES PRESENTED FOR REVIEW

1) Did the Acting Chief Judge error affirming Mr. Thrower's sentence in the face of Mr. Thrower's Ineffective Assistance claim, where the attorney failed to object to invalid judgment and sentences being used to calculate Mr. Thrower's offender score after defense counsel informed the sentencing court of Mr. Thrower's prior convictions were the product of excessive sentences ?

2) Was the Acting Chief Judge's Order Denying Mr. Thrower's Motion For Reconsideration in error, once Mr. Thrower made manifest his defense counsel's ineffectiveness, and made manifest the Jurisdictional defects of his prior convictions, and the unconstitutionally obtained prior convictions ?

D. STATEMENT OF THE CASE

Mr. Thrower appealed to the Court of Appeals Division One from a sentence that took place November 5, 2021. As part of Mr. Thrower's Statement of Additional Grounds, Mr. Thrower in GROUND 2, claimed his defense counsel's

performance was deficient and that his ineffectiveness caused Mr. Thrower to be sentenced with invalid, illegal, jurisdictional defected judgment and sentences.

On page 8 of the Court of Appeal's Opinion, the Acting Chief Judge addressed Mr. Thrower's "Ineffective Assistance of Counsel claim." As part of the Opinion the Acting Chief Judge "concluded that counsel was not ineffective," and that "there was nothing for Mr. Thrower's counsel to object to." (Court of Appeals Division One, Unpublished Opinion pages 8 through 10, Appendix A).

After receiving the Court of Appeal's Opinion, Mr. Thrower filed a Motion For Reconsideration. Mr. Thrower only addressed the Opinion of the Acting Chief Judge that "defense counsel had nothing to object to" and none of the California convictions or simple possession convictions were included as part of Mr. Thrower's offender score calculus. (Court of Appeals, Unpublished Opinion pages 9 and 10, Appendix A).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1) THE ACTING CHIEF JUDGE ERRED IN AFFIRMING SENTENCE IN THE FACE OF INEFFECTIVE ASSISTANCE (FAILURE TO OBJECT).

Mr. Thrower places before this Court several very important issues which involves and calls into question the very principles that American Justice

places its foundations on.

The Court's authority derives from RAP 13.5 (b) that states in part:

"Discretionary review of an [_____] decision of the Court of Appeals **will** be accepted by the Superior Court only:

(1) If the Court of Appeals has commited an obvious error which would render further proceedings unless; or

(2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substaintially limits the freedom of a party to act; or

(3) If the court of Appeals has so far departed from accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administration agency, as to call for the excercise of revisory jurisdiction by the Supreme Court."

The fact that during the sentencing hearing held November 5, 2021 the state prosecutor asked the sentencing court for permission to proceed with sentencing once the sentencing court entered its order vacating Cause No. 93-1-02545-5 which was a VUSCA possession conviction:

"MS. PETERSEN: May I proceed with the -- should we proceed with resentencing, or is there anything else we need to --" VRP 24:4-20.

At this point in the sentencing hearing, the state understood that it needed the sentencing court to excercise its discretion to continue sentencing Mr. Thrower, because the state knew that every prior conviction it had previously entered as Mr. Thrower's criminal history encompassed the now vacated conviction (RCW 69.50.4013).

Mr. Thrower's defense counsel just sat idled as all this transpired, and

he had made the argument to the sentencing court that Mr. Thrower had served excessive sentences pursuant to RCW 69.50.4013:

> "ADAIR: ... With regards to the appropriateness of the low-end recommendation, as I indicated in my presentence report, I think, you know, what happens with the Blake, while it's -- it can result in sort of an immediacy for an individual who is either serving time in prison on an actual VUCSA possession charge or had their sentence elevated because or multiple possession charges, what it doesn't do is allow for any way to go back in time and sort of fix what had happend in the past. And again, what I indicated in the presentence report is that he had been sentenced to prison in the past for what would be effectively counted on multiple years which would now be a possible sentence. So he's served years of his life in prison for which he can never get back and for which there is no way for the Court to give him any kind of relief for that, for what has happened to him in the past and number of years of his life that he spent locked up.
>
> The only way that the Court can give any kind of acknowledgement to the fact that **mistakenly he had serve in excess of how much time he can is by imposing the low end of the standard range, essentially acknowledge the fact that the years that the State asking for has actually already been served**. So I think that that's largely the basis that I believe the Court should be following the defense recommendation of the low end of the standard range." VRP 37:13 through 18:14.

Though there is no doubting the abuse of discretion by the sentencing court, once it was put on notice that Mr. Thrower's prior sentences were illegal and erroneous, it ignored those facts and still used those jurisdictionally defective sentences to calculate Mr. Thrower's offender score and enhance Mr. Thrower's sentence, "In fact, sentencing provisions outside the authority of the trial court are 'illegal' or 'invalid'" State v. Luke, 42 Wn.2d 260, 262, 254 P.2d 718 (1953), cert. denied, 354 U.S. 1000 [73 S.Ct. 1146, 92 L.Ed. 1406] (1953); "The court may correct an illegal sentence at any time." HEFLIN v. United States, 358 U.S. 415 (S.Ct. 1959).

After Mr. Adair argued that because Mr. Thrower had served sentences in excess mistakingly in the past, then to forego any objection to those prior excessive sentences being used to calculate Mr. Thrower's offender score, when there was no strategic or tactical advantage to forego objecting to ab initio judgment and sentences being used in Mr. Thrower's offender score calculus, his performance fell below any objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674 (1984): State v. Jones, 183 Wn.2d 327, 339, 352 P.3d 776 (2015). Defense counsel's objection would have held the Superior Court to its obligation, "When a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneouse sentence, when the error is discovered" McNutt v. Delmore, 47 Wn.2d 563, 565, 288 P.2d 848 (1955).

Mr. Thrower must prove that had defense counsel objected it likely would have succeeded "When a defendant bases his ineffective assistance of counsel claim on trial counsel's failure to object, the defendant must show that the objection would likely have succeeded" State v. Gerdts, 136 Wn.App. 720, 727, 150 P.3d 627 (2007). It goes without saying that the sentences handed down in Cause Numbers 96-1-04362-8; 02-1-07204-2; 07-1-09146-3; 08-1-03176-1, were excessive sentences that the court lacked authority to impose, that alone by itself, the court had a duty to correct before sentencing Mr. Thrower. (Exhibits 1-5)

2) ACTING CHIEF JUDGE ERRED IN DENYING MOTION FOR RECONSIDERATION ONCE JURISDICTIONAL DEFECTIVE AND UNCONSTITUTIONALLY OBTAINED CONVICTIONS WERE MADE

MANIFEST.

What the Acting Chief Judge totally failed to consider is even more egregious. As this Court, the Superior Court, and the Court of Appeals have all used the term "nonexisting conviction" when referring to RCW 69.50.4013. When something is presented as real that actually does not exist, it is false. Mr. Thrower was sentenced in Washington State in 1993 for "simple possession" RCW 69.50.4013. (Case No. 93-1-02545-5 King County). The State of Washington used RCW 69.50.4013 to change two of Mr. Thrower's California convictions into VUCSA simple possessions. The State of Washington then proceeded to use these nonexisting convictions in plea negotiations in Cause Numbers 96-1-04362-8; 02-1-07204-2; 07-1-09146-3; 08-1-03176-1 King County. (Exhibits 1 through 5)

This Court's holding in State v. Blake deemed RCW 69.50.4013 as state and federally unconstitutional. (State and federally unlawful). It is and always has been a legal nullity, meaning legally nothing, false, "One of the bedrock principles of our democracy 'implicit in any concept of ordered liberty' is that the State may not use false evidence to obtain a criminal conviction. Napue v. Illinois, 360 U.S. 264, 269, 3 L.Ed.2d 1217, 79 S.Ct. 1173 (1959). Defense Counsel's failure to object to these unconstitutionally obtained convictions caused the sentencing court, along with the Court of Appeals to **place their judicial stamp on using false evidence to obtain a criminal conviction**. For the sake of argument, the State may take the position that RCW 69.50.4013 was not deemed unconstitutional until March 2021 many years after Mr. Thrower negotiated the plea agreements, so the State did not know it was

using false evidence in the negotiated plea agreements. This Court should not be persuaded by any position that RCW 69.50.4013 was ever lawful. Furthermore, since RCW 69.50.4013 has been made manifestly false by this Court's Blake decision, the state owed Mr. Thrower an objection under the 14th Amendment of the United States Constitution, and Article 1, Section3 of the Washington State Constitution. By defense counsel failing to object to the State usage of these convictions as Mr. Thrower's Criminal History, defense counsel allowed the State to forego its freestanding obligation, "the state violates a criminal defendant's right to due process of law when, although not soliciting false evidence, it allows false evidence to go uncorrected when it appears. "Alcorta v. Texas, 355 U.S. 28, 2 L.Ed.2d 9, 78 S.Ct. 103 (1957); Pyle v. Kansas317 U.S. 213, 87 L.ED. 214, 63 S.Ct. 177 (1943); Hayes v. Brown, 399 F.3d 972 (9th Cir 2005).

Mr. Thrower's question to this Court is, "is it effective assistance to allow your client to be sentenced with invalid, jurisdictionally defective, unconstitutionally obtained convictions ? Additionally, its clear that since 1993, the State of Washington has been erroneously sentencing Mr. Thrower using RCW 69.50.4013, but even at this very moment, Mr. Thrower's current incarceration is unlawful, because each prior conviction the State entered into the record on November 5, 2021, are excessive sentences the court lacked any jurisdiction to impose, as this Court made clear, ... "A constitutional court cannot acquire jurisdiction by agreement or stipulation. Either it has or has not jurisdiction. If it does not have jurisdiction, **any judgment entered is void ab initio and is, in legal effect, no judgement at all** ..."

Wesley v. Schneckloth, 55 Wn.2d 90, 93-94, 346 P.2d 658 (Wash. 1958). Just as the Superior Court and the Court of Appeals has failed to put a stop to this jurisdictional derailment, Mr. Thrower's defense counsel although acknowledging Mr. Thrower had done excessive sentences in the past, and the remaining 67 months the State was asking for, Mr. Thrower had served, he nevertheless chose not to object to this miscarriage of justice super train that continues to cause Mr. Thrower to pay for a ticket in a coin that the state cannot refund, as Mr. Thrower has completed the illegal erroneous sentences," Brown has met the terms of the agreed-upon bargain, and paid in a coin that the state cannot refund. Rescission of the contract is impossible under such circumstances; Brown cannot conceivably be returned to the status quo ante." Brown v. Poole, 377 F.3d 1155 (9th Cir 2003).

This Court has held "An excessive sentence based on an improper calculated offender score in a negotiated plea agreement will render a judgment and sentence facially invalid." In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 867, 50 P.3d 618 (2002). As for RCW 69.50.4013 being used in Mr. Thrower's current offender score albeit through the "Trojan Horse" method the Ninth Circuit has held, "a facially unconstitutional statute or policy is 'unconstitutional in every conceivable application, ...'" Foti v. City of Menlo Park, 146 F.3d 629, 635 (9th Cir. 1998), "under United States Supreme Court precedent, a sentencing court cannot consider an unconstitutionally obtained conviction for any purpose." United States v. Tucker, 404 U.S. 443, 448-49, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972). And as of January 17, 2023 The Ninth Circuit has held, "We also conclude that the imposition of an illgally excessive

sentence affects the fairness, integrity, or public reputation of judicial proceedings. As we have recognized in cases where illegal sentences increase a defendant's period of incarceration, it is a miscarriage of justice to give an illegal sentence." United States v. Schopp, 938 F.3d 1053, 1069 (9th Cir. 2019) (quoting United States v. Ameline, 409 F.3d 1073, 1081 (9th Cir. 2005) United States v. Lillard, 2023 U.S. App. LEXIS 968 January 17, 2023. (See Exhibits 1 through 5).

In closing, Mr. Thrower humbly implores this Court to liberally construe his Motion For Discretionary Review where rules and procedure are concern, as Mr. Thrower has at this point been abandoned by his appellate attorney.

F. CONCLUSION

For the foregoing reasons, Mr. Thrower humbly prays this Court grants his Motion For Discretionay Review, and in so doing, find that Mr. Thrower is entitled to relief as his current incarceration is unlawful, and remand with instructions to vacate, set aside, or resentence excluding all unconstitutional and miscarriage of justice sentences.

Pursuant to RAP 18.17(c)(11) this Motion For Discretionary Review contains 11 pages.

Executed this 20th day of March, 2023.

Respectfully submitted

Maurice Van Thrower
DOC# 709523 / H3 - A 18U
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

Represented by Counsel
David B. Koch
NIELSEN, KOCH, & GRANNIS, PLLC
2200 6th Avenue, Suite 1250
Seattle, WA 98121

I. DECLARATION

I, Maurice Van Thower, declare under penalty of perjury under the laws of the State of Washington, and the United States of America, I have reviewed the foregoing Motion For Discretionary Review, knows its contents and that they are true and correct.

Respectfully submitted

Maurice Van Thower, Pro se
DOC#709523 / H3 A18U
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

II. DECLARATION OF SERVICE BY MAIL

I, Maurice Van Thrower, declare that, on 20TH day of March, 2023, I deposited the foregoing, **Motion For Discretionary Review**, or a copy thereof, in the internal Legal Mail System at Stafford Creek Correction Center, Aberdeen, Washington, and made arrangments for postage, addressed to the following:

King County Prosecuting Attorney
Attn: Leesa Manion
King County Courthouse
516 Third Avenue, RM W554
Seattle, Washington 98104

The Court Of Appeals of the
State of Washington Division One
One Uniion Square
600 University Street
Seattle, Washington 98101-4170

Executed this 20TH day of March, 2023.

Maurice Van Thower

EXHIBIT 1

VUCSA OVER 21

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON)
Plaintiff,)
v.)
MAURICE V. THROWER)
Defendant.)

No. 96-1-04362-8 SEA

JUDGMENT AND SENTENCE

10952
12-06-96

COMMITMENT ISSUED NOV. 25 1996
COPY TO SENTENCING GUIDELINES COMMISSION NOV. 25 1996
PRESENTENCE STATEMENT & INFORMATION ATTACHED

I. HEARING

1.1 The defendant, the defendant's lawyer, RICHARD LEVIDOW, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 10-04-96 by plea of:

Count No.: I Crime: VUCSA VIII-DELIVERY OF COCAINE
RCW 69.50.401 A 1 I Crime Code 07319
Date of Crime 10-20-95 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

☐ Additional current offenses are attached in **Appendix A.**

SPECIAL VERDICT/FINDING(S):

(a) ☐ A special verdict/finding for being armed with a **Firearm** was rendered on Count(s): _____
(b) ☐ A special verdict/finding for being armed with a **Deadly Weapon** other than a **Firearm** was rendered on Count(s):
(c) ☐ A special verdict/finding was rendered that the defendant committed the crimes(s) with a **sexual motivation** in Count(s): _____
(d) ☐ A special verdict/finding was rendered for **Violation of the Uniform Controlled Substances Act** offense taking place ☐ in a school zone ☐ in a school ☐ on a school bus ☐ in a school bus route stop zone ☐ in a public park ☐ in public transit vehicle ☐ in a public transit stop shelter in Count(s): _____
(e) ☐ **Vehicular Homicide** ☐ Violent Offense (D.W.I. and/or reckless) or ☐ Nonviolent (disregard safety of others)
(f) ☐ Current offenses **encompassing** the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) VUCSA	06-02-89	ADULT		LOS ANGELES
(b) ROBB 2	06-02-89	ADULT		LOS ANGELES
(c) VUCSA	04-21-91	ADULT		LOS ANGELES
(d) VUCSA	07-23-93	ADULT	[redacted]	KING COUNTY

☐ Additional criminal history is attached in Appendix B.

☐ Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): _____

☐ One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	4	VIII			41 TO 54 MONTHS	10 YRS AND/OR $25,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

☐ Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____ _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State ☐ did ☐ did not recommend a similiar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

☐ The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

☐ Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.

☐ Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached Appendix E.

☐ Restitution to be determined at future hearing on (Date)_____ at _____ ___.m. ☐ Date to be set.

☐ Defendant waives presence at future restitution hearing(s).

Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of $100 if all crime(s) date prior to 6-6-96 and $500 if any crime date in the Judgment is after 6-5-96.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) [redacted], Court costs; ☒ Court costs are waived;

(b) ☐ $_____, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; ☒ Recoupment is waived (RCW 10.01.160);

(c) ☐ $ _____, Fine; ☐ $1,000, Fine for VUCSA; ☐ $2,000, Fine for subsequent VUCSA; ☒ VUCSA fine waived (RCW 69.50.430);

(d) ☐ $_____, King County Interlocal Drug Fund; ☒ Drug Fund payment is waived;

(e) ☐ $_____, State Crime Laboratory Fee; ☒ Laboratory fee waived (RCW 43.43.690);

(f) ☐ $_____, Incarceration costs; ☐ Incarceration costs waived (9.94A.145(2));

(g) ☐ $_____, Other cost for:_____.

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: $_____. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☐ Not less than $ _____ per month; ☒ On a schedule established by the defendant's Community Corrections Officer. ☐ :_____The.

Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

EXHIBIT 2

PRESENTENCING STATEMENT & INFORMATION ATTACHED

COMMITMENT ISSUED SEP 2 $ 2002

VUCSA OVI

FILED

02 SEP 20 PM 3:05

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

709523
9-24-02

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

Maurice Throver

Defendant,

No. 02-1-07204-2 SEA

JUDGMENT AND SENTENCE
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, A. Stanton, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:
2.1 CURRENT OFFENSE(S): The defendant was found guilty on 9/19/02 by plea of:

Count No.: 1 Crime: VUCSA (delivery of cocaine)
RCW 69.50.401(a)(1)(i) Crime Code: _____
Date of Crime: 8/6/02 Incident No. 02-350085

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[ ] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

(a) [ ] While armed with a firearm in count(s) _____ RCW 9.94A.310(3).
(b) [ ] While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.310(4).
(c) [ ] With a sexual motivation in count(s) _____ RCW 9.94A.127.
(d) [ ] A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
(e) [ ] Vehicular homicide [ ]Violent traffic offense [ ]DUI [ ] Reckless [ ]Disregard.
(f) [ ] Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.310(7).
(g) [ ] Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
(h) [ ] Domestic violence offense as defined in RCW 10.99.020 for count(s) _____.
(i) [ ] Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.400(1)(a).

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

_____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):
[ ] Criminal history is attached in Appendix B.
[ ] Prior convictions counted as one offense in determining the offender score (RCW 9.94A.360(5) are: _____
[ ] One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count	5	VII			41-54	10/25,000
Count						
Count						
Count						

[ ] Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:
[ ] Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State [ ] did [ ] did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.
[ ] The Court DISMISSES Count(s) _____.

EXHIBIT 3

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 07-1-09146-3 KNT
	)	
vs.	)	JUDGMENT AND SENTENCE,
	)	(FELONY) - APPENDIX B,
MAURICE V. THROWER	)	CRIMINAL HISTORY
	)	
Defendant,	)	
	)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
CONT SUBST VIOL-SECTION(A)	9/19/2002	ADULT	021072042	KING CO
CONT SUBST VIO A:MFG/DELVR/P	11/22/1996	ADULT	961043628	KING CO
CONT SUBST VIO A:MFG/DELVR/P	7/23/1993	ADULT	931025455	KING CO
POSSESS NARC CONTROL SUBSTANCE	4/21/1991	ADULT	TA11712	LA CALIF
ROBBERY 2	6/2/1989	ADULT	A651455	LA CALIF
POSSESS NARC CONTROL SUBSTANCE	6/2/1989	ADULT	A649744	LA CALIF

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 8/29/08

JUDGE, KING COUNTY SUPERIOR COURT

4.4 **CONFINEMENT OVER ONE YEAR:** Defendant is sentenced to a term of total confinement in the custody of the **Department of Corrections** as follows, commencing: [X] immediately; [ ](Date): ________________ by ____________.m.

60 months/days on count I ; _______months/days on count____; _______months/day on count______

_______months/days on count____; _______months/days on count____; _______months/day on count______

The above terms for counts _________________________ are consecutive / concurrent.

The above terms shall run [ ] CONSECUTIVE [X] CONCURRENT to cause No.(s) 08-1-03176-1 KNT

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to any previously imposed sentence not referred to in this order.

[ ] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special **WEAPON** finding(s) in section 2.1: ____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[ ] The enhancement term(s) for any special **WEAPON** findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The **TOTAL** of all terms imposed in this cause is 60 months.

Credit is given for [[illegible]] days served [X] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A505(6).

4.5 **NO CONTACT:** For the maximum term of 10 years, defendant shall have no contact with Great Bear Motel

4.6 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in **APPENDIX G.**
[ ] **HIV TESTING:** For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

4.7 (a) [ ] **COMMUNITY PLACEMENT** pursuant to RCW 9.94A.700, for **qualifying crimes committed before 7-1-2000,** is ordered for ________ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] **APPENDIX H** for Community Placement conditions is attached and incorporated herein.

(b) [ ] **COMMUNITY CUSTODY** pursuant to RCW 9.94.710 for any **SEX OFFENSE committed after 6-5-96 but before 7-1-2000,** is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. **APPENDIX H** for Community Custody Conditions and **APPENDIX J** for sex offender registration is attached and incorporated herein.

EXHIBIT 4

WORKING COPY

FAX HIV

FILED

08 SEP -2 AM 8:50

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

PRESENTENCING STATEMENT & INFORMATION ATTACHED

COMMITMENT ISSUED SEP 02 2008

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 08-1-03176-1 KNT
Vs.	)	**JUDGMENT AND SENTENCE FELONY**
MAURICE VAN THROWER Defendant.	)	

709923
9-19-08
DCC

I. HEARING

I.1 The defendant, the defendant's lawyer, JENNIER ATWOOD, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court **finds**:
2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 7/31/2008 by plea of:

Count No.: I Crime: RAPE IN THE THIRD DEGREE
RCW 9A.44.060(1)(A) Crime Code: 00764
Date of Crime: 10/4/2007 TO 10/5/2007 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[ ] Additional current offenses are attached in **Appendix A**

SPECIAL VERDICT or FINDING(S):

(a) [ ] While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
(b) [ ] While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
(c) [ ] With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
(d) [ ] A V.U.C.S.A. offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
(e) [ ] **Vehicular homicide** [ ]Violent traffic offense [ ]DUI [ ] Reckless [ ]Disregard.
(f) [ ] **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
(g) [ ] **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
(h) [ ] **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.
(i) [ ] Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S)**: Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): VUCSA- 07-1-09146-3

2.3 **CRIMINAL HISTORY**: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):
[X] Criminal history is attached in **Appendix B**.
[ ] One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	7	V	51 TO 60 MONTHS		51 TO 60 MONTHS	5 YRS AND/OR $10,000
Count						
Count						
Count						

[ ] Additional current offense sentencing data is attached in **Appendix C**.

2.5 **EXCEPTIONAL SENTENCE** (RCW 9.94A.535):
[ ] Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State [ ] did [ ] did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.
[ ] The Court DISMISSES Count(s) _____.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 08-1-03176-1 KNT
vs.	)	JUDGMENT AND SENTENCE, (FELONY) - APPENDIX B, CRIMINAL HISTORY
MAURICE VAN THROWER Defendant,	)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
CONT SUBST VIOL- SECTION (A)	9/19/2002	ADULT	021072042	KING CO
CONT SUBST VIO A: MFG/DELVR/P	11/22/1996	ADULT	961043628	KING CO
CONT SUBST VIO A: MFG/DELVR/P	7/23/1993	ADULT	931025455	KING CO
POSSESS NARC CONTROL SUBSTANCE	4/21/1991	ADULT	TA11712	LA CALIF
ROBBERY 2	6/2/1989	ADULT	A651455	LA CALIF
POSSESS NARC CONTROL SUBSTANCE	6/2/1989	ADULT	A649744	LA CALIF

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 8/29/08

JUDGE, KING COUNTY SUPERIOR COURT

4.4 The defendant, having been convicted of a FELONY SEX OFFENSE, is sentenced to the following:

(a) **DETERMINATE SENTENCE :** Defendant is sentenced to a term of confinement in the custody of the [ ] King County **Jail** [ ] King County **Work/Education Release** (subject to conditions of conduct ordered this date) [X] **Department of Corrections,** as follows, commencing: [X] immediately;
[ ] Date: _____ by _____ a.m. / p.m.

51 months/days on count I ; _____ months/days on count _____; _____ months/days on count ____;

_____ months/days on count _____; _____ months/days on count _____; _____ months/days on count ____;

_____ months/days on count _____; _____ months/days on count _____; _____ months/days on count ____.

ALTERNATIVE CONVERSION - RCW 9.94A.680 (LESS THAN ONE YEAR ONLY):
_____ days of total confinement are hereby converted to:
[ ] _____ days of partial confinement to be served subject to the requirements of the King County Jail.
[ ] _____ days/hours community restitution under the supervision of the Department of Corrections to be completed as follows:
[ ] on a schedule established by the defendant's Community Corrections Officer;
[ ] _____.
[ ] Alternative conversion was not used because: [ ] Defendant's criminal history, [ ] Defendant's failure to appear, [ ] Other: _____.

[ ] **COMMUNITY CUSTODY for FAILURE TO REGISTER AS A SEX OFFENDER under RCW 9A.44.130(11)(a) committed on or after 6-7-2006 as to Counts** _____**(regardless of length of confinement)** is ordered pursuant to RCW 9.94A.545(2) and RCW 9.94A.715 for the range of 36 to 48 months.

[ ] **FOR CONFINEMENT** LESS THAN ONE YEAR **(except for Failure to Register as a Sex Offender under RCW 9A.44.130(11)(a) committed on or after 6-7-06) as to Counts** _____**:** **COMMUNITY** [ ] **SUPERVISION,** for crimes committed before 7-1-2000, [ ] **CUSTODY,** for crimes committed on or after 7-1-2000, is ordered pursuant to RCW 9.94A.545 for a period of 12 months. The defendant shall report to the Department of Corrections within 72 hours of this date or of his/her release if now in custody; shall comply with all the rules, regulations and conditions of the Department for supervision of offenders (RCW 9.94A.720); shall comply with all affirmative acts required to monitor compliance; and shall otherwise comply with terms set forth in this sentence.
[ ] **APPENDIX ____: Additional Conditions** are attached and incorporated herein.

[ ] **COMMUNITY PLACEMENT (CONFINEMENT OVER ONE YEAR) as to Counts** _____**:** pursuant to RCW 9.94A.700, for **qualifying crimes committed before 6-6-1996,** is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 7-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.440 not otherwise described above.]
[ ] **APPENDIX H, Community Placement conditions,** is attached and incorporated herein.

[ ] **COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) as to Counts** _____**:** pursuant to RCW 9.94A.710 for any **SEX OFFENSE committed on or after 6-6-1996 but before 7-1-2000,** is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728 whichever is longer.
[ ] **APPENDIX H, Community Custody conditions,** is attached and incorporated herein.

EXHIBIT 5

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 12-1-04111-0 SEA
	)	
vs.	)	JUDGMENT AND SENTENCE,
	)	(FELONY) - APPENDIX B,
MAURICE VAN THROWER,	)	CRIMINAL HISTORY
	)	
Defendant.	)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
~~Robbery-2~~	~~6/2/1989~~	~~AF~~	~~A651455~~	~~Los Angeles Superior Court Compton CA~~
Controlled Substance Violatio	09/19/2002	AF	02-1-07204-2	King Superior Court WA
Controlled Substance Violatio	8/29/2008	AF	07-1-09146-3	King Superior Court WA
Rape-Third Degree	08/29/2008	AF	08-1-03176-1	King Superior Court WA
Controlled Substance Violatio	07/23/1993	AF	96-1-04362-8	King Superior Court WA

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: NOV 05 2021

JUDGE, KING COUNTY SUPERIOR COURT
Melinda J. Young

THROWER'S EXCESSIVE SENTENCES PURSUANT TO RCW 69.50.4013
Offender Score / Seriousness Level / Total Standard Range

1996 Case Number KING Co. 96-1-04362-8
4 VIII 41 to 54 Months

2002 Cause Number KING Co. 02-1-7204-2
5 VII 41 to 54 Months

2007 Cause Number KING Co. 07-1-0914603
6 II 60 to 120 Months

2008 Cause Number KING Co. 08-1-03176-1
7 V 51 to 60 Months

CRIMINAL HISTORY RELIED ON FOR CAUSE No. 96-1-04362-8 SEA
(a) VUCSA 06-02-89 Adult Los Angeles
(b) ROBB 2° 06-02-89 Adult Los Angeles
(c) VUCSA 04-21-91 Adult Los Angeles
(d) VUCSA 07-23-93 Adult 931025455 King County

CRIMINAL HISTORY RELIED ON FOR CAUSE No. 02-1-07204-2 SEA
(a) VUCSA 06-02-89 Adult Los Angeles
(b) ROBB 2° 06-02-89 Adult Los Angeles
(c) VUCSA 04-21-91 Adult Los Angeles
(d) VUCSA 07-23-93 Adult 931025455 King County
(e) VUCSA (Delivery Cocain) 11-22-1996 961043628 King County

CRIMINAL HISTORY RELIED ON FOR CAUSE No. 07-1-09146-3 KNT
(a) VUCSA 06-02-89 Adult Los Angeles
(b) ROBB 2° 06-02-89 Adult Los Angeles
(c) VUCSA 04-21-91 Adult Los Angeles
(d) VUCSA 07-23-93 931025455 King County
(e) VUCSA (Delivery Cocain) 11-22-96 96-1-04362-8 King County
(f) VUCSA (Delivery Cocain) 09-19-02 02-1-07204-1 King County

CRIMINAL HISTORY RELIED ON FOR CAUSE No. 08-1-03176-1 KNT
(a) VUCSA 06-02-89 Adult Los Angeles
(b) ROBB 2° 06-02-89 Adult Los Angeles
(c) VUCSA 04-21-91 Adult Los Angeles
(d) VUCSA 07-23-93 Adult 931025455 King County
(e) VUCSA (Delivery Cocain) 11-22-96 96-1-04362-8 King County
(f) VUCSA (Delivery Cocain) 09-19-02 02-1-07204-2 King County
(g) VUCSA (Delivery Cocain) 08-29-08 07-1-09146-3 King County

THE ACTUAL OFFENDER SCORE FOR CAUSE No. 96-1-04362-8 SEA
0 VIII 21 to 27 Months

THE ACTUAL OFFENDER SCORE FOR CAUSE No. 02-1-07204-2 SEA
1 VII 21 to 27 Months

THE ACTUAL OFFENDER SCORE FOR CAUSE No. 07-1-09146-3 KNT
2 II 12+ to 20 Months

THE ACTUAL OFFENDER SCORE FOR CAUSE No. 08-1-03176-1 KNT
3 V 15 to 20 Months

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MAURICE VAN THROWER, Appellant.	No. 83357-0-I DIVISION ONE UNPUBLISHED OPINION

SMITH, A.C.J. — Maurice Van Thrower was convicted of two counts of child molestation in 2013 and sentenced to concurrent terms of 180 months to life. The court ordered that he have no contact with his victim. Following our Supreme Court's opinion in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), Thrower sought resentencing. In the interim, however, Thrower had reached out to several family members of the victim by letter. At resentencing, the court prohibited Thrower from having contact not only with his victim, but also with any member of the victim's family, specifically naming six individuals. Thrower appeals, contending that the no-contact order prohibitions are not sufficiently crime-related. He also raises several issues in a statement of additional grounds concerning the trial court's treatment of his CrR 7.5 motion, ineffective assistance of counsel, and the characterization of his new sentence. We conclude that the no-contact order prohibitions are sufficiently crime-related and that none of the

issues raised in the statement of additional grounds warrant reversal. Therefore, we affirm.

FACTS

A jury convicted Maurice Van Thrower of two counts of first degree child molestation in 2013. Thrower timely appealed and this court affirmed those convictions. State v. Thrower, No. 69950-4-I, slip op. (Wash. Ct. App. June 30, 2014) (unpublished) https://www.courts.wa.gov/opinions/pdf/699504.pdf.

In April 2021, following our Supreme Court's opinion in Blake, 197 Wn.2d 170, Thrower sought a resentencing hearing because his prior simple possession convictions had been included in his offender score. Thrower also challenged the use of a prior felony conviction from California in calculating his offender score. At resentencing, Thrower attempted to raise additional issues related to his original trial, including an earlier attempt to move for a new trial under CrR 7.5. The trial court declined to address the CrR 7.5 motion, as the hearing only concerned resentencing, not a review of Thrower's conviction. Instead, the court transferred the motion to this court under CrR 7.8 as a personal restraint petition.

The State agreed that Thrower's offender score was impacted by Blake. Three simple possession convictions were removed—two from California and one from Washington. The State did not attempt to prove comparability of the California felony conviction. The parties agreed that Thrower's new offender score was nine, leaving the standard range unchanged at 149 to 198 months.

Though the State asked for the same range to be imposed, it also requested that the court include, as a condition of the judgment and sentence, a no-contact order prohibiting contact with "any member" of the victim, T.W.'s, family. The State noted that since the original sentencing in 2013, Thrower had "continue[d] to victimize" the family by sending letters to various family members, offering money or a "potential financial benefit for coming back and recanting." Defense counsel opposed the condition as overbroad and not reasonably crime-related. Thrower addressed the letters at the resentencing hearing. He claimed that his trial attorney failed to interview several of the family members and that he was merely trying to investigate and create a record to prove his innocence.

After reviewing the letters, the court reimposed a sexual assault protection order protecting the victim. It also imposed the State's proposed order prohibiting Thrower from contacting "any member of T.W.'s family." At defense counsel's suggestion, the court listed the names of six family members that Thrower was specifically not to contact, "so that there [wasn't] any question about [whom the order protected]."

Thrower appeals.

ANALYSIS

No-Contact Provision

On appeal, Thrower asserts that the no-contact order prohibition against contacting "any member of T.W.'s family" is not sufficiently crime-related as required by statute. He also contends that because the six individuals named in the no-contact order are neither victims nor witnesses, that prohibition is also not

adequately crime-related. We conclude that both prohibitions are reasonably crime-related.

RCW 9.94A.505(9)[1] authorizes trial courts to impose "crime-related prohibitions," such as no-contact orders, as conditions of a sentence. State v. McGuire, 12 Wn. App. 2d 88, 94-95, 456 P.3d 1193 (2020). "Crime-related prohibitions" are orders directly related to "the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10). They "may include orders prohibiting contact with victims or witnesses for the statutory maximum term." State v. Armendariz, 160 Wn.2d 106, 108, 156 P.3d 201 (2007). However, "[n]o-contact orders are not limited to the victims of the crime." State v. Navarro, 188 Wn. App. 550, 556, 354 P.3d 22 (2015).

" '[T]his court reviews sentencing conditions for abuse of discretion.' " State v. Nguyen, 191 Wn.2d 671, 683, 425 P.3d 847 (2018) (quoting State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993)).[2] Sentencing conditions are usually upheld if they are reasonably crime-related. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). Thus, a court does not abuse its discretion if a

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[1] The legislature amended this statute in 2019, renumbering the relevant subsection. LAWS OF 2019, ch. 191, § 3. Though the parties cite the old subsection numbering, the text of the subsection has not changed, and we cite to the current version of the statute.

[2] Citing Armendariz, Thrower asserts that whether a court had authority to issue a no-contact order as a sentencing condition is reviewed de novo. 160 Wn.2d at 110. But the holding of Armendariz undermines his argument. In Armendariz, our Supreme Court concluded that "[t]he plain language of the SRA authorizes trial courts to impose crime-related prohibitions, *including no-contact orders*, under the independent authority of RCW 9.94A.505(8) [now renumbered as 9.94A.505(9)]," and therefore, that the trial court did not exceed its authority in imposing a no-contact order as a crime-related prohibition. 160 Wn.2d at 112-14 (emphasis added).

"reasonably related" between the crime of conviction and the sentencing condition exists. State v. Irwin, 191 Wn. App. 644, 658-59, 364 P.3d 830 (2015) (quoting State v. Kinzle, 181 Wn. App. 774, 785, 326 P.3d 870 (2014)). And the prohibited conduct need not be identical to the crime of conviction, but there must be "some basis for the connection." Irwin, 191 Wn. App. at 657.

For example, in Warren, the defendant, who had sexually abused his two stepdaughters, was prohibited from having contact with his wife, the mother of his victims. 165 Wn.2d at 23. Though the defendant's wife was not a victim of his crimes, our Supreme Court affirmed the no-contact order because it was "reasonably related" to the crime. Warren, 165 Wn.2d at 34. The Court explained that the wife "is the mother of the two child victims of sexual abuse for which [the defendant] was convicted; [the defendant] attempted to induce her not to cooperate in the prosecution of the crime; and [the defendant's wife] testified against [the defendant] resulting in his conviction of the crime." Warren, 165 Wn.2d at 34.

Warren supports upholding the no-contact order in the present case. Here, letters between Thrower and various members of T.W.'s family were introduced into evidence at resentencing.[3] The letters revealed that Thrower had

[3] Thrower maintained that he sent the letters because his counsel failed to interview certain family members that could help prove his innocence. Thrower offered the following explanation:

> First, let me address what I was truly attempting to do with the letters. In the appeal process, the Court told me that because [my attorney] didn't interview the grandma, the uncle, and the uncle's baby's mom and the other cousin to that I couldn't—it was mute [sic]. I couldn't do anything because I didn't have what those

offered financial incentives to members of the family in exchange for T.W. and her mother recanting their original trial testimony, similar to the defendant in Warren.[4] Addressing the letters, the court stated

> [a]nd in taking a look at the letters . . . it is clear to me that you are communicating with [T.W's] mother in order to manipulate her and to try to obtain things for which you are not entitled to do through this process. So I am going to order no contact with [T.W's] mother, her grandmother and her family as a condition of the sentence. . . . Whether or not you are seeking to have testimony for what you believe to be your evidentiary thing is going to be a separate issue with that, but the way in which you're communicating with them I find to be significantly different than that.

Given Thrower's persistent attempts to contact T.W. via third parties, it was reasonable for the resentencing court to include in the no-contact order other close familial parties. Doing so prevents Thrower from harassing or revictimizing T.W. and her family and therefore, is crime-related.

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individuals would have said in my appeal. So what I'm attempting to do, since I'm pro se, I don't have any money, I can't get a private investigator, I wrote the Court, I asked the Court to have [my attorney interview the family members]. I've been very diligent in trying to show that I am innocent. . . . I didn't offer no one any money. That is just money that I feel that I am owed for being wrongfully convicted.

[4] For example, in one of the letters, Thrower wrote,

> Its time for the truth to come to the forefront and allow me to hold the Detective and Prosecutor accountable for their over zealous [sic] prosecution. . . . Plus I need that purse the State of Washington about to cough up for wrongfully convicting me. So yes Jen go to your daughter, or let her read this letter and she will let you know that she really didn't want this to happen to me. . . . I'm innocent!!! And the truth is worth a lot of money at this point (Hundred of Thousands), and I'm willing to share!!

Statement of Additional Grounds

In a statement of additional grounds, Thrower argues that the court erred in transferring his CrR 7.5 motion for a new trial to this court as a personal restraint petition, that he received ineffective assistance from his resentencing counsel, that the court orally imposed a determinate sentence, and, in the alternative, that the Indeterminate Sentencing Review Board is unconstitutional. We address each argument in turn.

1. CrR 7.5 and CrR 7.8

Thrower contends that the court violated his due process rights by transferring his CrR 7.5 motion for new trial to this court to consider as a personal restraint petition. We disagree.

In general, a person seeking to challenge their conviction or sentence has 30 days to initiate a direct appeal. RAP 5.2(a). "[A]ny form of postconviction relief other than a direct appeal" is a "collateral attack." RCW 10.73.090(2). Most collateral attacks must be brought within "one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." RCW 10.73.090(1). Collateral attacks filed in superior court are governed by CrR 7.8. State v. Molnar, 198 Wn.2d 500, 508, 497 P.3d 858 (2021). CrR 7.8(c)(2) requires the trial court to transfer untimely motions to this court. State v. Smith, 144 Wn. App. 860, 863, 184 P.3d 666 (2008). "[I]f the superior court determines that the collateral attack is untimely, then the court must transfer it to the Court of Appeals without reaching the merits." Molnar, 198 Wn.2d at 509. We review a trial court's ruling on a CrR 7.8

motion for an abuse of discretion. State v. Robinson, 193 Wn. App. 215, 217, 374 P.3d 175 (2016).

Here, Thrower's CrR 7.5 motion for new trial is clearly a collateral attack. At the close of his original trial, Thrower attempted to file a CrR 7.4 motion for "arrest of judgment," that is, a motion seeking to vacate the sentence. But that motion was not filed because his attorney believed it was frivolous. And when Thrower brought up counsel's failure to file the motion at his first sentencing, the court agreed with his attorney that the motion was frivolous. At resentencing, Thrower tried to move under CrR 7.5 for a new trial on the basis that the original sentencing court erred in not addressing his motion for arrest of judgment. The resentencing court declined to entertain the motion, stating that the hearing was only for "resentencing but not a review of [Thrower's] conviction." Accordingly, the court transferred Thrower's motion to this court as a personal restraint petition pursuant to CrR 7.8(c)(2). Under this procedure, a petitioner's opportunity to be heard is not terminated—it is simply transferred to this court. Because the court correctly followed the transfer procedure under CrR 7.8, we conclude it did not abuse its discretion. And since Thrower's personal restraint petition is currently before this court, we decline to reach the merits of his CrR 7.5 motion.

2. Ineffective Assistance of Counsel

Thrower contends that his defense counsel was ineffective by not objecting to the State using prior convictions, now invalidated by Blake, at resentencing. But contrary to Thrower's contention, the State acknowledged that

Thrower's criminal history had been affected by Blake and agreed that his offender score should be adjusted accordingly. We conclude that counsel was not ineffective.

The Sixth Amendment to the United States Constitution and Article I, Section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. State v. Estes, 188 Wn.2d 450, 457, 395 P.3d 1045 (2017). Washington has adopted the two-pronged test set out in Strickland v. Washington for evaluating whether a defendant had constitutionally sufficient representation. 466 U.S. 668, 80 L. Ed. 2d 674 (1984); State v. Cienfuegos, 144 Wn.2d 222, 226, 25 P.3d 1011 (2001). Under Strickland, the defendant must show both (1) deficient performance, and (2) resulting prejudice to prevail on an ineffective assistance claim. 466 U.S. at 687; State v. Jones, 183 Wn.2d 327, 339, 352 P.3d 776 (2015).

Counsel's performance is deficient if it falls "below an objective standard or reasonableness based on consideration of all the circumstances." State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Prejudice exists if there is a reasonable probability that "but for counsel's deficient performance, the outcome of the proceedings would have been different." State v. Kyllo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). "The defendant must affirmatively prove prejudice and show more than a 'conceivable effect on the outcome' to prevail." Estes, 188 Wn.2d at 458 (some internal quotation marks omitted) (quoting State v. Crawford, 159 Wn.2d 86, 99, 147 P.3d 1288 (2006)). There is a strong presumption that counsel's representation was reasonable. Kyllo, 166 Wn.2d at

862. Moreover, performance is not deficient if counsel's conduct qualifies as a legitimate trial strategy or tactic. Kyllo, 166 Wn.2d at 863. We review ineffective assistance of counsel claims de novo. Jones, 183 Wn.2d at 338-39.

Here, pursuant to Blake, Thrower's three simple drug possession convictions were removed and his offender score was recalculated to nine. 197 Wn.2d 170. Both parties agreed that this was the correct score. The State did not attempt to include Thrower's California felony conviction through a comparability analysis. Though Thrower challenges his counsel's failure to object to the simple possession convictions and California felony convictions being included as part of his offender score calculus, those convictions were not included. Accordingly, there was nothing for Thrower's counsel to object to and his counsel was not ineffective.

3. Determinate Sentence

Thrower asserts that at resentencing, the court orally stated a different sentence than the one contained in the judgment and sentence. He claims that, contrary to the judgment and sentence, the court imposed a determinate sentence of 180 months rather than an indeterminate sentence with a range of 180 months to life. We are unconvinced.

"Washington is a written order state." State v. Huckins, 5 Wn. App. 2d 457, 469, 426 P.3d 797 (2018). " '[A] trial court's oral statements are no more than a verbal expression of [its] informal opinion at that time . . . necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned.' " Huckins, 5 Wn. App. 2d at 469-70 (some internal

quotation marks omitted) (quoting State v. Dailey, 93 Wn.2d 454, 458-59, 610 P.2d 357 (1980)).

Here, the resentencing court did not orally sentence Thrower to a determinate sentence. The court stated, "I'm going to sentence you to the same thing that Judge Linde [the original sentencing judge] did. I think Judge Linde was in the best position to truly evaluate the case and sentence you to 180 months on each count." Though the court did not explicitly state that it was imposing a maximum term, it stated that it was imposing the same sentence as before—an indeterminate sentence—and the judgment and sentence reflected this. The court did not err.

4. Indeterminate Sentence and ISRB

As an alternative argument, Thrower also challenges the imposition of his indeterminate sentence. He contends that RCW 9.94A.507 establishes the standard range for his crime and is in tension with RCW 9A.20.021(1)(a), which allows for "a term of life imprisonment" for a class A felony. He also claims that the Indeterminate Sentencing Review Board (ISRB) is unconstitutional. We disagree on both points.

i. Indeterminate Sentence

RCW 9.94A.507 governs the sentences of certain sex offenders. Offenders subject to RCW 9.94A.507 are sentenced to indeterminate sentences within the mandatory minimum sentence and the statutory maximum sentence for the crime. RCW 9.94A.507(3)(a)-(b). RCW 9A.20.021(1) provides the maximum sentences for crimes and reads, in pertinent part:

> Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:
>
> (a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine.

Washington courts have consistently held that the "statutory maximum" means the maximum sentence under RCW 9A.20.021 and not the high end of the standard range under the Sentencing Reform Act of 1981 (SRA), ch. 9A.94 RCW. In re Pers. Restraint of Sargent, 20 Wn. App. 2d 186, 195, 499 P.3d 241 (2021); see, e.g., State v. Bobenhouse, 143 Wn. App. 315, 331, 177 P.3d 209 (2008) (statutory maximum for first degree child rape is life) (citing RCW 9A.20.021); State v. Adams, 138 Wn. App. 36, 51, 155 P.3d 989 (2007) (statutory maximum for class A felony is life imprisonment) (citing RCW 9A.20.021). The SRA itself acknowledges RCW 9A.20.021. RCW 9.94A.506(3) ("The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.")

To the extent Thrower asserts that his sentence violates due process, he does not cogently state how his rights were violated. Therefore, we only address whether the court correctly sentenced him under the statutory scheme.

Thrower was convicted of two counts of child molestation in the first degree, which is a class A felony that carries a maximum term of life in prison. RCW 9A.44.083. Under these parameters, the court correctly sentenced Thrower to a minimum term of 180 months on each count with a mandatory

maximum term of life in prison. Thrower's assertion that the two statutes impermissibly conflict does not logically follow from the text of the SRA. In fact, the statutes work in tandem: RCW 9.94A.507 sets forth the applicable range under the SRA and RCW 9A.20.021 provides the sentence. We conclude that the court did not err.

ii. ISRB

Thrower contends that the ISRB is unconstitutional for multiple reasons. He first alleges that "without the courts [sic] authority[,] the (ISRB) gains authority to override the judge's sentence of the individual," "in stark contrast to the Constitution of the United States." He also contends that RCW 9.95.011(2)(a), which governs minimum terms, runs afoul to the United States Supreme Court's holding in United States v. Haymond, 139 S. Ct. 2369, 204 L. Ed. 2d 897 (2019).

Finally, he claims that the ISRB's authority unconstitutionally "supersedes the actual sentence handed down by the judge without a lawyer, judge or jury, contrary to the well established Fifth and Sixth Amendments." (Underlining omitted.) Therefore, he contends that "to sentence any individual under the ISRB as applied is unconstitutional."

Sentencing Authority: Under RCW 9.94A.507(5), "[w]hen a court sentences a person to the custody of the department [of corrections]. . . the court shall, in addition to other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the [ISRB] for any period of time the person is released from total confinement before the expiration of the maximum sentence."

Thrower contends that Third Engrossed Substitute Senate Bill (ESSB) 6151, 57th Leg., Reg. Sess. (Wash. 2001), which revised certain provisions relating to sex offender sentencing, gives the ISRB "authority to override the judge's sentence of the individual" under RCW 9.94A.507(5). Specifically, he takes issue with the following excerpts from the Final Bill Report on Third ESSB 6151, 57th Leg., Reg. Sess. (Wash. 2001):

> The ISRB decides whether to release the person to community custody or retain the person in prison.

And,

> The ISRB must release the offender unless he or she is likelier than not to commit a predatory sex offense.

FINAL B. REP. ON THIRD SUBSTITUTE S.B. 6151, at 3.

But the Final Bill Report merely explains how the ISRB functions in relation to RCW 9.94A.507. And a plain reading of RCW 9.94A.507(5) supports this conclusion. Under RCW 9.94A.507(5), the *court* sentences a person, not the ISRB or Department of Corrections. And under the statute, the court sentences individuals to community custody under the supervision of the ISRB. RCW 9.94A.507(5). The individual and the ISRB are still bound by the maximum sentence imposed by the court. RCW 9.94A.507(5). The ISRB does not "override" the sentencing judge's authority as Thrower contends.

RCW 9.95.011(2)(a): Thrower takes issue with the following language from RCW 9.95.011(2)(a): "If the [ISRB] does not release the person, it shall set a new minimum term not to exceed an additional five years. The [ISRB] shall review the person again not less than ninety days prior to the expiration of the

new minimum term." He asserts that this language is "egregous [sic] when looking at the holding in Haymond," in which the Court noted that "a jury must find any facts that trigger a new mandatory minimum prison term." 139 S. Ct. at 2380.

RAP 3.1 provides that "[o]nly an aggrieved party may seek review by the appellate court." "While RAP 3.1 does not itself define the term 'aggrieved,' Washington courts have long held that '[f]or a party to be aggrieved, the decision must adversely affect that party's property or pecuniary rights, or a personal right, or impose on a party a burden or obligation.' " Randy Reynolds & Assocs., Inc. v. Harmon, 193 Wn.2d 143, 150, 437 P.3d 677 (2019) (quoting In re the Matter of the Parentage of X.T.L., No. 31335-2-III, slip op. at 17 (Wash. Ct. App. Aug. 19, 2014) (unpublished) https://www.courts.wa.gov/opinions/pdf/313352.unp.pdf). Thrower does not contend that he has been subjected to the procedure described in RCW 9.95.011(2)(a) and we therefore decline to issue an advisory opinion.

Fifth and Sixth Amendments: The Fifth Amendment provides for a grand jury in capital crimes, protects against double jeopardy and self-incrimination, and includes due process and takings clauses. U.S. CONST., art. V. The Sixth Amendment protects the right to a speedy and public trial by an impartial jury. U.S. CONST., art. VI.

We first note that although Thrower challenges the ISRB's constitutionality under the Fifth Amendment, he does not specify which provision the ISRB violates. "Passing treatment of an issue or lack of reasoned argument is

insufficient to merit judicial consideration." Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996). And we will not consider an inadequately briefed argument. Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011). Accordingly, we decline to consider Thrower's Fifth Amendment argument.

The constitutionality of the ISRB under the Sixth Amendment, however, is settled law. The United States Supreme Court considered the constitutionality of Washington's indeterminate sentencing scheme in Blakely v. Washington and concluded that it did not run afoul with the Sixth Amendment. 542 U.S. 296, 308-09, 159 L. Ed. 2d 403 (2004).

Thrower also asserts that "[o]nly a jury, acting on proof beyond a reasonable doubt, may take a person's liberty" and therefore, "to sentence any individual under the ISRB as applied is unconstitutional." To the extent that Thrower argues that only juries may impose sentences, he is mistaken. The legislature has the power to define sentences statutorily, and it is traditionally the court's power to decide the appropriate sentence from within those restrictions. State v. Ammons, 105 Wn.2d 175, 180, 713 P.2d 719 (1986). The ISRB is a sentencing scheme created by the legislature. And here, Thrower was *convicted* by a jury. Contrary to Thrower's assertion, the ISRB is the mechanism by which individuals with indeterminate sentences, like Thrower, are released earlier than their court-imposed maximum sentence. See In re Pers. Restraint of Dodge, 198 Wn.2d 826, 829, 502 P.3d 349 (2022) (explaining statute requires ISRB to

employ a presumption of release). Thrower's argument fails and we decline to conclude that the ISRB is unconstitutional.

We affirm.

Smith, A.C.J.

WE CONCUR:

Mann, J.

FILED
3/8/2023
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. MAURICE VAN THROWER, Appellant.	No. 83357-0-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Maurice Thrower has moved for reconsideration of the opinion filed on February 13, 2023. The panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Smith, A.C.J.

office used to use that does document that they were provided to Mr. Jordan in August of 2012, so just to make that record.

THE COURT: Okay.

MS. PETERSEN: I am handing forward certified copies of Mr. Thrower's Judgment & Sentence under Cause No. 2 -- I'm sorry, 02-1-07204-2, so his Judgment & Sentence, his Statement of Defendant on Plea of Guilty for that case. I don't have a preference as to how these exhibits -- these items are filed or marked.

THE COURT: All right. And I think -- why don't we, just to be consistent with everything else, mark them as post trial exhibits, and we'll do one for each certified copy.

MR. ADAIR: And, Your Honor, Ms. Petersen is correct. She did mention to me that she had certified copies of the King County matters. Again, as this was a trial, typically, it's my practice -- again, I was not the trial attorney, but I would expect that the prior convictions would be contested, and I looked in what I guess ECR, what is now the portal, court website. I did not see that anything had actually been filed at the time, and I did not see that anything had been filed in preparation for this. So when I was preparing my presentence report, I was just simply

noting that they had not appeared to have been filed or provided. But, certainly, Ms. Petersen did indicate that she had the King County matters that were certified. And, quite frankly, I was not really believing that the State would not be able to provide the King County ones. It really had to do with the California convictions.

THE COURT: Of course. And, of course, Mr. Adair, you're entitled to firm all of that up.

MS. PETERSEN: Absolutely. And I just wanted to make it clear that I wasn't hiding -- anyway, I think we're fine, Mr. Adair --

THE COURT: Yes.

MS. PETERSEN: -- and I have been communicating, and I just wanted to make the record.

THE COURT: Okay.

MS. PETERSEN: And, again, I did not provide them at the original trial hearing because defense counsel acknowledged and agreed to the State's calculated offender score at the time.

THE CLERK: State's Post Trial 3 and 4 marked for identification.

THE COURT: Okay.

MS. PETERSEN: And then I'm also handing forward the Judgment & Sentence and Order on Stipulated

Fact Finding under Cause No. 07-1-09146-3, Kent designation, which is a conviction for VUCSA, delivery of cocaine.

MR. ADAIR: I'll just make the same record as to each of those, the four certified copies that she's handing up.

THE COURT: Okay. All right. And I am going to admit them as post trial exhibits.

THE CLERK: Post Trial Exhibits 5 and 6.

THE COURT: Okay. Thank you.

MS. PETERSEN: And I am also handing forward Judgment & Sentence and Statement of Defendant on Plea of Guilty under King County Case No. 08-1-03176-1, Kent designation, which is a conviction for rape in the third degree.

THE CLERK: State's Post Trial Exhibits 7 and 8 are marked for identification.

THE COURT: Thank you. And 7 and 8 will be admitted as well.

MS. PETERSEN: And then finally Cause No. 96 -- felony Judgment & Sentence as well as Statement of Defendant on Plea of Guilty under King County Case No. 96-1-043628, Seattle designation, which reflects the conviction for VUCSA, delivery of cocaine.

THE CLERK: State's Post Trial Exhibits 9 and

10 are marked for identification.

THE COURT: All right. And absent further argument from Defense, 9 and 10 will be admitted.

MS. PETERSEN: And, finally, just while I'm remembering things to hand up to the Court, there is one agreed motion vacating and dismissing the only Washington state conviction that Mr. Thrower had that is affected by *State vs. Blake*.

THE COURT: Okay.

MR. ADAIR: And, Your Honor, I've reviewed that, and I have signed off in agreement of the proposed order.

THE COURT: Okay. And that is Cause No. 93-1-02545-5. It is a VUCSA possession, which is no longer a valid conviction pursuant to *State vs. Blake*, and I am going to sign the order vacating that conviction.

MS. PETERSEN: May I proceed with the -- should we proceed with resentencing, or is there anything else we need to --

THE COURT: Well, the question I have is about the California robbery.

MS. PETERSEN: So the State is --

THE COURT: Okay.

MS. PETERSEN: After consulting with our

think the Court has the jurisdiction over those individuals to be included with this no-contact order. I certainly am aware that the Court can impose the lifetime no-contact order with the named victim, and we're not opposing that.

Again, with the letters, I think what's clear in what was -- in what Mr. Thrower had written is, again, just his impassioned belief that he was wrongly convicted. He's not intending to try to retraumatize any individual, but just state his own belief that a wrong had been committed against him and his belief that perhaps that that should be brought to light.

With regards to the appropriateness of the low-end recommendation, as I indicated in my presentence report, I think, you know, what happens with the *Blake*, while it's -- it can result in sort of an immediacy for an individual who is either serving time in prison on an actual VUCSA possession charge or had their sentence elevated because of multiple possession charges, what it doesn't do is allow for any way to go back in time and sort of fix what had happened in the past. And again, what I indicated in the presentence report is that he had been sentenced to prison in the past for what would be effectively counted on multiple years which would now be a possible sentence. So he's served

years of his life in prison for which he can never get back and for which there is no way for the Court to give him any kind of relief for that, for what has happened to him in the past and numbers of years of his life that he spent locked up.

The only way that the Court can give any kind of acknowledgment to the fact that mistakenly he had served in excess of how much time he can is by imposing the low end of the standard range, essentially acknowledge the fact that the years that the State is asking for has actually already been served. So I think that that's largely the basis that I believe the Court should be following the defense recommendation of the low end of the standard range.

I don't have anything further to add on the offender score that's not already been discussed. So with that, I will let Mr. Thrower make his presentation to the Court.

THE COURT: All right. And I am happy to hear from you now, Mr. Thrower.

THE DEFENDANT: Do I have to stand up?

THE COURT: It's up to you.

THE DEFENDANT: Your Honor, first, let me address these --

THE COURT: You can keep your mask up. Thank

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. MAURICE VAN THROWER, Defendant,	No. 93-1-02545-5 SEA AGREED MOTION AND ORDER VACATING AND DISMISSING JUDGMENT AND SENTENCE FOR POSSESSION-ONLY OFFENSES PURSUANT TO STATE V. BLAKE. CODE: ORVCD [Clerk's Action Required]

MOTION

Defendant, represented by undersigned counsel, and the State of Washington, through the undersigned DPA, jointly move this court for an order vacating and dismissing with prejudice the judgment and sentence previously entered by the court in this cause against defendant for VUCSA simple possession. Because all of Defendant's convictions under this cause number are for VUCSA simple possession, defendant is also entitled to a refund of any legal financial obligations, fees, fines, costs, charges, collection costs, assessments, or interest on LFOs ("LFOs") paid by the defendant, and cancellation of any LFOs remaining due. This motion is brought under the authority of CrR 7.8; *State v. Blake*, 197 Wn. 2d 170, 174, 481 P.3d 521, 524 (2021); and *Nelson v. Colorado*, 137 S. Ct. 1249, 1252, 197 L. Ed. 2d 611 (2017). Following vacation, the State will not file further charges based on the operative Information under which the defendant was convicted in this cause number.

ORDER

THIS MATTER having come before the undersigned judge through the parties' agreed CrR 7.8 motion to vacate, the court finds that (1) all conviction(s) in the judgment and sentence previously entered in this cause number are limited to VUCSA simple possession offense(s); (2) these conviction(s) are unconstitutional based on *Blake*; (3) the previous judgment and sentence

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Prosecuting Attorney
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516 Third Avenue
Seattle, Washington 98104

is now void pursuant to *Blake*; (4) the requirements of CrR 7.8 are satisfied under the circumstances of this case; and (5) the defendant is entitled to a refund of any LFOs previously paid in connection with this cause number as set forth below. As a result of these findings, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

VACATION. The judgment and sentence previously entered by the court in this cause number is vacated under CrR 7.8 and this case is dismissed with prejudice. The conviction(s) for VUCSA simple possession reflected in this cause number shall be considered *void ab initio*, which means that defendant may truthfully deny conviction for all crime(s) in the judgment and sentence previously entered in this cause number.

DEPARTMENT OF CORRECTIONS. The Department of Corrections is ordered to terminate any supervision or community custody on the above cause number and quash any active DOC warrants that arise solely from the conviction(s) vacated by this order.

LEGAL FINANCIAL OBLIGATIONS. *All* counts from the judgment and sentence previously entered in this cause number were for violations of RCW 69.50.4013(1) (or previous codifications of this statute) that have been vacated by this order and no other counts remain. As part of the vacation process, per *Nelson*, plaintiff State of Washington is obligated under due process to refund to the defendant all legal financial obligations, fees, fines, costs, charges, collections costs, assessments, or interest on the LFO principle actually paid by defendant that arise solely from the conviction(s) vacated by this order ("LFO Amount"). The clerk shall initiate a refund of the LFO Amount to defendant on behalf of plaintiff State of Washington out of funds made available by the State of Washington, or if such funds are not available, the clerk shall certify the LFO Amount owing to defendant for direct payment by the State of Washington. The Clerk shall also delete or cancel any unpaid LFO balances that arise solely from the conviction(s) vacated by this order, including any interest or collection fees. The Clerk shall send the refund or certification form in the defendant's name to the following address:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

WASHINGTON STATE PATROL. The clerk of the court shall transmit a copy of this order to the Washington State Patrol, which agency shall immediately update its records to reflect the vacation and dismissal of all counts under this cause number. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation.

DONE this 5 day of November, 2021.

The Honorable Melinda J. Young

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Prosecuting Attorney
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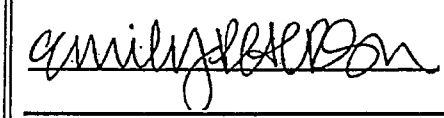
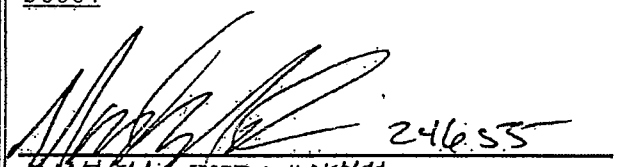
516 Third Avenue
Seattle, Washington 98104

Motion Presented and Agreed to by:



Senior Deputy Prosecuting Attorney, WSBA# 36664



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June 10, 2022

Maurice Thrower
DOC No. 709523
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Re: State v. Thrower, No. 83357-0-I

Dear Mr. Thrower:

Thank you for your letter summarizing the issues you would like to raise as part of your current appeal from the resentencing hearing.

The first issue you mention is that all of your prior judgments are invalid on their face because they list prior convictions for simple possession as part of your criminal history. This is true. And because they are invalid on their face, you could have the court strike the references to those simple possession convictions in your history, although it would not change or otherwise impact your sentence in this current case.

However, as we've discussed, this does not mean that your convictions for crimes other than simple possession (delivery and rape convictions) can be vacated based on this invalidity. Your rape conviction, for example, was the result of a plea. You have to file a motion to withdraw that plea under the cause number (08-1-03176-1) and argue, for example, that inclusion of the simple possession convictions in your offender score materially affected your decision to enter a plea in that case. In other words, had you known that your offender score and standard range should have been lower, you would not have waived your right to trial and entered a plea. Of course, you may have reasons *not* to undo that plea (for example, if other possible charges were dismissed or never filed as part of the plea deal and could be resurrected). But the bottom line is that there is nothing that can be done as part of this current appeal from the resentencing that would cause that rape conviction, or any other past conviction, to be vacated based on State v. Blake.

The second issue you mention is Judge Young's transfer of your CrR 7.5 motion to the Court of Appeals as a PRP. I discussed this motion at length in my letter dated April 22. Because a CrR 7.5 motion must be filed "within 10 days after the verdict," your motion was about 8 years late. Untimely motions can be sent to the Court of Appeals as a PRP under CrR 7.8. You challenged that transfer in the Court of Appeals (cause no. 83358-8-I) and the Supreme Court (cause no. 100556-3) and lost. Moreover, as also discussed in my April 22 letter, the other problem with your CrR 7.5 motion is that it raised issues already decided against you in your previous appeal (cause no. 69950-4-I) or earlier PRP (cause no. 76199-4-I). Your CrR 7.5 motion has been disposed of. I do not represent you on that motion and it is not part of the current appeal.

Your argument is that the CrR 7.5 motion could not have been time barred because your judgment in this case was invalid on its face. But the invalidity was limited to the inclusion of simple possession convictions in your offender score, which has now been fixed. That one type of invalidity does not mean you get to raise any *other* issues in the case regardless of timing. See In re Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000) (mistakes apparent on face of judgment can be raised beyond one year time limit; other alleged mistakes time barred).

The fourth issue is a challenge to the constitutionality of your indeterminate sentence and State v. Clarke, 156 Wn.2d 880, 134 P.2d 188 (2006). As you know, Clarke says that – even where the sentencing court imposed an exceptional minimum sentence for sex offenses – there is no violation of the Sixth Amendment or Blakely because that exceptional sentence does not increase the maximum statutory sentence of life in prison authorized by law. Your situation is one step removed from Clarke, since your minimum sentence is within the standard range.

You are correct that, in State v. Goss, 186 Wn.2d 372, 378 n.1, 378 P.3d 154 (2016), the Washington Supreme Court questioned whether Clarke remained good law, citing Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). In Alleyne, the United States Supreme Court held that any fact that increases the mandatory minimum sentence for a crime must be submitted to a jury. In that case, the minimum authorized sentence for the defendant's firearm crime was "not less than 5 years," but the court increased the potential sentence to "not less than 7 years" based on its own finding that the defendant also brandished the gun. The Supreme Court held that the additional finding that the defendant brandished the gun had to come from a jury in order to raise the sentence floor. This ruling calls into question the Clarke court's decision that an exceptional minimum sentence for sex offenses does not have to be based on findings found by a jury. The problem for you, though, is that *you received a standard range minimum sentence.* Therefore, even if Clarke is no longer good law, it makes no difference to your circumstances. The Legislature set your minimum sentence as anywhere in the range between 149 and 198 months. That range is your floor. No additional findings were required to impose 180 months. The result would probably be different if you had received a minimum sentence above 198 months. But you did not. Unfortunately, your sentence is consistent with Blakely and fully authorized by RCW 9.94A.507.

Regardless of what I have said in this letter, you obviously have the opportunity to raise additional issues in your statement of additional grounds. But I do not plan on raising these issues because I do not believe they have any chance of succeeding.

The one issue I am raising has to do with Judge Young's order that you not contact "T.W. or any member of T.W.'s family." Your attorney objected to this order and you also complained about it. While courts can prohibit contact with victims and trial witnesses, the order in your case goes too far and should be amended.

I know this a lot of information. Let me know if you have any questions.

Sincerely,

David B. Koch
Attorney at Law

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