NO. 102542-4
(COA NO. 84527-6-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM DOUGLAS LANCE,

Petitioner.

FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

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A. INTRODUCTION

State v. Blake, 197 Wn.2d 170, 418 P.3d 521 (2021), was a watershed decision that held, likely for the first time in our state's history, that a criminal statute under which thousands have been convicted was void from the date of its enactment. Unfortunately, under the current state of the case law, not all persons affected by this decision are receiving its benefit.

Hundreds whose convictions became final within a year of the *Blake* decision have had their prior convictions vacated and received resentencing. This includes some whose offender scores remained 9 or above and whose standard ranges did not change.

Others, like William Lance, are serving lengthy sentences that became final long before *Blake* was issued. As it has in other cases, based on a five-justice order from a department of this Court, the Court of

Appeals ruled Mr. Lance is not entitled to resentencing because his correct offender score remains a 9 and his sentence is therefore not facially invalid.

A two-tiered system in which some benefit from *Blake* and others do not based only on the date of their conviction is unfair, and the binding effect of an order at a motion calendar is questionable. Review is warranted for this reason, as well as the additional reason that *Blake* is a significant change in the law material to Mr. Lance's sentence.

Both issues are before this Court in *State v. Kelly*, No. 102002-3. This Court should join Mr. Lance's case with Mr. Kelly's.

B. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

Petitioner William Lance asks for review of the decision in *State v. Lance*, No. 84527-6-I (Wash. Ct.

App. Oct. 9, 2023), reversing the trial court's order granting his motion for resentencing under CrR 7.8.

C. ISSUES PRESENTED FOR REVIEW

1. On direct appeal and timely collateral review, the Court of Appeals has granted resentencing to many whose offender scores included void convictions of possessing a controlled substance. This includes people whose standard ranges were unchanged, where the record did not clearly show the trial court would have imposed the same sentence. People whose convictions became final too early to seek timely review based on *Blake*, however, have been denied relief on the basis their sentences are not facially invalid. This two-tiered system is fundamentally unfair and warrants this Court's review. RAP 13.4(b)(1), (4).

2. Department Two of this Court recently published an order ruling a prior conviction made void

by *Blake* does not render a sentence facially invalid if the standard range is unaffected. The Court of Appeals cited this order to deny relief in at least nine cases, including Mr. Lance's. However, the structure and history of our state's court system calls into question whether an order of a department of this Court has precedential effect. This Court should grant review of this issue of public importance. RAP 13.4(b)(4).

3. The one-year time bar does not apply to a petition for collateral relief based on a significant change in the law that is material to the petitioner's sentence. *Blake* is material to Mr. Lance's sentence because his void conviction of possessing a controlled substance increased his standard range. The Court of Appeals reasoned *Blake* was not material, but because Mr. Lance's sentence was not facially invalid, not because *Blake* does not bear on any issue material to

his sentence. This Court should grant review and evaluate Mr. Lance's claim under the correct precedent. RAP 13.4(b)(1), (4).

D. STATEMENT ●F THE CASE

The trial court calculated Mr. Lance's offender score as 10, resulting in a standard range of 411 to 548 months. CP 95–96. His offender score included a conviction of possessing a controlled substance. CP 95. The court imposed the high end of the standard range. CP 99. The judgment and sentence became final in 2009. CP 75.

In March 2022, Mr. Lance moved for resentencing under CrR 7.8 based on *Blake*. CP 59–61. In response, the prosecution contended the motion was untimely and moved to transfer it to this Court as a personal restraint petition. CP 48–50. Mr. Lance opposed the motion, arguing his miscalculated offender score made

his sentence invalid on its face and *Blake* was a significant change in the law. CP 39–42. The trial court granted the motion to transfer. CP 14–15.

Mr. Lance moved the trial court to reconsider. CP 7–13. He cited numerous cases where courts granted resentencing to people whose post-*Blake* offender scores remained 9 or above, and argued it would be unfair to deny him the same relief. CP 11–12. The trial court granted reconsideration and declined to transfer Mr. Lance's CrR 7.8 motion. CP 5–6.

The Court of Appeals reversed. Slip op. at 6–7. Notwithstanding that similarly situated people have received relief, the Court held Mr. Lance's sentence was not facially invalid because his miscalculated offender score did not affect the standard range. *Id.* at 4–5. It reached this conclusion based on *In re Personal Restraint of Richardson*, 200 Wn.2d 845, 525 P.3d 939

(2022)—an order issued by a five-justice department of this court at a motion calendar, not by the full court after briefing and argument. Slip op. at 4–5.

The Court of Appeals held *Blake* was not material to Mr. Lance's sentence for the same reason, overlooking that it cited precedent bearing on facial invalidity, not the exception to the time bar based on a significant change in the law. *Id.* at 5.

E. ARGUMENT

A motion under CrR 7.8 is timely if it complies with the time-bar provisions of RCW 10.73.090 and RCW 10.73.100. CrR 7.8(b). These statutes provide that any collateral attack on a sentence must be filed within one year after the judgment became final, unless the "judgment and sentence is [in]valid on its face." RCW 10.73.090(1). Further, this time bar does not apply if the petitioner can demonstrate one or more

of six exceptions, including "a significant change in the law." RCW 10.73.100(6).

If a CrR 7.8 motion is untimely, the trial court must transfer it to the Court of Appeals to consider as a personal restraint petition. CrR 7.8(c)(2). If the motion is timely and the petitioner "made a substantial showing that they are entitled to relief," however, the trial court must rule on the motion. *Id.*

1. **This Court should grant review and hold *Blake* rendered Mr. Lance's sentence facially invalid.**

This Court has long held that an incorrect offender score makes a sentence invalid on its face. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866–67, 50 P.3d 618 (2002). In a subsequent decision, however, this Court diluted this rule by holding that the sentence is not facially invalid if the correct offender score would yield the same standard range. *In re Pers. Restraint of Toledo-Sotelo*, 176 Wn.2d 759, 767–68, 297

P.3d 51 (2013). Finally, in 2022, a department of this Court purported to apply *Toledo-Sotelo* to cases like Mr. Lance's, where removing convictions rendered void by *Blake* reduces the offender score, but not below 9. *Richardson*, 200 Wn.2d at 846–47.

The state of the case law calls for this Court's review for two reasons. First, applying *Toledo-Sotelo* to cases like Mr. Lance's creates an unfair two-tiered system where some people are excluded from *Blake's* benefit based only on the timing of their most recent conviction. Second, the precedential effect of this Court's order in *Richardson* is highly questionable. This Court should grant review. RAP 13.4(b)(1), (4).

a. This Court should overrule harmful precedent that deprives some people of the benefit of Blake *based only on when they were convicted.*

In cases on direct appeal, the general rule is that an incorrect offender score requires resentencing

"unless the record clearly indicates the sentencing court would have imposed the same sentence anyway." *State v. Parker*, 132 Wn.2d 182, 189, 937 P.2d 575 (1997); *see id.* at 193 (reversing exceptional sentence based on incorrect standard range).

It follows from *Parker* that an incorrect offender score may have influenced the trial court's choice of sentence, even if it did not affect the range itself. *See State v. McCorkle*, 88 Wn. App. 485, 499–500, 945 P.2d 736 (1997). In *McCorkle*, the prosecution argued that the erroneous calculation of Mr. McCorkle's offender score as 13 instead of 9 was harmless. *Id.* at 499. The Court disagreed—citing *Parker*, it reasoned "the record does not clearly indicate that the sentencing court would have imposed the same sentence" had the offender score been four points lower. *Id.* at 499–500.

Following *McCorkle's* lead, the Court of Appeals granted resentencing to numerous appellants whose prior convictions were voided by *Blake* but whose offender scores remained at or above 9. *State v. Weekly*, No. 53583-1-II, 2022 WL 538379, at *8 (Wash. Ct. App. Feb. 23, 2022) (unpub.); *State v. Kyllo*, No. 55176-4-II, 2022 WL 291019, at *1 (Wash. Ct. App. Feb. 1, 2022) (unpub.); *State v. Kinsey*, No. 37737-7-III, 2021 WL 6052576, at *2 (Wash. Ct. App. Dec. 21, 2021) (unpub.); *State v. Nugent*, No. 53724-9-II, 2021 WL 5578047, at *5 (Wash. Ct. App. Nov. 30, 2021) (unpub.); *State v. Griffin*, No. 54224-2-II, 2021 WL 2935966, at *8 (Wash. Ct. App. July 13, 2021) (unpub.).

Petitioners on collateral review whose sentences became final more than a year in the past, however, are subject to a different set of rules. Under the rule of *Goodwin*, of course, a person whose offender score was

incorrectly calculated is not subject to the time bar because their sentence is facially invalid. 146 Wn.2d at 866–67. This would seem to be the case even for people whose offender scores remained 9 or above.

After *Goodwin*, however, this Court held that a miscalculated offender score does not make the sentence facially invalid if the sentence happened to fall within the correct standard range. *Toledo-Sotelo*, 176 Wn.2d at 767–68. This Court reasoned it was enough that the sentence was statutorily authorized, regardless of whether the record shows the court would have imposed the same sentence. *Id.* (citing *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 136, 267 P.3d 324 (2011)). This Court also noted "[t]here is nothing to suggest that the trial court *would have sentenced [the petitioner] differently*" if the offender score were

correct, inverting the *Parker* rule. *Toledo-Sotelo*, 176 Wn.2d at 768–69 (emphasis added).

Accordingly, the current state of the case law creates a two-tiered system where those whose convictions became final within one year of the *Blake* decision are entitled to justice, and those like Mr. Lance who exhausted their appeals more than one year in the past are not, by pure operation of chance.

Toledo-Sotelo and other cases in its line are incorrect and harmful, at least to the extent they exclude petitioners whose convictions became final more than one year in the past from the benefit of *Blake*. *Blake* was a watershed decision, holding for perhaps the first time that a felony statute based on which thousands of people were condemned to prison was void from the moment the Governor signed it. 197 Wn.2d at 195. To shut the courthouse doors on some of

these people based only on the dates of their convictions is fundamentally unfair.

This Court should grant review and clarify that a sentence calculated based on convictions rendered void by *Blake* is facially invalid even if the offender score remains at or above 9, consistent with *Goodwin* and notwithstanding *Toledo-Sotelo*. RAP 13.4(b)(1), (4).

b. Whether this Court's five-justice order in Richardson *has precedential effect is a question of public importance.*

In *Richardson*, this Court purported to resolve the issue addressed *supra* in part I.a.: whether an offender score reflecting void convictions makes a sentence facially invalid where the correct score remains at or above 9. 200 Wn.2d at 846–47. And the Court did so in an unusual way—via an order at a motion calendar, issued by only five justices. *Id.* at 846.

Soon after this Court issued its order in *Richardson*, the Court of Appeals relied on it to deny resentencing to a person whose conviction became final more than one year before *Blake*. *In re Pers. Restraint of Jensen*, No. 84201-3-I, 2022 WL 17581804, at *1 (Wash. Ct. App. Dec. 12, 2022) (unpub.). It has since done so at least eight more times, including in Mr. Lance's case. Slip op. at 4–5.[1]

[1] *Accord State v. Kelly*, 25 Wn. App. 2d 879, 891, 526 P.3d 39 (2023); *State v. Ross*, No. 84121-1-I, 2023 WL 4077846, at *2 (Wash. Ct. App. June 20, 2023) (unpub.); *In re Pers. Restraint of Smith*, No. 56449-1-II, 2023 WL 1954514, at *1–2 (Wash. Ct. App. Feb. 7, 2023) (unpub.); *In re Pers. Restraint of Taylor*, No. 84036-3-I, 2023 WL 353923, at *2 (Wash. Ct. App. Jan. 23, 2023) (unpub.); *In re Pers. Restraint of Kier*, No. 84073-8-I, 2023 WL 356024, at *1–2 (Wash. Ct. App. Jan. 23, 2023) (unpub.); *In re Pers. Restraint of Priebe*, No. 84280-3-I, 2023 WL 356026, at *2 (Wash. Ct. App. Jan. 23, 2023) (unpub.); *In re Pers. Restraint of Brennan*, No. 84286-2-I, 2023 WL 356025, at *1 (Wash. Ct. App. Jan. 23, 2023) (unpub.). The decision in *Kelly* is under review by this Court under case number 102002-3.

The problem with these decisions is that they cite no authority for the proposition that a ruling by a five-justice department has precedential effect. In fact, the structure and history of Washington's court system suggests the contrary.

When Washington became a state, it had only one appellate court: this Court. Const. art. IV, § 1. Initially consisting of only five justices, this Court was the first and last resort on appeal from superior court judgments. Const. art. IV, § 2.

In 1909, the Legislature expanded the Court to nine justices and divided it into two departments. Laws of 1909, ch. 24, §§ 1, 3. Each department of the Court was empowered "to hear and determine causes, and all questions arising therein." *Id.* § 3. Within 30 days of a department's decision, a party could petition for rehearing or for a hearing by the full court en banc. *Id.*

§ 4. In other words, the departments of this Court served as an intermediate appellate court, with the en banc Court filling its current role of reviewing only those cases it chooses to review in its discretion.

A seismic shift occurred in 1969, when the Legislature established the Court of Appeals. RCW 2.06.010; Laws of 1969, ch. 221, § 1; *see also* Const. art. IV, § 30 (authorizing establishment of court of appeals). The Legislature granted the Court of Appeals "exclusive appellate jurisdiction," except for narrow categories of cases where parties could seek direct review by this Court. RCW 2.06.030.

The judges on each panel of the Court of Appeals would decide which of its decisions would be published as precedential. RCW 2.06.040. Further review would be available "only at the discretion of [this Court] upon the filing of a petition for review." RCW 2.06.030.

Since the Court of Appeals's establishment, the sole remaining function of this Court's departments is "the hearing of motions and such other matters as the Chief Justice may designate." SAR 6.

The Court of Appeals having supplanted this Court's departments as the appellate court of first resort, it is doubtful that an order at a department's motion calendar is precedential. To assign binding effect to such an order would circumvent the structure the Legislature put in place, whereby the Court of Appeals has exclusive appellate jurisdiction and the full Supreme Court affords further review on a discretionary basis.

In Mr. Lance's case, the Court of Appeals cited a number of opinions of this Court's departments as evidence that the *Richardson* order is precedential. Slip op. at 6. It overlooked that each of these opinions

predates the Court of Appeals and its replacement of this Court as the appellate court of first resort. *Id.*

To imbue a department's order with binding effect is not only inconsistent with the structure of our court system, but it also circumvents the rigorous process by which this Court's precedential decisions are made. When this Court grants review, it affords the parties an opportunity to file additional briefs and holds oral argument before the full Court. RAP 11.2(a); RAP 13.7(d); Order No. 25700-B, In re Time Allowed for Oral Argument Under RAP 11.4(a) and RAP 17.5(d) (Wash. Apr. 7, 2010). Further, a case is more likely to draw the attention of amicus curiae after a review grant. *See* RAP 10.6 (concerning amicus curiae briefs).

Decisions reached without passing through this gauntlet of adversarial testing are unlikely to be as reliable as the opinions of the full Court.

This Court should grant review and clarify that orders of a department of this Court at a motion calendar, including Department Two's order in *Richardson*, do not bind anyone but the parties to the order. RAP 13.4(b)(4).

2. The Court of Appeals contravened this Court's precedent in holding *Blake* was not a significant change in the law under RCW 10.73.100.

This Court should grant review for the additional reason that *Blake* was a significant change in the law that is material to Mr. Lance's sentence. RCW 10.73.100(6). In holding otherwise, the Court of Appeals relied on cases interpreting RCW 10.73.090(1) instead of RCW 10.73.100(6), and therefore contravened this Court's precedent. RAP 13.4(b)(1).

It can hardly be gainsaid that *Blake*'s holding that former RCW 69.50.4013(1) was beyond the Legislature's power to enact was a significant change

in the law. This change is material to Mr. Lance's sentence if "it would affect a materially determinative issue in [Mr. Lance's] petition." *In re Pers. Restraint of Ali*, 196 Wn.2d 220, 234–35, 474 P.3d 507 (2023).

Blake unquestionably bears on a materially determinative issue: whether the trial court sentenced Mr. Lance based on an incorrect offender score. Removing Mr. Lance's void conviction reduced his offender score from 10 to 9. The trial court's original sentence was at the top of the standard range, indicating it may have imposed a lower sentence if the correct offender score was lower. CP 99. Under this Court's longstanding precedent, Mr. Lance's miscalculated standard range entitled him to

resentencing. *Parker*, 132 Wn.2d at 189; *accord McCorkle*, 88 Wn. App. at 499–500.[2]

In holding *Blake* was not material to Mr. Lance's sentence, the Court of Appeals conflated cases interpreting RCW 10.73.090(1) with cases interpreting RCW 10.73.100(6). Slip op. at 5. Citing this Court's order in *Richardson*, which in turn cited *Toledo-Sotelo*, the Court of Appeals reasoned that Mr. Lance's original sentence was statutorily authorized. *Id.* But whether the sentence was authorized bears only on whether the judgment was facially invalid. *Toledo-Sotelo*, 176 Wn.2d at 767–68. Authorized or not, the sentence was based in part on an incorrect standard

[2] RCW 10.73.100(6) also requires that the change in the law have retroactive effect. This Court's decision that former RCW 69.50.4013(1) violated due process by imposing felony liability for innocent non-conduct was "(1) a new rule (2) of constitutional magnitude (3) that is substantive." *Ali*, 196 Wn.2d at 236.

range, and *Blake* is therefore material. *See Parker*, 132 Wn.2d at 189 (incorrect offender score requires resentencing unless the trial court clearly would have imposed the same sentence without the error).

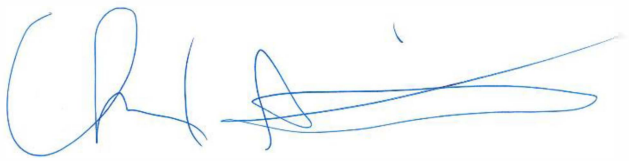
This Court should grant review and clarify that *Blake* is a significant change in the law that is material to sentences imposed based in part on an offender score that includes convictions rendered void by *Blake*. RAP 13.4(b)(1).

F. CONCLUSION

This Court should grant review and join this case with *State v. Kelly*, No. 102033-1, which presents similar issues.

Per RAP 18.17(c)(10), the undersigned certifies this brief of appellant contains 3,276 words.

DATED this 8th day of November, 2023.



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Appendix

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. WILLIAM DOUGLAS LANCE, Respondent.	No. 84527-6-I DIVISION ONE UNPUBLISHED OPINION

FELDMAN, J. — The State appeals a trial court order granting William Douglas Lance's postconviction motion for relief from judgment. Because the trial court's ruling contradicts CrR 7.8(c)(2), which requires that Lance's motion be transferred to this court for consideration as a personal restraint petition (PRP), we reverse.

I

Lance was convicted by a jury of one count of murder in the first degree and was sentenced, with an offender score of 10, to 548 months of confinement on a standard sentencing range of 411-548 months. The judgment and sentence became final in 2009. Approximately 13 years later, Lance filed a motion for relief from judgment arguing that he is entitled to resentencing because the offender score erroneously included a prior conviction for possession of a controlled

substance which is now invalid under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). In response, the State filed a motion to transfer Lance's motion to the Court of Appeals, arguing that the motion is time-barred under RCW 10.73.900 and must therefore be transferred to this court for consideration as a PRP under CrR 7.8(c)(2).

The trial court initially agreed with the State and entered an order granting the State's motion to transfer, denying Lance's motion for relief from judgment, and transferring Lance's motion to this court for consideration as a PRP as required by CrR 7.8(c)(2). Lance then filed a motion for reconsideration, and the trial court granted that motion. The trial court's order granting Lance's motion for reconsideration states as follows:

> Although the Judgment and Sentence in this case is not facially invalid, as the sentencing range remains the same, Defendant is correct that the judgment and sentence contains a reference to a conviction that was vacated on constitutional grounds. Moreover, Defendant has provided information that within this county, other similarly situated defendants whose score remains a 9+ have been granted resentencing. Considering those facts, and taking into account the interest of judicial economy Defendant's Motion to Reconsider is GRANTED.

Having reconsidered its prior rulings, the trial court this time granted Lance's motion for relief from judgment, denied the State's motion to transfer, and stated, "the Court will conduct a resentencing hearing on a date convenient for the Court and parties." The State appeals.

II

The State's principal argument on appeal is that a trial court cannot properly grant a postconviction motion for relief from judgment under CR 7.8 if, as here, it determines that the motion is time-barred. "We review a trial court's ruling on a

CrR 7.8 motion for abuse of discretion." *State v. Robinson*, 193 Wn. App. 215, 217, 374 P.3d 175 (2016) (citing *State v. Zavala-Reynoso*, 127 Wn. App. 119, 122, 110 P.3d 827 (2005)). "A trial court abuses its discretion by misinterpreting a statute or rule." *Diaz v. State*, 175 Wn.2d 457, 462, 285 P.3d 873 (2012). Because the trial court misinterpreted and misapplied CrR 7.8, we reverse.

The trial court's ruling granting Lance's motion for reconsideration is contrary to both the plain language of CrR 7.8(c)(2) and controlling precedent. In *State v. Molnar*, 198 Wn.2d 500, 497 P.3d 858 (2021), our Supreme Court held as follows:

> Collateral attacks filed in superior court are governed by CrR 7.8, and "when a superior court receives a CrR 7.8 motion, it should follow the CrR 7.8(c) procedures." *State v. Waller*, 197 Wash.2d 218, 220, 481 P.3d 515 (2021). CrR 7.8(c)(2) provides,
>
> > The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.
>
> Therefore, *if 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*.

198 Wn.2d at 508-09 (emphasis added). In *State v. Frohs*, 22 Wn. App. 2d 88, 511 P.3d 1288 (2022), this court similarly held, "CrR 7.8(c)(2) requires transfer of a postconviction motion to this court for consideration as a [PRP] unless the motion is not time barred and 'either the defendant has made a substantial showing of merit or a factual hearing is required to decide the motion.'" *Id.* at 92-93 (*quoting In re Pers. Restraint of Ruiz-Sanabria*, 184 Wn.2d 632, 638, 362 P.3d 758 (2015) (citing CrR 7.8(c)(2)).

Lance's motion for relief from judgment is a collateral attack, not a direct appeal, because it was filed approximately 13 years after his judgment and sentence became final in 2009. The trial court here concluded that Lance's "motion is time barred by RCW 10.73.090," that Lance had not made a substantial showing of merit, and that resolution of Lance's motion will not require a factual hearing. Having so concluded, the court was *required* by the mandatory language in CrR 7.8(c)(2), *Molnar*, and *Frohs* to transfer Lance's motion to the court of appeals without reaching the merits. The trial court abused its discretion when it failed to transfer the motion to this court and instead agreed to reach the merits of the motion at an upcoming resentencing hearing.

Lance argues, as he did in the trial court, that his motion for relief from judgment is not time-barred because two exceptions to the one-year time limit on collateral review under RCW 10.73.090 apply here: (1) the judgment and sentence is invalid on its face (*see* RCW 10.73.090(1)); and (2) the *Blake* decision is a significant change in the law that is material to his sentence (*see* RCW 10.73.100(6)). Both arguments are contrary to our Supreme Court's recent order in *In re Personal Restraint of Richardson*, 200 Wn.2d 845, 525 P.3d 939 (2022). The court there held that a PRP challenging a sentence on the basis that the offender score erroneously included a prior conviction for attempted possession of a controlled substance—a conviction now invalid under *Blake*—"is not facially invalid for purposes of exempting the [PRP] from the [one-year] time limit" on collateral review under RCW 10.73.090(1). 200 Wn.2d at 847. That was so, the court reasoned, because "[r]emoving from the offender score the prior conviction

for attempted possession of a controlled substance reduces the score from 10 to 9, but at a score of 9 Richardson's standard range remains 471 to 608 months. . . . The superior court imposed a sentence within that range and therefore the sentence was authorized." *Id.* (internal citation omitted).

The same reasoning and result in *Richardson* also apply here. Lance conceded below, and we agree, that his "standard range remains unchanged" (411-548 months) even after excising the prior conviction subject to *Blake*. The trial court similarly concluded, "the sentencing range remains the same." It necessarily follows under *Richardson* that the trial court's sentence within that range was authorized and that the judgment and sentence is not facially invalid for purposes of exempting Lance's motion for relief from judgment from the one-year time limit on collateral review under RCW 10.73.090(1). And because *Blake* does not affect the sentencing range applicable to Lance, and the trial court's sentence is and remains "authorized" under *Richardson*, the *Blake* decision is not material to Lance's sentence (*see* RCW 10.73.100(6)). Thus, these exceptions to the one-year time limit on collateral review do not apply here.

Lance asserts we should not follow *Richardson* because it "was decided by five justices through an order and without the typical merits briefing and argument that usually precede a significant decision." This argument fails for two reasons. First, we expressly adopted the Supreme Court's order in *Richardson* "as our position" in *In re Personal Restraint of Taylor*,No. 84036-3-I, slip op. at 4 (Wash. Ct. App. Jan. 23, 2023) (unpublished), http://www.courts.wa.gov/opinions/pdf/840363.pdf. While *Taylor* is an

unpublished opinion, we may properly cite and discuss unpublished opinions where, as here, doing so is "necessary for a reasoned decision." GR 14.1(c). We adopt the reasoning of *Taylor* as set forth therein. Second, as we noted in *Taylor*, longstanding authority demonstrates that decisions made by a department of our Supreme Court are precedential. *See, e.g., State v. Dickens*, 66 Wn.2d 58, 401 P.2d 321 (1965); *Green Mountain Sch. Dist. No. 103 v. Durkee*, 56 Wn.2d 154, 351 P.2d 525 (1960); *Hogland v. Klein*, 49 Wn.2d 216, 289 P.2d 1099 (1956); *State v. Emmanuel*, 49 Wn.2d 109, 298 P.2d 510 (1956) (cited in *Taylor*, 84036-3-I, slip op. at 4, n.1).

The trial court's reasoning is similarly flawed. While the judgment and sentence, as the trial court noted, contains a reference to a conviction that is now invalid under *Blake*, Lance's sentencing range remains the same under *Richardson* when that reference is excised. Regarding the trial court's observation that "other similarly situated defendants whose score remains a 9+ have been granted resentencing," one of the appellate opinions cited by Lance in his motion for reconsideration was reversed by the Supreme Court in *Richardson* and the other opinion involves a direct appeal rather than collateral review. Contrary to the trial court's ruling, there is no "judicial economy" exception to the mandatory transfer provision in CR 7.8(c)(2) that would allow resentencing here.

III

Applying *Richardson*, as we must, Lance's motion for relief from judgment is time-barred. Under CrR 7.8(c)(2) and controlling precedent, the trial court was required to transfer the motion to this court for consideration as a PRP without

reaching the merits. The trial court's contrary ruling is reversed, and the matter is remanded to the trial court to comply with the requirements of CrR 7.8(c)(2).

Feldman, J.

WE CONCUR:

Coburn, J.

Hazelrigg, ACJ

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. 84527-6-I**, 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 Nathaniel Sugg
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Date: November 7, 2023

WASHINGTON APPELLATE PROJECT

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