NO. 103818-6

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SIDNEY SMITH,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW AND CROSS-PETITION FOR REVIEW

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A. INTRODUCTION

Petitioner Sidney Smith seeks review of the Court of Appeals' decision upholding the denial of his motion for *Blake*[1] resentencing in *State v. Smith*, No. 85196-9-I (unpublished, December 23, 2024). The Court of Appeals upheld the trial court's conclusion that Smith failed to establish that the nonconstitutional scoring error—which had no effect on the length of the agreed-upon exceptional sentence Smith received—resulted in a complete miscarriage of justice. While the Court of Appeals was correct on that point, it erred in reaching that question at all; it should have held that the trial court erred in finding Smith's motion timely, as Smith filed his motion more than seven years after his judgment and sentence became final and failed to establish that his sentence was facially invalid. Instead, the Court of Appeals misinterpreted this Court's recent decision in *In re Pers. Restraint of Fletcher*,

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

3 Wn.3d 356, 552 P.3d 302 (2024), and concluded that Smith's sentence was facially invalid under that decision.

This Court should grant review of the facial invalidity issue, clarify the limited holding of *Fletcher*, and consider overruling *Fletcher*, as it is incorrect and harmful.

B. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

C. STATEMENT OF THE CASE

1. FACTS OF THE CRIME AND 2015 SENTENCING.

In the middle of the afternoon on New Year's Day 2013, then-5l-year-old Sidney Smith was driving a stolen car in West Seattle when police officers in marked patrol cars attempted to stop him.[2] CP 3, 5. Speeding, Smith swerved into the oncoming lane in order to pass a slower vehicle and nearly struck an oncoming patrol car. CP 3, 5. Moments later, Smith again drove in an oncoming lane; this time, he struck an oncoming car head-on. CP 3, 5.

The car Smith struck was occupied by three sisters. CP 3, 5. The driver, 31-year-old Natasha Muse, suffered a compound leg fracture and a brain hemorrhage. CP 3, 152. 28-year-old Hawa Muse suffered a fractured pelvis, and

[2] These facts are drawn primarily from the Prosecuting Attorney Case Summary and the Certification for Determination of Probable Cause, which were incorporated in the trial court's findings of fact supporting the exceptional sentence by agreement of the parties. CP 43.

23-year-old Marian Muse suffered bruises, cuts, and scrapes. CP 3, 5.

Smith was contacted at the hospital by a Drug Recognition Expert Officer who observed signs that he was under the influence of drugs or alcohol. CP 3. Smith admitted consuming methamphetamine, and subsequent toxicology analysis of Smith's blood confirmed that Smith had consumed methamphetamine and marijuana prior to the crash. CP 3, 6.

Smith was originally charged with two counts of vehicular assault based on DUI and driving in a reckless manner (against Natasha and Hawa Muse), and one count of reckless endangerment (against Marian Muse). CP 1-2. Vehicular assault based on DUI or reckless driving is a "most serious offense," commonly referred to as a "strike" offense. RCW 9.94A.030(32)(p); CP 139. Smith's felony criminal history consisted of California convictions for three rapes with force, first-degree kidnapping, second-degree robbery, failure to register as a sex offender, and possession of a controlled

substance. CP 31, 34. The parties agreed that Smith's offender score was nine on each felony count, which created a standard range of 63-84 months on each count as originally charged. CP 32.

However, if convicted as originally charged, Smith's score and standard range would have had no bearing on his sentence. CP 139. Smith agreed that he had twice previously been convicted of offenses that were comparable to Washington strike offenses. CP 31. As a result, if convicted of either of the original vehicular assault charges, Smith would have faced a mandatory life-without-parole sentence under the Persistent Offender Accountability Act ("POAA"). CP 31-32.

Smith entered into a plea agreement whereby he was permitted to plead guilty to non-strike offenses: two counts of vehicular assault based on driving with disregard for the safety of others and causing substantial bodily harm. CP 8-9, 30, 32. Smith's standard range on the reduced charges was 51-68 months (based on his then-current score of nine). CP 32, 35.

However, in exchange for the amendment to non-strike offenses, Smith agreed to a 190-month exceptional sentence above the standard range, made up of consecutive 95-month exceptional sentences on each count of vehicular assault. CP 30, 32.

At sentencing, Smith informed the court, through his counsel, that the plea agreement had been "carefully negotiated" and that Smith had agreed to "a significantly longer sentence than your average Vehicular Assault would entail . . . . because of the risk that he faced of a persistent offender status if he were convicted as he was earlier charged." RP 26-27. The victims submitted handwritten victim impact statements detailing the physical and emotional trauma they suffered and the ways in which, more than two years later, they continued to suffer profound physical consequences. CP 151-57; RP 23.

After Smith allocuted, the trial court pronounced sentence as follows:

> Well, the Court was, uh, affected, I have to say, by the letters by the three young women who were injured in this and the seriousness of their injuries. I do think that the way the parties worked through a solution to this case, considering Mr. Smith's history, considering the seriousness of the injuries, and considering the type of criminal conduct is an appropriate resolution of the case. I do find that the agreed aggravator does exist, and the Court will adopt that as the parties have submitted, and I will impose the exceptional sentence of 95 months on each count to run consecutively.

RP 28. The court entered written findings of fact and conclusions of law stating that the exceptional sentence was warranted under RCW 9.94A.535(2)[3] based on the fact that Smith had faced a life-without-parole sentence if convicted as originally charged and had agreed to the exceptional sentence in exchange for the State's agreement to amend the charges to non-strike offenses. CP 43. Smith's judgment and sentence

[3] RCW 9.94A.535(2)(a) permits an exceptional sentence when "[t]he defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act."

was filed on February 6, 2015. CP 36. He did not file a direct appeal.

2. 2022 MOTION FOR RESENTENCING AND COURT OF APPEALS OPINION.

In February 2021, this Court issued its decision in *Blake,* holding Washington's drug-possession statute unconstitutional. As a result, there was no longer a valid Washington felony to which Smith's 2006 California conviction for possession of a controlled substance was comparable. CP 141.

In December 2022, Smith filed a CrR 7.8 motion for resentencing on the grounds that the offender score and standard range in his judgment and sentence were now incorrect. CP 64. Smith asserted that his motion was not time-barred under RCW 10.73.090 because his sentence was facially invalid. CP 68-71.

The State agreed that, as a result of *Blake*, Smith's offender score had decreased from 9 to 8 and his standard range on each count of vehicular assault had decreased from 51-68

months to 43-57 months. CP 141. However, the State moved to transfer Smith's motion to this Court pursuant to CrR 7.8(c)(2) on the grounds that (1) Smith's exceptional sentences were facially valid,[4] and thus he had failed to establish that his motion was timely and (2) Smith had failed to make a substantial showing that he was entitled to relief. CP 137, 141-45. The State argued that, even if the trial court concluded that transfer was not warranted, Smith's motion should be denied on the merits because Smith had failed to establish the prejudice necessary to obtain relief on collateral attack. CP 145-48.

The trial court[5] denied the State's motion to transfer, finding that Smith's motion was timely because his sentence was facially invalid under *State v. Fletcher*, 19 Wn. App. 2d 566, 497 P.3d 886 (2021). RP 66; CP 173-74. In a subsequent

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[4] Despite arguing that Smith's sentence was facially valid, the State acknowledged that the trial court was bound to follow the contrary holding of Division Three in *State v. Fletcher*, 19 Wn. App. 2d 566, 572-78, 497 P.3d 886 (2021).

[5] Smith's motion for resentencing was heard by the original sentencing judge's successor.

written ruling, the trial court denied Smith's motion on the merits, finding that he had failed to establish the prejudice necessary to obtain relief on collateral attack.

The trial court agreed with the State that this Court's caselaw required Smith to "at the very least" meet the lower "more likely than not would have received a different sentence" prejudice standard that would apply if the error from which he sought relief were constitutional rather than nonconstitutional. CP 147-48, 174. The court found Smith had failed to make that showing. CP 174-75. The court noted that Smith's motion would still fail even under a lower prejudice standard requiring only some evidence that he would have received a different sentence, because "[t]here is *no* evidence in the record that the judge in this case would have imposed a lower sentence had the offender score been an 8, rather than a 9. There is no evidence that the judge even considered imposing a standard range sentence." CP 174-75 (emphasis added).

Smith timely appealed the trial court's ruling. CP 177. The State defended the trial court's finding that Smith had failed to establish the requisite prejudice, and cross-assigned error to the trial court's conclusion that Smith's motion was timely as an alternative basis to deny Smith relief.

The Court of Appeals affirmed the trial court on both points in an unpublished opinion. *State v. Smith*, No. 85196-9-I (unpublished, December 23, 2024). It interpreted this Court's recent decision in *Fletcher*, 3 Wn.3d 356, as holding that any miscalculation of the standard range, however small or inconsequential, renders an exceptional sentence facially invalid. *Smith*, slip op. at 5. Thus, the Court of Appeals held, the trial court properly concluded that Smith's motion for resentencing was not time-barred. *Id.*

The Court of Appeals went on to hold that the trial court properly exercised its discretion in denying Smith's request for relief under CrR 7.8(b)(4) and (b)(5) because Smith's judgment was not void and because he had failed to establish that the

scoring error was "a fundamental defect resulting in a complete miscarriage of justice." *Id.* at 7-11. The court noted that the "complete miscarriage of justice" standard is "more demanding than the 'actual and substantial prejudice' standard for constitutional error" on collateral attack. *Id.* at 7-8.

The Court of Appeals examined this Court's recent decision in *Fletcher*, in which this Court found that a large scoring error constituted a complete miscarriage of justice where there was "'a high probability that the mistake affected the original sentence.'" *Smith*, slip op. at 10 (quoting *Fletcher*, 3 Wn.3d at 381). However, the Court of Appeals upheld the trial court's finding that there was "no evidence" Smith would have received a different sentence had his offender score been calculated correctly. Slip op. at 11. It therefore upheld as a proper exercise of discretion the trial court's conclusion that Smith failed to establish that the scoring error resulted in a complete miscarriage of justice. *Id.* at 11.

Smith now petitions for review of the Court of Appeals' holding that the trial court properly exercised its discretion in finding that he failed to establish that the miscalculation of his offender score resulted in a complete miscarriage of justice.

D. THIS COURT SHOULD GRANT THE PETITION SO LONG AS IT ALSO REVIEWS WHETHER SMITH'S MOTION IS TIME-BARRED

Under RAP 13.4(b)(1), this Court will accept review "[i]f the decision of the Court of Appeals is in conflict with a decision of the Supreme Court." The Court of Appeals' decision regarding the timeliness of Smith's motion for resentencing misinterprets this Court's recent decision in *Fletcher*, and thus conflicts with both *Fletcher* and other decisions of this Court. At a minimum, this Court should grant review to clarify the limited scope of *Fletcher*'s holding. However, the Court should also take this opportunity to reexamine *Fletcher*, which is both incorrect and harmful, and overrule it or limit the decision to its facts.

1. THE COURT OF APPEALS MISINTERPRETED *FLETCHER*; SMITH'S MOTION IS TIME-BARRED UNDER THAT DECISION.

RCW 10.73.090 bars consideration of a collateral attack brought more than one year after a conviction became final unless the petitioner meets his burden to establish a facial invalidity in the judgment or some other statutory exception to the one-year time limit. RCW 10.73.090; *Benyaminov v. City of Bellevue*, 144 Wn. App. 755, 768, 183 P.3d 1127 (2008).

In Smith's CrR 7.8 motion for resentencing, he asserted only one applicable exception to the time-bar: that his sentence was invalid on its face. CP 68-72. Thus, if Smith's sentence is in fact valid on its face, the trial court erred in finding he had met his burden and his collateral attack should have been transferred to the Court of Appeals as untimely, pursuant to CrR 7.8(c)(2).

As this Court has long made clear, "invalid on its face" does not mean merely that the trial court committed a legal error; a judgment is invalid on its face only if the court has

exceeded its authority in entering the judgment and sentence and the judgment and sentence evidences the error without further elaboration. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 143, 267 P.3d 324 (2011); *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). "A mere 'technical misstatement that had no actual effect on the rights of the petitioner' does not establish facial invalidity." *In re Pers. Restraint of Toledo-Sotelo*, 176 Wn.2d 759, 767, 297 Pd 759 (2013) (quoting *In re Pers. Restraint of McKiearnan*, 165 Wn.2d 777, 783, 203 P.3d 375 (2009)). For a judgment and sentence to be facially invalid, "the sentencing court must actually pass down a sentence not authorized under the [Sentencing Reform Act ("SRA")]." *Toledo-Sotelo*, 176 Wn.2d at 767.

Assuming that valid aggravating factors have been found by the appropriate factfinder, the imposition of an exceptional sentence above the standard range is statutorily authorized under the SRA whenever the sentencing court "finds,

considering the purpose of [the SRA], that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535. There is no dispute in this case that Smith's exceptional sentence was imposed after the trial court made such a finding based on the valid statutory factor that "[t]he defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act." CP 43; RCW 9.94A.535(2)(a). The trial court could have lawfully imposed Smith's 95-month exceptional sentences even if his offender score had been zero.

Failing to follow a statutorily required procedure—like correctly calculating the standard range before imposing an exceptional sentence—does not necessarily render a sentence facially invalid; "[f]acial validity depends on whether the court exceeded its *substantive* authority." *In re Pers. Restraint of*

Flippo, 187 Wn.2d 106, 110, 385 P.3d 128 (2016) (emphasis added).

However, in *Fletcher* this Court held for the first time that a "serious," "extreme [upward] miscalculation" of a defendant's offender and standard range renders an otherwise-lawful exceptional sentence facially invalid, even if the defendant stipulated to it. *Fletcher*, 3 Wn.3d at 359. The facts before this Court in *Fletcher* were similar to, but materially different from, the facts of this case.

Fletcher stipulated that an exceptional sentence was warranted[6] in exchange for being allowed to plead guilty to reduced charges, but did not bind himself to join the State's recommendation of an exceptional sentence. *Id.* at 361.

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[6] RCW 9.94A.535(2) states that "The trial court may impose an aggravated exceptional sentence . . . [if] (a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act."

However, the parties and the sentencing court grossly miscalculated Fletcher's offender score and standard range: on the most serious amended charge, they arrived at a score of eight and a standard range of 53 to 70 months, whereas Fletcher's correct offender score was four and his correct standard range was 15 to 20 months. *Id.* The high end of the miscalculated standard range was thus 250% higher than the high end of the correct standard range. With this "serious" miscalculation in mind, the sentencing court then imposed an exceptional sentence of 120 months in prison. *Id.* at 361.

In considering whether Fletcher's sentence was facially invalid, this Court reaffirmed a number of longstanding principles of facial invalidity: that "[n]ot every error renders a judgment and sentence invalid"; that "[a] mere technical misstatement that had no actual effect on the rights of the petitioner does not establish facial invalidity"; and that "a sentence imposed in excess of the court's statutory authority does establish facial invalidity." *Id.* at 368 (internal quotations

marks omitted). The central point of contention was whether the miscalculation of Fletcher's standard range before imposing an exceptional sentence based on his stipulation rendered the sentence "in excess of the court's statutory authority." *Id.* at 368-69, 392 (Stephens, J., dissenting), 401 (González, C.J., concurring in dissent).

The four dissenting justices would have held that Fletcher's sentence was statutorily authorized (and thus facially valid) because Fletcher stipulated that an exceptional sentence was warranted, giving the trial court statutory authority to impose the bargained-for exceptional sentence regardless of the standard range. *Id.* at 394-99 (Stephens, J., dissenting), 401 (González, C.J., concurring in dissent). However, a majority of the court grappled with the perceived tension (in *non-exceptional-sentence* cases) between precedent holding that a facial invalidity exists where an upward miscalculation of the standard range results in the imposition of a sentence above the correctly-calculated standard range, such as *In re Pers.*

Restraint of Goodwin,[7] and precedent holding that a "misstatement that had no actual effect on the rights of the petitioner does not establish facial invalidity," such as *Toledo-Sotelo*. *Id.* at 371-72. The majority concluded:

> . . . *Toledo-Sotelo* is easily distinguishable from this case. Fletcher's sentence was incorrectly based on washed out juvenile adjudications that led to an incorrect offender score and standard range. The incorrect score and range were incorrectly high, not incorrectly low, **and the magnitude of the error was startling**. **Fletcher's original J&S reflects a standard range for assault that is more than *three times* the standard range actually permitted by the SRA.**
>
> **In other words, the errors in Fletcher's case mattered.**

Id. at 373 (bolding added; italics in original).

Although the majority occasionally made statements that could be read in isolation to stand for the proposition that *any* upward miscalculation in the standard range would render any resulting sentence facially invalid, those statements were made when discussing or quoting prior cases such as *Goodwin*, in

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[7] 146 Wn.2d 861, 50 P.3d 618 (2002).

which this Court was addressing a miscalculation of the standard range before imposing a standard range sentence that could not have been imposed had the trial court calculated the standard range correctly. *E.g.*, *id.* at 373 ("A sentencing court 'acts without statutory authority' when it imposes a sentence based on an offender score that was miscalculated upward." (quoting *Goodwin*, 146 Wn.2d at 868)).

When discussing its holding in *Fletcher*, this Court repeatedly phrased it in the context of the miscalculation of Fletcher's offender score and standard range being "extreme," "egregious," and of "startling" magnitude. *E.g.*, *id.* at 359 (petition "is timely, because the J&S's **serious sentence calculation errors** make it invalid on its face. . . . The original sentencing court could not possibly [decide whether and by how much to depart from standard range] in a fair, statutorily authorized, or reliable way given the **extreme miscalculation** of Fletcher's offender score and standard sentence range."), 368-69 ("Our case law supports Fletcher's argument that a

sentence based on an offender score that was **miscalculated dramatically upward** is a sentence in excess of the court's authority that renders his J&S invalid on its face."), 374 (sentencing court "was **completely misinformed** about the standard range").

In concluding its analysis, the majority again phrased its holding as centering on the magnitude of the error: "Fletcher's offender score unlawfully included prior juvenile adjudications, resulting in an egregious miscalculation of the standard sentence range in his original J&S. . . . Based on this record, the serious errors in Fletcher's original J&S clearly *did* have an actual effect on the rights of the petitioner. As a result, Fletcher's J&S is facially invalid and so his PRP is timely." *Id.* at 379 (internal quotation marks and citation omitted), 383 ("A sentencing court exceeds its statutory authority under the SRA when it imposes a sentence based on such a dramatically miscalculated standard range.").

As discussed in more detail below, *Fletcher*'s holding that a *sufficiently large* scoring error deprives a court of the statutory authority it otherwise possesses under RCW 9.94A.535(2)(a) is incorrect and harmful and should be reconsidered. However, even if this Court does not abandon *Fletcher*, it should correct the Court of Appeals' error in applying *Fletcher* to the facts of this case.

Unlike in *Fletcher*, here the miscalculation of Smith's offender score and standard range were *not* extreme or egregious—his score was minorly miscalculated as nine instead of eight, and his original and corrected standard ranges overlap. Whereas the high end of the mistaken standard range in *Fletcher* was 250% higher than the high end of the corrected standard range, here the miscalculated high end was only 19% higher than the correctly calculated high end. Moreover, the record here establishes that, unlike in *Fletcher*, the error in this case simply did not "matter[]." *Fletcher*, 3 Wn.3d at 373. The recommendation of the parties, and the court's decision to

adopt it, had nothing to do with Smith's standard range and everything to do with the fact that the plea deal allowed Smith to avoid the life-without-parole sentence that would be mandatory if he were convicted on the original charges.

It is thus inconsistent with the holding of *Fletcher* to conclude that the inconsequential offender score error in this case deprived the trial court of the statutory authority it otherwise possessed to impose an exceptional sentence. Even in the wake of *Fletcher*, the Court of Appeals erred in upholding the trial court's conclusion that Smith had met his burden to establish that his CrR 7.8 motion was timely. That error should be corrected by this Court to provide guidance to future courts.

2. *FLETCHER* IS INCORRECT AND HARMFUL AND SHOULD BE OVERRULED OR CONFINED TO ITS FACTS.

As the dissenting justices highlighted in *Fletcher*, the majority's holding that a *sufficiently large* scoring error deprives the trial court of the substantive authority it otherwise

possesses to impose an exceptional sentence under RCW 9.94A.535(2)(a) is deeply flawed. *Id.* at 384 (Stephens, J., dissenting) ("Nowhere in our precedent have we previously suggested that the size of a scoring miscalculation is sufficient grounds to declare a final judgment and sentence facially invalid."), 401 (González, C.J., dissenting) ("[A] judgment and sentence is invalid if it shows the trial court exercised a power it did not have. . . . [T]he trial court *did* have the power to depart upward from the standard sentencing range and impose an exceptional sentence based on . . . the defendant's stipulation that an exceptional sentence was warranted.").

This Court requires "a clear showing that an established rule is incorrect and harmful before it is abandoned." *State v. Guzman Nunez*, 174 Wn.2d 707, 713, 285 P.3d 21 (2012) (internal quotation marks omitted). The showing that a rule is incorrect is satisfied where the rule conflicts with precedent and is not supported by the authority on which it relies. *Id.* As explained in detail in the dissents in *Fletcher*, the *Fletcher* rule

is not supported by the authority on which it relies, because none of the cases it relies on substantively analyze facial invalidity. *Fletcher*, 3 Wn.3d at 391-98 (Stephens, J., dissenting) (discussing *Goodwin*; *In re Pers. Restraint of LaChapelle*, 153 Wn.2d 1, 100 P.3d 805 (2004)); *State v. Parker*, 132 Wn.2d 182, 937 P.2d 575 (1997); *In re Pers. Restraint of Call*, 144 Wn.2d 315, 28 P.3d 709 (2001); and others). Fletcher relies on discussions of "statutory authority" in the direct appeals and timely PRPs, *e.g.*, *Fletcher*, 3 Wn.3d at 369-70, but discussions of whether a trial court acted with "statutory authority" in those contexts refers to whether the trial court's action *complied with the SRA*, not whether it was legally erroneous but reached a result within the court's substantive authority.

Fletcher also conflicts with precedent such as *Flippo*, in which this Court held that failure to follow the SRA-mandated procedure before imposing discretionary legal financial obligations "does not detract from a court's substantive

authority" to impose them. 187 Wn.2d at 111. *Fletcher* disregarded *Flippo* on the grounds that it "did not disturb the holdings and analysis" of cases such as *Parker*, 132 Wn.2d 182, but it failed to recognize that *Flippo* addressed substantive authority—the relevant consideration when assessing facial invalidity—while *Parker* was a direct appeal case addressing whether a sentence was authorized in the sense that it complied with the SRA.

Because the holding of *Fletcher* conflicts with precedent and is not supported by the authority on which it relies, it is incorrect.

Fletcher is also harmful. The fact that a decision of this Court "creates unnecessary confusion" for trial courts is a basis to find it harmful. *E.g.*, *Guzman Nunez*, 174 Wn.2d at 716. Here, *Fletcher*'s holding that a sufficiently large miscalculation of the standard range renders an exceptional sentence facially

invalid causes confusion for lower courts because it is not clear how big a miscalculation must be in order to qualify, as this case demonstrates. The decision is also harmful because expanding what constitutes a facial invalidity undercuts society's "significant interest" in finality. *In re Pers. Restraint of Kennedy*, 200 Wn.2d 1, 12, 513 P.3d 769 (2022). "Respect for the finality of judgments is a cornerstone of our legal system." *Fletcher*, 3 Wn.3d at 384 (Stephens, J., dissenting).

Because *Fletcher*'s holding is incorrect and harmful, this Court should overrule it or limit it to its facts.

3. THE COURT OF APPEALS CORRECTLY APPLIED THIS COURT'S PRECEDENT IN HOLDING THAT SMITH FAILED TO ESTABLISH A MISCARRIAGE OF JUSTICE.

If this Court concludes that Smith's sentence is facially valid, his motion for resentencing will be time-barred and it will be unnecessary to reach the issue of whether the Court of

Appeals erred in upholding as a proper exercise of discretion the trial court's conclusion that Smith did not meet his burden to establish the level of prejudice required to obtain relief on collateral attack. If this Court does reach that issue, however, the Court of Appeals' opinion and the Brief of Respondent below make clear that Smith's challenge to the Court of Appeals' decision is meritless. Indeed, it would have been an abuse of discretion for the trial court to grant Smith's motion for resentencing on this record. CP 175. This Court should grant review to clarify that *Fletcher* does not stand for the proposition that any miscalculation of the standard range results in a complete miscarriage of justice, as Smith contends.

E. CONCLUSION

For the foregoing reasons, the petition for review and this cross-petition should be granted.

This document contains 4,739 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 21st day of February, 2025.

Respectfully submitted,

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