Supreme Court No. _____ Case #: 1039565
Court of Appeals No. 59249-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.

MICHAEL DONAVAN BEAL, II,

Petitioner.

PETITION FOR REVIEW

PETER B. TILLER
Attorney for Petitioner
THE TILLER LAW FIRM
118 North Rock Street
P. O. Box 58
Centralia, WA 98531
(360) 736-9301

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A. IDENTITY OF PETITIONER

Petitioner Michel Beal, appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review that is designated in part B of this petition.

B. DECISION OF THE COURT OF APPEALS

Beal seeks review of the unpublished opinion of the Court of Appeals in cause number No. 59249-5-II, 2025 WL 468543, filed February 11, 2025. A copy of the decision is in Appendix A at pages A-1 through A-8.

C. ISSUE PRESENTED FOR REVIEW

1. A resentencing is de novo unless an appellate court reversing a sentence restricts resentencing to narrow issues. At the de novo resentencing hearing, the trial court must exercise independent discretion and should consider any rehabilitation evidence. Should this Court grant review where the Judge did not consider evidence of rehabilitation and noted that the sentence had been reduced at a previous resentencing hearing and it imposed the same amount of time?

D. STATEMENT OF THE CASE

Michel Beal was convicted by plea of first-degree manslaughter, vehicular homicide, failure to remain at accident resulting in death (felony hit and run—death), and attempting to elude, with a special allegation of "endangering one or more persons." Mr. Beal was sentenced on January 26, 2018, to 280 months with an offender score of 12 for manslaughter, a score of 11 for vehicular homicide, an offender score of 12 for failure to remain at the scene, and an offender score of 11 for attempting to elude. Clerk's Papers (CP) at 24, 27.

Following the ***Blake***[1] decision, Mr. Beal was resentenced in Count 1 and Count 2 to 268 months by Judge Philip K. Sorensen. CP at 40-44. Judge Sorensen vacated two drug possession convictions, reducing Mr. Beal's offender score by two points, resulting in an offender score of 9 for vehicular homicide. CP at 42. Judge Sorensen reduced Mr. Beal's sentence to 268 months, although his standard range in Count 1 and Count 2 remained the same even with a lower offender score. CP at 42.

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

An Order Correcting Judgment and Adjusting Sentence Pursuant to ***Blake*** was entered on October 18, 2021. CP at 40-44.

Mr. Beal filed a personal restraint petition arguing that his convictions for manslaughter in Count 1 and vehicular homicide in Count 2 violate the prohibition against double jeopardy.[2] CP at 47. The State agreed with Mr. Beal's argument and the Court of Appeals issued a Certificate of Finality and an Order Granting Petition on July 28, 2023, remanding the case to the trial court and ordering that the conviction for first degree manslaughter be vacated. CP at 45-48. The order stated that the petition is granted and the case is remanded to the trial court to "vacate the first degree manslaughter conviction and for resentencing." CP at 47.

The case came on for resentencing before Judge Garold E. Johnson on January 12, 2024. Report of Proceedings (RP) at 5-35.

The State recommended that Mr. Beal's sentence of 268 months not be further modified. CP at 52-53.

Defense counsel filed a presentence report, arguing that

[2]***In re Pers. Restraint of Beal***, No. 57752-6-II.

with the vacation of the manslaughter charge, Mr. Beal has an offender score of 8 and a standard range of 185 to 245 months. RP at 9-10; CP at 58, 64. The defense report also contains information regarding Mr. Beal's work toward rehabilitation while in custody, including a description of circumstances leading to the original offenses, his efforts to maintain a relationship with his young daughter including participation in parent-teacher conferences, his accomplishments while in DOC custody and his jobs while in custody. CP at 59-64. The defense report also contains nine letters of support of Mr. Beal. CP at 68-79.

The State noted that Mr. Beal has taken good advantage of programs available in prison but asked the court to not change the sentence of 268 months. RP at 24-25. The court imposed the same sentence of 268 months and said that the judge who heard the ***Blake*** resentencing had taken into consideration the progress Mr. Beal made while in custody. RP at 30-31.

On direct review Mr. Beal appealed his standard range sentence following a second resentencing on his convictions for vehicular homicide, failure to remain at an accident resulting in

death, and attempting to elude a pursuing police vehicle. He argues that the trial court erred when it (1) concluded that he failed to establish that two of his prior offenses, a first degree theft and a third degree assault, were the same criminal conduct; and (2) improperly failed to consider his rehabilitation while in prison before imposing the sentence. ***State v. Beal,*** slip op. at 1.

By unpublished opinion filed February 11, 2025, the Court of Appeals, Division II, affirmed the sentence. See unpublished opinion, ***Beal,*** slip op. at 1 and 8. Mr. Beal relies on the facts as presented in the Court's Opinion and as contained in his Brief of Appellant at 2-7.

Mr. Beal petitions this Court for discretionary review pursuant to RAP 13.4(b).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The considerations that govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes that this court should accept review because the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; is in conflict with a published decision of the Court of Appeals. RAP

13.4(b)(1), (2).

1. RESPECTFULLY, THE COURT SHOULD GRANT REVIEW WHERE THE TRIAL COURT ERRED BY FAILING TO CONDUCT A DE NOVO RESENTENCING.

On July 28, 2023, Division Two reversed Mr. Beal's sentence and remanded for resentencing without any restrictions on the trial court. CP at 47-48. The resentencing court committed reversible error by failing to exercise necessary discretion when imposing the new sentence. As a result, the court needed to resentence Mr. Beal de novo. Instead, the trial court imposed the same amount of time as a previous judge and did not take into consideration evidence of Mr. Beal's rehabilitation. More specifically, the trial court did not actually consider Mr. Beal's rehabilitation and the fact that he was a very different person from seven years prior when he committed the crimes. Reversal for a de novo resentencing is required.

Division Three held that any resentencing must be de novo "unless the reviewing court restricts resentencing to narrow

issues." ***State v. Dunbar***, 27 Wn.App.2d 238, 244, 532 P.3d 652 (2023); see also ***State v. Toney***, 149 Wn. App. 787, 792, 205 P.3d 944 (2009). This means the sentencing court cannot rely on the court's previous sentence—in this case a post-***Blake*** sentence—without exercising independent discretion.

In ***Dunbar***, the Court addressed a similar situation where the defendant, like Mr. Beal, presented the court with evidence of rehabilitation, and the trial court made comments indicating it considered the evidence but in fact just relied on the former trial sentencing judge's sentence. "Generally, the law wishes to prevent relitigation of an issue after the party enjoyed a full and fair opportunity to litigate the question." ***Dunbar***, 27 Wn. App. 2d at 244. But this principle does not strictly apply to criminal cases. Instead, in the criminal context, "a court on a sentence remand should be able to take new matters into account on behalf of either the government or the defendant." ***Dunbar***, 27 Wn. App. 2d at 244-45. "By ordering resentencing without any specific

instructions or any prohibitions, the reviewing court returns the case to the trial court to consider every aspect of the offender's sentences de novo." ***Dunbar***, 27 Wn. App. 2d at 246. The Court also provided that "since evidence of rehabilitation relates to the legislature's explicit provision that a sentence should [o]ffer the offender an opportunity to improve himself or herself, resentencing courts must consider rehabilitation." ***Dunbar***, 27 Wn. App. 2d at 247.

While a resentencing judge may consider prior rulings by another judge, "the resentencing judge should exercise independent discretion." ***Dunbar***, 27 Wn. App. 2d at 244. "Resentencing must proceed as an entirely new proceeding when all issues bearing on the proper sentence must be considered de novo and the defendant is entitled to the full array of due process rights." ***Dunbar***, 27 Wn. App. 2d at 245. "Without a limitation, the resentencing court should consider sentencing de novo and entertain any relevant evidence that it could have heard at the first

sentencing." ***Dunbar***, 27 Wn. App. 2d at 246 (citations omitted). Rehabilitation evidence should expressly be considered. *Id.* at 247; see RCW 9.94A.010(5). Each person's unique individuality should be considered during sentencing. ***Dunbar***, 27 Wn. App. 2d at 247. Evidence of rehabilitation is something to review and reward during resentencing. ***Dunbar***, 27 Wn. App. 2d at 247.

In this case, defense counsel presented evidence of Mr. Beal's continued rehabilitation since his ***Blake*** resentencing in 2021. Instead of addressing the resentencing de novo as required by case law, Judge Johnson stated:

> [w]hen you look through all of this, it does call for the Court to impose a sentence that I already have imposed. I've already reduced the sentence. I'm not going to reduce it twice. I took into consideration your progress already when I reduced it once before, right?

RP at 31. The court, however, did not take Mr. Beal's rehabilitation efforts into consideration because it was actually

another judge who resentenced Mr. Beal to 268 months in October, 2021. RP at 31. Mr. Beal's counsel pointed out to the court that it was actually a different judge who ordered the reduced sentence of 268 months on October 18, 2021. RP at 31.

Mr. Beal's resentencing report filed on January 11, 2024 contained a number of certificates showing his completion of education and training courses at Department of Corrections. Among these are certificates for a 9 week course called S.E.L.F.L.E.S.S. Model of Communications Breakdown, dated July 29, 2022, DOC Food Program Hazard Analysis Critical Control Point Teaching Program, dated December 2, 2022, and Parenting Inside Out, dated January 19, 2023. CP at 87-95. Mr. Beal's defense report also included ten letters in support of him, each dated after the ***Blake*** resentencing in October 2021. CP at 68-79. Therefore, the previous judge could not have taken into consideration any of the material presented by Mr. Beal that occurred after the ***Blake*** resentencing in October 2021.

Dunbar should control the outcome of Mr. Beal's case because as in ***Dunbar***, he presented proof of rehabilitation but the judge ultimately reverted to the prior sentencing judge just as did the judge in ***Dunbar,*** and assumed that he had already reduced the sentence, when it was in fact another judge. In doing so, the court did exactly what the Court of Appeals said it could not in ***Dunbar***. In that case, the Court indicated a resentencing court "may impose the identical sentence or a greater or lesser sentence within its discretion." **Dunbar**, 27 Wn. App. 2d at 249. Regardless of whatever sentence the court chooses, it must "exercise independent discretion." ***State v. Vasquez***, 26 Wn. App. 2d 1032, 2023 WL 3197346, (unpublished) at *5 (May 2, 2023) (cited under GR 14.1(a)), rev. granted (Oct. 3, 2023). "The resentencing judge may not rely on a previous court's sentence determination and fail to conduct its own independent review." ***Dunbar***, 27 Wn. App. 2d at 249.

The court never addressed the rehabilitation evidence. See ***Pepper v. United States***, 562 U.S. 476, 490, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011) ("[W]hen a defendant's sentence has been set aside on appeal and his case remanded for resentencing, a district court may consider evidence of a defendant's rehabilitation since his prior sentencing."). "The Supreme Court noted the policy behind sentencing of treating each offender as a unique individual, whose human failings and improvements sometimes mitigate and sometimes magnify the crime and punishment to ensue." ***Dunbar***, 27 Wn. App. 2d at 247.

This method of inquiry was warranted here. Mr. Beal made remarkable progress in his rehabilitation while in custody. The court, clearly not familiar with the case, assumed that it had already ruled on the case in what was nothing short of an embarrassing lapse. The trial court failed to exercise its independent discretion and consider possible rehabilitation evidence at Mr. Beal's resentencing. Its failure to do so

constitutes reversible error. See ***Dunbar***, 27 Wn. App. 2d at 248-50.

Remand for a de novo resentencing in front of a different judge is warranted. See ***Dunbar***, 27 Wn. App. 2d at 250. The court's reference to upholding the ruling of the previous sentencing judge falls short of the legislatively mandated *de novo* review on resentencing, where the judge actually considers the rehabilitation achieved by the appellant. ***Dunbar***, 27 Wn. App. 2d at 250.

For the foregoing reasons, this Court should accept review and remand to the trial court for resentencing.

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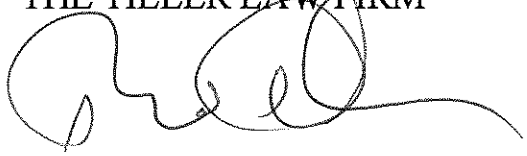
F. CONCLUSION

For the foregoing reasons, this Court should grant review to correct the above-referenced errors in the unpublished opinion of the court below that conflict with prior decisions of this Court and the courts of appeals.

Certificate of Compliance: This document contains 2164 words, excluding the parts of the document exempted from the word count by RAP 18.17.the petition exempted from the word count by RAP 18.17.

DATED: March 11, 2025.

Respectfully submitted,
THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
ptiller@tillerlaw.com
Of Attorneys for Michel Beal

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant, hereby certifies that one copy of this Brief was e-filed by JIS Link to Mr. Derek M. Byrne, Court of Appeals, Division 2, Kristie Barham, Pierce County Prosecuting Attorney's office. and mailed to the appellant pre-paid on March 11, 2025, at the Centralia Washington post office addressed as follows:

Kristie Barham
Pierce County Prosecutors Office
Kristie.barham@piercecounty.wa.gov

Mr. Derek M. Byrne
Clerk of the Court
Court of Appeals
909 A Street, Ste. 200
Tacoma, WA 98402-4454

Mr. Michel Beal
DOC# 994805
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520
LEGAL MAIL/SPECIAL MAIL

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on March 11, 2025.

Dated: March 11, 2025.

THE TILLER LAW FIRM

PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

February 11, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MICHAEL DONAVAN BEAL, II, Appellant.	No. 59249-5-II UNPUBLISHED OPINION

MAXA, J. – Michael Beal, II appeals his standard range sentence following a second resentencing on his convictions for vehicular homicide, failure to remain at an accident resulting in death, and attempting to elude a pursuing police vehicle. He argues that the trial court erred when it (1) concluded that he failed to establish that two of his prior offenses, a first degree theft and a third degree assault, were the same criminal conduct; and (2) improperly failed to consider his rehabilitation while in prison before imposing the sentence.

We hold that (1) the trial court did not abuse its discretion in ruling that that the theft and assault did not constitute the same criminal conduct, and (2) the trial court did not err in resentencing Beal because it considered Beal's rehabilitation. Accordingly, we affirm Beal's sentence.

FACTS

Background

In June 2017, while being pursued by law enforcement, Beal caused a multi-vehicle collision that resulted in another driver's death. In January 2018, Beal pleaded guilty to the amended charges of first degree manslaughter, vehicular homicide, failure to remain at an accident resulting in death, and attempting to elude a pursuing police vehicle.

The trial court determined that Beal's offender scores were 12 points for the first degree manslaughter and failure to remain at the scene convictions and 11 points for the vehicular homicide and attempting to elude convictions. These offender scores included points for two convictions for unlawful possession of a controlled substance. The offender scores also included one point each for his 2000 third degree assault and first degree theft convictions in Spokane County.

The trial court did not find that any of Beal's prior convictions constituted the same offense for the purpose of determining his offender score. The court sentenced Beal to 280 months for the first degree manslaughter and vehicular homicide convictions, 120 months for the failure to remain at an accident resulting in death conviction, and 29 months for the attempting to elude conviction. All of the sentences were within the standard ranges.

In 2021, the Supreme Court issued *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), which held that the statute defining unlawful possession of a controlled substance was constitutionally void. In October 2021, a different judge issued an order correcting Beal's sentence in light of *Blake*. The judge reduced Beal's offender scores to 9 points for the first degree manslaughter and vehicular homicide convictions and 10 points for the failure to remain at an accident resulting in death and the attempting to elude convictions. Although the standard

sentencing ranges were the same as in the original sentencing, the judge adjusted Beal's sentences to 268 months for the first degree manslaughter conviction and for the vehicular homicide conviction. The sentences remained the same for the other convictions.

Beal subsequently filed a personal restraint petition (PRP) in which he argued that his vehicular homicide and first degree manslaughter convictions violated the prohibition against double jeopardy. In July 2023, this court granted Beal's PRP, vacated the manslaughter conviction, and remanded for resentencing.

Second Resentencing

At his second resentencing hearing before the original trial court, Beal argued that his 2000 first degree theft and third degree assault convictions constituted the same criminal conduct and should count as only one point in his offender score. In support, Beal submitted the police incident report and the first page of the judgment and sentence for these offenses.

The police report stated that Beal entered a Fred Meyer store, concealed several items on his person, and then left the store without paying. A security officer followed Beal into the parking lot, where Beal entered a waiting car. When the security officer attempted to apprehend Beal, Beal started punching him in the stomach.

The judgment and sentence showed that Beal had pleaded guilty to first degree theft and third degree assault charges; that the two offenses were committed on the same day; and that the theft was charged under RCW 9A.56.030(1)(b), which required that Beal take the property "from the person of another."

The trial court concluded that the first degree theft and the third degree assault were two distinct crimes and that Beal had not met his burden of establishing that they constituted the same criminal conduct.

Beal also argued that the trial court should consider evidence of his rehabilitation efforts and changed circumstances. In support of this argument, Beal submitted several statements from fellow inmates and a former employer discussing his good character and numerous documents recording his academic and other achievements obtained while he had been serving his sentence.

Before pronouncing sentence, the trial court stated that it had examined Beal's history and had "taken into consideration the advances that Mr. Beal has made . . . while in prison." Rep. of Proc. (RP) at 27. And after Beal's allocution, the court commended Beal for making himself a better person while in prison. The court then stated, "[W]hen you look through all of this, it does call for the Court to impose a sentence that I already have imposed. I've already reduced the sentence. I'm not going to reduce it twice. I took into consideration your progress already when I reduced it once before, right?" RP at 30-31.

Beal's attorney then pointed out that a different judge had conducted the second sentencing. The court responded, "But nevertheless, it's already been taken into consideration. I'm not going to reduce it any further." RP at 31. The court imposed the same sentences as the second resentencing: 268 months for the vehicular homicide conviction, 120 months for the failure to remain at an accident resulting in death conviction, and 29 months for the attempting to elude conviction.

Beal appeals his sentence.

ANALYSIS

A. SAME CRIMINAL CONDUCT

Beal argues that the trial court erred when it refused to consider the first degree theft and third degree assault as the same criminal conduct because both crimes involved the same objective intent. We disagree.

1. Legal Principles

Inherent in the sentencing scheme of the Sentencing Reform Act of 1981, chapter 9.94A RCW, "is a presumption that two or more current offenses and all prior offenses are counted separately in calculating an offender score." *State v. Jackson*, 28 Wn. App. 2d 654, 662, 538 P.3d 284 (2023), *review denied*, 2 Wn.3d 1027 (2024).

However, prior offenses that are found to encompass the same criminal conduct must be counted as one offense. RCW 9.94A.525(5)(a)(i).[1] Under RCW 9.94A.589(1)(a), two or more offenses constitute the same criminal conduct when they "require the same criminal intent, are committed at the same time and place, and involve the same victim." Unless all three elements are present, the offenses are not the same criminal conduct. *State v. Westwood*, 2 Wn.3d 157, 162, 534 P.3d 1162 (2023). The defendant has the burden of showing that the offenses constitute the same criminal conduct. *Id.*

We review the trial court's same criminal conduct determination for an abuse of discretion or misapplication of law. *Id.* Under this standard, a court abuses its discretion if the record supports only one conclusion regarding same criminal conduct and the court makes a contrary ruling. *State v. Canter*, 17 Wn. App. 2d 728, 742, 487 P.3d 916 (2021). But where "the record adequately supports either conclusion, the matter lies in the court's discretion." *Id.*

2. Analysis

Beal fails to demonstrate that the trial court abused its discretion when it concluded that the first degree theft and third degree assault were separate crimes because these crimes do not share the same objective intent as defined by their statutory definitions.

[1] RCW 9.94A.525 has been amended since the events of this case transpired. Because these amendments do not impact the statutory language we rely on, we refer to the current statute.

In *Westwood*, the Supreme Court explained that when determining whether the crimes involve the same criminal intent, we first identify the statutory definitions of the crimes to determine the objective intent for each crime. 2 Wn.3d at 167-68. If the objective intent for each crime is different, our inquiry ends and the convictions are not the same criminal conduct. *Id.* at 168. If the statutory objective intents are the same or similar, then "courts can then look at whether the crimes furthered each other and were part of the same scheme or plan." *Id.*

The definition of theft requires that the defendant wrongfully obtain or exert unauthorized control over the property or services of another with the intent to deprive the person of such property or services. RCW 9A.56.020(1)(a). Beal pleaded guilty to first degree theft under RCW 9A.56.030(1)(b),[2] which requires a theft of property that is "taken from the person of another."

Third degree assault under RCW 9A.36.031(1)(f) requires that a person "[w]ith criminal negligence, cause[ ] bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering." A person "acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation." RCW 9A.08.010(1)(d).

Here, under *Westwood*, we need not decide whether the crimes furthered each other and were part of the same scheme or plan because, when viewed objectively, the convictions do not share the same statutory objective intent. First degree theft required that Beal take property from the person of another with the intent to deprive. But third degree assault required that Beal

[2] RCW 9A.56.030 has been amended numerous times since 1999, but we cite to the current version of the statute because the relevant portion of the statute has not changed.

negligently inflict bodily harm. First degree theft does not require negligent infliction of bodily harm. Because the two crimes require different intents, we hold that the trial court did not abuse its discretion by concluding the crimes were not the same criminal conduct.[3]

B. REHABILITATION EVIDENCE

Beal argues that the trial court erred in imposing his standard range sentence because the court failed to consider his rehabilitation while in prison. We disagree.

The general rule is that a sentence within the standard sentence range for an offense may not be appealed. RCW 9.94A.585(1); *State v. Glant*, 13 Wn. App. 2d 356, 376, 465 P.3d 382 (2020). However, this rule does not apply to the procedure by which a standard range sentence is imposed. *In re Pers. Restraint of Marshall*, 10 Wn. App. 2d 626, 635, 455 P.3d 1163 (2019). Beal challenges the trial court's procedure, arguing that the court did not conduct a de novo resentencing because it failed to consider his rehabilitation.

A trial court has discretion to consider post-conviction rehabilitation at resentencing. *State v. Dunbar*, 27 Wn. App. 2d 238, 247, 532 P.3d 652 (2023). But the record shows that the trial court considered the rehabilitation evidence that Beal presented at the resentencing hearing before imposing sentence. The court stated that it had "taken into consideration the advances that Mr. Beal has made . . . while in prison." RP at 27. Later, the court stated, "I can't say that I'm disappointed at all that you're doing everything you can to make yourself a better person; that is good." RP at 30. And although the court initially was confused that it had reduced Beal's

[3] Although it is not entirely clear from the record why the trial court concluded that these crimes were two separate crimes and did not amount to same criminal conduct, we can affirm on any grounds that the record supports. *State v. Gudgell*, 20 Wn. App. 2d 162, 183, 499 P.3d 229 (2021).

sentence at the second resentencing, the court surmised that the other judge's sentence reduction was based on a consideration of Beal's rehabilitation.

The trial court considered Beal's rehabilitation and decided that the rehabilitation did not warrant a lower sentence. That decision was within the court's discretion.

We hold that the trial court did not err in imposing Beal's standard range sentence.

CONCLUSION

We affirm Beal's sentence.

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.

MAXA, J.

We concur:

CRUSER, C.J.

PRICE, J.

THE TILLER LAW FIRM

March 11, 2025 - 3:05 PM

Transmittal Information

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