Supreme Court No. _____
No. 85825-4-I

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,

Respondent,

v.

MARQUES WATSON,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Marques Watson, the petitioner, asks this Court to grant review of the Court of Appeals' decision terminating review, issued on November 19, 2024.

B. ISSUE FOR WHICH REVIEW SHOULD BE GRANTED

Whether the law eliminating the scoring of prior juvenile adjudications in an offender score calculation applies to sentencings where this law is in effect, but the offense being sentenced was committed before the law was in effect?

C. STATEMENT OF THE CASE

Marques Watson pleaded guilty to three counts of first degree robbery. CP 100-125; RP 8/16/23 RP 12. Mr. Watson was 19 years old when he committed the offenses in 2022. CP 26, 40. Mr. Watson had two prior juvenile adjudications for robbery. CP 124.

Based on these prior juvenile adjudications, the prosecution contended Mr. Watson's offender score on each conviction was an eight. CP 43. This made the standard range 108 to 155 months on each offense. CP 43.

Mr. Watson contended that under a recent change in the law, his juvenile adjudications did not count, making his offender score a four on each offense. CP 66-71. This made the standard range 51 to 68 months on each offense. CP 71.

The prosecution argued that the change in the law only applied to offenses committed on or after the law's effective date. 9/26/23 RP 3-7. The prosecution insisted that for the legislature to enact a law that does otherwise, it must expressly state its intent to depart from the general rule, set out in statute, that

punishment is determined based on the law in effect at the time of the offense. 9/26/23 RP 7, 18; CP 45-47.

Defense counsel explained this was not true. All that is necessary is for the legislature to fairly convey its intent that the law applies to sentencings after its effective date. CP 70; 9/26/23 RP 9-13. The legislature did this through its statement of intent. 9/26/23 RP 13, 16-17. This statement of intent recounted how it was unjust to use a person's juvenile criminal history to increase punishment for acts committed as an adult and how a change in the law was necessary to bring Washington into line with most states, which do not use juvenile adjudications to enhance punishment. Laws of 2023, ch. 415, § 1.

The trial court ruled the law did not apply to Mr. Watson's sentencing. The court reasoned there was no *express* intent in the statute to apply the change in the

law to all sentencings after enactment. 9/26/23 RP 19; CP 2. The trial court also reasoned the legislature must have not intended the law to apply "retroactively"[1] because a prior draft of the law had expressly provided for this. 9/26/23 RP 19; CP 2.

Consequently, the court sentenced Mr. Watson using an offender score of eight. CP 31. The court sentenced Mr. Watson to concurrent low-end standard range sentences of 108 months. 9/26/23 RP 30; CP 31.

In its unpublished opinion, the Court of Appeals rejected Mr. Watson's argument on appeal that the statute eliminating the scoring of most prior juvenile adjudications applied to Mr. Watson's case and affirmed.

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[1] As explained later, whether the law in effect applied at Mr. Watson's sentencing in September 2023 was not an issue of retroactive application.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Review should be granted to decide whether the law eliminating the use of most juvenile adjudications in offender score calculations applies to sentencings on pre-act offenses where the change in the law is in effect at the time of sentencing.

Under the Sentencing Reform Act, the offender score and offense seriousness level determines the standard range sentence. RCW 9.94A.510, 530(1). The offender score is the total sum of points accrued from prior convictions rounded down to the nearest whole number. RCW 9.94A.525.

Mr. Watson had two juvenile adjudications that were counted in his offender scores. This increased his punishment by making his offender score on each offense an eight rather than a four. *See* RCW 9.94A.525; RCW 9A.56.200.

But the legislature passed a law mandating that most prior juvenile felony adjudications do not count in the offender score. Laws of 2023, ch. 415, § 2.[2] The law took effect on July 23, 2023, before Mr. Watson's sentencing.

Following previous decisions from the Court of Appeals, the Court of Appeals held this law does not apply to pre-act offenses or to sentences that are pending on appeal.

Interpretation of a statute is a legal issue, reviewed de novo. *State v. Jenks*, 197 Wn.2d 708, 713, 487 P.3d 482 (2021).

In ruling that the law did not apply, the Court of Appeals relied on two statutes that generally require

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2 https://leg.wa.gov/CodeReviser/documents/sessionlaw/2023pam2.pdf. The exceptions are for first and second degree murder along with class A felony sex offenses.

that sentences be determined based on the law in effect at the time of the offense. RCW 9.94A.345; RCW 10.01.040. The Court of Appeals reasoned that the language of the statute did not evince intent to apply to pre-act cases, including to sentencings where the law is in effect. Slip op. at 3-4. And that for the legislature to create a new law exempting itself from those previous laws enacted by a past legislature, there must be "express legislative intent" that is "apparent." Slip op.at 4.

A statute need *not* have express language for it to operate at later sentencings or even "retroactively." *Jenks*, 197 Wn.2d at 720; *State v. Ross*, 152 Wn.2d 220, 238, 95 P.3d 1225 (2004); *State v. Rose*, 191 Wn. App. 858, 865-66, 365 P.3d 756 (2015); *Dorsey v. United States*, 567 U.S. 260, 274, 132 S. Ct. 2321, 183 L. Ed. 2d 250 (2012). Laws purporting to create any kind of

drafting requirement on the legislature are ineffective because a legislature cannot bind a future legislature from exercising its power. *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 174 P.3d 1142, 1151-52 (2007); *United States v. Winstar Corp.*, 518 U.S. 839, 872-73, 116 S. Ct. 2432, 135 L. Ed. 2d 964 (1996).

As the United States Supreme Court has recognized, whether a statute applies must be analyzed based on its language. *Dorsey*, 567 U.S. at 274-75, 132 S. Ct. 2321, 183 L. Ed. 2d 250 (2012). "No magical passwords" or express intent are required to supersede or exempt a law from a prior law. *Id.* at 274 (cleaned up). The analysis is whether the legislature did so "by necessary implication." *Id.* Or, as this Court has put it, the law is exempt from the prior law when the legislature expresses "an intent in words that fairly

convey that intention." *Jenks*, 197 Wn.2d at 720 (cleaned up). Thus, the legislature is *not* required to say, "This act shall apply to pending cases." *Rose*, 191 Wn. App. at 865-66.

Here, the plain language of the new law expresses an intent to apply to all sentencings after its effective date, including to pre-act offenses. The intent section of the law, expressing the purpose of the law, shows this:

> The legislature intends to:
>
> (1) *Give real effect* to the juvenile justice system's express goals of rehabilitation and reintegration;
> (2) *Bring Washington in line* with the majority of states, which do not consider prior juvenile offenses in sentencing range calculations for adults;
> (3) *Recognize the expansive body of scientific research on brain development*, which shows that adolescent's perception, judgment, and decision making differs significantly from that of adults;
> (4) *Facilitate the provision of due process* by granting the procedural

> protections of a criminal proceeding ***in any adjudication*** which may be used to determine the severity of a criminal sentence;
> and
>
> (5) *Recognize how grave disproportionality within the juvenile legal system* may subsequently impact sentencing ranges in adult court.

Laws of 2023, ch. 415, § 1 (emphases added).

This statement of intent uses strong words that convey the legislature's intent to have this law apply to all sentencings: "Give real effect," "Bring Washington in line," "Recognize the expansive body of scientific research on brain development," "Facilitate the provision of due process . . . in ***any*** adjudication," and "Recognize [the] grave disproportionality within the juvenile legal system." *Id.* (emphasis added).

This statement of intent shows it is fundamentally unfair and out-of-step to increase a person's punishment based on what that person did as

a child. Consequently, the legislature's intent was to end this harmful practice in all sentencings on or after July 23, 2023. *See Dorsey,* 567 U.S. at 273-281 (several considerations showed that Congress intended more lenient penalties to apply when sentencing offenders whose crimes preceded enactment of law, including avoiding sentencing disparities that the act was intended to remedy); *State v. Grant*, 89 Wn.2d 678, 684, 575 P.2d 210 (1978) (language that "intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages" expressed sufficient intent to apply to all cases); *State v. Zornes*, 78 Wn.2d 9, 13, 475 P.2d 109 (1970) (amendment was not merely prospective given the language, "the provisions of this chapter shall ***not ever*** be applicable to any form of cannabis") (emphasis added); *Rose,* 191 Wn. App. at 869 (statement of intent

saying that "the people intend to stop treating adult marijuana use as a crime" and "allow law enforcement resources to be focused on violent and property crimes" expressed an intent to have law apply to pending cases).

In reasoning this intent section did not overcome RCW 9.94A.345 and RCW 10.01.040, the Court of Appeals cited *State v. Troutman*, 30 Wn. App. 2d 592, 546 P.3d 458 (2024), *review denied*, 3 Wn.3d 1016, 554 P.3d 1217, where the Court of Appeals reasoned the plain language of the statute "does not evince a legislative intent . . . to apply retroactively." *Troutman*, 30 Wn. App. at 599.

But the statutes in *Dorsey*, *Zornes*, *Grant*, and *Rose* did not expressly state that the amendments in those cases would apply to pending cases for prosecutions for offenses committed before their

effective dates. The reasoning from the Court of Appeals that an explicit statement is required is erroneous and elevates RCW 9.94A.345 and RCW 10.01.040 into super statutes even though they are non-constitutional.

This Court's decision in *State v. Jenks*, 197 Wn.2d 708, 487 P.3d 482 (2021) is not to the contrary. The statute in *Jenks* concerned eliminating second degree robbery as a strike offense for purposes of Washington's "three strikes and you're out" life-sentence law. Unlike the law here, it did *not* have a statement of intent. *Compare* Laws of 2023, ch. 415, § 1 ***with*** Laws of 2019, ch. 187. Thus, the language of the statute did "not fairly convey intent to exclude the saving clause" statute. *Jenks*, 197 Wn.2d at 720.

The more relevant case from this Court is *Ross*. 152 Wn.2d 220. There, the legislature reduced the

amount of points for prior drug convictions in offender scores by amending RCW 9.94A.525. The Court determined this change in the law did not apply to crimes committed before the effective date of the law. *Ross*, 152 Wn.2d at 239. The legislature expressed the intent that the statute would *not* apply "retroactively" by stating the amendments "apply to crimes committed on or after July 1, 2002." *Id.* (quoting Laws of 2002, ch. 290, § 29).

In contrast to *Jenks* and *Ross*, the statement of intent here fairly conveys the message that it applies to any future sentencing (as opposed to just offenses committed after its effective date).[3] Otherwise the goals

[3] This is not an issue of "retroactivity" on whether the law applies to people serving sentences where their cases are final. Rather it is an issue of *prospective* application. Does the law apply to new sentencings going forward, including pre-act offenses? Or does it apply just to sentences for crimes committed on or after July 23, 2023, the effective date of the act?

expressed in the statement of intent make little sense. And unlike in *Ross*, the legislature did *not* include a comparable statement that the law would only "apply to crimes committed on or after" a particular date. *Ross*, 152 Wn.2d at 239.

Jenks is also distinct because it did not consider whether the statute there was remedial. 197 Wn.2d at 726. A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right." *State v. Pillatos*, 159 Wn.2d 459, 473, 150 P.3d 1130 (2007) (internal quotation omitted). "[R]emedial statutes are liberally construed in order to effectuate the remedial purpose for which the statute was enacted." *Grant*, 89 Wn.2d at 685. "[R]emedial statutes are generally enforced as soon as they are effective, even if they relate to

transactions predating their enactment." *Pillatos*, 159 Wn.2d at 473.

Here, the statute "relate[s] only to procedures and does not affect a substantive or vested right." *Id.* The State does not have a substantive or vested right in having a person's juvenile adjudications count in their offender score. Thus, the statute applies to Mr. Watson's sentencing and he is entitled to relief on direct appeal. *See State v. Jefferson*, 192 Wn.2d 225, 245-47, 429 P.3d 467 (2018).

In rejecting Mr. Watson's argument that the statute is remedial, the Court of Appeals cited *State v. Tester*, 30 Wn. App. 2d 650, 546 P.3d 94 (2024), *review denied*, 3 Wn.3d 1016, 554 P.3d 1217. Slip op. at 5-6. *Tester* rejected a similar argument based on *Jenks*. 30 Wn. App. 2d at 658. But *Jenks* expressly declined to reach the issue of whether the statute in that case was

remedial, so citing to it makes little sense. *Jenks*, 197 Wn.2d at 726. As for *State v. Kane*, 101 Wn. App. 607, 613, 5 P.3d 741 (2000), cited by the Court of Appeals in *Tester* and the opinion in this case for the notion "the remedial nature of an amendment is irrelevant" to the issue of intent, *Kane* predates and is contrary to this Court's opinion in *Pillatos*. That case reasoned and applied the principle that "[r]emedial statutes are an exception to the general rule that statutes operate prospectively." *Pillatos*, 159 Wn.2d at 473.

Concerning legislative history, which was cited by the trial court in rejecting Mr. Watson's position, unless there is ambiguity, meaning is determined from the language of the statute, not legislative history. *Alaska Airlines, Inc. v. Dep't of Labor & Indus.*, 1 Wn.3d 666, 676-79, 531 P.3d 252 (2023). Consequently, that a previous version of the bill of the law at issue

provided a right to resentencing for any person who was sentence using a juvenile adjudication is not relevant. Moreover, even when using legislative history, "sequential drafts are not determinative" when determining legislative intent. *Id.* at 679.

Relatedly, post-enactment history is irrelevant in determining intent. As the United States Supreme Court has recognized, post-enactment history is a "particularly dangerous basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 670, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020) (internal quotation omitted) (citing *Sullivan v. Finkelstein*, 496 U.S. 617, 632, 110 S. Ct. 2658, 110 L. Ed. 2d 563 (1990) (Scalia, J., concurring) ("Arguments based on subsequent legislative history . . . should not be taken seriously, not even in a footnote"). For this

reason, "the failure of the legislature to act following judicial construction of a statute does not forever bind the court to perpetuate either a poorly reasoned judicial conclusion or an error." *Jepson v. Dep't of Labor & Indus.*, 89 Wn.2d 394, 406, 573 P.2d 10 (1977).

Review is warranted on this important issue. The mode of analysis by the Court of Appeals is in conflict with precedent. RAP 13.4(b)(1), (2). And this issue undoubtedly "involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). There are many (non-final) pre-act cases where courts have or will count juvenile adjudications, increasing the punishment imposed. No one should needlessly serve a sentence in excess of the law.

And this is happening notwithstanding the legislature's statement of intent saying this is unjust

and "[r]ecogniz[ing] how grave disproportionality within the juvenile legal system may subsequently impact sentencing ranges in adult court." Laws of 2023, ch. 415, § 1. This disproportionately has affected people of color—like Mr. Watson, and indigenous persons the most. [4] This Court should grant review and decide this critical issue.

That this Court denied review on closely related issues in *Troutman* and *Tester* is immaterial. This "'Court's denial of review has never been taken as an

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[4] Crosscut, Luna Reyna, *WA may end mandatory sentencing points based on juvenile convictions* (Apr. 20, 2023), available at: https://crosscut.com/politics/2023/04/wa-may-end-mandatory-sentencing-points-based-juvenile-convictions (recounting data showing that "People of color are facing longer sentences because they were involved in the juvenile system as children" and that "Indigenous youth are 3 times more likely than white youth to enter the prison pipeline through referral into the juvenile justice system than to have criminal charges dropped.").

expression of the court's implicit acceptance of an appellate court's decision.'" *Fast v. Kennewick Pub. Hosp. Dist.*, 187 Wn.2d 27, 40, 384 P.3d 232 (2016) (quoting *Matia Contractors, Inc. v. City of Bellingham*, 144 Wn. App. 445, 452, 183 P.3d 1082 (2008)); *accord Teague v. Lane*, 489 U.S. 288, 296, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989) (United States Supreme Court's denial of a writ of certiorari does not mean the court approves of the decision below). And of course, a "Court of Appeals decision has no stare decisis effect on this court." *Fast*, 187 Wn.2d at 40.

E. CONCLUSION

The legislature recognized it is generally unjust and bad policy to increase a person's punishment based on actions taken as a child. This change in the law applied to Mr. Watson's sentencing because the law was in effect and applied to him. This Court should

grant Mr. Watson's petition, so hold, reverse the Court of Appeals, and remand for a new sentencing hearing.

This document contains 2,991 words and complies with RAP 18.17.

Respectfully submitted this 5th day of December, 2024.

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Appendix

FILED
11/19/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. WATSON, MARQUES JAKAI, DOB: 09/10/2003, Appellant.	No. 85825-4-I UNPUBLISHED OPINION

BOWMAN, J. — Marques Jakai Watson appeals his sentence for three first degree robbery convictions committed in 2022. He argues the trial court erred by counting juvenile adjudications in his offender score because a 2023 amendment to RCW 9.94A.525(1) in effect at the time of his sentencing precluded including the adjudications. Because Watson's sentencing was controlled by the law in effect at the time of his offenses, we affirm.

FACTS

In May 2023, the legislature amended RCW 9.94A.525, the offender score statute, to exclude most juvenile adjudications from inclusion in an offender score calculation.[1] LAWS OF 2023, ch. 415, § 2. The amendment took effect on July 23, 2023. *Id.*

[1] The amendment added subsection (1)(b), which provides that "adjudications of guilt pursuant to Title 13 RCW which are not murder in the first or second degree or class A felony sex offenses may not be included in the offender score." RCW 9.94A.525. Title 13 RCW governs juvenile courts and juvenile offenders.

On August 16, 2023, the State charged Watson with three counts of first degree robbery committed over three days in August 2022. The same day, Watson pleaded guilty as charged. In his plea agreement, the State calculated Watson's offender score as 8. The calculation included two juvenile adjudications for first degree robbery. As a result, Watson's standard sentencing range was 108 to 144 months of confinement.

Watson disagreed with the State's calculation. He argued that the offender score statute in effect at the time of his sentencing should apply, which prohibited including juvenile adjudications in his score under RCW 9.94A.525(1)(b). Watson calculated his offender score as 4 and his standard sentencing range as 51 to 68 months' confinement.

The court sentenced Watson in September 2023. It concluded that the law in effect at the time of Watson's offenses in 2022 applied to his sentence. It calculated Watson's offender score as 8 and imposed a standard-range concurrent sentence of 108 months of confinement.

Watson appeals.

ANALYSIS

Watson argues that the trial court erred by including his juvenile adjudications in his offender score. He contends the court should have applied the July 2023 amended statute to his sentence instead of the statute in effect at the time of his offenses. The State says we have already answered this question and held otherwise. We agree with the State.

We review de novo a sentencing court's calculation of an offender score. *State v. Olsen*, 180 Wn.2d 468, 472, 325 P.3d 187 (2014). We also review de novo questions of statutory interpretation. *State v. Jenks*, 197 Wn.2d 708, 713, 487 P.3d 482 (2021). We construe statutes based on their plain language. *Id.* at 714. And if the plain language is unambiguous, our analysis ends. *Id.*

Generally, RCW 9.94A.345 and RCW 10.01.040 control which version of the law courts must use when the legislature has amended a penal statute. *Jenks*, 197 Wn.2d at 713-14. RCW 9.94A.345, the timing statute, "commands sentencers to look to the law in effect at the time of the crime." *Id.* at 716. Under RCW 9.94A.345:

> Except as otherwise provided in [the SRA[2]], any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.

And RCW 10.01.040, the general savings clause statute, ensures that pending criminal proceedings are not affected by subsequent statutory amendments. *Jenks*, 197 Wn.2d at 719-20. RCW 10.01.040 provides, in pertinent part:

> Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

[2] Sentencing Reform Act of 1981, chapter 9.94A RCW.

Under RCW 9.94A.345 and RCW 10.01.040, "sentences imposed under the SRA are generally meted out in accordance with the law in effect at the time of the offense." *Jenks*, 197 Wn.2d at 714. Any exception must be apparent by express legislative intent " 'in words that fairly convey that intention.' " *Id.* at 720[3] (quoting *State v. Ross*, 152 Wn.2d 220, 238, 95 P.3d 1225 (2004)).

In *State v. Troutman*, we rejected the same argument that the amendment to RCW 9.94A.525(1) applies to sentences for crimes committed before the amendment's effective date. 30 Wn. App. 2d 592, 599-600, 546 P.3d 458, *review denied*, 3 Wn.3d 1016, 554 P.3d 1217 (2024). We concluded:

> Because the plain language [of RCW 9.94A.525(1) as amended] is unambiguous and does not evince a legislative intent for [the statute] to apply retroactively, we conclude that under the SRA, RCW 9.94A.345, and the savings clause, RCW 10.01.040, the law in effect at the time of the offense applies to [the defendant]'s sentence.

Id.[4]

We hold the same here. Because Watson committed the robberies in August 2022 and the amendment to RCW 9.94A.525(1) did not take effect until July 2023, the trial court did not err by including the juvenile adjudications in his offender score.

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[3] Internal quotation marks omitted.

[4] Divisions Two and Three recently reached the same conclusion. *See State v. Tester*, 30 Wn. App. 2d 650, 656-59, 546 P.3d 94, *review denied*, 2024 WL 4449749 (2024) (holding RCW 9.94A.345 and RCW 10.01.040 require the trial court to impose a sentence based on the law in effect when the defendant committed their offense, and because RCW 9.94A.525(1)(b) was not in effect at that time, it does not apply to the defendant's offender score calculation); *In re Pers. Restraint of Scabbyrobe*, No. 39562-6-III, slip op. at 5-6 (Wash. Ct. App. Jan. 25, 2024) (unpublished), https://www.courts.wa.gov/opinions/pdf/395626_unp.pdf (same); *see also* GR 14.1(c) (we may cite unpublished opinions "for a reasoned decision").

Still, Watson argues that the legislature clearly expressed its intent to apply the amended statute "to all sentencings after its effective date." He points to the statute's intent section, which states:

> The legislature intends to:
> (1) Give real effect to the juvenile justice system's express goals of rehabilitation and reintegration;
> (2) Bring Washington in line with the majority of states, which do not consider prior juvenile offenses in sentencing range calculations for adults;
> (3) Recognize the expansive body of scientific research on brain development, which shows that [an] adolescent's perception, judgment, and decision making differs significantly from that of adults;
> (4) Facilitate the provision of due process by granting the procedural protections of a criminal proceeding in any adjudication which may be used to determine the severity of a criminal sentence; and
> (5) Recognize how grave disproportionality within the juvenile legal system may subsequently impact sentencing ranges in adult court.

LAWS OF 2023, ch. 415, § 1. But we also rejected this argument in *Troutman*. We concluded that the intent section's plain language is "unambiguous" and "says nothing about retroactivity." *Troutman*, 30 Wn. App. 2d at 599-600. We see no reason to part from that ruling here.

Further, as much as Watson describes the amended statute as remedial, and thus applicable at his sentencing, Division Two recently rejected that same argument in *State v. Tester*, 30 Wn. App. 2d 650, 658-59, 546 P.3d 94 (2024). The court recognized that remedial statutes generally involve procedural matters and are " 'enforced as soon as they are effective, even if they relate to transactions predating their enactment.' " *Id.* at 658 (quoting *State v. Pillatos*, 159 Wn.2d 459, 473, 150 P.3d 1130 (2007)). But changes to criminal

punishments are substantive, not procedural. *Jenks*, 197 Wn.2d at 721. And, in any event, "the remedial nature of an amendment is irrelevant when the statute is subject to RCW 10.01.040." *Tester*, 30 Wn. App. 2d at 658-59 (citing *State v. Kane*, 101 Wn. App. 607, 613, 5 P.3d 741 (2000)).

Because the amendment to RCW 9.94A.525(1) did not apply to the calculation of Watson's offender score, we affirm his sentence.

Brennan, J.

WE CONCUR:

Birk, J.

Coburn, J.

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 document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 85825-4-I**, 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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Date: December 5, 2024

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