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STATE OF WASHINGTON
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**No. 103058-4
Court of Appeals No. 39048-9-III**

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,
RESPONDENT/CROSS PETITIONER,**

v.

**DUSTIN GENE ABRAMS,
PETITIONER/CROSS RESPONDENT.**

**ANSWER TO PETITION FOR REVIEW
CROSS PETITION FOR REVIEW**

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A. IDENTITY OF RESPONDENT/CROSS PETITIONER

The State of Washington is the plaintiff below, and the respondent/cross petitioner in this petition.

B. DECISION BELOW

The unpublished decision noted in State v. Abrams, COA 39048-9-III, attached to petitioner/cross respondent's brief.

C. ISSUES PRESENTED FOR REVIEW

1. Must a court exercise discretion where, as matter of law, there is no evidence to exercise discretion on?

2. Did the Court of Appeals properly interpret RCW 9.94A.640 to allow vacation of a conviction based on rehabilitation where the defendant had never shown any sort of rehabilitation or ability to reintegrate into society because he has been continuously incarcerated for a murder since the convictions he seeks to have vacated?

D. STATEMENT OF THE CASE

On June 8, 2004, Dustin Abrams pled guilty to four counts of theft of a firearm, one count of theft in the first degree and one count of theft in the second degree in Grant County cause number 04-1-00255-1. CP 7-18. The victim was Mike Mallon. CP 2. Mr. Abrams was sentenced to 30 months in prison. CP 26. During those 30 months Grant County detectives developed enough information to charge Mr. Abrams with Mr. Mallon's murder. Mr. Abrams was brought back to the Grant County jail before he completed his sentence. He completed his sentence in the Grant County jail on 04-1-00255-1 while awaiting trial. He later pled to the murder conviction, as well as to other crimes he committed in the Grant County jail. Mr. Abrams is still incarcerated on the murder conviction, having never left the custody of the Grant County jail or DOC. See COA # 38372-5-III.

On June 17, 2022, Mr. Abrams filed a motion to vacate his convictions in the 04 cause number. CP 90-91. Notably Mr. Abrams did not provide any evidence of rehabilitation.

This motion was also denied because Mr. Abrams was still incarcerated.

E. WHY REVIEW SHOULD BE DENIED, AND WHY THE STATE'S CROSS PETITION SHOULD BE GRANTED

1. The Petition for Review should be denied.

In order to vacate under RCW 9.94A.640, “the court must meaningfully consider evidence of mitigation and rehabilitation since the time of the crime and exercise its discretion based on its assessment of the extent of rehabilitation.” *State v. Hawkins*, 200 Wn.2d 477, 481, 519 P.3d 182, 186 (2022). The Court “must...exercise its discretion by considering information about whether the defendant has shown sufficient rehabilitation since the time of the crime.” *Id* at 497.

Here Mr. Abrams submitted no evidence of rehabilitation. This is not a case where he submitted some evidence, and the court disregarded it. Mr. Abrams submitted absolutely none. If the Court has to consider evidence of

rehabilitation to exercise its discretion, and there is none, there is nothing for the court to exercise its discretion on. This is in keeping with the meaning and intent of the statute.

RCW 9.94A.640 is a rehabilitation statute. The “New Hope Act” Laws of 2019 Ch 331 is entitled “AN ACT Relating to promoting successful reentry by modifying the process for obtaining certificated or discharge and vacating conviction records.” “[T]he vacatur statute is a legislative expression of public policy that a deserving offender should be restored to her preconviction status as a full-fledged citizen.” *Hawkins*, 200 Wn.2d at 495. The statute is about reentry and rehabilitation. The legislature expects the trial court to exercise its discretion. It cannot do that if there are no facts to exercise its discretion with. Mr. Abrams criticizes the appellate court for finding facts, but here there are simply no facts to find.

Nor does this case conflict with *State v. Grayson*, 154 Wn.2d 333, 335, 111 P.3d 1183, 1184 (2005). In *Grayson* the trial judge categorically denied the defendant a drug offender

sentencing alternative (DOSA), citing the fact the State did not have the money to support it. Mr. Grayson had screened eligible for a DOSA, see RCW 9.94A.660(4)(a). While the prosecutor argued it was not a good idea, he did not argue there were no facts to support granting the DOSA.

Here Mr. Abrams presented no facts that would indicate he has been rehabilitated. It is not simply that there is a debate about the quality or sufficiency of the facts. There are none. This is akin to a summary judgement or CrR 8.3(c) motion. The facts are taken in the light most favorable to the non-moving party, here Mr. Abrams, and the Court can decide the question as a matter of law because reasonable minds could not differ on the subject. The Court of Appeals is perfectly capable of deciding this issue, just like they would decide a summary judgment issue on de novo review. The Court of Appeals did not conflict with *Grayson*, and review should be denied.

2. The Court should grant the State's Cross Petition for Review.

The rules of statutory construction indicate that Mr. Abrams is not eligible to vacate his conviction.

Washington follows the plain meaning rule. To determine legislative intent, this court looks first to the language of the statute. If the statute's meaning is plain on its face, the court will give effect to that plain meaning as the expression of what was intended. Unambiguous language must be applied as written. When the statute is clear, courts may not engage in statutory construction. Plain words do not require construction. We assume the legislature means what it says. Only if the language of the statute gives rise to two reasonable interpretations, will the court look outside the language of the statute and employ rules of construction.

Under the plain meaning rule, Washington courts may look to other language in the same statute and even language in other statutes. In Washington, courts determine the plain meaning of a statute's language by simultaneously examining the language of the entire statute and related statutes. A court deciphers meaning based on the context of all statutes.

State v. Barnes, 196 Wn. App. 261, 266–67, 382 P.3d 729, 732 (2016), *aff'd*, 189 Wn.2d 492, 403 P.3d 72 (2017)(internal citations omitted). “Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose.” *LaCoursiere v.*

Camwest Dev., Inc., 181 Wn.2d 734, 742, 339 P.3d 963, 967 (2014).

The Court of Appeals adopted an absurd interpretation of the statute, allowing a petition to vacate from someone who had never been released from DOC custody, and never shown they can function in society, the ability to vacate their prior offenses. This raises an important issue under Washington law and is an issue of significant public interest. Review should be granted under RAP 13.4(b)(3 and 4), and the Court of Appeals reversed.

Mr. Abrams is still serving a murder sentence that was imposed after he was sentenced for the crimes which he seeks vacation. He has never been released from custody since he was convicted of the crimes he seeks vacation for. RCW 9.94A.640(e) states that the conviction cannot be vacated if “The offense is a class B felony and less than ten years have passed since the later of: (i) The applicant's release from community custody; (ii) the applicant's release from full and partial confinement; or (iii) the applicant's sentencing date.”

Subsection (f) contains materially identical language for class C felonies. Mr. Abrams argues that the release from full and partial confinement means on those specific charges, not on all charges the defendant is serving a sentence on. Mr. Abrams' interpretation defeats the purposes of the statute, would place the statute in conflict with related statutes, and leads to absurd results. The plain language of the statute indicates it means 10 years from release from DOC control.

RCW 9.94A.640 is a rehabilitation statute. The "New Hope Act" Laws of 2019 Ch 331 is entitled "AN ACT Relating to promoting successful reentry by modifying the process for obtaining certificated or discharge and vacating conviction records." "[T]he vacatur statute is a legislative expression of public policy that a deserving offender should be restored to her preconviction status as a full-fledged citizen." *State v. Hawkins*, 200 Wn.2d 477, 495, 519 P.3d 182, 193 (2022). The statute is about reentry and rehabilitation. Mr. Abrams has not reentered the community, and will not do so for several more

years. He has not made any showing that he has been rehabilitated or can live peacefully in the community. A person serving a murder sentence in DOC is not someone the legislature would think should be restored to his preconviction status as a full-fledged citizen. Mr. Abrams' interpretation defeats the purpose of the purpose of the statute.

The Court of Appeals interpretation creates a conflict between crimes that have community custody and those that don't. Community custody time is served at the end of all confinement time, including that time imposed on unrelated charges. RCW 9.94A.171(3)(a) states "for offenders..., any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless... "(exceptions not applicable here). Under Mr. Abrams' interpretation crimes that come with community custody would be ineligible for vacation until after the offender's ultimate release, while crimes that do not have community custody would be eligible for vacation sometimes decades earlier, while

the offender is still in prison. It seems very unlikely this would be an outcome the legislature intended.

The interpretation adopted by the Court of Appeals does not advance the legislative purpose. The legislative purpose was to assist those who have demonstrated rehabilitation in the community to become full members of society. Mr. Abrams has never been in the community since his convictions. The Court of Appeals erred in interpreting the Statute. The State's cross petition for review should be granted.


F. CONCLUSION

The Court of Appeals correctly affirmed the trial court on the grounds that there was no evidence of rehabilitation, so no reasonable judge could find that Mr. Abrams' cases should be vacated. The Court of Appeals incorrectly interpreted the statute to frustrate its intended purpose and should be reversed on those grounds. Mr. Abrams' petition should be denied. The State's cross petition should be granted, and the Court of Appeals reversed.

This document contains 1688 words, excluding the parts
of the document exempted from the word count by RAP 18.17.

Dated this 12th day of May 2024.

Respectfully Submitted,

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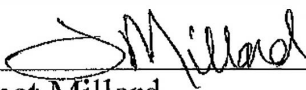
CERTIFICATE OF SERVICE

On this day I served a copy of the Answer to Petition for Review/Cross Petition for Review in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

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