

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 98846-3
)	
v.)	MOTION REQUESTING
)	ADDITIONAL RELIEF
SANTIAGO ALBERTO SANTOS,)	UNDER <i>BLAKE</i>
)	
Petitioner.)	

A. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

Petitioner Santiago Santos asks this Court to order additional sentencing relief due to a recent change in the law announced in State v. Blake, 197 Wn.2d 170, 1481 P.3d 521 (2021), to serve the ends of justice. RAP 1.2(a), (c); RAP 18.8(a).

B. ARGUMENT

This Court recently ruled that the statute criminalizing the unknowing possession of a controlled substance, RCW 69.50.4013(1), is unconstitutional and void. Blake, 197 Wn.2d at 173.

Mr. Santos was convicted of second degree murder. The Court of Appeals affirmed his conviction, but ordered sentencing relief as to legal financial obligations. Mr. Santos filed a petition for review on July 31, 2020. On November 4, 2020, this Court stayed consideration of the petition pending a final decision in in Supreme Court No. 98067-5, State

of Washington v. Leland Honn Knapp IV. That decision was issued on May 6, 2021, but is not final yet.

Mr. Santos was sentenced with an offender score of 3. CP 164. This offender score was based on criminal history that included two California convictions for possession of a controlled substance. CP 164 163; RP 1228-29. These two prior convictions were counted on the assumption they were comparable to a valid Washington criminal statute, i.e., RCW 69.50.4013(1). But this assumption was wrong because this Court held the statute unconstitutional, meaning that it is void and always has been. Blake, 197 Wn.2d at 195. A prior conviction based on a void statute may not be included in the offender score. State v. Ammons, 105 Wn.2d 175, 187-88, 713 P.2d 719 (1986) (“a prior conviction ... which is constitutionally invalid on its face may not be considered”). Moreover, it does not matter whether Mr. Santos agreed the two convictions counted, because a defendant cannot agree to an illegal sentence. In re the Pers. Restraint of Goodwin, 146 Wn.2d 861, 875-76, 50 P.3d 618, 626 (2002). Because there was no valid comparable statute to the statute the California drug possession convictions are based on, the trial court erred by scoring the two prior convictions. See RCW 9.94A.525(3); State v. Morley, 134 Wn.2d 588, 606, 952 P.2d 167 (1998).

Mr. Santos did not assign error to scoring the foreign convictions. But the change in the law under Blake did not exist when Mr. Santos filed his opening brief in February 2019. Mr. Santos is entitled to the benefit of any change in the law that occurs during his direct appeal. See State v. Ramirez, 191 Wn.2d 732, 749, 426 P.3d 714 (2018). Further, RAP 1.2(a) directs this Court to liberally construe the rules to “promote justice and facilitate the decision of cases on the merits.” RAP 1.2(c) similarly allows this Court to waive or alter the appellate rules “to serve the ends of justice.” RAP 18.8(a) gives this Court broad discretion to enlarge the time within which an act must be done. Mr. Santos is entitled only to a single opportunity for direct appellate review. The change in the law applies to him. The issue could not reasonably have been raised earlier. The interest of justice favor granting him relief based on the change in the law announced in Blake.

Accordingly, if this Court grants Mr. Santos’s petition for review on any of the issues presented, the Court should also consider this sentencing issue when the case is before the Court. If the Court denies Mr. Santos’s petition for review on the issues presented, this Court should still (1) remand to the Court of Appeals to address this sentencing issue; or (2) decide the issue itself and order remand to the trial court for resentencing

without the two prior California convictions for possession of a controlled substance.

C. CONCLUSION

Due to the recent change in law under Blake, this Court should permit consideration of this sentencing issue. If review is granted, the Court should consider it along with the other issues. Alternatively, the Court should remand either to the Court of Appeals or the trial court and afford Mr. Santos the sentencing relief he is entitled to under Blake.

Respectfully submitted this 6th day of May, 2021.



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Date: May 6, 2021

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