

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/27/2023 4:26 PM  
BY ERIN L. LENNON

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

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STATE OF WASHINGTON,	)	No. 102003-1
	)	
Respondent,	)	STATEMENT OF
	)	ADDITIONAL
v.	)	AUTHORITIES
	)	
TIMOTHY M. KELLY,,	)	
	)	
Petitioner.	)	

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Under RAP 10.8, Mr. Kelly submits the following additional authorities in support of his petition for review on whether he was entitled to a new sentencing hearing after the trial court due to now void prior and current convictions for possession of a controlled substance, notwithstanding that his offender score was greater than a 9: *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, Mr. Kelly was in the same position as Mr. Dunbar, but the trial court refused to resentence Mr. Kelly, let alone give a de novo resentencing. This is unfair. As explained, the Court of Appeals erred by refusing to remand for resentencing 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.

In reaching this result, the Court of Appeals relied on its published decision in Mr. Kelly's other case, which Mr. Kelly is also petitioning for review. The decisions in Mr. Kelly's cases conflict with *Dunbar*. The split in decisions of the Court of Appeals merits review. RAP 13.4(b)(2).

This document contains 329 words, excluding the parts of the document exempted from the word count by RAP 18.17

Respectfully submitted this 27th day of July, 2023.



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Date: July 27, 2023

# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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