

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/8/2021 12:49 PM  
BY SUSAN L. CARLSON

CLERK IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  Respondent,  v.  ZACHARY BERGSTROM,  Appellant.	NO. 99535-4 COA 36381-3-III  MOTION TO AUTHORIZE SPOKANE COUNTY SUPERIOR COURT TO VACATE PCS CHARGE AND REMAND FOR RESENTENCING CONTINGENT ON DISPOSITION OF MOTION TO RECONSIDER
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I. IDENTITY OF MOVING PARTY

The Respondent, State of Washington, represented by Spokane County Prosecuting Attorney, Lawrence Haskell, through his deputy prosecuting attorney, Brett Pearce, seeks the relief designated below.

II. RELIEF SOUGHT

Respondent requests this Court authorize the Spokane County Superior Court to enter an order vacating Count IV of the Judgment and Sentence pursuant to RAP 7.2(e), under case number 18-14-02398-1, upon either the deadline for filing a motion for reconsideration in the case of *State v. Blake*, No. 96873-0, if no such motion is filed, or upon the date the Washington State Supreme Court disposes of the motion for reconsideration in that matter. The defendant may also be entitled to resentencing for the remaining counts unless his or her offender score is unaffected by the order vacating the possession of controlled substances convictions.

**Motion to Authorize Spokane County Superior Court to Vacate PCS Charge and Remand for Resentencing Contingent on Disposition of Motion to Reconsider - 1**

### III. ARGUMENT

Pursuant to RAP 7.2, the trial court is unable to enter any order affecting the subject matter on appeal without an order by this Court expanding its authority to act in the case.

The defendant was found guilty of Count I - second degree unlawful possession of a firearm; Count III - possession of a controlled substance with intent to deliver - methamphetamine; and Count IV - possession of a controlled substance - heroin. The Judgment and Sentence was entered on July 25, 2019.

The Washington State Supreme Court's decision in *Blake* finding the possession of a controlled substance unconstitutional was issued on February 25, 2021. The deadline for filing a motion for reconsideration is March 17, 2021. Should the Supreme Court deny any motion for reconsideration, if one is filed, count Count IV, must be vacated and dismissed. The defendant may be entitled to resentencing on the remaining count(s).

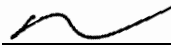
### IV. CONCLUSION

The Respondent respectfully requests this Court issue an order allowing the Spokane County Superior Court to enter an order vacating Count IV for possession of a controlled substance contingent upon a decision by the Washington State Supreme Court affirming its should the decision in *Blake* as issued on February 25,

2021. Upon Mandate of any remaining appellate issues, the matter should be remanded for resentencing on the counts unaffected by *Blake*.

RESPECTFULLY SUBMITTED this 8 day of March 2021.

LAWRENCE H. HASKELL  
Prosecuting Attorney



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Brett Pearce WSBA #51819  
Deputy Prosecuting Attorney  
Attorney for Respondent

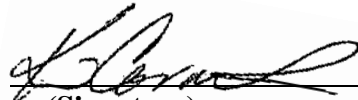
**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington, that on March 8, 2021, I e-mailed a copy of Motion to Authorize Spokane County Superior Court to Vacate PCS Charge and Remand for Resentencing Contingent on Disposition of Motion to Reconsider pursuant to agreement in this matter to:

Devon Knowles  
devon@washapp.org; waspofficemail@washapp.org

3/8/2021  
(Date)

Spokane, WA  
(Place)

  
\_\_\_\_\_  
(Signature)

# SPOKANE COUNTY PROSECUTOR

March 08, 2021 - 12:49 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 99535-4  
**Appellate Court Case Title:** State of Washington v. Zachary P. Bergstrom  
**Superior Court Case Number:** 18-1-02398-1

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- 995354\_Motion\_20210308124740SC797766\_0074.pdf  
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### Comments:

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Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

**Filing on Behalf of:** Brett Ballock Pearce - Email: bpearce@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

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