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Supreme Court No. 102643-9  
Court of Appeals No. 84536-5-I

IN THE SUPREME COURT FOR THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MONTREAL MORGAN,

Petitioner.

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PETITION FOR REVIEW

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TABLE OF CONTENTS

A. INTRODUCTION ..... 1

B. IDENTITY OF PETITIONER AND DECISION  
BELOW ..... 2

C. ISSUE PRESENTED FOR REVIEW ..... 2

D. STATEMENT OF THE CASE ..... 3

E. ARGUMENT ..... 9

**This Court should accept review because the  
Court of Appeals’ misreading of the  
restitution statute to eliminate the trial  
court’s discretion to determine a just amount  
contradicts this Court’s precedent and raises  
an issue of substantial public importance.....9**

F. CONCLUSION..... 18

TABLE OF AUTHORITIES

**Washington Supreme Court Decisions**

*State v. Barbee*, 193 Wn.2d 581, 444 P.3d 10 (2019) ...17

*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) 18

*State v. Garza*, 200 Wn.2d 449, 518 P.3d 1029 (2022)11,  
13

*State v. Griffith*, 164 Wn.2d 960, 195 P.3d 506 (2008) 10

*State v. J.P.*, 149 Wn.2d 444, 69 P.3d 318 (2003).. 12, 18

*State v. Radan*, 143 Wn.2d 323, 21 P.3d 255 (2001) ... 16

**Statutes**

Laws of 2023, ch. 449 ..... 19

RCW 7.68.035..... 19

RCW 7.68.120..... 17

RCW 9.94A.753.....passim

**Rules**

RAP 13.4(b)..... passim

**Washington Court of Appeals Decisions**

*State v. D.L.W.*, 14 Wn. App. 2d 649, 472 P.3d 356  
(2020)..... 10, 13

*State v. McCarthy*, 178 Wn. App. 290, 313 P.3d 1247  
(2013)..... 15

## A. INTRODUCTION

RCW 9.94A.753(7) requires the defendant to repay the crime victim's compensation fund (CVC), a state agency. It states the court "shall order restitution" when a victim is entitled to it under the crime victims' compensation act, but does not require the court to order a specific amount or require that the request be paid in "full."

The Court of Appeals misconstrued this statute to remove the trial court's discretion to reduce or adjust the amount requested by the CVC when, as in Mr. Morgan's case, his limited criminal culpability and poverty warrant a reduction. This Court should accept review of this issue of statutory construction. RAP 13.4(b)(1)&(4).

B. IDENTITY OF PETITIONER AND DECISION BELOW

Montreal Morgan, petitioner here and appellant below, asks this Court to accept review under RAP 13.4(b)(1)&(4) of the published opinion of the Court of Appeals in *State v Morgan*, no. 84535-5-I, attached.

C. ISSUE PRESENTED FOR REVIEW

RCW 9.94A.753(7) requires a court to impose restitution when requested by the crime victims' compensation fund, but allows the court to determine the amount of restitution the defendant should repay. The Court of Appeals misinterpreted the statute to remove all judicial discretion in determining the just and proportional amount of restitution a defendant should be required to repay to this state-funded agency. This Court should accept review and resolve this issue of statutory construction. RAP 13.4(b)(1)&(4).

#### D. STATEMENT OF THE CASE

Montreal Morgan's young life was shaped by extreme intergenerational trauma, violence, abuse, and poverty. CP 136–40. At age 24, Mr. Morgan arranged to rob a drug dealer with three other young men, including one youth under age 18. Supp. CP 120. The juvenile connected his co-defendants with the robbery target, and Mr. Morgan drove them. Supp. CP 120. Mr. Morgan stayed outside while the other two 18 and 21-year old co-defendants entered the home. Supp. CP 120. Rather than rob their intended victim, the younger co-defendants tragically shot and killed the intended robbery target's brother. CP 120. Mr. Morgan never went inside the home. RP 172.

Mr. Morgan entered a guilty plea to conspiracy to commit murder in the second degree and unlawful

possession of a firearm in the second degree. RP 128-29.

At sentencing Mr. Morgan's attorney noted Mr. Morgan "had one of the most chaotic and traumatic childhoods" she had seen "in three decades of doing public defense work." RP 159-60. But she also noted that Mr. Morgan showed remarkable resilience. RP 160. Despite growing up in extreme emotional and physical deprivation, Mr. Morgan sought more for himself. He forged loving bonds with his extended family. RP 160; CP 176-77. He was known to be extremely giving and generous to others and was a loving father to his young children. CP 177.

In imposing its sentence, the court specifically noted, Mr. Morgan took part in "what appeared to have been a plan to commit a robbery and never went into the home, never fired a weapon, didn't engage in any

conduct that was a per se direct result of the loss of [the victim's] life." RP 172. Considering Mr. Morgan's significant mitigating evidence, both as to his limited role in the crime and the experts' assessment that his profound adverse life experiences as a child inhibited his brain development, the court sentenced Mr. Morgan to 163 months, consistent with the parties' recommendation. RP 133, 142-49; 156-73; CP 60.

After the court sentenced Mr. Morgan, the prosecutor filed a notice stating their office "attempted to contact victims' family but have not received a response so restitution will not be requested for victims' family." CP 71. However, the prosecutor informed Mr. Morgan it was requesting he repay the crime victims compensation fund \$10,480 jointly and severally with his co-defendants. CP 71-72. This fee



included payment for the deceased's medical and funeral expenses. CP 84.

RCW 9.94A.753(7) governs repayment to the crime victims' compensation fund. RP 190. This statute states a court "shall order restitution" when a victim is entitled to it under the crime victims' compensation act, but does not require the court to order a specific amount or require that the request be paid in "full." RP 181, 190.

Mr. Morgan argued the restitution to the crime victims' fund should be divided and reduced between the four co-defendants based on their relative culpability and ability to pay. RP 192. Mr. Morgan noted that while all co-defendants were held on at least a one million dollar bond, only the juvenile co-defendant's parents could post this amount to secure his release. RP 192. Mr. Morgan's juvenile co-

defendant comes from a family with greater financial means, will be released in a couple of years and will not have an adult felony conviction on his record, which increases his ability to repay restitution. RP 193. The juvenile court has authority to reduce this co-defendant's restitution obligation. RP 193.

In contrast, Mr. Morgan will have limited job prospects upon release given this and his prior felony convictions. RP 182. Mr. Morgan explained his prior convictions unfairly reflected his criminal culpability, but will make his reintegration and ability to find meaningful employment very difficult. CP 119. Living in Spokane as a young Black man, he accrued five felony convictions on the same day when he was 20 and another felony when he was 19. CP 119-20. He cited evidence demonstrating Spokane's history of racially biased prosecutions of Black men, and these numerous

felonies for isolated incidents likely reflect this racially driven overcharging. Supp. CP 119-20.

Mr. Morgan also suffers from severe mental illness that will further complicate his ability to work, as documented in the psychological report submitted to the court at his sentencing. RP 193; CP 185.

Rather than justly divide the amount of restitution owed between the four co-defendants, the trial court believed it lacked the discretion to adjust the restitution to account for the co-defendants' different levels of culpability and life circumstances. RP 204. The court ordered Mr. Morgan to jointly and severally pay the entire amount requested by the crime victims' compensation fund, \$10,480.00. CP 102; RP 204.

The court believed "RCW 9.94A.753(7) limits its discretion when it pertains to Crime Victims

Compensation Program restitution requests.” CP 102.

The sentencing judge added this to the order so that “the reviewing court” could resolve this issue. RP 204.

Despite no language in RCW 9.94A.753(7) that prohibits a court from exercising its discretion to appropriately adjust the amount of restitution requested by the CVC, the Court of Appeals read this limitation into the statute in a published opinion. ●p. at 6.

#### E. ARGUMENT

**This Court should accept review because the Court of Appeals’ misreading of the restitution statute to eliminate the trial court’s discretion to determine a just amount contradicts this Court’s precedent and raises an issue of substantial public importance.**

RCW 9.94A.753(7) requires the court to impose restitution but leaves the court discretion to order the appropriate amount. In a published opinion, the Court of Appeals misinterpreted the statute to require a court

to enter an order for repayment of the entire amount requested by the crime victims' compensation fund where the statute does not require it. This Court should accept review of this issue of statutory construction that results in unjustly saddling poor people with untenable legal financial obligations, a matter of substantial public interest. RAP 13.4(b)(1)&(4).

A court's authority to impose restitution is purely statutory. *State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). In felony cases, this authority derives from RCW 9.94A.753. "Discretion is inherent" in this restitution statute. *State v. D.L.W.*, 14 Wn. App. 2d 649, 655, 472 P.3d 356 (2020) (citing RCW 9.94A.753). "The extent of the trial court's discretion under [RCW 9.94A.753] is a question of statutory interpretation" that courts review *de novo*. *Id.*

If the statute’s “meaning is plain on its face, this court must give effect to the plain meaning as an expression of legislative intent.” *State v. Garza*, 200 Wn.2d 449, 455, 518 P.3d 1029 (2022). Courts “determine a statute’s plain meaning by looking to its text, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* at 455.

The plain language of RCW 9.94A.753(7) requires the court to order restitution, but allows the court to determine the amount. This provision states: “the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims’ compensation act, chapter 7.68 RCW.” RCW 9.94A.753(7). Additionally, if the court does not order restitution, but the crime victim is entitled to benefits under the crime victims’ compensation act,

[T]he department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

RCW 9.94A.753(7).

As the parties argued to the trial court, this statute explicitly omits a statement that the court must order any particular amount or order the defendant to pay the full amount of restitution requested by the crime victims' fund. RP 181. Still, the court mistakenly believed this statute required it to order each person to pay the requested restitution in full. RP 204.

Courts "cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). To conclude that the court

must order the *full* amount of restitution under this statute adds words to the statute that are not there.

Interpreting the statute to allow a court discretion as to the amount of restitution is also consistent with the other provisions of RCW 9.94A.753. *Garza*, 200 Wn.2d at 455. Courts recognize “discretion is inherent” in RCW 9.94A.753. *D.L.W.*, 14 Wn. App. 2d at 655. RCW 9.94A.753(5) has similar language to section (7) that requires a court to impose restitution, but is silent as to the amount. This subsection provides: “Restitution shall be ordered whenever the offender is convicted of an offense” that causes injury or damage. RCW 9.94A.753(5).

The trial court noted that RCW 9.94A.753(7) applies “regardless” of provisions in (1)-(6) of the statute. RP 190. The inapplicability of the modifiers in sections (1)-(6) does not change the plain language of



(7). This statutory scheme gives courts discretion and provides a further basis to find a court must have the discretion to determine the amount of restitution to impose under RCW 9.94A.753(7).

RCW 9.94A.753(1)-(6) gives courts authority to order restitution, sets the time limits the court has to order it, and provides the factors a court should consider in determining the amount owed, including allowing the court to not impose restitution in “extraordinary circumstances.” These procedural differences show how important a court’s discretion is when ordering the amount of restitution under (7). Where sections (3) and (5) require a causal connection between the restitution and injury or harm, there is no requirement of a causal connection between the restitution ordered and the harm or loss being compensated under section (7). *State v. McCarthy*, 178

Wn. App. 290, 300, 313 P.3d 1247 (2013). There are no limiting provisions to ensure the defendant is required to pay a just amount under (7) as there is when applying provisions (1)-(6). A court must therefore have the discretion to decide the appropriate amount of restitution under (7) absent language stating otherwise.

The Court of Appeals looked to the Crime Victims' Compensation Act (CVCA) to determine that a person must ask the Department of Labor and Industries, who administers the CVC, if they seek to reduce the amount requested, not the court. Op. at 5 (citing RCW 7.68.120). This turns the court's order of restitution into nothing more than a rubber stamp for the Department's requests.

Even if there were any ambiguity in the statute, it would have to be construed in favor of the defendant.

*State v. Radan*, 143 Wn.2d 323, 330, 21 P.3d 255 (2001). This would allow a court to determine the amount of restitution based on the defendant's reduced culpability.

But RCW 9.94A.753(7) is unambiguous. It applies regardless of the other provisions in the statute, and plainly omits any statement that the court must order restitution in any specified amount. If a statute is unambiguous this Court must apply "the statute as written and assume that the legislature means exactly what it says." *Radan*, 143 Wn.2d at 330. Absent language to the contrary and consistent with the court's discretion regarding the amount of restitution under RCW 9.94A.753, the plain language of (7) allows the court to decide the amount of restitution the defendant must repay to the crime victims' compensation fund.

Moreover, allowing a court discretion to determine the just amount of restitution owed by an individual defendant to the victims' compensation fund is consistent with the purpose of restitution, which is to "rehabilitate the defendant and to compensate the victim." *State v. Barbee*, 193 Wn.2d 581, 588, 444 P.3d 10 (2019). Criminal defendants pay into the crime victims' fund through the VPA. RCW 7.68.035(1). It is now also funded by the legislature. Laws of 2023, ch. 449 (2). Victims receive compensation through this fund and so adjusting the amount of restitution an individual must repay to the fund does not reduce a victim's compensation. Allowing a court to determine the appropriate amount of repayment to the fund promotes the defendant's rehabilitation because a court can consider a person's ability to pay and their reduced culpability.

The Court of Appeals reads words into a statute that aren't there to divest sentencing courts of discretion, contrary to this Court's guidance in the application of the canons of statutory construction. *J.P.*, 149 Wn.2d at 450. RAP 13.4(b)(1). Additionally, courts must be able to impose restitution proportionately and justly. Saddling poor people with untenable legal financial debt is a matter of substantial public interest warranting review. RAP 13.4(b)(4); *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015).

#### F. CONCLUSION

The Court of Appeals misconstrued the restitution statute to wrongly remove a trial court's discretion to order the appropriate and just amount of restitution. This Court should accept review. RAP 13.4(b)(1)&(4).

In compliance with RAP 18.17, this document  
contains 2,383 words.

DATED this 13th day of December 2023.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

MONTREAL LEANTHONY MORGAN,  
SR.,

Appellant.

No. 84536-5-I

DIVISION ONE

PUBLISHED OPINION

MANN, J. — The sentencing court generally has broad discretion when imposing restitution. But when restitution is based on benefits paid under the “Crime Victims’ Compensation Act” (CVCA), chapter 7.68 RCW, to compensate victims for losses resulting from an offense, the applicable statutes do not allow the court to waive restitution or to impose less restitution than the amount of benefits paid. Montreal Morgan appeals a restitution order and argues that the sentencing court should have exercised discretion to reduce the amount owed under the crime victims’ compensation (CVC) program. We disagree and affirm.

I

Morgan pleaded guilty to conspiracy to commit murder in the second degree and unlawful possession of a firearm in the second degree, based on his participation in a

2020 home invasion robbery that resulted in the shooting death of one of the occupants of the home. In conjunction with his plea, Morgan agreed to join the State's recommendation for a sentence of 163 months and to pay restitution in an amount to be determined at a future hearing. The sentencing court imposed a sentence in accordance with the plea agreement.

The State requested restitution based on the Department of Labor and Industries (Department) payment of \$10,480 as CVC benefits to reimburse the victim's family for out-of-pocket medical expenses and funeral costs under the CVCA.<sup>1</sup> Citing his youthfulness at the time of the crime, mental health issues, and limited future earning potential, Morgan urged the trial to exercise discretion and order less than the full amount of restitution requested by the Department. The sentencing court responded that it believed RCW 9.94A.753(7) limited its discretion to impose less restitution under the CVC program. The court ordered Morgan and his codefendants to pay, jointly and severally, restitution of \$10,480 for benefits paid under the CVC program. Morgan appeals.

## II

Morgan challenges the restitution order and argues that the sentencing court erred by failing to recognize its discretion to determine the appropriate amount of restitution. We disagree.

A sentencing court's restitution order will not be disturbed on appeal absent an abuse of discretion. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999).

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<sup>1</sup> The Department administers the CVC program. See RCW 7.68.015.



Application of an incorrect legal analysis or other error of law can constitute abuse of discretion. State v. Kinneman, 155 Wn.2d 272, 289, 119 P.3d 350 (2005).

The sentencing court's authority to order restitution derives from statutory provisions. State v. Gray, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). The restitution statute provides:

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

.....

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the [Department], as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the [Department], the court shall hold a restitution hearing and shall enter a restitution order.

RCW 9.94A.753.<sup>2</sup>

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<sup>2</sup> The legislature amended RCW 9.94A.753 in 2022 and added a new subsection to RCW 9.94A.753(3), which went into effect on January 1, 2023. LAWS OF 2022, ch. 260, § 3(3)(b). The new provision provides that the trial court "may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or state agency, except for restitution owed to the department of labor and industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay." RCW 9.94A.753(3)(b) (emphasis added).

While Morgan argues that the court has “inherent” discretion over restitution, he concedes that RCW 9.94A.753(7) does not authorize the trial court to waive restitution when the State seeks restitution for benefits paid under the CVCA. In that case, the statute mandates that the court “shall” order restitution upon request “[r]egardless” of subsection (5), and if it fails to do so, the Department may petition for entry of an order so providing. RCW 9.94A.753(7). In other words, even when “extraordinary circumstances” are present, RCW 9.94A.753(7) does not authorize the sentencing court to waive restitution for costs incurred under the CVC program.

Still, Morgan argues that RCW 9.94A.753(7) does not require the trial court to impose a particular amount of restitution or require the court to impose the full amount of restitution paid under the CVC program. He contends that because RCW 9.94A.753(5) and RCW 9.94A.753(7) are both “silent as [to] the amount” of restitution, the provisions should be interpreted in the same manner.

But to support his claim that the court’s discretion extends to restitution under subsection (7), Morgan relies on authority involving restitution requested by an insurer under subsection (5). See, e.g., State v. D.L.W., 14 Wn. App. 2d 649, 659, 472 P.3d 356 (2020) (adult court sentencing a juvenile has discretion under RCW 9.94A.753(5) to consider youthfulness in determining the amount of restitution owed to an insurer). And, Morgan’s argument fails to appreciate the interplay between the restitution statute, the CVCA, and the language of subsection (7), which “specifically directs the court to disregard the terms of subsection (5).” State v. McCarthy, 178 Wn. App. 290, 301, 313 P.3d 1247 (2013) (rejecting claim of error based on failure to address causal connection

between expenses imposed as restitution under RCW 9.94A.753(7) and criminal conduct).

The CVCA provides that “[a]ny payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed the criminal act.” RCW 7.68.120. This same section reiterates that the Department must petition for entry of a restitution order if the court fails to enter one. RCW 7.68.120. Repayment of the debt owed to the Department may be “waived, modified downward[,] or otherwise adjusted by the department in the interest of justice, the well-being of the victim, and the rehabilitation of the individual.” RCW 7.68.120(5). The statute does not provide for modification of restitution by the sentencing court.

Morgan argues in reply that the CVCA contemplates the court’s discretion to set the appropriate amount of restitution for CVC program benefits. Morgan points to the language of RCW 7.68.120(1) which provides that “[i]f there has been a superior or district court order . . . the debt shall be limited to the amount provided for in the order. A court order shall prevail over any other order.” But in the absence of a prior court order setting restitution, this language does not suggest that the sentencing court has discretion to impose restitution in a different amount than the Department paid in benefits to a victim.

Morgan also claims that the court must have discretion to reduce restitution because the statute allows a convicted individual to request a court hearing when the Department petitions the court for an order of restitution and notifies the individual of the debt owing as a result of the CVC program benefits paid. See RCW 7.68.120(2)(a). We disagree. The ability to request a hearing when the Department directly petitions

the court does not mean that when a sentencing court considers the Department's restitution request based on properly documented CVC benefits under RCW 9.94A.753(7), the court may order restitution in an amount less than the benefits paid.


RCW 9.94A.753(7) is consistent with the statutory scheme of the CVCA, which reserves the ability to adjust restitution in appropriate circumstances, to the Department. The plain language of RCW 9.94A.753(7) directs the sentencing court to apply that provision "[r]egardless" of "subsections (1) through (6)." RCW 9.94A.753(7) thus explicitly limits the court's discretion as to restitution premised on CVC benefits. And reading the CVCA with RCW 9.94A.753(7), the court correctly determined that it needed to order restitution to the CVC program in the amount that the Department paid to the victim.

Caselaw addressing restitution reflects our interpretation of the relevant statutes. For instance, in State v. Ramos, 24 Wn. App. 2d 204, 221, 520 P.3d 65 (2022), we considered an Eighth Amendment challenge to restitution and other amounts imposed in connection with the defendant's convictions. We noted that while the sentencing court generally has discretion when imposing restitution, "that discretion does not extend to cases where 'the victim is entitled to benefits under the Crime Victims' Compensation Act, chapter 7.68 RCW.'" Ramos, 24 Wn. App. 2d at 221 (quoting RCW 9.94A.753(7)). We observed that the propriety of restitution based on the CVC program benefits is properly addressed, not by the sentencing court, but by the defendant, who may seek "modification of a restitution order through a petition to the Department of Labor and Industries." Ramos, 24 Wn. App. 2d at 221 (citing RCW 7.68.120(5)). And likewise, in State v. Ellis, 27 Wn. App. 2d 1, 11-12, 530 P.3d 1048 (2023), in the context

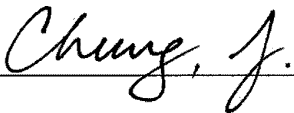
of a constitutional excessive fines claim, Division Two of this court recently observed that the restitution statute does not allow the sentencing court to modify or waive full restitution to reimburse the CVC program for benefits paid.

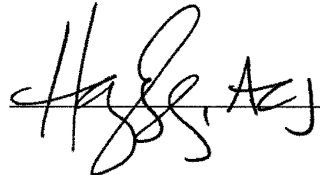
Since the State requested restitution solely based on the CVC program benefits paid, the sentencing court did not err in concluding that it lacked discretion under RCW 9.94A.753(7) to reduce the amount of restitution.

Affirmed.

  
\_\_\_\_\_

WE CONCUR:

  
\_\_\_\_\_

  
\_\_\_\_\_

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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 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. 84536-5-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:

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Date: December 13, 2023

# WASHINGTON APPELLATE PROJECT

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