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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

NO. 103058-4

THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

DUSTIN ABRAMS,

Petitioner.

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FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR GRANT COUNTY

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REPLY TO ANSWER TO PETITION FOR REVIEW

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## A. ISSUE PRESENTED FOR CROSS REVIEW

The Court of Appeals read the plain text of the statute to mean Mr. Abrams could move to vacate his conviction after completing his sentence for that crime, whether or not he continued to serve a sentence for a separate conviction. The decision is contrary to no precedent, does not burden any person's constitutional rights, and is consistent with the public's interest in rehabilitation. This Court should deny review.

## B. WHY CROSS REVIEW SHOULD BE DENIED

**The Court of Appeals's decision that Mr. Abrams is eligible to seek vacation is a straightforward reading of the New Hope Act's plain text.**

If a statute's "plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). As the prosecution points out, "[u]nambiguous language must be applied as written," and "[p]lain words do not

require construction.” *State v. Barnes*, 196 Wn. App. 261, 267, 382 P.3d 729 (2016); Ans. to PFR at 6.

In this case, the Court of Appeals read the plain text of the New Hope Act to allow Mr. Abrams to move to vacate his conviction ten years after he served his sentence for that conviction, even if he remained in prison based on other convictions. Slip op. at 14. Six of the statute’s seven disqualifying criteria begin with “[t]he offense.” *Id.* at 11–12; RCW 9.94A.640(2)(b)–(g). Accordingly, where the statute bars vacation if “less than ten years have passed since the later of” three triggering events, including Mr. Abrams’s “release from full and partial confinement,” those events relate only to “the offense” he seeks to vacate, not all possible offenses. RCW 9.94A.640(2)(e).

The Court of Appeals also noted that one of the disqualifying conditions is “any criminal charges

against the offender pending in any court.” RCW 9.94A.640(2)(a); Slip op. at 13. The legislature knew how to refer to “any criminal charges” in the other six paragraphs in subsection 2, but chose instead to refer only to “the offense” whose vacation is sought. *Id.*

Despite emphasizing the “plain meaning rule” in its answer, the prosecution does not explain why the Court of Appeals’s reading does not comport with the statute’s plain text. Ans. to PFR at 6–10 (quoting *Barnes*, 196 Wn. App. at 266).

More importantly, the prosecution does not show any of the criteria for review in RAP 13.4. First, the prosecution does not argue the Court of Appeals’s reading of the statute is inconsistent with a published Washington appellate opinion. RAP 13.4(b)(1), (2).

Second, despite asserting RAP 13.4(b)(3) as a ground for review, the prosecution does not argue the

Court of Appeals's decision raises an issue under the state or federal constitution. Ans. to PFR at 7.

Third, the decision does not involve “an issue of substantial public interest” that this Court should decide. RAP 13.4(b)(4). On the contrary, it is the prosecution's reading that conflicts with the New Hope Act's purpose to restore “a deserving offender” to “a full-fledged citizen.” Ans. to PFR at 8; *State v. Hawkins*, 200 Wn.2d 477, 495, 519 P.3d 182 (2022).

Though vacating a person's conviction while the person is still in prison for other offenses “affords little benefit” in the near term, it encourages the person to continue to work to better themselves. Slip op. at 14–15. Insisting a confined person can take no action toward becoming “conviction free” until their release on all convictions conflicts with not only the statute's

plain text but also “the policy of promoting and furthering rehabilitation while in prison.” *Id.* at 15.

It is true that the Court of Appeals’s reading means a person sentenced to community custody must wait until they have served their confinement terms on all convictions before moving for vacation, while a person sentenced only to confinement need only complete their sentence for that conviction. Slip op. at 14. This fact does not override the statute’s plain reference to “the offense” rather than “an offense” or something similar. *Id.* Besides, crimes that come with community custody terms tend to cause more harm than those that do not, giving rise to a rational basis for treating the two categories differently. *Id.*

The New Hope Act states its purpose within its name—to give convicted persons hope of building a brighter future for themselves. Laws of 2019, ch. 331,



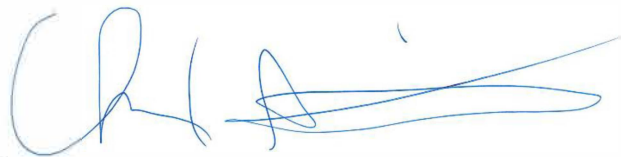
§ 1; *Hawkins*, 200 Wn.2d at 495. Nothing in the statute's text denies that hope to Mr. Abrams merely because he remains in prison on other charges. The prosecution has not shown the Court of Appeals's decision warrants this Court's review.

### C. CONCLUSION

This Court should deny review of the issue stated in the prosecution's answer and grant review of the issue in Mr. Abrams's petition for review.

Per RAP 18.17(c)(10), the undersigned certifies this reply contains 803 words.

DATED this 4th day of June, 2024.



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# APPENDIX

RCW 9.94A.640—Vacation of Offender's Record of Conviction.

(1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if:

(a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in RCW 9.94A.030 or crime against persons as defined in RCW 43.43.830, except the following offenses may be vacated if the conviction did not include a firearm, deadly weapon, or sexual motivation enhancement: (i) Assault in the second degree under RCW 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when not committed against a law enforcement officer or peace officer; and (iii) robbery in the second degree under RCW 9A.56.210;

(c) The offense is a class B felony and the offender has been convicted of a new crime in this state, another state, or federal court in the ten years prior to the application for vacation;

(d) The offense is a class C felony and the offender has been convicted of a new crime in this state, another state, or federal court in the five years prior to the application for vacation;

(e) 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;

(f) The offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five 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; or

(g) The offense was a felony described in RCW 46.61.502 or 46.61.504.

(3) If the applicant is a victim of sex trafficking, prostitution, or commercial sexual abuse of a minor; sexual assault; or domestic violence as defined in RCW 9.94A.030, the victim or the prosecutor of the county in which the victim was sentenced may apply to the sentencing court or the sentencing court's successor to vacate the victim's record of conviction for a class B or class C felony offense using the process in RCW

9.94A.648. When preparing or filing the petition, the prosecutor is not deemed to be providing legal advice or legal assistance on behalf of the victim, but is fulfilling an administrative function on behalf of the state in order to further their responsibility to seek to reform and improve the administration of criminal justice. A record of conviction vacated using the process in RCW 9.94A.648 is subject to subsection (4) of this section.

(4)(a) Except as otherwise provided, once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution, and nothing in this section affects the requirements for restoring a right to possess a firearm under RCW 9.41.040.

(b) A conviction vacated on or after July 28, 2019, qualifies as a prior conviction for the purpose of charging a present recidivist offense occurring on or after July 28, 2019, and may be used to establish an

ongoing pattern of abuse for purposes of RCW  
9.94A.535.

### DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 103058-4**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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- ☐ Attorneys for other party



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Date: June 4, 2024

# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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