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STATE OF WASHINGTON

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No. _____
Court of Appeals No. 37619-9-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

RECEIVED
COURT OF APPEALS
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL D. WILLIAMS,

Petitioner.

DEC 09 2009

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STATE OF WASHINGTON
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PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
and the Superior Court of Pierce County

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STATE OF WASHINGTON
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KATHRYN RUSSELL SELK
WSBA No. 23879
Counsel for Petitioner
RUSSELL SELK LAW OFFICE
1037 Northeast 65th Street, Box 135
Seattle, Washington 98115
(206) 782-3353

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A. IDENTITY OF PETITIONER

Michael D. Williams, appellant below, petitions this Court to grant review of the published portion of the decision of the court of appeals designated in section B.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(1), (2), (3) and (4), petitioner seeks review of the published portion of the court of appeals, Division Two, in State v. Williams, __ Wn. App. __, __ P.3d __ (2009 WL 3720661), filed November 9, 2009.¹

C. ISSUES PRESENTED FOR REVIEW

In State v. Grant, 89 Wn.2d 678, 685-86, 575 P.2d 210 (1978), this Court held that a statute which made it a crime to “willfully hinder, delay or obstruct” a public officer in the discharge of their duties addressed “conduct rather than speech.” That holding was reiterated in State v. White, 97 Wn.2d 92, 95, 101, 640 P.2d 1061 (1982), in which this Court declined to apply a First Amendment analysis to the then-current obstruction statute making it a crime to “knowingly hinder, delay or obstruct” an officer, because that language addressed conduct rather than

¹A copy of the Opinion is attached as Appendix A (hereinafter “App. A”).

speech.

Cases of the courts of appeals such as State v. Williamson, 84 Wn. App. 37, 924 P.2d 960 (1996) and State v. Lalonde, 35 Wn. App. 54, 59, 665 P.2d 412, review denied, 100 Wn.2d at 1014 (1983), have also repeatedly held that the same “hinder, delay or obstruct” language does not regulate speech but only conduct or conduct mixed with speech.

Petitioner Williams was charged with obstruction under RCW 9.A.76.020(1) for giving a false name to police and claiming he did not have identification. Without discussing Grant, White, Williamson, Lalonde or any of the other relevant caselaw interpreting the same “hinders, delays or obstructs” language used in the statute, Division Two simply looked at a dictionary, then declared that the language - and the statute - applied to pure speech.

1. Should review be granted under RAP 13.4(b)(1) and (2) to address the conflicts between Division Two’s published decision and the decisions in White, Williamson and the other cases interpreting the relevant language? Further, should review be granted under RAP 13.4(b)(4) because Division Two’s failure to follow prior decisions implicates the important public policies furthered by the doctrine of *stare decisis*?

2. Should review be granted under RAP 13.4(b)(4) in order to address the very significant public policy question of the proper interpretation of a statute defining a crime?

3. Should review be granted under RAP 13.4(b)(3) and (4) in order to address what the prosecution must prove in order to satisfy its constitutionally mandated, due process burden of proving its case beyond a reasonable doubt, because of the serious public importance of ensuring only constitutionally proper convictions for crimes such as obstruction?

4. The Legislature is presumed to be familiar with court interpretations of statutory language and the subsequent amendment of a statute without changing that language or declaring an intent to override that interpretation is deemed to be an acquiescence to the court interpretations under State v. Bobic, 140 Wn.2d 250, 264, 996 P.2d 610 (2000).

Should review be granted in order to address the proper interpretation of the language of the obstruction statute where Division Two's published decision failed to apply the principle of Bobic even though the Legislature amended the obstruction statute several times without changing the "hinders, delays or obstructs" language after courts held that the language does not apply to pure speech?

5. Even if independent interpretation of the language of the obstruction statute had been proper, should review be granted because Division Two's published decision fails to properly apply the rule of lenity and adopt the interpretation most favorable to the criminal defendant?

6. If review is granted on the preceding issues, should review also be granted under RAP 13.4(b)(3) in order to address the question of whether counsel was prejudicially ineffective in failing to raise these issues below and allowing his client to be convicted based upon legally insufficient evidence, on an improper charge?

D. SUMMARY OF ARGUMENT

Division Two's decision ignores the long line of cases interpreting what is meant when a person is charged with obstruction-type crimes and alleged to have "hindered, delayed or obstructed" an officer. The phrase "hinder, delay or obstruct" has been repeatedly interpreted, by this Court and the courts of appeals, to address only pure conduct or conduct coupled with speech, not pure speech. Further, the appellate courts of this state have repeatedly declined to apply standards of scrutiny which would be required if the "hinders, delays or obstructs" language governed speech and thus implicated the First Amendment.

It was error for Division Two to ignore these precedents and hold

that the “hinders, delays or obstructs” means of committing obstruction applies as a matter of law when the only allegation is that the defendant gave a false name or information and lied about having identification. Review should be granted not only because of the conflicts between the published decision in this case and decisions of this Court and the courts of appeals (RAP 13.4(b)(1) and (2)) but also because of the very significant public policy questions involved in proper interpretation and application of a statute defining a crime (RAP 13.4(b)(4)).

Further, because Division Two’s erroneous interpretation of the statute is published, that decision’s conflicts with established caselaw will very likely cause confusion among the various appellate courts and practitioners until this Court clarifies the proper scope and interpretation of the obstruction crime. And Division Two’s refusal to follow the relevant caselaw on interpretation of the language runs afoul of the doctrine of *stare decisis* and the important public policies that doctrine serves.

In addition, review should be granted because Division Two’s published decision ignores two fundamentals of statutory construction. By ignoring the fact that the Legislature has amended the statute while aware of court interpretations that the “hinders, delays or obstructs” language

does not apply to pure speech and has not changed that language, Division Two ignored the rule this Court described in Bobic. By failing to adopt the interpretation of “hinders, delays or obstructs” most favorable to the defendant, Division Two similarly ignored the rule of lenity this Court has adhered to in cases such as In re Sietz, 124 Wn.2d 645, 880 P.3d 34 (1994).

Finally, if this Court grants review on the other issues, it should also grant review under RAP 13.4(b)(3) in order to address whether counsel was prejudicially ineffective in failing to raise these issues below.

E. STATEMENT OF THE CASE

1. Procedural facts

Petitioner Michael D. Williams was charged with and convicted of third-degree theft, making a false or misleading statement to a public servant and obstructing a law enforcement officer, after a bench trial in Pierce County in 2008. CP 1-2; 2RP 58-68²; RCW 9A.56.020; RCW 9A.56.030; RCW 9A.76.020; RCW 9A.76.175. He was ordered to serve

²The verbatim report of proceedings consists of five volumes, which will be referred to as follows:

January 30, 2008, as “1RP;”
February 4, 2008, as “2RP;”
February 8, 2008, as “3RP;”
March 14, 2008, as “4RP;”
April 11, 2008, as “5RP.”

standard range sentences and appealed. CP 35-37.

On November 9, 2009, Division Two of the court of appeals affirmed in a published decision. App. A.

2. Overview of facts relevant to appeal³

Petitioner Michael Williams was accused of leaving a tire store with tires and other items on his vehicle for which he had not paid. 1RP 23-28. His check to pay for those items did not clear “Telecheck” and he did not return after saying he was going to the bank to get the money to pay. 1RP 23-38. When an officer went to an address associated with Williams and spoke to him, Williams gave the name “Eric R. Williams” and a date of birth of November 22, 1977. 1RP 47-52. Williams also said, untruthfully, that he did not have a license or identification. 1RP 47-52. Williams ultimately admitted to the officer that he had lied about his name because he had a felony arrest warrant and had not wanted to get arrested. 1RP 61.

Williams was charged with and convicted of both obstruction and making a false statement for “giving a false name and failing to

³More detailed discussion of the facts regarding the offense is contained in the opening brief at 2-6. Further discussion of the facts relevant to the issues presented for review is contained in the argument section, *infra*.

provide identifying information that was correct.” 2RP 61.

On appeal, Williams argued that reversal and dismissal of the conviction was required, because the obstruction statute, RCW 9A.76.020(1), did not apply to Williams’ speech, as a matter of law. Brief of Appellant (hereinafter “BOA” at 6-13). He also argued that counsel was ineffective in failing to raise the issue below. BOA at 14. Division Two rejected each of these arguments and affirmed. App. A at 1-7.

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

REVIEW SHOULD BE GRANTED IN ORDER TO ADDRESS
WHETHER THE OBSTRUCTION STATUTE APPLIES
TO PURE SPEECH AS A MATTER OF LAW

The issues in this case all turn on the proper interpretation of RCW 9A.76.020(1), the current version of the statute defining the crime of obstructing a law enforcement officer. Under that statute, a person is guilty of the crime of obstruction if he “willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.” RCW 9A.76.020(1).

In previous cases, this Court and the courts of appeals have held that this language, either in the same or predecessor statutes- governs pure conduct and conduct coupled with speech but does not govern pure speech. See Grant, supra; White, supra; Williamson, supra; Lalonde,

supra. Although each of those cases - and the history of the obstruction statute itself - were cited to Division Two in this case, that court nevertheless failed to cite or address a single one of those cases in its published decision. App. A at 5-6; see BOA at 6-13. Instead, Division Two simply cited to a dictionary and declared its belief that “[t]he plain language” of the statute “criminalizes any willful act - verbal or not verbal - that hinders, delays or obstructs” an officer and a “false statement” has that capacity. App. A at 5-6. The “plain language and ordinary meaning” of the statute was “clear,” Division Two stated, so that the arguments about the prior interpretations of the same language over the years and the history discussed in Williams’ briefing, while “interesting,” need not need to be addressed. App. A at 6.

This Court should grant review of this published decision under RAP 13.4(b)(1), (2), (3) and (4).

First, review should be granted under RAP 13.4(b)(4), because of the very serious public policy question of the proper interpretation of the statute defining the crime of obstruction. This Court has implicitly recognized the importance of granting review in cases where the issues revolve around the proper interpretation and application of a statute defining a crime. See, e.g., State v. Cromwell, 157 Wn.2d 529, 140 P.3d

593 (2006) (granting review in order to address the proper interpretation of the language of the statute defining a crime); State v. Bash, 130 Wn.2d 594, 925 P.2d 978 (1996) (same).

Further, review of the proper interpretation of the obstruction statute is needed in order to clarify the proper scope and application of the statute, because of the conflicts between the published decision in this case and the decisions of this Court and the courts of appeals. To make clear the error Division Two committed in failing to follow those prior interpretations of the statute, it is necessary to briefly discuss the history of the crime of obstruction.

In the past, both speech and conduct which hindered or impeded officers in their official duties were criminalized in the same statute as separate means of committing the same offense. Under former RCW 9A.76.020 (1975), it was “Obstruction of a Public Servant” to 1) refuse to furnish information lawfully required by a public servant, 2) knowingly make an untrue statement to such a servant, or 3) “knowingly hinder, delay, or obstruct any public servant in the discharge of his official powers or duties.” See, e.g., Williamson, 84 Wn. App. at 43.

In 1982, in White, this Court invalidated the first two subsections of the statute - the ones addressing speech - as unconstitutionally vague

under the standards applicable to statutes governing speech and thus subject to First Amendment protections. White, 97 Wn.2d at 101. In reaching this conclusion, the Court specifically noted that the third subsection, the “hinders, delays or obstructs” means, applied to “conduct rather than speech.” 97 Wn.2d at 95. This holding was consistent with the Court’s earlier holding, in Grant, 89 Wn.2d at 685-86, that similar language in the earlier version of the statute related only to conduct, not speech.

Following White, a year later, in Lalonde, the court of appeals specifically held that the “hinders, obstructs or delays” means of committing obstruction under a predecessor statute was constitutional because it did not regulate speech, but only conduct. Lalonde, 35 Wn. App. at 59.

As a result, after White, the only portion of the obstruction statute which remained intact was the third means, i.e., the “knowingly hinder, delay, or obstruct” means. Indeed, in Williamson, Division Two recognized this fact. 84 Wn. App. at 43. The Williamson Court also noted that, after White, prosecutors began attempting to charge defendants with obstruction under the “hinders, delays or obstructs” subsection where the allegations were that the defendant had given false or misleading

statements to police. Williamson, 84 Wn. App. at 43. Division Two recognized, however, that such efforts had been rejected because the Legislature had intended that the “hinders, delays or obstructs” subsection was addressed only to *conduct*, not speech. Williamson, 84 Wn. App. at 43.

Despite this history and clear holdings regarding what the Legislature meant in crafting the crime for when someone “hinders, delays or obstructs” an officer, Division Two’s published decision holds that the language of the statute not only governs conduct or even conduct coupled with speech but pure speech. App. A at 1-7. Division Two’s decision in this case thus conflicts with this Court’s interpretations of the same language in Grant and White, and with its own decision in Williamson, as well as with other court of appeals decisions following White. Review should be granted under RAP 13.4(b)(1) and (2) in order for this Court to address these conflicts and decide for itself whether to follow its prior holdings and those of the many court of appeals decisions or overrule them and follow the published decision in this case. Put simply, if this Court does not grant review, it will remain an open question whether the published decision in this case is the law or this Court’s decisions and those of the courts of appeals interpreting the same language are to be

followed.

Further, review should be granted based upon RAP 13.4(b)(4), because Division Two's failure to follow prior caselaw implicates *stare decisis* and the important public policies behind that doctrine. *Stare decisis* is the doctrine that "decisions of the courts of last resort are held to be binding on all others." State v. Ray, 130 Wn.2d 673, 677, 976 P.2d 904 (1996), quoting, State ex rel. State Fin. Comm. v. Martin, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963). The doctrine applies to interpretations of a statute. State v. Law, 154 Wn.2d 85, 102-103, 110 P.3d 717 (2005). Where the Supreme Court has previously interpreted the language of a statute, absent a showing that those prior interpretations were "incorrect and harmful," that interpretation is binding on lower appellate courts. Law, 154 Wn.2d at 102-103.

Division Two made no finding that the prior interpretations of the language it was interpreting were in any way "incorrect and harmful." App. A at 1-7. It just simply refused to follow them. This failure to comply with *stare decisis* on the proper interpretation of the relevant statutory language is of great importance to public policy. As this Court noted in Ray, *stare decisis* is what "makes for stability and permanence" in the law, "holds the courts of the land together," makes those courts into a

“system of justice” and gives them “unity and purpose.” 130 Wn.2d at 677, quoting, Martin, 62 Wn.2d at 665-66. Without *stare decisis*, this Court declared:

the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declaration and assertions—a kind of amorphous creed yielding to and wielded by them who administer it. Take away *stare decisis*, and what is left may have force, but it will not be law.

Ray, 130 Wn.2d at 677, quoting, Martin, 62 Wn.2d at 665-66. Review should be granted on this issue.

Review should also be granted under RAP 13.4(b)(1) because Division Two’s decision failed to apply two of the fundamental principles of statutory construction recognized and applied by this Court in Bobic, supra, and Sietz, supra. In Bobic, this Court declared that the Legislature is deemed to be aware of court interpretations of statutory language and the failure to amend that language or indicate a disagreement with prior court interpretations indicates an acquiescence with that interpretation. Bobic, 140 Wn.2d at 264. Relevant to this case, in 1994, the Legislature finally amended the obstruction statute in response to White. See State v. Graham, 130 Wn.2d 711, 716 n. 2, 927 P.2d 227 (1996). With those amendments, the Legislature deleted the portions of the statute the White Court had found improper and set forth two separate means of committing

the offense, now described as “obstructing a law enforcement officer.”
See Laws of 1994, ch. 196, § 1; see Graham, 130 Wn.2d at 716 n. 2. The two means of committing obstruction were now not only willfully hindering, delaying or obstructing an officer in the discharge of official powers or duties, as before, but also willfully making a false or misleading statement while detained, during the course of a lawful investigation or arrest. Laws of 1994, ch. 196, § 1; see Williamson, 84 Wn. App. at 44.

Despite the indication in White that the language relating to hindering, delaying and obstructing related only to conduct, however, with the 1994 changes, the Legislature did not amend that language or in any way indicate that it intended that subsection to apply to speech in addition to conduct. Laws of 1994, ch. 196, § 1. Nor did it make any such changes a short time later when, in 1995, it again amended the statutory scheme to eliminate the “false or misleading statement” means of committing obstruction and created a new crime of making such a statement to an officer. See Laws of 1995, ch. 285, §§ 32, 33.

Notably, Division Two failed to consider how the existence of the separate crime designed to govern speech was relevant to whether the obstruction statute was also designed to do the same, despite Williams’ arguments on that point. See App. A at 1-7; BOA at 11-12

The Legislature's failure to materially change the language defining the "hinders, delays or obstructs" means of committing obstruction - now the *only* means of committing that crime - indicates that it intended that crime to apply to conduct only, as this Court held in White and as it had previously indicated in Grant. Further, despite its several amendments to the statute since White, the Legislature has never changed the language in order to indicate that it wanted the "hinders, delays or obstructs" subsection to apply to speech. Nor has the Legislature ever indicated any intent to contravene the various courts' previous holdings that the "hinders, delays or obstructs" subsection should *not* apply to speech but only conduct. Review should be granted because the court of appeals in this case ignored the fundamental rule of statutory interpretation set forth in Bobic in erroneously holding that the obstruction statute's "hinders, delays or obstructs" language applies to speech.

In addition, even if it was proper for Division Two to independently interpret the language of the obstruction statute without following the rulings previously issued on that same point, the court's interpretation was flawed and ignores fundamentals of statutory construction which apply when fundamental rights are involved. The court declared that the "plain language" of the statute making it a crime to

“hinder, delay or obstruct” an officer covers both conduct and speech, but nothing in that statute says any such thing. See App. 6; RCW 9A.76.020(1). Rather, the statute does not state whether it was intended to address only acts or was also intended to address pure speech. See RCW 9A.76.020(1). As it is not clear, if Division Two did not choose to follow all of the prior precedent on the proper interpretation of the phrase, it was still required to adopt the interpretation most favorable to the defense under the rule of lenity as described by this Court in cases such as Sietz, supra. Review should be granted in order to address Division Two’s failure to follow this important dictate of statutory construction

Finally, if this Court grants review on the issue of the proper, constitutional interpretation of the obstruction statute, it should also grant review under RAP 13.4(b)(3) in order to address whether counsel was ineffective in failing to raise the issue below. Both the state and federal constitutions guarantee the accused the right to effective assistance of counsel. See Strickland v. Washington, 366 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996), overruled in part and on other grounds by, Carey v. Musladin, 549 U.S. 70, 127 S. Ct. 649, 166 L. Ed.2d 482 (2006); Sixth Amend.; Art. I, § 22. Reversal is required for counsel’s ineffectiveness

where there is a reasonable probability that, but for counsel's failures, the result of the proceeding would have been different. See State v. Cienfuegos, 144 Wn.2d 222, 229, 25 P.3d 1011 (2001).

Under Division Two's published decision in this case, it is not ineffective for counsel to fail to object to obstruction convictions which, Williams submits, are invalid as a matter of law. If this Court grants review in order to address whether such convictions are so invalid, it should grant review on the issue of ineffective assistance, too, in order to safeguard the constitutionally guaranteed right of the accused to effective assistance of counsel. Further, such review will give guidance to counsel, who are currently in the unenviable position of not knowing whether this Court's decision in White and decisions such as Williamson set the appropriate standard for the relevant convictions and inform counsel's performance.

G. CONCLUSION

For the foregoing reasons, this Court should accept review of the decision of Division Two of the court of appeals in this case

DATED this 07th day of December, 2009.

Respectfully submitted,



KATHRYN RUSSELL SELK, No. 23879
Attorney for Petitioner
RUSSELL SELK LAW OFFICE
1037 Northeast 65th Street, Box 135
Seattle, Washington 98115
(206) 782-3353

CERTIFICATE OF SERVICE BY MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel and petitioner by depositing the same in the United States Mail, first class postage pre-paid, as follows:

- To: Michelle Luna-Green, Pierce County
Prosecutor's Office, 946 County City Building,
930 Tacoma Ave S., Tacoma, WA. 98402;
- To: Kimberley Ann De Marco, Pierce County
Prosecutor's Office, 946 County City Building,
930 Tacoma Ave S., Tacoma, WA. 98402;
- To: Michael D. Williams, DOC 734664, c/o CCO
Erin Wright, 10109 S. Tacoma Way, Bldg C.,
Suite 4, Lakewood, WA. 98499-4665.

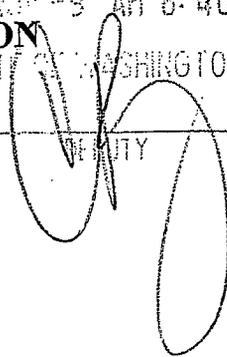
DATED this 9th day of December, 2009.


KATHRYN RUSSELL SELK, No. 23879
Attorney for Petitioner
RUSSELL SELK LAW OFFICE
1037 Northeast 65th Street, Box 135
Seattle, Washington 98115(206) 782-3353

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STATE OF WASHINGTON

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DEROUN WILLIAMS,

Appellant.

No. 37619-9-II

PUBLISHED OPINION

Penoyar, A.C.J. — Michael Deroun Williams appeals his conviction for obstructing a law enforcement officer. Williams made false statements, including giving a false identity, to police officers who were investigating a theft. Williams argues that the obstruction statute, RCW 9A.76.020(1), applies only to obstructive conduct, not to obstructive speech. Williams also argues that he received ineffective assistance of counsel because his counsel failed to assert at trial that false statements to a police officer cannot serve as the basis for a conviction under RCW 9A.76.020(1). We affirm.

FACTS

On December 3, 2007, Williams asked Les Schwab Tires in Fife to install new tires and rims on his girlfriend Chelsey Pierce's Jeep Cherokee. Les Schwab installed the tires and rims, balanced the tires, and cut siping into the treads. The tires and rims cost \$1,533.96. The total pre-tax cost of all products and services was \$1,694.96.

Williams tried to pay with a check, but Les Schwab's check verification system declined the check. Williams then offered to get cash from the bank, stating that "he would be right back." Report of Proceedings (RP) (Jan. 31, 2008) at 26. Les Schwab's accountant, Heather

Crawford, told Williams to leave the car and key with her until he returned.¹ Williams gave Crawford the key, but he drove off in the car.

Several hours later, Crawford realized that the vehicle was missing. She called the police after attempts to contact Williams were unsuccessful. Officer Thomas Vradenburg of the Fife Police Department responded. He obtained Pierce's address in Federal Way and asked the Federal Way police to investigate.

Officer Scott Parker of the Federal Way Police Department went to Pierce's residence, where he found Williams. They spoke in the doorway of Pierce's home. Williams informed Parker that his name was "Eric R. Williams," which is his brother's name, and he gave a false birth date. RP (Jan. 31, 2008) at 44. Williams told Parker that he "didn't have any identification on him," even though he had identification in Pierce's home. RP (Jan. 31, 2008) at 47.

When Parker asked Williams whether there was another way to determine his identity, Williams replied that his mother, grandmother, and aunt lived "down the street." RP (Feb. 4, 2008) at 22. Parker asked Williams to accompany him to a relative's house to verify his identity, but Williams stated that he did not know the addresses. At trial, Williams stated, "I had to, like, think about it for a second. No, if we go there then I can't be Eric Williams if we go there [sic] because they know what my name is, so I just was evasive with all their questions and my identity." RP (Feb. 4, 2008) at 22. Williams testified that he was evasive about his identity because he had an outstanding arrest warrant for violating community custody.

¹ Williams later testified that Crawford told him only to leave a key and made no reference to the car. The trial court found that this testimony was not credible. Since Williams has not challenged any findings of fact, they are verities on appeal. *State v. Moore*, 161 Wn.2d 880, 884, 169 P.3d 469 (2007).

Williams admitted to Parker that he had taken the car from the Les Schwab lot. He then showed Parker the car. Williams stated that errands had prevented him from returning to pay Les Schwab before it closed.² Williams said that he had left Les Schwab a voice message about being late. Les Schwab, however, did not have a voice messaging system that allowed a person to leave a message.

Parker informed Vradenburg that he found the car and spoke to Williams. Vradenburg drove to Federal Way to speak to Williams. Williams again identified himself as "Eric Williams" and gave a false birth date. RP (Jan. 31, 2008) at 56. He told Vradenburg that he did not know his address or Social Security number and had no identification. He stated that Michael Williams was his brother. Vradenburg ran a license check and determined that the physical description of "Eric Williams" did not match Williams.

Vradenburg arrested Williams and transported him to Fife City Jail. Vradenburg asked the county jail staff to complete an "administrative booking" since there was a discrepancy in identity. RP (Jan. 31, 2008) at 60. This booking method uses names, fingerprints, and photographs to identify suspects.

After being held in a cell "for a while," Williams admitted his true name and birth date to a police officer. RP (Jan. 31, 2008) at 60. The officer relayed this information to Vradenburg, who discovered "Michael Williams" in the police records and noted that Williams had an outstanding warrant. Vradenburg asked jail officials to email Williams's booking photo, which he matched to the police records, thus enabling him to finally verify Williams's identity.

² The trial court found that Williams's testimony about being delayed by errands was not credible.

The State charged Williams with first degree theft,³ making a false or misleading statement to a public servant,⁴ and obstructing a law enforcement officer.⁵ Following a bench trial on January 31 and February 4, 2009, the trial court convicted Williams on all charges. The court imposed standard range sentences of 25 months for theft and 365 days for each of the other two counts, all sentences to run concurrently. Williams now appeals his obstructing a law enforcement officer conviction.

ANALYSIS

I. OBSTRUCTING A LAW ENFORCEMENT OFFICER

A. Standard of Review

We review statutory construction de novo. *State v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003). Our primary duty in interpreting statutes is to determine and implement the legislature's intent. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). If the statute's plain language and ordinary meaning is clear, we look only to the statute's language to determine intent. *Wentz*, 149 Wn.2d at 346. If the statutory language is susceptible to more than one reasonable interpretation, we may resort to other indicators of legislative intent, including legislative history, to resolve the ambiguity. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005).

B. RCW 9A.76.020(1)

A person is guilty of obstructing a law enforcement officer if the person "willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official

³ RCW 9A.56.020(1)(a); RCW 9A.56.030(1)(a).

⁴ RCW 9A.76.175.

⁵ RCW 9A.76.020(1).

powers or duties.” RCW 9A.76.020(1). A “[l]aw enforcement officer” includes city police officers. *See* RCW 9A.76.020(2); RCW 10.93.020(3).

“Hinder” means “to make slow or difficult the course or progress of.” *Webster’s Third New Int’l Dictionary* 1070 (2002). “Delay” means “to stop, detain, or hinder for a time . . . to cause to be slower or to occur more slowly than normal.” *Webster’s* at 595. “Obstruct” means “to be or come in the way of: hinder from passing, action, or operation.” *Webster’s* at 1559.

Williams argues that the crime of obstruction applies only to *conduct* that hinders, delays, or obstructs law enforcement. Williams’s reading of the obstruction statute is inconsistent with the statute’s ordinary meaning. The plain language of RCW 9A.76.020(1) does not treat conduct and speech differently. Rather, the statute criminalizes any willful act—verbal or nonverbal—that hinders, delays or obstructs a law enforcement officer acting within his or her official powers. A false statement to a police officer is as capable of hindering or delaying an officer’s ability to investigate a crime as a physical act, such as fleeing the scene of a crime.

Indeed, Williams’s false statements to Fife and Federal Way police officers illustrate that speech may obstruct an investigation as much as nonverbal conduct. Williams pretended to be his brother in order to avoid arrest on an outstanding warrant, and he falsely stated that he left a voice message with Les Schwab. Some of Williams’s other assertions—such as that he did not know where nearby relatives resided—strain credulity, especially in light of Williams’s open admission that he intended to be evasive in answering officers’ questions. Williams’s false statements delayed the officers’ ability to identify him, the primary subject of a suspected theft, and to determine whether he intended to deprive Les Schwab of its products and services, the

necessary *mens rea* for theft.⁶ The statements forced Vradenburg to engage in additional law enforcement steps in order to identify Williams, including requesting an administrative booking and a booking photo. As a result, Williams's false statements hindered, delayed, and obstructed the criminal investigation.

Williams offers reasons to conclude that the legislature intended that conduct, but not speech alone, could be charged under the obstruction statute. These interesting arguments turn on legislative amendments to the obstruction statutes over the years, the arguably inconsistent case law surrounding those changes, and the enactment of RCW 9A.76.175, which specifically criminalizes false statements to a public servant. Because the obstruction statute's plain language and ordinary meaning is clear, we do not address these arguments. *Wentz*, 149 Wn.2d at 346.

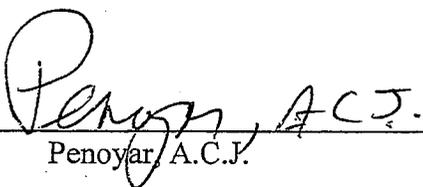
II. INEFFECTIVE ASSISTANCE OF COUNSEL

The federal and state constitutions guarantee effective assistance of counsel. *See* U.S. CONST. amend VI; WASH. CONST. art. I, § 22. To establish ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient by an objective standard of reasonableness, and (2) the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Prejudice occurs when there is a reasonable probability that the outcome of the proceeding would have differed but for the deficient performance. *Strickland*, 466 U.S. at 694. A defendant must overcome a strong presumption that counsel was effective. *Strickland*, 466 U.S. at 689; *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

⁶ Theft requires intent to deprive another person of her property or services. RCW 9A.56.020(1)(a). Williams's defense at trial was that he did not intend to deprive Les Schwab of its products and services.

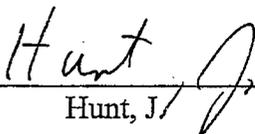
Williams argues that he received ineffective assistance because trial counsel failed to raise the statutory argument that he makes on appeal—namely, that speech alone cannot be charged under the obstruction statute.⁷ Counsel’s decision not to raise a non-meritorious statutory argument at trial is objectively reasonable given the argument’s likelihood of failure. Thus, counsel’s performance was not deficient and Williams’s ineffective assistance claim fails.

Affirmed.



Penoyar, A.C.J.

We concur:



Hunt, J.



Quinn-Brintnall, J.

⁷ In closing argument, trial counsel only challenged the theft charge: “As [the State] pointed out, the charge to making a false or misleading statement to a public servant and obstruction of a law enforcement officer is not an issue.” RP (Feb. 4, 2008) at 50.