CERTIFICATE OF SERVICE
GR 3.1

I, MEKO JONES, certify under penalty of perjury under the laws of the State of Washington, that I did serve the attached:

1. NOTICE OF APPEAL (RAP 4.2)(1 page)

2 PETITION FOR REVIEW (pages);

3. AFFIDAVIT IN SUPPORT OF PETITIONER FOR REVIEW

4. MOTION TO TAKE JUDICIAL NOTICE

5 MOTION REQUESTING BRADY ORDER

6 MOTION TO APPOINT STAND-BY COUNSEL

7. MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

pursuant to RAP 13.1(b)(1), upon the following:

1. Washington Supreme Court, P.O. Box 40929, Olympia, WA 98520-0929 (by efile)

2. Court of Appeals - Division II, 909 A Street, Suite 200, Tacoma, WA 98402 (seperate efile).

That the following is a NEW ACTION, originating from direct appeal: 57346-6-II.

Said was efiled in separate efiles from Stafford Creek Correction Center, by legal librarian Paula Maine, on the date expressed below.

SWORN TO and EXECUTED in the City of Aberdeen, County of Grays Harbor, in the State of Washington, on the 3rd th day of July, 2024 GR 13.

Meko Sr.

Meko Jones DOC# 745965
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

COURT OF APPEALS

DIVISION II

STATE OF WASHINGTON,
Respondent

vs

MEKO JONES,
Appellant,

PETITION FOR REVIEW

RAP 13.4(b)(1)

Meko Jones, Appellant
DOC# 745965
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

COURT OF APPEALS

DIVISION II

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

vs.

MEKO JONES, Appellant

Cause 57346-6-II

STATEMENT OF ADDITIONAL GROUNDS

Meko Jones,
Pro Se
DOC# 745965
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON,
Respondent

vs.

MEKO JONES,
Appellant,

No. 57346-6-II

STATEMENT OF ADDITIONAL GROUNDS

RAP 10.10

GROUND ONE

ISSUE: Mr. Jones contends that his 6th Amend rights were violated when the trial court issued an illegal sentence that exceeds the statutory maximum.

On the face of the Judgment and Sentence Mr. Jones received a sentence in Count 1 of 84 months, plus 18 months of community custody, plus 36 months of firearm enhancements making a total of 138 months to serve. However the statutory maximum Mr. Jones could receive is only 10 years. Resentencing is required. (Judgment and Sentence; §4.5)

On Count 6 Mr. Jones received 84 months, plus 18 months community custody, plus 36 months firearm enhancement making a total of 138 months to serve. However the statutory maximum Mr. Jones could receive is only 10 year, 120 months. Resentencing is required.

On Count 7 Mr. Jones received 60 months, plus 18 months firearm enhancements making it a total of 78 months to serve. However the statutory maximum Mr. Jones could receive is 5 years. resentencing is required.

At the time of Jones sentencing, the 'SRA' adressed what a sentencing court must do if the combination of the standard range and applicable firearm enhancement exceeds the statutory maximum for an offense. RCW 9.94A.533 (3)(g) provided: "If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced."

By this provision, the trial court here should have imposed the firearm enhancement and the community custody, then reduced the underlying sentence to reach the statutory maximum.

Under Wilkinson v. Doston, 544 U.S. 74, 86 (2005), the prisoner who shows that his sentence was unconstitutional is actually entitled to release, because the judgement pursuant to which he is confined has been invalid.

GROUND TWO

ISSUE: The appellant's constitution right to notice was violated by the State not including the specific essential element of what weapon it would prove to the jury.

On June 5, 2013 Petition was formally charged by Amended Information in the Pierce County Superior Court with Counts I, II, III, VI, as identified in part. (See Exhibit A). As part of the Amended Information, the State alleged the Petitioner was armed with a firearm, invoking the provision of RCW 9.94A.533. RCW 9.94A.533 contains subsection (3) for firearm, and also subsection (4) for deadly weapon, but 9.94A.533 also contains subsection (7) for an enhancement for vehicular homicide, subsection (8) is an enhancement for sexual motivation, subsection (10) is for any criminal street gang related felony. (See Exhibit B). In all there are 14 subsections for the State to choose; but they elected none.

In State v. Theroff, ____ Wash. 2d. at 392, 622 P.2d 1240, the State neglected to provide the defendant with notice that it intended to seek an enhanced penalty in its information. We remanded for sentencing because when prosecutor's seek enhanced penalties, notice of their intent must be set forth in the information. Thus, unless a is properly amended, once the State elects which charges it is pursuing, and includes elements in the charging document; it is bound by that decision. In State v. Recuenco, 180 P.3d 1276 Wash, the Supreme Court held that when a trial Judge imposes a sentence enhancement for something the State did not ask for, it violated the defedant's due process rights.

The Trial Court simply exceeded its authority in imposing a sentence not authorized by the charges.

When the prosecutor neglected to elect a specific enhancement I.F 9.94A.533 subsection (3) for firearm, or (4) deadly weapon, the court exceeded its statutory authority at the sentencing phase by sentencing petitioner to said enhancements making not only his Judgement and Sentence invalid, but his sentence invalid.

In liberally consturing the charging document, we employ the two-prong Kjorsvik test (1) do the necessary elements appear in any form, or by fair construction on the face of the document and if so (2) can the defendant show he or she was prejudiced by the unartful language Kjorsvik, 117 wash 2d at 105-06 812 P.2d 86. If the defendant satisfies the first prong of the test, we presume prejudice and reverse without reaching the question of prejudice, State v. McCarty, 140 wash 2d at 425 998 P.2d 296 (citing Kjorvik 117 wash 2d at 105-06 812 P.2d 86)

On June 05, 2013 the State of Washington filed an amended information charging the Petitioner with gun enhancements on Counts I, II, III, VI. (See Exhibit A) (quoting State of Washington sentencing guidelines common Adult Sentencing Guidelines Manual cmt at II-67 (1997): See also former RCW 9.94A.310 (3)(6), (4)(6), now recodified as 9.94A.533) Former RCW 9.94.125 (recodified as 9.94A.602) the Statue authorizing a special verdict finding on a deadly weapon was not amended to reflect the changes made by the Hard Time Act.

Former RCW 9.94A.125 expressly directs that the jury be asked by special verdict whether a defendant was armed with a deadly weapon and include firearms within the definition of deadly weapon. Washington practice recognizes former RCW 9.94A.125 to authorize putting the firearm enhancement questions to the jury in form of a special verdict. When you look at Petitioners Charging Document (See Exhibit C) there is no sign of RCW 9.94A.602 (former 9.94A.125).

So the question needs to be asked how was the special verdict question put to the jury when RCW 9.94A.602 is the procedure that authorize that question. Next I'd like the courts to look at page 2 of petitioners Judgement and Sentence dated July 19, 2013 (Exhibit D) The box where a special verdict finding for use of firearm was returned on Counts I, II, III, VI RCW 9.94A.602, 9.94A.533 was checked, even though 9.94A.602 was not in petitioners charging information.

This can not be a clerical error because the special verdict question was put to the Jury. This is an infirmity that can't be over looked. In Re personal Restraint of Hinton, 152 wn 2d 853, 100 P.3d 801 (2004) the Hinton court further reference several documents relevant to the determination of invalid on its face, these include: The Judgement and Sentence, Charging Documents, Statements in the Plea agreement, and Jury Instructions. Instructions I.d at 858. By the States failure to charge RCW 9.94A.602 and courts lack of authority.

Petitioners motion should be deemed as timely and heard on its merits. As quoted in In Re Personal Restraint of Scott 173 wn 2d 911 (2011) The general rule is that a Judgement and Sentence is not valid on its face, if the trial Judge actually exercised authority statutory or otherwise it did not have. Verdict forms, plea agreements, charging documents maybe consulted if they show that the court lacked authority and the Judgement and Sentence is not valid on its face. petitioners brief is timely, and should be heard on its merits.

The State and Federal Constitutions both require that a defendant in a criminal case receive adequate notice of the nature and cause of the accusation in order to allow them to prepare a defense in response to charges that they have committed a crime. Indeed, Article 1 and 22 of the Washington State Constitution provides in pertinent part that "[i]n criminal prosecutions, the accused shall have the right to demand the nature and cause of the accusations against them."

"The Sixth Article in the Amendment to the U.S. Constitution similarly provides inpertinent part [i]n all criminal prosecutions, the accused shall..... be informed of the nature and cause of the accusation."

The protection afforded by each of these Constitutional provisions is the same. State v. Hopper, 116 Wn.2d 151, 156, 822 P.2d 775 (1992).

Fact increasing either end of the prescribed range of penalties to which a criminal defendant is exposed are elements of the crime, and must be specified in the indictment. Alleyne v. United States, ____ U.S. ____, 133 S. Ct.2151, 2160 (2013) (citing Apprendi v. New Jersey, 530 U.S. 466, 501, 120 S. Ct. 2348; also citing 1 J. Bishop, new Criminal Procedure and 598 at 360-61; also citing 1 F. Wharton Criminal Law and 371, p.291 (rev. 7th ed.1874) (Thomas, Ginsburg, Sotomajor, and Kagan, JJ, joined in opinion of the court). Under our State Constitution, it is a "Constitutionally mandated rule that all essential elements of a charged crime must be included in the charging document.

"State v. Quismundo, 164 Wn.2d 499, 503, 792 P.3d 342 92008) (citing State v. Vangerpen, 125 Wn.2d 782, 788, 888 P.2d 1177 (1995). This essential elements rule recognizes a defendant's Article 1 and 22 right to demand the nature and cause of the accusation against them. Vangerpen, supra at 789. Due process of both the State and Federal Constitutions require the mandatory sentence enhancements under RCW 9.94A.533 must be pleaded in the information. State v. Theroff, 95 Wn.2d 385, 392, 622 P.2d 1240 (1980).

Firearm and deadly weapon enhancements must be included in the information. State v. recuenco, 163 Wn.2d 428, 434, 180 P.3d 1276 (2008) (citing In Re Bush, 95 Wn.2d 551, 554, 627 P.2d 953 (1981). When the term "Sentence Enhancement" describes an increase beyond the maximum authorized statutory sentence, it becomes the equivalent of an "element" of a greater offense than the one covered by the jury's verdict.

Id (quoting Apprendi, supra at 494 n.19). A party cannot be convicted of an offense with which he was not charged. State v. Irizerry, 111 Wn.2d 591, 592, 763 P.2d 432 (1998); State v. polkey, 109 Wn.2d 484, 487, 745 P.2d 854 91987); State v. Carr, 97 Wn.2d 436, 439, 645 P.2d 1098 (1982). "More than merely listing the elements, the information must alleged the particular facts supporting them." State v. nanog, 169 Wn.2d 220, 226, 237 P.3d 250 (2010). The mere recitation of a "Numerical Code Section" and the "title of an offense" does not satisfy the essential elements rule. City of Auburn

City of Auburn v. Brooke, 119 Wn.2d 623, 627, 836, P.2d 212 (1992). See also State v. George, 146 Wn. App. 906, 913, 193 P.3d 693 (2008). Requiring the defendant to locate the relevant code and determine 'the elements of the defense from the proper code section" is an unfair burden to place on the accused." Brook, supra at 635. "[D]efendants should not have to search for the rule or regulations they are accused of violating " Id When a charging document is insufficient, a defendant need not show prejudice to effect a dismissal; the insufficient charging document itself is enough to warrant a dismissal Id at 790. Obligations to an information which completely fails to set forth all elements of an offense can be raised at any time; such an objection is a constitution question State v. Holt, 104 Wn 2d 315, 321, 704 P 2d 1189 (1985)

Here petitioner was convicted by way of a jury verdict rendered on the Amended Information which was filed on June 05, 2013. Exhibit A.

A review of said information evinces that the State alleged that Petitioner was armed with a firearm during the commission of Counts I and II "invoking the provisions of RCW 9.94A.533/9.94A.510 " Exhibit B

However, there are numerous subsections within section .533 of title 9.94A RCW. Exhibit B.

When charging Petitioner on the Amended Information, the State did not give notice of what subsection of section .533 it was invoking. Exhibit B. Instead, it generally referenced section .533, requiring Petitioner "to locate the relevant code and determine the elements of the defense from the proper code section," which "is an unfair burden to place on the accused." State v. Zillyettle, 178 Wn.2d 153, 307 P.3d 712, 717 (2013) (quoting Brooke, supra at 635). Zillyett is an analogous case. There, the State charged brenda Zillyette with control substance homicide for another persons death.

The information charging Zillyette with controlled substance homicide did not specify the controlled substance that Zillyette allegedly delivered to the deceased that resulted ion the death. The information alleged a violation of "RCW 69.50.401" and nothing more. The trial court convicted as charged, and the Court of Appeals affirmed.

On discretionary review, the Washington State Supreme Court reversed because the information failed to set forth all of the essential elements of the crime of controlled substance homicide.

In its analysis, the Zillyette court resolved the issue of: (1) whether the identity of the controlled substance is an essential element of controlled substance homicide?; and (2) was the charging information sufficient because it failed to specify the particular subsection which identified the particular controlled substance, or schedule of controlled substance, that caused the victim's death?

In resolving the first issue in the affirmative, both courts agreed that the State must specify in the information which particular subsection it relies upon when such subsection "aggravates the maximum sentence a court may impose. Zillyete, supra at 716 (quoting State v. Zillyette, 169 Wn. App. 24, 26-27, 278 P.3d 1144 (2012) (citing State v. Goodman, 150 Wn.2d 774, 786, 83 P.3d 410 (2004). In resolving the second issue in the negative, the Zillyette court held that because the State alleged in the information that Zillyette violated "RCW 69.50.401" with no other subsection listed, said information was insufficient as the particular facts necessary to charge Zillyette with controlled substance homicide do not appear in any form, or by fair construction, in Zillyette's information.

Zillyette, 178 Wn.2d 153, 307 P 3d at 717. The Zillyette court stated that the mere recitation of a "numerical code section" and the "title of offense" does not satisfy the essential elements rule. Id (quoting Brooke, supra at 627; and citing George, supra at 913).

The Zillyette, court reversed, vacated, and dismissed because Zillyette information was insufficient for failing to allege the essential elements as contained in the particular subsection of RCW 69.50 401. Id.

because the State charged petitioner in the Amended Information with an incomplete statutory citation (RCW 9.94A 533) petitioners enhanced conviction, and sentence based thereupon constitutes a fundamental due process violation.

The State was required to further elaborate which specific subsection .533 it was invoking in the Amended Information in order to satisfy the "essential elements rule. because petitioners fire-arm enhanced conviction and sentence goes beyond that authorized by statue the enhanced sentence is subject to collateral attack (Goodwin, supra at 873-74), Petitioner meets the fundamental defect rule announced in Cook, and he is entitled to the remedy he seeks. PRP Moore, 116, Wn.2d 30, 33, 803 P 2d 400 (1991) (a sentence in excess of statutory authority constitutes a fundamental defect which inherently results in a complete miscarriage of justice).

In Washington law, the procedure that is outlined in Re Rivera 152 Wash App 794 218 P.3d 638: the court stated, the information cited former RCW 9.94A.310 (now recodified as 9.94A.533) generally and did not include the subsection that identified whether the enhancement was a firearm or a deadly weapon.

(quoting In Re pers Restraint of Jackson, 175 Wn.2d 155 (2012) The rule announced In Recuenco III that a firearm enhancement must be charged with explicit particularity in order to authorize a firearm enhancement at sentencing. The indication and intent to seek an enhancement goes back further than State v. Recuenco, this procedure and rule of thumb is well reconized and goes back to State v. Frazzer, 81 Wash.2d 628, 634-35 503 P.2d 1073 (1972). Firearm enhancement held unavailable at sentencing when charges contained no indication of any intent to seek any resentencing when absolutely no notice was given in advance: When prosecutor's seek enhanced penalties, notice of their intent must be set forth in the information State v. Theroff, 95, Wash 2d 385, 622 P.2d 1240 (1980). Sentencing enhancements, such as a deadly weapon allegation must be included in the information In Re Bush, 95 Wash.2d 551, 554, 627 P.2d 953 (1981).

The Hard Time Act split the previous deadly weapon enhancement into separate enhancement for firearms, and for other deadly weapons State v. Brown, 139 Wash.2d 20, 25 983 P.2d 608 (1999).

The legal question that is before this court, is when you review the Petitioners charging information (Exhibit A), was it done correctly. Can this court show that the State indicated which enhanced penalty it would seek in the Petitioner, Mr. Jones, charging information; giving the court authority to sentence him illegally to a total of 192 months in enhancements.

For deciding to prosecute under RCW 9.94A.411 any and all felony crimes involving any deadly weapon special verdict under RCW 9.94A.602, weapon enhancement under TCW 9.94A.533 (3) or (4) or both and any and all felony crimes as defined in RCW 9.94A.533 (3)(F) or (4)(F), or both which are excluded from the deadly weapon enhancement shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.411 was not used or quoted in the case, but what it light's is the fact that there are prosecuting standard's to be followed and also that there are different subsets of enhancements to be applied to each individual case. (See Exhibit E).

In Washington Criminal Practice in courts of limited jurisdiction in chapter 23.05 SRA mandatory Sentence Enhancement overview: States there are a number of Mandatory Sentence Enhancements found within the Sentencing Reform Act. See RCW 9.94A,533. A Mandatory Sentence Enhancement increases the presumtive or standard sentence: It is not a separate sentence State v. Silva-Baltazar, 125 Wn.2d 472, 886, P.2d 138 (1994): Example of sentencing enhancements under the SRA include commission of a crime while armed with a deadly weapon or firearm:

Commission of a certain drug offense in county jail or State correction facility; Commission of a crime while in a school zone.

In Washington Criminal Practice in courts of limited juriediction: Chapter 5 charging the offense the charging document may also allege that the means by which the defendant committed the offense are unknown. The charging documents must state for each count the official or customary citation of the statue, rule, regulation or other provision of law which the defendants is alleged to have violated CrR 2.1 (a)(1).

CONCLUSION

Mr. Jones has demonstrated that, trial court error error in imposing a firearm enhancements without the State alleging specific enhanced penalty by subsection to authorized the trial court to sentence the enhanced penalty. See Rivera, 152 Wash App 794, 218 P.3d 638 (Div 2009).

Based on the foregoing, I ask this Honorable Court to grant petitioner's ' motion, and vacate petitioner's enhancements and resentence Mr. Jones with the correct sentence in Count 1, Count 6, and Count 7 giving Mr. Jones a valid Judgement and Sentence.

Respectfully Submitted Meko Jones Date: 4-20-2023

Meko Jones

RAP 10.10: _____

ADDITIONAL GROUNDS FOR COUNSEL TO BRIEF

Ground 3

ISSUE: The trial court abused its discretion, violating RCW 9.94A.525 by assessing varying offender scores.

A defendant' offender score cannot be variable. On Counts I, II, III, VI, the trial court assessed an offender score of 20. On Counts IV and V the trial court assessed an offender score of 9. On Count VII the trial court assessed an offender score of 13. On Count VIII the trial court an offender score of 14.

RCW 9.94A.525 only grants the court the authority to assess an offender score on prior convictions. Since Counts I - VIII were charged as "same criminal conduct," the court lacked authority to distinguish, using other counts as prior convictions. XIV Amend. U.S. Const., via Art. 1, §2.

Ground 4

ISSUE: The Court abused its discretion by finding the appellant guilty of chemical dependency without the State giving notice.

A trial court cannot impose a sentence that the State did not ask for; nor the defendant given notice. V, VI, and XIV Amend. U.S Const., and Art. 1, §§ 2, 22.

GROUND 5

ISSUE: The trial court abused its discretion by imposing restitution upon the appellant without making an assessment for his ability to repay on the record.

The RCW 9.94A.760(1)(2023) is retroactive and demands the trial court to enter an assessment. The appellant's judgment and sentence remains void until the court enters a an assessment and/or amends the sentence. No other government agency can amend the court's sentence. ER 201(d) (Exhibit C).

GROUND 6

ISSUE: The trial court abused its discretion by imposing crime victim compensation without a victim's request, or an assessment for the appellant's ability to pay.

The Ninth Circuit in Colbert v. Haynes, determined that the assessment of crime victim compensation could not be imposed without a victim's request on the record. Colbert v. Haynes, 954 F.3d 1232 (9th Cir. 2020). Since sentencing the Department of Corrections has imposed the payment of the victim. The issue is now imposed and cannot be recontextualized as a "ministerial act". Reimbursement is now demanded. XIV Amend. U.S. Const. via Art. 1, §2.

GROUND 7

ISSUE: The trial court abused its discretion by sentencing the defendant to a no-contact order for life.

GROUND 8

ISSUE: The trail court abused its discretion by running the running the sentences enhancements consecutively, when the charging information same criminal conduct on counts II - VIII.

The trial court deviate from RCW 9.94A.589(1), when the state charged the crimes as same criminal conduct.

SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. MEKO JONES, Appellant.	No. _____ AFFIDAVIT IN SUPPORT OF PETITION FOR REVIEW

I. AFFIDAVIT

I, Meko Jones, certify under the laws of the State of Washington, that the foregoing is true and correct. 28 U.S.C. §1746.

1. That I am the appellant, Meko Jones, am over the age of majority and competent to testify to the follwoing.

RAP 13(b)(1)

2. That the Court of Appeals, Division II, entered an opinion regarding cause 57346-6-II, on June 18, 2024.

3. That the opinion refused to adjudicate all claims on direct appeal, suggesting the "issues presented exceed the scope of appeal from Jones' Blake resentencing." (Slip op. at 2 and 9).

4. That the Court of Appeal's panels concession now demands a merits determination on all the remaining issues.

5. That the errors alleged by the Statement of Additional Grounds are clear and plain upon the judgment and sentence.

6 That manifest constitutional errors can be raised at any time on appeal. RAP 2.5.

7. That failure of the trial court to resentence the defendant to a standard range sentence now affords the appellant the constitutional right to appeal. VI & XIV Amendment, United States Constitution; Apprendi v. New Jersey, 530 U.S. 466 (2000).

8. That Washington law demands conformity to Apprendi. Laws of 2005, Chapter 58, section 1.

9. That failure to give notice to defend against a jury determination for all elements of a crime now violates the appellant's V, VI and XIV Amendment constitutional right.

10. That the trial court abused its discretion when it asserted a varied range of an offender score, elevating the standard range without a jury determination. RCW 9.94A.525.

11. That the trial court imposed a finding of guilt for chemical dependency wihtout giving notice or obtaining a jury determination.

12 That the trial court now imposes legal financial obligations, cost of incarceration and restitution without assessment to pay in light of being found indigent. RCW 9.94A.760 (2022 c160, §4).

13. That the trial court imposes crime victim compensation without a request for compensation, by an alleged victim upon the record.

14. That the trial court's imposition of a life time no contact order violates appellant's V, VI and XIV Amendment Right. Apprendi.

15. That the appellant is sentenced to consecutive sentencing enhancements despite notice of "same criminal conduct now violates the V, VI and XIV Amendment. Apprendi.

16 That ¶12 - ¶15, support the conflict with United States Supreme Court precedent, now afford the appellant by Washington's supremacy clause. Wash. Const. Article 1, §2.

17. That the state imposes an illegal sentence, qualifying the appellant for relief upon exhaustion. Coleman v. Thompson, 501 U.S. 722 (1991); 28 U.S.C. 2241, United States Constitution, Article 1, section 9.

MOTION TO TAKE JUDICIAL NOTICE

18. That appellant was not given notice of the record designated for the Court of Appeals.

19. That the appellant objects to a vague / incomplete record for review.

20. That Nielson, Koch and Granniss, PLLC, has expressed their intent to deny any further legal assistance in this matter.

21. That all records to be produced pursuant to Brady v. Maryland, 373 U.S. 83 (1963), establish manifest constitutional error, andclear and plain error.

22. That appellant's affidavit in support combined with petitioner's judgment and sentence. establish manifest constitutional error which demand a merits determination.

MOTION FOR BRADY ORDER

23. That failure to produce the record establishing notice; arraignment and jury determination for all grounds alleged in this pleading, and errors upon the judgment and sentence, violates appelant's previously stated constitutional rights.

24. That failure to give an analysis pursuant to Brady v. Maryland, supra., is dispositive.

MOTION TO APPOINT STAND-BY COUNSEL

25. That to facilitate creation of a complete record pursuant to ER 201 and Brady, appellant requests stand-by counsel for judicial economoy.

MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

26. That petitioner's lengthy STATEMENT OF ADDITIONAL GROUNDS can be syntesized to the provided two specific statements.

SWORN TO and EXECUTED in the City of Aberdeen, County of

Grays Harbor, in the State of Washington, on the 3rd day of July, 2024. GR 13.

Meko Jones

Meko Jones DOC 745965
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. MEKO JONES, Appellant,	No. _____ MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

I. MEMORANDUM

The Sixth Amendment guarantes appellant Jones the right to a jury trial. United States Amendment 6. This right entitles petitioner Jones to a jury determination of every contested fact authoring a punishment. United States v. Gaudin, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

"Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S Ct. 2348, 147 L.Ed.2d 435 (2000)

DONE THIS 3rd day of July, 2024.

Meko Jones DOC 745965
S.C.C.C.
191 Constantine Way
Aberdeen, WA 98520

Filed
Washington State
Court of Appeals
Division Two

June 18, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MEKO DEAUNTE JONES, Appellant.	No. 57346-6-II UNPUBLISHED OPINION

CHE, J. — Meko Deaunte Jones appeals his *State v. Blake*[1] resentencing. In 2013, a jury convicted Jones of eight felonies, including felony harassment and two counts of second degree assault. The trial court sentenced Jones to the top of the standard sentencing range for every offense. Although his criminal history contained two prior convictions for simple unlawful possession of a controlled substance (UPCS), the convictions had washed out and were not counted as points in his offender score for the 2013 sentencing. Nevertheless, Jones requested and received a resentencing based on *Blake* in 2022.

At the resentencing hearing, Jones sought only to reduce the sentence on each of his convictions to the low end of the standard range and to run his enhancements concurrently. The trial court elected to reduce the sentence on only one count.

On appeal, Jones does not argue that the aforementioned sentence was error, but raises unrelated issues. In part, Jones argues that his felony harassment sentence exceeds the statutory

[1] 197 Wn.2d 170, 481 P.3d 521 (2021).

maximum, which the State concedes. Jones also contends that the trial court ignored this court's mandate to correct his second degree assault sentences from his previous direct appeal.[2] Jones also filed a statement of additional grounds for review (SAG).

We hold that all of the issues presented exceed the scope of the appeal from Jones' *Blake* resentencing. However, we reach the felony harassment statutory maximum issue in light of the State's concession and agree that remand is appropriate on that discreet issue. And if it is accurate that the trial court did fail to implement our mandate from Jones' previous direct appeal, then the second degree assault counts must be corrected in compliance with our mandate. We otherwise affirm.

FACTS

In 2013, a jury convicted Jones of eight felonies: Count I—second degree assault, Count II—first degree kidnapping, Count III—first degree robbery, Count IV—attempting to elude a pursuing police vehicle, Count V—first degree unlawful possession of a firearm, Count VI—second degree assault, Count VII—felony harassment, and Count VIII—tampering with a witness. Some carried domestic violence designations and some carried firearm sentencing enhancements. Jones' offender score for each count ranged from 9 to 20 points. The trial court imposed sentences at the top of the standard sentencing range for each count. Although Jones' criminal history contained two prior convictions for UPCS, the convictions had washed out and they were *not* counted in his offender score at his sentencing.

[2]*State v. Jones*, No. 45143-3-II, slip op. at 1 (Wash. Ct. App. Mar. 10, 2015) (unpublished) https://www.courts.wa.gov/opinions/pdf/D2%2045143-3-II%20%20Unpublished%20Opinion.pdf.

Jones appealed. We held that "the sentencing court erred in imposing a combined term of confinement and community custody that exceeded the maximum allowed for each of [Jones'] second degree assault convictions, requiring a remand to correct the unlawful sentence." *Jones*, No. 451433, slip op. at 1. And we otherwise affirmed. *Id.*

In July 2022, Jones sought resentencing under *Blake*, arguing that it was "possible" that the original sentencing judge took a prior UPCS conviction "into account" when imposing the high-end sentence even though the UPCS convictions had washed out and were not included in his offender score. Rep. of Proc. (RP) (July 29, 2022) at 10.[3] The trial court agreed to conduct a resentencing hearing.[4]

At the resentencing hearing, Jones asked the court to reduce his sentence on each of his convictions to the low end of the standard sentencing range, citing his efforts at rehabilitation while incarcerated. Jones also asked the trial court to run his sentencing enhancements concurrently and spoke at length in support of his request, again citing his contrition and his efforts at rehabilitation. Jones confined his requests at resentencing to a reduction in his incarceration time, and at no point asked the trial court to revisit the length of his community

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[3] In support of his request, Jones' counsel pointed the trial court to unpublished cases of the Court of Appeals in which a defendant obtained a new sentencing hearing, despite having received a sentence at the top of the sentencing range, so that the trial court could determine the impact of the vacated UPCS convictions on the defendant's sentence and impose a new sentence if warranted. However, the cases cited by Jones were cases where the prior UPCS conviction *counted as a point* in the original offender score. *See In re Pers. Restraint of Taylor*, No. 84036-3-I, slip op. at 1 (Wash. Ct. App. Oct. 31, 2022) (unpublished), *superseded* by No. 84036-3-I, slip op. at 1 (Wash. Ct. App. Jan. 23, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/840363.pdf; *State v. Griffin*, No. 54224-2-II, slip op. at 13 (Wash Ct. App. July 13, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/ D2%2054224-2-II%20Unpublished%20Opinion.pdf.

[4] The trial court also, as part of that motion, vacated the two prior UPCS convictions.

custody terms, his offender score calculation, his legal financial obligations (LFOs), or the no contact order prohibiting him from contacting his child's mother.

The trial court elected to resentence Jones on only one count, the first degree kidnapping conviction. The trial court reduced Jones' sentence from 198 months to 180 months. The trial court left the remaining terms of Jones' 2013 sentence the same.

Jones appeals his resentencing.[5]

ANALYSIS

I. NO CONTACT ORDER

Jones argues that the no contact order restricting him from contacting his child's mother must be modified to allow for contact as part of a court process as it prevents him from asserting his fundamental right to parent. The State responds that this is an unpreserved error outside the scope of this appeal. We agree that the issue is outside the scope of appeal.

CrR 7.8 is the procedural mechanism for defendants to raise collateral attacks on their convictions in the trial court. *State v. Molnar*, 198 Wn.2d 500, 508, 497 P.3d 858 (2021). *Blake* motions for resentencing are collateral attacks on convictions governed by CrR 7.8. Here, there is no written motion for resentencing under *Blake* in our record. But our record demonstrates that Jones sought resentencing on that basis and the trial court agreed to conduct resentencing.

[5] As an initial matter we must address the State's motion to dismiss this appeal, raised in its Brief of Respondent. The State contended that the notice of appeal in this case was filed after the 30 day period provided in RAP 5.2. Jones subsequently filed a motion to enlarge time to file the notice of appeal, asserting that complications related to COVID-19 prevented him from timely filing the notice of appeal. Motion to Enlarge Time to File Notice of Appeal, *State v. Jones*, No. 57346-6-II (Oct. 16, 2023). A commissioner of this court granted the motion, relying on RAP 18.8(b). Ruling, *State of Washington v. Meko Deaunte Jones*, No. 57346-6-II (Oct. 16, 2023). The State did not move to modify the commissioner's ruling and, as such, the State's motion to dismiss is moot.

In the context of a collateral attack, an error in the judgment and sentence does not permit a petitioner "to circumvent other carefully crafted time limits on collateral review." *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 134, 267 P.3d 324 (2011).

Relief from judgment under CrR 7.8 is limited to enumerated grounds such as mistake, newly discovered evidence, or fraud. But Jones' appeal essentially seeks a second resentencing by expanding the scope of appeal beyond what was raised at the trial court. Jones relies on *State v. Dunbar* to argue that he can now challenge all the conditions of the original sentence for the first time on appeal from his resentencing. In *Dunbar*, Division Three noted *Blake* resentencing motions carry a presumption of de novo resentencing where the trial court may hear new evidence and arguments. *State v. Dunbar*, 27 Wn. App. 2d 238, 249, 532 P.3d 652 (2023) (holding that the trial court erred in not considering evidence of Dunbar's rehabilitation). But *Dunbar* does not address the scope of appellate review from a *Blake* resentencing, and Jones cites no authority overriding the constraints of CrR 7.8.

Moreover, at the 2022 resentencing, Jones requested the court to reduce his sentence on each of his convictions to the low end of the standard sentencing range and requested the court court to run his sentencing enhancements concurrently. The trial court only partially granted Jones' request to reduce his base sentence by reducing the kidnapping offense from 198 to 180 months. His discreet requests at the CrR 7.8 resentencing hearing confined the scope of his appeal.

The no contact order Jones now challenges is clearly outside the scope of issues raised at resentencing. Thus, we decline to reach this issue as it exceeds the scope of this appeal. Relatedly, Jones argues his counsel was ineffective for failing to object to the no contact order

below. Because we hold that Jones' claim of error related to the no contact order cannot be raised in this appeal, we likewise decline to reach this issue.

II. FELONY HARASSMENT STATUTORY MAXIMUM

Jones argues, and the State concedes, that the term of his confinement for the felony harassment conviction exceeds the statutory maximum for that offense. Although this issue is beyond the scope of this appeal because it was not part of Jones' motion for relief below, we reach this issue in light of the State's concession and agree that remand for correction of this issue is appropriate.

"Whether a sentence is legally erroneous is reviewed de novo." *State v. Dyson*, 189 Wn. App. 215, 224, 360 P.3d 25 (2015). "[A] court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW." RCW 9.94A.505(5). The maximum sentence for a felony harassment conviction is five years of confinement. RCW 9A.20.021(1)(c); RCW 9A.46.020(2)(b). If a firearm sentencing enhancement would extend the sentence over the statutory maximum, the sentencing court must reduce the base sentence. RCW 9.94A.533(3)(g).

Here, the sentencing court erroneously imposed a sentence of 78 months—60 months for the base offense plus 18 months for a firearm sentencing enhancement—for the felony harassment conviction, which is in excess of the statutory maximum. We remand for the sentencing court to correct the sentence on the felony harassment conviction consistent with this opinion.

III. LFOs

Jones challenges several of his LFOs, despite not raising any issue with his LFOs to the trial court. Although these claims exceed the proper scope of this appeal, several of these LFOs have undergone statutory changes since Jones' original sentencing. Because this matter is being remanded to address Jones' felony harassment sentence, the trial court should reconsider these LFOs on remand.[6]

IV. SAG

In his SAG, Jones argues (1) the sentencing court erroneously imposed sentences exceeding the statutory maximum for Count I and VI (second degree assault convictions), and VII (felony harassment),[7] (2) the charging information was deficient, (3) the sentencing court erred by assessing different offender scores for different counts in violation of RCW 9.94A.525, (4) the sentencing erred by finding him guilty of chemical dependency, (5) the sentencing court erred by imposing restitution and the VPA, and (6) the sentencing court abused its discretion by imposing a no contact order for life, and (7) the sentencing court abused its discretion by imposing the sentencing enhancements consecutively because the State charged Counts II-VIII based on the same criminal conduct.

Besides the trial court possibly failing to implement our mandate from an earlier appeal, each of the issues Jones raised in his SAG (1) were addressed by his counsel's briefing; (2) exceed the proper scope of this appeal either because they raise errors related to his trial (the

[6] Jones challenges the community custody supervision fees, the crime victim penalty assessment—which was already struck, and restitution interest.

[7] This argument as to Count I and VI was the subject of an earlier appeal.

sufficiency of the charging document), errors in his offender score (which he expressly did not challenge at the resentencing hearing), or errors in his original judgment and sentence that he did not preserve (the chemical dependency finding); or (3) are claims that have been previously rejected by this court (the same criminal conduct claim). We decline to review these claims.

The only argument that we can address is Jones' claim that the trial court failed to implement the mandate from this court in Jones' original appeal, filed on October 1, 2015, that instructed the trial court to resentence Jones on his second degree assault convictions so that his community custody terms, when combined with his terms of confinement, did not exceed the statutory maximum for the offenses. *Jones*, No. 451433, slip op. at 5. Although this issue was not raised at the 2022 resentencing hearing—and the proper method of addressing this error would have been a motion to recall the mandate pursuant to RAP 12.9(a)—the failure to follow our mandate if accurate,[8] presents a serious irregularity warranting our intervention. It is unacceptable that the trial court did not docket this matter for resentencing when it received our mandate, and it is unacceptable that neither the State nor Jones' trial counsel sought to have this matter placed on the docket for resentencing in the face of the trial court's inaction.

Let us be clear once again: the community custody terms on Jones' second degree assault convictions, when combined with his period of confinement on those counts, exceed the maximum penalty for second degree assault. *Jones*, No. 451433, slip op. at 5. Assuming these sentences have not been corrected since the 2013 judgment and sentence, they must be corrected now.

[8] Our record does not show that Jones' Judgment and Sentence was corrected based on our 2015 opinion.

CONCLUSION

We hold that all of the issues Jones raises exceed the scope of this appeal. Nevertheless, we remand for resentencing of the felony harassment conviction based on the State's concession. And if it is accurate that the trial court did fail to abide by our 2015 mandate, Jones' sentences for second degree assault must be corrected in compliance with our mandate.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Che, J.

Che, J.

We concur:

Cruser, C.J.

Cruser, C.J.

Price, J.

Price, J.

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June 18, 2024

Meko Jones, Sr., 745965
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Re: State v. Jones, COA No. 57346-6-II

Dear Mr. Jones,

Enclosed is a copy of the unpublished opinion filed in your case by the Court of Appeals. The Court of Appeals agreed with some of our arguments but rejected others.

First, the court held that we could not challenge the no contact order restricting your access to the children as a violation of your fundamental right to parent because it was outside the scope of this appeal. Specifically, the court noted that no challenges were made to the no contact order during your resentencing and therefore it declined to consider these issues.

There is some good news, however! The court concluded that your case had to be remanded for several reasons. First, the court agreed that the sentence for your harassment conviction exceeded the statutory maximum, and therefore had to be corrected. Second, the court agreed that the court should reconsider the imposition of multiple LFOs on remand. Finally, the court agreed that remand was appropriate for the trial court to comply with its 2015 mandate and correct your sentences on the second degree assault convictions, which exceed the statutory maximum when combined with your community custody terms.

Unfortunately, the Court of Appeals did not concluded that any of the other issues identified in your statement of additional grounds for review warranted relief.

At this point there are two options. The first is to file a motion to reconsider with the Court of Appeals. Such a motion is appropriate if the Court has misunderstood or overlooked an important point of fact or law. Regrettably, it is my professional opinion that the Court of Appeals has legal and factual justification to support its decision. Therefore, I do not believe such a motion is appropriate and thus, our office will not be

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