

SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHNNY MORRIS,

Petitioner.

NO. 102748-6

RESPONSE TO MOTION TO
VACATE STAY AND
SUMMARILY REVERSE

I. IDENTITY OF RESPONING PARTY:

The respondent, State of Washington, requests the relief designated in part II.

II. STATEMENT OF RELIEF SOUGHT:

The State respectfully requests that this Court deny Johnny Morris's motion to vacate stay and summarily reverse.

III. FACTS RELEVANT TO THIS MOTION

On his 24th birthday, Johnny Morris fired a .40 caliber handgun at least nine times from a dark green 1999 Dodge

Stratus in which he was a passenger. CP 154. One of the .40 caliber bullets fired from Morris's gun struck Mr. Ragland in the back of the head and caused Mr. Ragland's death. *Id.*; CP 17.

Morris ultimately pled guilty to manslaughter in the first degree for causing Mr. Ragland's death. CP 8, 9, 10; RP 457-58, 466.¹ Morris entered the guilty plea in exchange for a reduction of charges. RP 458. Morris agreed in exchange for the reduction of charges to jointly recommend a sentence of 290 months. RP 459, 465.

Morris stipulated to his prior criminal history. CP 19; RP 467; RP (2022) 3. He also stipulated that his offender score was 9.5. CP 19. Morris's criminal history included one juvenile simple possession drug conviction. *Id.* This offense contributed .5 to his offender score. *Id.*

¹ The verbatim report of proceedings consists of six volumes, many of which begin with page one, contrary to RAP 9.2(f)(2)(A). The State will cite to the sentencing transcript as "RP (2011)," the *Blake* hearing transcript as "RP (2022)," and the remaining four volumes as "RP."

Morris was sentenced on May 20, 2011. RP (2011) 3; CP 24. Morris acknowledged that his plea agreement with the State required a joint recommendation of 290 months. RP (2011) 13-14. He fulfilled his contractual obligations and requested a sentence of 290 months. RP (2011) 13-14.

The sentencing court, acknowledging that the parties had negotiated an agreed recommendation, imposed the exact sentence Morris requested. CP 28; RP (2011) 14, 17-18. Because Morris did not appeal, his conviction and 290 month sentence became final on May 20, 2011. RCW 10.73.090(3)(a); CP 184.

Nearly seven years later, Morris violated his plea agreement by filing a collateral attack that required a mitigated sentence based on youth. *See* CP 156-57. The motion was denied as time-barred. CP 184.

Eleven years later, Morris violated his plea agreement by seeking a new mitigated sentence after his offender score, though not his standard range, was impacted by *State v. Blake*, 197

Wn.2d 170, 481 P.3d 521 (2021). *See* CP 36-39, 42-45; RP (2022) 5, 9.

The trial court corrected the offender score calculation but adhered to the original 290 month sentence. CP 110-13. One of the four grounds for doing so was that Morris should be held to his plea bargain. RP (2022) 17-18.

Morris appealed the trial court's decision, raising two issues:

1. At Mr. Morris' resentencing hearing, relying on *State v. O'Dell*, he argued his youth at the time of the offense rendered his conduct less culpable. The trial court refused to consider this argument, erroneously finding the *O'Dell* decision is not retroactive. Did the trial court abuse its discretion?
2. Although Mr. Morris has been convicted of multiple felonies and has almost certainly provided multiple DNA samples, the trial court imposed a \$100 DNA fee. Was this error?

Brief of Appellant at 1. The brief contained no challenge to the trial court's decision that he should be held to his plea agreement.

The State's responsive brief urged the court of appeals to affirm the trial court because the standard range remained unchanged, thus rendering a request for resentencing untimely under RCW 10.73.090. *See* Brief of Respondent.

Morris's reply did not contend that his request for resentencing was timely. He did not argue that he was entitled to ignore the terms of his plea agreement and seek a sentence lower than 290 months. Morris argued that the State could not rely on RCW 10.73.090 because it did not file a notice of cross-appeal. Alternatively, he argued that the State waived the ability to rely on RCW 10.73.090 because it did not object on that basis in the trial court. Reply Brief at 1-4. Morris did not, however, identify any express agreement that Morris' request for resentencing should be granted.

Morris' appeal was denied in an unpublished opinion. *See State v. Morris*, No. 57401-2-II, Unpublished Opinion (Dec. 26, 2023). It held that the trial court did not have the authority to

resentence Morris because his request was untimely. Slip op. at

1. This decision was reached because

if [the court] remand[s] for resentencing, the State will be able to argue that Morris's request for resentencing is untimely even though timeliness was not raised at the first sentencing hearing. And as discussed above, the State will prevail on this argument because Morris's judgment and sentence was not rendered facially invalid due to the incorrect offender score.

Slip op. at 6.

Morris filed a timely petition for review. He identified two issues in his petition for review, neither of which claimed that the State forfeited the ability to assert the RCW 10.73.090 time bar:

1. Should this Court grant review to resolve a clear and irreconcilable conflict between the Divisions of the Court of Appeals to resolve the proper scope of *Blake* resentencings?

2. When a trial court grants a *Blake* resentencing, is the trial court required at the time of the sentencing hearing to consider all mitigation, both legal and factual, de novo?

Petition for Review at 1.

This Court stayed consideration of the petition for review pending *State v. Kelly*, No. 102002-3 on May 8, 2024. This Court issued its opinion in *Kelly* on December 19, 2024. See *State v. Kelly*, ___ Wn.3d ___, 561 P.3d 246 (2024) (motion for reconsideration filed January 7, 2025)).

On January 8, 2025, Morris filed a motion to vacate stay and summarily reverse the court of appeals. The State files this timely response.

IV. GROUND FOR RELIEF AND ARGUMENT:

Morris' motion to summarily reverse is based on this Court's recent decision in *State v. Vasquez*, ___ Wn.3d ___, 560 P.3d 853 (2024) (plurality opinion), which he claims is "materially indistinguishable" from his case. Motion to Vacate Stay at 3. Morris is wrong for three reasons.

First, in *Vasquez*, the State affirmatively agreed that Vasquez was entitled to resentencing and the arguments in the court of appeals and this Court were limited to the scope of the resentencing hearing. *Id.* at 859-60. In this case, like in *Kelly*,

the State raised the time bar in the appellate court, citing a decision that was issued while Morris' appeal was not yet final. *Compare* Brief of Respondent *with Kelly*, 561 P.3d at 251-52.

Second, this Court will only resolve the issues raised in the petition for review and the answer thereto. RAP 13.7(b). Morris' petition for review focuses solely on the scope of a resentencing hearing. He did not ask this Court to determine whether the court of appeals erred by considering RCW 10.73.090. This omission is fatal to his instant motion. *State v. Korum*, 157 Wn.2d 614, 623-25, 141 P.3d 13 (2006) (granting motion to issue from supplemental brief that was raised in the argument portion of the petition for review but not in the concise statement of the issues portion of the document).

Third, Morris is requesting a summary reversal and a remand for a de novo sentencing. Motion to Vacate Stay at 3. This "remedy" ignores the fact that the court of appeals did not resolve the issue of whether the trial court erred by rejecting Morris' request for de novo resentencing. *See Slip op.* at 1.

Thus, the proper remedy would be a remand for the court of appeals to reach the merits of Morris' challenge to the denial of his motion for de novo sentencing. *See* RAP 13.7(b). The result of such a remand would be an affirmance of the trial court's decision that Morris should not be allowed to breach his plea agreement by asking for a sentence of less than 290 months. *See State v. Harris*, ____ Wn.3d ____, 559 P.3d 499 (2024) (a defendant breaches his plea agreement by refusing to abide by promises in that agreement—including by requesting a sentence other than that bargained for).

The State asserted Morris' breach of the plea agreement in the trial court. RP (2022) at 4-7. And the State requested specific performance—the maintenance or reimposition of the agreed upon sentence. *Id.* at 7. The State, moreover, will continue to demand specific performance—that Morris request only the agreed upon 290 month sentence and that he offer no evidence or make any arguments in support of a mitigated sentence.

V. CONCLUSION:

For the aforementioned reasons, the State requests this court deny Morris' motion for summary reversal and remand for a de novo sentencing. The State, however, has no objection to the lifting of the stay and the entry of an order denying the petition for review.

This document contains 1,442 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 24th day of January, 2025.

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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to the attorney of record for the petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Gig Harbor, Washington on the date below.

1/24/2025

Date

s/ Kimberly Hale

Signature

PIERCE COUNTY PROSECUTING ATTORNEY

January 24, 2025 - 8:43 AM

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