

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON

CLERK COURT OF APPEALS, DIVISION ONE OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,)	No. 102002-3
)	
Respondent,)	STATEMENT OF
)	ADDITIONAL
v.)	AUTHORITIES
)	
TIMOTHY M. KELLY,,)	
)	
Petitioner.)	

Under RAP 10.8, Mr. Kelly submits the following additional authority in support of his petition for review on whether he is entitled to remand for a new sentencing hearing: *State v. Dunbar*, No. 39125-6-III, slip op., 2023 WL 4567835, at *3 (Wash. Ct. App. July 18, 2023).

In *Dunbar*, Mr. Dunbar was resentenced following *State v. Blake*, 197 Wash.2d 170, 195, 481 P.3d 521 (2021). Mr. Dunbar had two prior convictions for drug possession, which were void under *Blake* and should not count in his offender scores. His standard range on the convictions did not change because his offender scores remained in the mid-20s, well

above a 9. The resentencing court deferred to the original sentencing judge's decision and imposed the same sentences on the two convictions.

The Court of Appeals held that that Mr. Dunbar was entitled to de novo resentencing. This meant that the “resentencing judge may not rely on a previous court's sentence determination and fail to conduct its own independent review.” *Dunbar*, 2023 WL 4567835, at *6. Notwithstanding Mr. Dunbar's high offender score, the Court remanded for a new resentencing hearing. *Id.*

Here, the trial court resentenced Mr. Kelly based on prior void drug convictions, but erred in exceeded its sentencing authority in ordering two five-year firearm enhancements to run concurrently, rather than consecutively. Still, the Court of Appeals refused to remand the case to the trial court based on the statutory timebar on collateral attacks, even though the State waived reliance on the statute by failing to raise it in the trial court.

Mr. Kelly was in the same position as Mr. Dunbar in having a high offender score. That Mr. Dunbar gets remand for a de novo resentencing, but Mr. Kelly does not, is fundamentally unfair. It is especially unfair because the trial court intended to grant Mr. Kelly a significant reduction in his sentence, but simply erred in the manner in which it did so.

Both *Dunbar* and the decision in Mr. Kelly's case are published. Together, they create a split in decisions of the Court of Appeals, meriting review. RAP 13.4(b)(2).

This document contains 349 words, excluding the parts of the document exempted from the word count by RAP 18.17

Respectfully submitted this 27th day of July, 2023.



Richard W. Lechich – WSBA #43296
Washington Appellate Project –
#91052
Attorney for Petitioner

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 102002-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Pamela Loginsky, DPA
[pamela.loginsky@piercecountywa.gov]
[PCpatcecf@co.pierce.wa.us]
Pierce County Prosecutor's Office

petitioner

Attorney for other party



MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: July 27, 2023

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