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Supreme Court No. 102494-1
(COA No. 56983-3-II)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALPHONSO ALBERT BELL,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Alphonso Bell petitions for review from the opinion in *State v. Bell*, No. 56983-3-II (September 19, 2023). RAP 13.4.

B. ISSUES PRESENTED FOR REVIEW

1. A court must enter a new judgment and sentence when it sentences a person. The trial court resentenced Mr. Bell but only entered an order amending the previous judgment. The Court of Appeals misconstrued the plain statutory requirement and erroneously excused the trial court's failure.

2. Review should be granted to address the issues raised by Mr. Bell in his Statement of Additional Grounds (SAG).

3. This Court recently accepted review of similar issues in the cases of *State v. Vasquez* and the consolidated cases of *State v. Kelly* and *State v. Kelly*.[1] This Court should stay Mr. Bell's petition pending resolution of those cases.

[1] *State v. Vasquez*, Case No. 102045-7, Order Granting Review, Oct. 3, 2023; *State v. Kelly*, Cases No. 102002-3 & 102003-1, Orders Granting Review, Oct. 3, 2023.

C. STATEMENT OF THE CASE

In 2011, Mr. Bell pleaded guilty to second degree murder with a firearm enhancement. CP 8-16. His prior offender score included a point for possession of a controlled substance. CP 20. This Court's ruling in *State v. Blake*[2] rendered Mr. Bell's previous drug possession conviction invalid. After this decision, Mr. Bell returned to the trial court for a new sentencing hearing to recalculate his offender score and sentence without the prior drug conviction.

Rather than enter a new judgment and sentence after resentencing Mr. Bell, the court issued an "Order Correcting Judgment and Adjusting Sentence Pursuant to Blake." CP 57-61. The court revised two items on the prior judgment and sentence: the standard range calculation and the term of confinement. CP 57-61. The court ordered "all other terms and conditions of the original Judgment and Sentence dated

[2] 97 Wn.2d 170, 481 P.3d 521 (2021)

February 3, 2012, shall remain in full force and effect as if set forth in full herein." CP 60.

Mr. Bell appealed. He argued the court erred when it failed to strike legal financial obligations (LFOs) that exceeded the court's statutory authority. He also argued the court erred when it failed to enter a new judgment and sentence that accurately reflected his sentence. In his SAG, Mr. Bell argued his firearm enhancement is improper because he was armed with a knife and that he should receive another resentencing under *Blake*. The Court of Appeals remanded on the issue of LFOs but rejected all other claims.

D. ARGUMENT

1. **The trial court erred when it failed to enter a new judgment and sentence document and merely entered an unattached order purporting to amend Mr. Bell's decade-old judgment and sentence.**

Whenever a court sentences a person, it must enter a judgment and sentence. There is no exception to this requirement when a court conducts a new sentencing hearing and resentences the person. The Sentencing Reform Act (SRA)

specifically requires that "[a] current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge." RCW 9.94A.480(1).

The judgment and sentence reflects the finding of guilt and the punishment, including LFOs. *See* RCW 10.64.015; *see also* RCW 9.94A.760(1) (LFOs are part of the sentence); *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015). The document contains the "formal utterance" or "formal decision or determination" that is "the final determination of the rights of the parties to the action." *In re Pers. Restraint of Well*, 133 Wn.2d 433, 440, 946 P.2d 750 (1997) (citations omitted); *see In re Clark*, 24 Wn.2d 105, 110, 163 P.2d 577 (1945).

A complete judgment and sentence document is necessary to accurately reflect the person's sentence and allow

for accurate administration of the sentence. For example, the court clerk maintains the judgment and sentence and must ensure an accurate public record. RCW 9.94A.475. When the defendant is committed to the Department of Corrections (DOC), the judgment and sentence document accompanies him and allows DOC to calculate his sentence. RCW 9.94A.500(1). The complete judgment and sentence document must also be provided to the caseload forecast counsel. RCW 9.94A.480(2). In addition, the court clerk and DOC need accurate documentation to calculate and collect outstanding LFOs. *See* RCW 9.94A.750-.777.

The SRA does not authorize the court to impose a sentence by any means other than a judgment and sentence document. Nor does the SRA permit the court to enter orders to amend portions of the judgment and sentence. Instead, after the court conducts a new sentencing hearing, it must actually enter a complete, new judgment and sentence document. *See* RCW 9.94A.480(1). This procedure accords with the SRA, provides

clear direction to DOC and the court clerk, and ensures an accurate public record. This also ensures the court is complying with current laws at resentencing.

But instead of entering a new judgment and sentence as the SRA required, the trial court here entered an "Order Correcting Judgment and Adjusting Sentence Pursuant to *Blake*." CP 57-61. The five page order purports to amend two items of the original judgment and sentence and states, "all other terms and conditions of the original Judgment and Sentence dated February 3, 2012, shall remain in full force and effect as if set forth in full herein." CP 60. In addition to the order adding appellate costs to the judgment and sentence, this order renders Mr. Bell's judgment and sentence as three separate documents entered on three different dates. CP 18-30, 57-61, 82-83.

This is contrary to the SRA requirements. And by merely entering an order revising two lines of the judgment and sentence, the trial court upheld other erroneous portions of the

sentence. *See* Appendix A at 3-5 (ruling in favor of Mr. Bell and remanding with instructions to strike erroneous LFOs). It also upheld a firearm sentencing enhancement where the undisputed facts establish the weapon used in the offense was a knife. CP 3-4, 19, 60; *see* SAG.

The State argues the term "reworked judgment and sentence document" in RCW 9.94A.480 authorizes a short order amending the judgment and sentence in this case. Br. of Resp't at 23. While the meaning of "reworked" may mean "amended," Mr. Bell does not suggest that the SRA precludes the court's authorization to "amend" his judgment and sentence. Instead, he argues that when a court "amends" or "reworks" a judgment and sentence, it must abide by statute and enter a "reworked judgment and sentence document." RCW 9.94A.480(1). No such document has been filed in Mr. Bell's case.

The Court of Appeals purports to rely on the statute's plain language to conclude that RCW 9.94A.480(1) does not require entry of a new judgment and sentence document when

the court conducts a new sentencing hearing. *See* Appendix A at 5-7. But it does not explain what the statute then means by a "current, newly created or reworked judgment and sentence document for each felony sentencing[.]" RCW 9.94A.480(1). There is no ambiguity in this requirement. It plainly requires a judge to sign and enter a new or reworked judgment and sentence document whenever a person is sentenced.

Importantly, there is no alternative provided in the SRA. Nothing in the SRA permits entry of a judgment and sentence document by way of several documents purporting to amend an original inaccurate judgment. So even if the Court of Appeals believes the statute's plain language does not mean what it says, there is no statute which permits what occurred here.

The SRA does not permit a court to amend a judgment by separate order. Instead, the SRA the plainly requires entry of a new judgment and sentence document when a court resentences a person. Mr. Bell is entitled to have the court enter a new

judgment and sentence document that accurately reflects the sentence imposed.

Currently, thousands of people are eligible to be resentenced for a variety of reasons such as this Court decision in *Blake*. Providing clarity to that process is an issue of substantial public interest meriting review. RAP 13.4(b).

2. **This Court should grant review to address the issues raised in Mr. Bell's SAG.**

3. **This Court should grant review or stay the case pending its resolution of the issues in *Vasquez* and *Kelly*.**

Alternatively, Mr. Bell requests this Court stay consideration of his petition until resolution of *State v. Vasquez* and *State v. Kelly*.

E. CONCLUSION

For all these reasons, this Court should accept review or stay this petition pending resolution of *State v. Vasquez* and *State v. Kelly*. RAP 13.4(b).

Counsel certifies this petition is 1,453 words long and complies with RAP 18.17.

DATED this 19th day of October 2023.

Respectfully submitted,

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APPENDIX A

Filed
Washington State
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ALPHONSO ALBERT BELL, Appellant.	No. 56983-3-II UNPUBLISHED OPINION

PRICE, J. — Alphonso Bell pleaded guilty to second degree murder in 2011 as a result of a fatal stabbing. In 2022, following our Supreme Court's *Blake*[1] decision, the superior court resentenced Bell with the use of a short order correcting his judgment and sentence to address *Blake*'s effect on Bell's offender score. Bell's legal financial obligations (LFOs) were neither discussed nor amended as part of the superior court's order.

Bell appeals, contending his LFOs are no longer supportable under current law, the crime victim penalty assessment (CVPA) fee is unconstitutional, and the superior court erred when it did not enter an entirely new judgment and sentence document at his resentencing. Bell also raises additional issues in a statement of additional grounds (SAG).[2] The State concedes the matter should be remanded to the superior court to address Bell's LFOs, but objects to Bell's other claims.

We remand to the superior court to address the LFOs, but reject Bell's remaining claims.

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[1] *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

[2] RAP 10.10.

FACTS

I. SENTENCING AND LFOS

After Bell pleaded guilty to second degree murder with a firearm sentencing enhancement in 2011, he was sentenced to a high-end standard range sentence of 397 months with 60 additional months for the firearm sentencing enhancement. The superior court also imposed several LFOs, including a $200 criminal filing fee, $1,500 attorney fees, $100 DNA database fee, $500 CVPA, and supervision fees while on community custody, plus interest to accrue on the LFOs. The superior court made no inquiry into, or determination about, Bell's indigency. Three years later, the superior court added appellate court costs to Bell's judgment and sentence related to an unsuccessful personal restraint petition.

II. RESENTENCING

Following the *Blake* decision, Bell was resentenced. Bell's offender score was recalculated, reducing it from a 10 to a 9, but the standard sentencing range for his second degree murder conviction remained the same. Nevertheless, Bell sought a different sentence, requesting 298 months, which was the low end of the standard sentencing range.

The superior court rejected Bell's request, but it did lower his sentence from 397 months to 385 months plus 60 months for the firearm sentencing enhancement. Rather than enter an entirely new judgment and sentence document, the superior court entered a short order merely correcting the judgment and sentence. The order further stated that "all other terms and conditions of the original Judgment and Sentence dated February 03, 2012, shall remain in full force and effect as is set forth in full herein." Clerk's Papers (CP) at 60.

The superior court did not inquire into Bell's indigency or ability to pay at the resentencing hearing, nor were any findings made regarding indigency in the order correcting the judgment and sentence. Bell did not raise or object to the LFOs at his resentencing.

Bell appeals his sentence.

ANALYSIS

I. IMPOSITION OF LFOS

Bell argues the superior court erred when it did not strike the LFOs at his resentencing given his indigency status. The State concedes the case should be remanded to address Bell's LFOs. We accept the State's concession and remand for the superior court to address the LFOs.[3]

Since Bell's original sentencing in 2011, the law regarding LFOs has evolved. For example, court costs, including attorney fees and appellate court costs, may no longer be imposed on indigent defendants. RCW 10.01.160(2), (3); RCW 10.73.160(1); *see In re Pers. Restraint of Dove*, 196 Wn. App. 148, 155, 381 P.3d 1280 (2016); *State v. Grant*, 196 Wn. App. 644, 651, 385 P.3d 184 (2016). In addition, criminal filing fees may no longer be imposed on indigent defendants. RCW 36.18.020(2)(h).

Several other LFOs have been eliminated entirely since Bell was first sentenced. In 2018, the legislature barred interest on nonrestitution LFOs. RCW 10.82.090(1). And interest on

[3] Under RAP 2.5(a), this court "may refuse to review any claim of error which was not raised in the trial court." But RAP 2.5(a) also gives this court discretion on whether or not to address an error that was not raised at the superior court. Although Bell did not raise the issue regarding LFOs at the superior court, we exercise our discretion and address the issue of LFOs because of the State's concession and the clear legislative directives evidenced in the numerous statutory changes in this area.

restitution is discretionary; the superior court has the option of not imposing interest on restitution if the defendant is indigent. RCW 10.82.090(2).

In 2022, the legislature barred the imposition of community custody supervision fees. LAWS OF 2022, ch. 29, § 7 (amending RCW 9.94A.703(2)).

Finally, until very recently, a court was required to impose a DNA collection fee unless the defendant's DNA was previously collected as a result of a prior conviction. Former RCW 43.43.7541 (2018). But in 2023, the legislature eliminated this requirement. LAWS OF 2023, ch. 449, § 4. And the court must waive any DNA collection previously imposed, on the defendant's motion. RCW 43.43.7541(2).

Here, the State concedes that remand is appropriate to address Bell's LFOs but does not necessarily concede Bell is indigent. Indeed, nothing in the record reflects that Bell has been declared indigent as defined in RCW 10.101.010(3)(a) through (c). Therefore, we remand for the superior court to determine Bell's indigency and, following this determination, reconsider the imposition of attorney fees, criminal filing fees, appellate court costs, and interest on restitution LFOs. The superior court should also strike the DNA fee, community custody supervision fees, and any nonrestitution interest.

II. CONSTITUTIONALITY OF THE CVPA

Separate from his general LFO arguments, Bell argues the CVPA must be stricken from his judgment and sentence for a different reason—because it violates the excessive fines clause of the United States and Washington Constitutions. In part, pointing to the plain language of the statute, Bell argues that the CVPA is punitive and implicates the constitutional prohibition on excessive fines.

Whether the excessive fines clauses ever applied to the CVPA has long been decided. The CVPA was previously declared as being "not punitive in nature." *State v. Mathers*, 193 Wn. App. 913, 920, 376 P.3d 1163, *review denied*, 186 Wn.2d 1015 (2016). Further, our Supreme Court has held that the CVPA "is neither unconstitutional on its face nor as applied to indigent defendants." *State v. Curry*, 118 Wn.2d 911, 918, 829 P.2d 166 (1992). We must follow the established precedent that the CVPA is constitutional. *See State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) (Supreme Court's decision on issue of state law binds all lower courts).

Nevertheless, like the other LFOs discussed above, recent statutory changes make remand appropriate for the CVPA imposed against Bell. Effective July 1, 2023, courts may not impose the CVPA on indigent defendants. RCW 7.68.035(4).[4] The court must also waive any CVPA fees imposed prior to the effective date of the amendment if the offender is indigent, on the offender's motion. RCW 7.68.035(5)(b).

Therefore, like the LFOs discussed above, we remand for the superior court to determine Bell's indigency and reconsider the imposition of the CVPA.

III. NEW JUDGMENT AND SENTENCE DOCUMENT

Bell next argues the superior court erred when it merely entered a short order correcting his judgment and sentence rather than issuing an entirely new judgment and sentence document. We disagree.

[4] Although the legislative changes for the CVPA, the DNA fees, and the community custody supervision fees all took effect after Bell's resentencing, these legislative changes still apply to Bell because this case is on direct appeal. *See State v. Ramirez*, 191 Wn.2d 732, 748-49, 426 P.3d 714 (2015) (even though amendments to the LFO statute were enacted after sentencing, they applied to defendant because his case was on direct appeal and therefore not final).

A. LEGAL PRINCIPLES

We review statutory interpretation de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). The fundamental objective when determining the meaning of a statute "is to ascertain and carry out the [l]egislature's intent." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). We first looks to the plain meaning of the statute. *Armendariz*, 160 Wn.2d at 110. If the plain language is unambiguous, our inquiry ends and the statute is enforced with its plain meaning. *Id.*

B. APPLICATION

Bell argues the plain language of RCW 9.94A.480, requires an entirely new judgment and sentence document anytime a judgment and sentence is amended or corrected. RCW 9.94A.480(1) states,

> *A current, newly created or reworked judgment and sentence document* for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. . . .

(Emphasis added.)

Bell argues the phrase "judgment and sentence document" refers to one, single document and, therefore, the statute does not permit the use of a short order that merely amends a judgment and sentence. The State responds that nothing in the statute requires an entirely new full judgment and sentence document each time it is amended and, in fact, the phrase "reworked judgment" means that a new singular document is not necessary. Br. of Resp't at 23.

Although there may be practical advantages to a singular document, Bell's interpretation of the statute is unpersuasive. As argued by the State, there is nothing in RCW 9.94A.480(1) that

requires an entirely new judgment and sentence each time the document is amended or corrected. And the statute's use of the phrase "current, newly created[,] or *reworked* judgment and sentence" shows that the legislature contemplated merely amending a judgment and sentence. RCW 9.94A.480(1) (emphasis added). Thus, the superior court did not err by entering an order amending Bell's judgment and sentence, rather than an entirely new judgment and sentence document.

IV. STATEMENT OF ADDITIONAL GROUNDS (SAG)

Bell raises two claims in his SAG. First, he contends the firearm sentencing enhancement is improper because he was armed with a knife and not a firearm. Second, he seeks another resentencing under *Blake*. 197 Wn.2d 170, 481 P.3d 521 (2021).

In Bell's first claim, he claims the firearm sentencing enhancement is improper because his crime involved a fatal stabbing, not the use of a firearm. However, Bell pleaded guilty to second degree murder with a firearm enhancement and the validity of Bell's guilty plea is outside the scope of his resentencing hearing. Accordingly, we decline to consider Bell's claim that imposition of a firearm sentencing enhancement is improper.

Bell's second claim is that *Blake* makes his offender score incorrect and his sentence unconstitutional and, therefore, he should be resentenced again. But Bell has already been resentenced and received the remedy he is entitled to under *Blake*. Accordingly, this claim fails.

CONCLUSION

We remand to the superior court to strike the DNA fee, supervision fees, and nonrestitution LFO interest. On remand, the superior court should also determine Bell's indigency status and strike any remaining LFOs as appropriate. We reject Bell's remaining claims.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

PRICE, J.

We concur:

CRUSER, A.C.J.

[illegible], J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 56983-3-II**, 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 / residence / e-mail address as listed on ACORDS / WSBA website:

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WASHINGTON APPELLATE PROJECT

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