Supreme Court No. 102852-1
(COA No. 84617-5-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONELLE WILLIAMS,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Ronelle Williams asks this Court to accept review of the Court of Appeals decision under RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Mr. Williams appealed his judgment and sentence for several convictions involving his ex-partner. The Court of Appeals affirmed the convictions, but remanded to the trial court to strike LFOs. *State v. Williams*, No. 84617-5-I, 2024 WL 418915 (Wash. Ct. App. Feb. 5, 2024).

C. ISSUES PRESENTED FOR REVIEW

1. The Fifth Amendment of the United States Constitution and article I, section 9 of the Washington Constitution protect a defendant against double jeopardy. Assault is a course of conduct crime, and double jeopardy prohibits the State from prosecuting a person for every act during an assault. Therefore, this Court requires trial courts to examine the totality of the circumstances to determine whether it is a single assault. In this case, Mr. Williams was angry at his

girlfriend because her ex was at her house. He struck her in the face, confronted her ex, then returned and pointed a gun at her. Under the totality of the circumstances, Mr. Williams's actions constitute a single course of conduct, and his convictions for second degree assault and fourth degree assault thus violate the Double Jeopardy Clause. The Court of Appeals decision affirming these convictions conflicts with decisions by this Court and the Court of Appeals and implicates the accused's right to not face double punishment for a single offense, warranting this Court's review. RAP 13.4(b).

2. A person is generally entitled to credit for time served for a criminal conviction. Due process and principles of equity and fairness require a court to credit a person for time served for a conviction that is later deemed unconstitutional. The Court of Appeals decision affirming the trial court's refusal to credit Mr. Williams for time served for his prior, unconstitutional convictions is an important issue with broad import, warranting this Court's review. RAP 13.4(b).

D. STATEMENT OF THE CASE

Mr. Williams had a difficult upbringing. He and his siblings raised themselves from a young age without any parental support. RP 24. He suffered from depression, and he began to use drugs. RP 27, 29. When a former girlfriend died in a tragic car accident, Mr. Williams had a mental breakdown and turned to alcohol to cope with his trauma. RP 26.

In 2017, Mr. Williams was dating Sametra Beck. CP 4. One night, after a long night of heavy drinking, he went to Ms. Beck's apartment and saw her ex-partner, Demario Taylor, outside the apartment. CP 5. He was angry to see Mr. Taylor at the apartment and took his anger out on Ms. Beck. CP 5. He yelled and struck her in the face, briefly stepped outside to confront Mr. Taylor, then stepped back into the apartment and pointed a gun at Ms. Beck's pregnant stomach. CP 5. He did not pull the trigger. CP 5. After Mr. Williams was arrested, he made several jail phone calls to Ms. Beck. CP 44.

The State charged Mr. Williams with second degree assault (Count I), unlawful possession of a firearm (Count III), fourth degree assault (Count IV), and tampering with a witness (Count V).[1] CP 11-13. The State also charged Mr. Williams with a firearm enhancement for Count I, an aggravating factor that the alleged victim was pregnant for Count I, as well as a domestic violence designation for Counts I and IV. CP 11-12. A jury found him guilty on all charges and returned special verdicts on the firearm enhancement, aggravator, and domestic violence designations. CP 14-15.

At sentencing, the court declined to impose an exceptional sentence based on the aggravating factor and imposed a standard-range sentence of 135 months. CP 17, 30.

Mr. Williams filed a first appeal and the Court of Appeals affirmed. *State v. Williams*, 15 Wn. App. 2d 1030,

[1] The State also charged him with felony harassment (Count II), but later moved to strike the charge for violating double jeopardy. CP 12, 89-90.

2020 WL 6869993 (Wash. Ct. App. Nov. 23, 2020) (unpublished). Then, the Supreme Court granted Mr. Williams's petition for review and remanded to the trial court for a new sentencing hearing pursuant to *State v. Blake*.[2] CP 25-27; *State v. Williams*, 197 Wn.2d 1007, 484 P.3d 1260 (2021).

At Mr. Williams's new sentencing hearing, he argued Counts I and IV violated double jeopardy. CP 33-36. He also asked the court to credit him for time served for his prior, unconstitutional convictions for drug possession. CP 36-37.

Many of Mr. Williams's extensive family support system attended the hearing and spoke on his behalf. RP 24. His twin sister talked about their difficult childhood and the struggles Mr. Williams faced even as an adult. RP 25. His sisters, stepdaughter, and stepdaughter's son described growing up without father figures and how Mr. Williams took on that important role in their lives. RP 34-37. His stepdaughter's son

[2] 197 Wn.2d 170, 481 P.3d 521 (2021).

said: "I just need him. . . . I love you a lot. And I miss you." RP 35-36. Mr. Williams's cousin, who is the executive director of the Fatherhood Accountability Movement, explained how, in addition to their family, the organization will support Mr. Williams with his mental health and job prospects when he is released. RP 31, 39.

Mr. Williams also spoke about his rehabilitation. While in DOC custody, he sought treatment to address his previously undiagnosed mental health conditions. RP 40. He enrolled in and graduated from several programs to develop his skills. RP 42. He made significant strides to better himself, despite limited opportunities in DOC during the pandemic. RP 42. He also pointed out he has managed to stay infraction free: "and that's very hard being in prison." RP 41. Mr. Williams became emotional when talking about his family, their love for each other, and how he wants to be part of their lives. RP 42.

The court concluded Counts I and IV were not a single course of conduct and did not violate double jeopardy. RP 44-

47. The court also declined to credit Mr. Williams for time served for his prior convictions for drug possession, stating, "I don't believe that legally I can do that." RP 48. It also declined credit on equitable grounds. RP 48.

The court again declined to impose an exceptional sentence based on the aggravating factor and imposed a standard-range, concurrent sentence of 106 months. RP 49; CP 123.

Mr. Williams then filed this second appeal, arguing his convictions for Counts I and IV violated double jeopardy and he was entitled to credit for time served under an unconstitutional statute. The Court of Appeals affirmed. *Williams*, 2024 WL 418915 at *1.

E. ARGUMENT

1. The Court of Appeals decision affirming Mr. Williams's two assault convictions violates the Double Jeopardy Clause and conflicts with previous holdings by this Court and the Court of Appeals.

The Double Jeopardy Clause prohibits the State from convicting and punishing a defendant twice for the same

offense. U.S. Const. amend V; Const. art. I, § 9; *United States v. Dinitz*, 424 U.S. 600, 606, 96 S. Ct. 1075, 47 L. Ed. 2d 267 (1976); *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 980, 329 P.3d 78 (2014). Double jeopardy is implicated when multiple convictions arise from the same act, regardless of the sentence imposed. *State v. Womac*, 160 Wn.2d 643, 656, 160 P.3d 40 (2007); *State v. Calle*, 125 Wn.2d 769, 775, 888 P.2d 155 (1995).

This Court has held assault is a "course of conduct crime" and double jeopardy prohibits the State from prosecuting a person for every act during the assault. *Villanueva-Gonzalez*, 180 Wn.2d at 984, 985. To determine whether multiple acts constitute a single course of conduct, the court must examine five factors: (1) the length of time over which the acts took place, (2) whether the acts took place in the same location, (3) the defendant's intent or motivation for the different acts, (4) whether the acts were interrupted or there was an intervening act or event, and (5) whether there was an

opportunity for the defendant to reconsider their actions. *Id.* at 985. These factors are not dispositive; "the ultimate determination should depend on the totality of the circumstances, not a mechanical balancing of the various factors." *Id.*

In *In re Pers. Restraint of White*, the Court of Appeals correctly applied the *Villanueva-Gonzalez* factors to conclude the defendant's two acts were a single assault. 1 Wn. App. 2d 788, 797-98, 407 P.3d 1173 (2017). In that case, the defendant got into an argument with his girlfriend about custody of their child. *Id.* at 790. He pulled out a gun and threatened to kill her. *Id.* He briefly stepped away, and, even though their child pleaded with him to stop, he returned and placed his hands around his girlfriend's neck. *Id.* at 790, 795-96. The jury convicted him of two counts of second degree assault—one for pointing the gun at her, and one for putting his hands around her neck. *Id.* at 791.

The Court of Appeals applied the *Villanueva-Gonzalez* factors and reversed, concluding the acts were a single assault and the convictions violated double jeopardy. *Id.* at 798. Examining the totality of the circumstances, the Court of Appeals concluded the defendant's intent was to assault his girlfriend "and the episode as a whole was motivated by the disagreement over where [their child] would live." *Id.* at 794. In addition, even though the defendant briefly stepped away before assaulting the victim again, and even though the child pleaded with him to stop, the Court of Appeals concluded there was no interruption or moment of calm. *Id.* at 795-96.

In Mr. Williams's case, the Court of Appeals misapplied the *Villanueva-Gonzalez* factors to conclude his actions here were two separate assaults. *Williams*, 2024 WL 418915 at *2. Though it correctly concluded the first and second factors indicate that this was one continuous assault, the Court of Appeals wrongly distinguished *White* to conclude the third,

fourth, and fifth factors demonstrate they were two separate assaults. *Id.* (citing *White*, 1 Wn. App. at 795-96).

Under the third factor, the court examines the intent or motivation for each act. *Villanueva-Gonzalez*, 180 Wn.2d at 985. The Court of Appeals wrongly focused on *who* each assaultive act was directed toward. It concluded Mr. Williams's acts were two separate assaults because punching Ms. Beck was an assault against Ms. Beck while pointing the gun at Ms. Beck was an assault against both Ms. Beck and her unborn child. *Williams*, 2024 WL 418915 at *2. This reasoning is incorrect and fails to examine Mr. Williams's intent or motivation. It also overlooks the fact that any assault against Ms. Beck would also necessarily be an assault against her unborn child.

Proper analysis of this factor demonstrates the intent or motivation for both acts was the same: Mr. Williams was angry that Ms. Beck's former partner was at her home. He repeatedly yelled at her and questioned her as to why Mr. Taylor was there. CP 5. Similar to the facts in *White*, Mr. Williams's intent

and motivation was the same for both acts. *White*, 1 Wn. App. 2d at 795.

As to the fourth and fifth factors, the court examines whether there was an intervening event or an opportunity to stop and reconsider. *Villanueva-Gonzalez*, 180 Wn.2d at 985. Again, the Court of Appeals wrongly distinguished *White*. *Williams*, 2024 WL 418915 at *2. But the facts in *White* are directly on point. Similar to the facts in *White*, here there was no intervening event and no opportunity for Mr. Williams to stop and reconsider his actions. Mr. Williams briefly stepped away from Ms. Beck, but he had no opportunity to reflect or calm down because he stepped away to confront Mr. Taylor before returning to continue yelling at Ms. Beck. Contrary to the Court of Appeals's conclusion, confronting Mr. Taylor was a continuation of his assault, not an intervening event or opportunity to calm down. *Williams*, 2024 WL 418915 at *2.

A proper examination of the *Villanueva-Gonzalez* factors demonstrate that only one, continuous assault occurred here.

"[T]he episode as a whole" was driven by Mr. Williams's anger about Mr. Taylor's presence at Ms. Beck's residence, and Ms. Beck described one continuous incident with no interruption or moment of calm.. *White*, 1 Wn. App. 2d at 795. Under the totality of the circumstances, this was a single course of conduct. *Villanueva-Gonzalez*, 180 Wn.2d at 985.

The Court of Appeals decision affirming Mr. Williams's two convictions for assault is a significant question implicating the Double Jeopardy Clause. In addition, it conflicts with decisions by this Court and the Court of Appeals. This Court should grant review. RAP 13.4(b).

2. The Court of Appeals misapplied this Court's reasoning in *Roach* and refused to credit Mr. Williams for time served under an unconstitutional conviction. This Court should grant review of this issue of broad public import.

In *State v. Blake*, this Court invalidated the prior drug possession statute as unconstitutional, thereby eliminating every conviction pursuant to that statute. 197 Wn.2d 170, 185, 481 P.3d 521 (2021). When a statute is unconstitutional, it has

always been unconstitutional, and any sentence based on that statute is invalid. *See State v. Paniagua*, 22 Wn. App. 2d 350, 354, 511 P.3d 113, *review denied*, 200 Wn.2d 1018 (2022). The State cannot punish a person where it "ha[s] no power to proscribe the conduct" for which the person is being punished. *Montgomery v. Louisiana*, 577 U.S. 190, 202, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016).

Under due process and principles of fairness and equity, people are entitled to receive credit for time served for those unconstitutional convictions. Generally, "[a]s a matter of constitutional law, defendants are entitled to credit for all time served in confinement on a criminal charge, whether that time is served before or after sentencing." *State v. Enriquez-Martinez*, 198 Wn.2d 98, 101, 492 P.3d 162 (2021). Punishing a person for "a nonexistent crime" violates due process. *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004). Principles of equity and fairness require credit for time

served on unconstitutional convictions. *See In re Pers. Restraint of Roach*, 150 Wn.2d 29, 37, 74 P.3d 134 (2003).

In *Roach*, this Court adopted the equitable doctrine of credit for time served at liberty. *Id.* Guided by "'simple fairness,'" this Court held the defendant was entitled to credit where, through no fault of his own, he was erroneously released from custody. *Id.* at 36-37 (quoting *Green v. Christiansen*, 732 F.2d 1397, 1400 (9th Cir. 1984)). Rather than incarcerating him again, this Court credited him for his time spent in the community and held his sentence was complete. *Id.* at 35, 38.

This Court's "simple fairness" reasoning in *Roach* should extend to persons who were deprived of their liberty for unconstitutional convictions. Like the defendant in *Roach*, Mr. Williams served unconstitutional sentences through no fault of his own. People are constitutionally entitled to credit for "all time served." *Enriquez-Martinez*, 198 Wn.2d at 101. In addition, people are entitled to repayment of LFOs that were imposed as punishment for those unconstitutional convictions.

See Civil Survival Project v. State, 24 Wn. App. 2d 564, 569, 520 P.3d 1066 (2022); *Blake Refund Burueau*, Washington Administrative Office of the Courts.[3] Likewise, people should also receive credit for time served, even if they have already completed the unconstitutional sentence.

But the Court of Appeals refused to extend this Court's reasoning in *Roach* to persons who have, through no fault of their own, served unconstitutional sentences, concluding cases such as Mr. Williams's "d[o] not raise any of the fairness aand equity issues that animated the court's holding in *Roach*." 2024 WL 418915 at *3. While the Court of Appeals was correct to note the particular facts in *Roach* are different from this case, the question of whether principles of equity and fairness require credit should be governed by "simple fairness," not the specific facts. *See State v. Dalseg*, 132 Wn. App. 854, 865-68, 134 P.3d 261 (2006) (applying *Roach*'s equitable doctrine of credit to

[3] Available at: https://www.courts.wa.gov/blakerefund

two people who, through no fault of their own, served time in a statutorily noncompliant work release program).

The Court of Appeals correctly noted the SRA does not provide the relief Mr. Williams seeks, but misunderstood that this is exactly why the equitable doctrine of credit should apply. *Williams*, 2024 WL 418915 at *3. While RCW 9.94A.505(6) authorizes credit for time served prior to sentencing for the offense the person is being sentenced on, it does not prohibit credit for time served for a previous, unconstitutional offense. The statute does not apply to Mr. Williams's case. Contrary to the Court of Appeals's conclusion, no statute prohibits granting people like Mr. Williams such credit. Indeed, this Court in *Roach* created the equitable doctrine of credit *because* there was no contrary statute on point. 150 Wn.2d at 36-37 (concluding a statute that tolled a term of confinement where the offender escaped does not apply to a person who was released through no fault of their own).

This Court has acknowledged the significant harm the unconstitutional drug possession statute has had on young men of color, such as Mr. Williams. *Blake*, 197 Wn.2d at 184-85, 192. Authorizing courts to credit persons for time served under the unconstitutional statute is appropriate under due process and principles of equity and fairness, and it also furthers this Court's commitment to undoing systemic oppression. Open Letter from Wash. State Sup. Ct. to Members of Judiciary & Legal Cmty. (June 4, 2020).

The prior drug possession statute is unconstitiutional, and Mr. Williams should never have been incarcerated under that statute. Yet, he served 32 months' incarceration for multiple convictions under that unconstitutional statute. CP 36. There are numerous individuals in the exact same situation as Mr. Williams's, where they have completed a prior, unconstitutional sentence for drug possession but are currently serving another sentence for a different offense. Whether those people are entitled to credit for time served under the unconstitutional

statute is an important issue of broad import requiring this Court's guidance. RAP 13.4(b).

F. CONCLUSION

Based on the preceding, Mr. Williams respectfully requests this Court grant review pursuant to RAP 13.4(b).

This brief is in 14-point Times New Roman, contains 3,518 words, and complies with RAP 18.17.

Respectfully submitted this 4th day of March 2024.

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APPENDIX

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FILED
2/5/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. RONELLE WILLIAMS, Appellant.	No. 84617-5-I DIVISION ONE UNPUBLISHED OPINION

FELDMAN, J. — Williams appeals the trial court's judgment and sentence for assault in the second degree, felony harassment, unlawful possession of a firearm in the first degree, assault in the fourth degree, and witness tampering. He claims that the judgment and sentence violates double jeopardy principles, the trial court should have given him credit for time served on prior convictions, and the trial court improperly ordered him to pay Victim Penalty Assessment (VPA) and community custody supervision fees. We remand to the trial court to strike the VPA and community custody supervision fees, but in all other respects we affirm.

I

The State charged Williams with second-degree assault, unlawful possession of a firearm, fourth-degree assault, and tampering with a witness

following a violent altercation with his girlfriend at the time, Sametra Beck. A jury found him guilty on all charges.[1]

In his first appeal from the judgment and sentence, Williams argued that his arrest was not supported by probable cause, he was deprived of a fair trial, he received ineffective assistance of counsel, and his offender score was miscalculated. *State v*. *Williams*, 15 Wn. App. 2d 1030 (2020) (unpublished). After this court affirmed in an unpublished opinion, the Supreme Court granted discretionary review and remanded the case solely for recalculation of Williams' offender score and sentence in light of *State v*. *Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), which struck down Washington's statute prohibiting simple drug possession. *State v*. *Williams*, 197 Wn.2d 1007, 484 P.3d 1260 (2021).

In accordance with the Supreme Court's mandate, the trial court entered an order amending Williams' sentence based on his recalculated offender score after excising the prior convictions subject to *Blake*. Williams again appeals.

II

A. Double Jeopardy

Williams asserts that the conviction for assault in the fourth degree must be vacated because it violates double jeopardy principles. In response, the State contends that Williams is prohibited from raising the double jeopardy issue in this appeal because he could have raised it, but did not raise it, in his first appeal from

[1] Because the facts of this case are known to the parties and set forth in detail in our prior opinion in this matter (*State v*. *Williams*, 15 Wn. App. 2d 1030 (2020) (unpublished), *review granted in part, cause remanded*, 197 Wn.2d 1007, 484 P.3d 1260 (2021)), we do not repeat them here except as relevant to the arguments below.

the trial court's judgment and sentence. The fatal flaw in the State's argument is that the trial court addressed the merits of Williams' double jeopardy argument on resentencing, ruling that "it is of a constitutional magnitude, and I need to address it." Consequently, our review is governed by RAP 2.5(c)(1), which states:

> *Prior Trial Court Action*. If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the trial court even though a similar decision was not disputed in an earlier review of the same case.

Because the double jeopardy issue is of constitutional magnitude and the trial court squarely addressed it below, we exercise our discretion under RAP 2.5(c)(1) to review and determine the propriety of the trial court's decision.

While we agree with Williams that he can properly raise his double jeopardy argument in this appeal, we reject his argument on the merits. As Williams notes, assault can be a course of conduct crime, and multiple assault convictions that constitute one course of conduct implicate double jeopardy concerns. *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 984-85, 329 P.3d 78 (2014). But the record here does not indicate that his assaultive acts were part of a single course of conduct. To determine whether the acts constitute a single course of conduct, we examine five factors: (1) the length of time over which the acts took place, (2) whether the acts took place in the same location, (3) the defendant's intent or motivation for the different acts, (4) whether the acts were interrupted or there was an intervening act or event, and (5) whether there was an opportunity for the defendant to reconsider their actions. *Id.* at 985. These factors are not individually dispositive, and "the ultimate determination should depend on the totality of the

circumstances, not a mechanical balancing of the various factors." *Id*. We review the trial court's double jeopardy ruling de novo. *Id*. at 979-80.

Applying these factors, the trial court correctly concluded that Williams' fourth-degree assault conviction does not violate double jeopardy. As to factors (1) and (2), both assaultive acts took place in the same location, and the trial court estimated that both events occurred within a period of "around fifteen minutes of time thereabouts." Regarding factor (3), there were two separate assaultive acts, and the trial court reasonably found that Williams' intent was different for each. The fourth-degree assault was directed solely at Beck: Williams punched her several times in the face in rage, and the trial court found his intent in doing so was to assert domination and control over her. The second-degree assault, in contrast, was directed at both Beck and her unborn child: Williams pointed a loaded firearm at Beck's abdomen while threatening to kill her unborn child when she was eight months pregnant, and the trial court found his intent in doing so was "a different type of power and control by . . . lashing out at the child as well as Ms. Beck." As to factors (4) and (5), which are especially significant here, Williams left Beck's apartment between the two assaultive acts. During that time, Williams confronted Beck's ex-partner and armed himself with a firearm before returning to threaten Beck and her unborn child. Thus, there was at least one intervening event and sufficient opportunity for Williams to reconsider his actions. On this record, the trial court did not err in rejecting Williams' argument that the assaultive acts were part of a single course of conduct.

It is equally clear, considering the totality of the circumstances and the

Villanueva-Gonzalez factors, that Williams' reliance on *In re Pers. Restraint of White*, 1 Wn. App. 2d 788, 407 P.3d 1173 (2017), is misplaced. The defendant in *White* was convicted of two separate counts of second-degree assault for pointing a gun at his girlfriend (Raina Stevens) and strangling her. *Id*. at 794. The court found a double jeopardy violation in *White* because (1) "White's intent and motivation did not change" throughout the altercation with Stevens; (2) there was "one continuous struggle from the time White pointed a gun at Stevens to throwing her on the floor and beating her to the time he began to strangle her"; and (3) "the State points to no interruption or moment of calm that provided an opportunity to reconsider." *Id.* at 795-96. Because the facts and circumstances here are markedly different, as the above discussion shows, *White* is inapposite.[2]

B. Credit for time served

Williams next argues that he "is entitled to credit for time served for unconstitutional convictions." According to Williams, he "previously served 32 months' incarceration for multiple convictions" under the statute prohibiting simple drug possession that was declared unconstitutional in *Blake* and the trial court should have given him credit for the time he served on those unrelated convictions against the subsequent convictions at issue in this appeal. We disagree.

Preliminarily, Williams does not dispute the State's argument that the Sentencing Reform Act (SRA) does not authorize the relief he is seeking here.

[2] Williams' reliance on *State v. Robinson*, No. 36504-2-III, (Wash. Ct. App. Dec. 19, 2019) (unpublished), https://www.courts.wa.gov/opinions/pdf/365042_unp.pdf, is misplaced for similar reasons. Like *White* and unlike this case, *Robinson* involved an "uninterrupted" series of assaultive acts. *Id*. at 6.

Williams would be hard-pressed to argue otherwise, having conceded below that the SRA "does not provide for crediting time to one sentence for time served on another sentence." But even ignoring this concession, RCW 9.94A.505(6) authoritatively addresses this issue and requires trial courts to "give the offender credit for all confinement time served before the sentencing if that confinement was *solely* in regard to the offense for which the offender is being sentenced." (Emphasis added). The prior drug convictions here do not satisfy this requirement: they are not "solely in regard to the offense for which [Williams] is being sentenced," and are instead wholly unrelated to the convictions at issue in this appeal. Thus, the relief Williams seeks cannot properly be granted under the SRA.

Williams seeks to circumvent the plain language of the SRA by relying instead on principles of equity, fairness, and due process as described and applied by our Supreme Court in *In re Pers. Restraint of Roach*, 150 Wn.2d 29, 74 P.3d 134 (2003). The Court in *Roach* adopted "the doctrine of credit for time at liberty" and held, as a matter of fairness and equity, "that a convicted person is entitled to credit against his sentence for time spent erroneously at liberty due to the State's negligence, provided that the convicted person has not contributed to his release, has not absconded legal obligations while at liberty, and has had no further criminal convictions." *Id.* at 34-37.

Williams' reliance on *Roach* is misplaced, as this case does not raise any of the fairness and equity issues that animated the court's holding in *Roach*. Perhaps most important, unlike the circumstances in *Roach*, the government here did not lead Williams to believe that he had completed his sentence or parole and

was completely at liberty—which is the sine qua non of the doctrine of credit for time at liberty as described and applied in *Roach*. 150 Wn.2d at 35-36 (quoting *Green v. Christiansen*, 732 F.2d 1397, 1399 (9th Cir.1984)). Additionally, unlike the relief sought in *Roach*, the relief that Williams seeks contradicts the controlling statute. For these reasons, we decline to apply (or extend) the doctrine of credit for time at liberty to the facts at issue here.

C. Legal Financial Obligations

Lastly, Williams argues that remand to the trial court is necessary to strike the $500 VPA and community custody supervision fees from his judgment and sentence. Williams contends that recent amendments to RCW 7.68.035 provide that the VPA shall not be imposed against a defendant who is indigent at the time of sentencing. LAWS OF 2023, ch. 449, § 1. The State does not dispute that Williams is indigent and does not object to a remand for purposes of striking the VPA from his judgment and sentence. The State similarly concedes that, pursuant to the amended RCW 9.94A.703 and *State v. Wemhoff*, 24 Wn. App. 2d 198, 519 P.3d 297 (2022), the trial court should have struck the community custody supervision fees from Williams' judgment and sentence. We accept the State's concessions and, accordingly, remand to the trial court to strike the VPA and community custody supervision fees.[3]

[3] While the State claims that Williams relies on inapposite authority, the court squarely held in *State v. Ellis*, 27 Wn. App. 2d 1, 16-17, 530 P.3d 1048 (2023), that the recent amendments to RCW 7.68.035 and RCW 9.94A.703 apply to cases, like this one, that are on direct appeal.

III

We remand to the trial court to strike the VPA and community custody supervision fees. In all other respects, we affirm.

Feldman, J.

WE CONCUR:

Brennan, J.

Smith, C.J.

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