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Supreme Court No. _____
COA No. 58962-1-II

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTIAN SOLOMON GIBSON,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Christian Solomon Gibson, the petitioner here and respondent below, asks this Court to accept review of the Court of Appeals' decision terminating review under RAP 13.4.

B. COURT OF APPEALS DECISION

The State appealed Mr. Solomon Gibson's sentence. In a published opinion with one judge dissenting, the Court of Appeals reversed. *State v. Solomon Gibson*, 563 P.3d 1079 (Feb. 19, 2025).

C. ISSUE PRESENTED

The Sentencing Reform Act directs the court to calculate a person's offender score at the time of sentencing. Effective July 23, 2023, the legislature removed most juvenile convictions from this calculation. In this case, the court sentenced Mr. Solomon Gibson after the effective date of the legislative change and it excluded his juvenile convictions from its offender score calculation as the current statute required. The State appealed Mr. Solomon Gibson's sentence and the Court

of Appeals reversed in a published opinion. This Court should grant review of this published opinion, which conflicts with the plain language of RCW 9.94A.525 and other published opinions, and presents an issue of substantial public interest. RAP 13.4(b).

D. STATEMENT OF THE CASE

Christian Solomon Gibson was first incarcerated when he was only 15 years old. CP 40, 45, 64. By the time he was 16, Mr. Solomon Gibson had accrued multiple juvenile adjudications. CP 7, 40. In December 2022, at the age of 23, Mr. Solomon Gibson was finally released from his only adult conviction and was on work release when the following events occurred. CP 3.

On March 14, 2023, Mr. Solomon Gibson was in a car with his friend when a sedan drove past. CP 1–2. The occupants fired at least 40 shots at Mr. Solomon Gibson and his friend. CP 1–2. Mr. Solomon Gibson watched the bullets strike his friend in her head, torso, and hand. CP 2. He reacted by pulling a gun

from the inside of the car and firing back before screaming for help and applying pressure to his friend's neck wound. CP 2.

Officers determined it was “clear that [Mr. Solomon Gibson] returned fire in self-defense.” CP 3. However, because Mr. Solomon Gibson was on work release following a felony conviction, his possession of a gun was a crime. CP 3–4. He pleaded guilty to unlawful possession of a firearm in the second degree in October 2023 and proceeded to sentencing on November 1, 2023. CP 24–36; 10/25/23 RP 8–9.

Effective July 23, 2023, the legislature prohibited sentencing courts from using most juvenile offenses to increase a person's offender score. Laws of 2023, ch. 415, § 2 (HB 1324). Thus, over the State's objection, the sentencing court excluded Mr. Solomon Gibson's juvenile adjudications from his offender score. 11/01/23 RP 11–12. The court sentenced Mr. Solomon Gibson to eight months pursuant to the parties'

recommendation based on an offender score of 2. CP 64, 68;
11/01/23 RP 12–13.¹

The State appealed, arguing that HB 1324 did not apply to Mr. Solomon Gibson’s sentencing because his offense predated the amendment. Although one judge dissented, the Court of Appeals agreed with the State and reversed for resentencing based on an offender score including Mr. Solomon Gibson’s juvenile adjudications. Appendix at 6.

E. ARGUMENT

Review should be granted to decide whether the law eliminating most juvenile adjudications from offender score calculations applies prospectively when the change in law is in effect at the time of sentencing.

The Sentencing Reform Act (“SRA”) directs a sentencing court to calculate a person’s offender score by counting their prior convictions as of “the date of sentencing.” RCW

¹ The prosecuting attorney recommended a sentence of 25.5 months if Mr. Solomon Gibson was sentenced based on an offender score of 6 that included his juvenile criminal history, and recommended a sentence of 8 months if the court excluded juvenile points and sentenced him based on an offender score of 2. CP 28; 10/25/23 RP 6.

9.94A.525(1)(a). When the legislature removed nearly all juvenile adjudications from the court’s offender score calculation effective July 23, 2023, it prohibited courts from scoring those juvenile offenses in sentencing hearings from that point forward. The Court of Appeals decision to the contrary conflicts with the statute’s plain language and other provisions in the SRA, and is contrary to decisions by this Court and the Court of Appeals. This Court should grant review.

The trial court derives its sentencing authority entirely from statute. *State v. Ammons*, 105 Wn.2d 175, 180–81, 713 P.2d 719 (1986). “[T]he fixing of legal punishments for criminal offenses is a legislative function.” *Id.* at 180. The legislature delineated the court’s sentencing authority for adult convictions in the SRA, which directs the court to determine a standard range sentence based on the seriousness level of the offense and the person’s offender score. RCW 9.94A.530(1). At issue in this case is RCW 9.94A.525, which instructs the

sentencing court on how and when to calculate a person's offender score.

When interpreting a statute, the court is tasked with carrying out the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9–10, 43 P.3d 4 (2002). “[I]f the statute’s meaning is plain on its face, then the court must give effect to that plain meaning.” *Id.* “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citation omitted). To determine a statute’s plain meaning, courts examine the text of the statute, related statutory provisions, and the statutory scheme as a whole. *Campbell & Gwinn*, 146 Wn.2d at 9–12.

Relevant here, RCW 9.94A.525 specifically mandates the sentencing court to calculate a person's offender score using their prior convictions. The statute defines a “prior conviction” as “a conviction which exists *before the date of sentencing* for

the offense for which the offender score is being computed.” RCW 9.94A.525(1)(a) (emphasis added). Effective July 23, 2023, nearly all juvenile convictions were excluded from this computation. RCW 9.94A.525(1)(b) (Laws of 2023, ch. 415, § 2).²

The statute’s plain meaning is unambiguous: the date of sentencing is the operative date for counting prior convictions and calculating the offender score. *See J.P.*, 149 Wn.2d at 450 (courts must give effect to all language in the statute). Thus, for all sentencing hearings occurring on or after July 23, 2023, the court has no statutory authority to count most juvenile adjudications in an offender score.

This plain meaning comports with other provisions in the SRA. For example, prior convictions “shall count in the offender score if the *current version* of the sentencing reform

² Juvenile first and second degree murder and class A felony sex offenses are still considered “prior convictions” to be included in the calculation of an offender score. RCW 9.94A.525(1)(b).

act requires including or counting those convictions.” RCW 9.94A.525(22) (emphasis added). Those prior convictions are scored pursuant to the current law at a resentencing hearing even if they did not previously score pursuant to the law at the time of a previous sentencing. *Id.* Similarly, when a court sentences a person for multiple convictions, those other offenses are treated “as if they were prior convictions” for the purposes of calculating the offender score. RCW 9.94A.589(1)(a). This is because those convictions exist *at the time of sentencing*, regardless of when they occurred.

This plain meaning also comports with decisions by this Court and the Court of Appeals holding that the time of sentencing is the triggering event for offender score calculation. As the Court of Appeals has stated: “The offender score includes *all* prior convictions . . . existing at the time of that particular sentencing, without regard to when the underlying incidents occurred, the chronological relationship among the convictions, or the sentencing or resentencing chronology.”

State v. Shilling, 77 Wn. App. 166, 175, 889 P.2d 948 (1995) (emphasis in original).

This reasoning applies even when a person is resentenced. Because the offender score is calculated at the time of sentencing, this Court and the Court of Appeals have consistently held that subsequent convictions are included at resentencing, even if they occurred after the offense for which the person is being resentenced. *State v. Collicott*, 118 Wn.2d 649, 665–67, 827 P.2d 264 (1992); *State v. Clark*, 123 Wn. App. 515, 519, 94 P.3d 335 (2004).

Recent Court of Appeals decisions have reaffirmed these principles in considering the application of HB 1324 in cases pending appeal. In *Tester*, Division Two rejected the argument that RCW 9.94A.525(1)(b) applied prospectively to cases pending direct appeal where the amendment was not effective on the date of sentencing. 30 Wn. App. 2d 650, 656–57, 546 P.3d 94 (2024). Instead, it affirmed the appellant’s sentence, stating, “The triggering event for determining a defendant’s

offender score is the *defendant's sentencing* for a conviction, at which the offender score is calculated.” *Id.* at 657 (emphasis added). Division One reached the same conclusion in *Troutman*, ruling that “the statute at issue regulates which prior offenses are included in an offender score calculation, so the triggering event is sentencing.” 30 Wn. App. 2d 592, 600, 546 P.3d 458 (2024).

As summarized by the dissenting opinion in this case, “For purposes of this case, the key to both *Tester* and *Troutman* is that both courts expressly stated that the triggering event for *prospective* application of RCW 9.94A.525(1)(b) was sentencing.” Appendix at 9. (Maxa, J., dissenting). In other words, while the amendment did not apply prospectively in *Tester* or *Troutman* where the appellants’ sentencing had occurred before the statute’s effective date, the statute did apply prospectively to Mr. Solomon Gibson’s sentencing which occurred after the effective date of RCW 9.94A.525(1)(b).

In ruling that RCW 9.94A.525(1)(b) did not apply to Mr. Solomon Gibson’s sentencing hearing, the majority opinion relied on two statutes that generally require sentences to be determined based on the law in effect at the time of the offense. RCW 9.94A.345; RCW 10.01.040. It reasoned that the legislature did not “express a clear intent” that RCW 9.94A.525(1)(b) should apply retroactively. Appendix at 3–4.

For the above stated reasons, the Court of Appeals incorrectly assumes that RCW 9.94A.525(1)(b) need apply retroactively at all to apply to Mr. Solomon Gibson’s post-enactment sentencing hearing. Other statutes and decisions from this Court do not require a different conclusion.

While RCW 9.94A.345 states that a sentence is generally determined based on the law in effect at the time of the offense, it contains an explicit exception: “Except as otherwise provided in this chapter.” By its plain language, RCW 9.94A.345 applies where the legislature did not direct otherwise. This means the court will apply the law at the time of the offense for some

aspects of sentencing, such as determining the seriousness level, the standard range, or what constitutes a “strike.” *See State v. Jenks*, 197 Wn.2d 708, 715, 487 P.3d 482 (2021). However, the offender score statute is an exception to this general rule, where the legislature directed that “the date of sentencing” is the operative trigger for determining what prior convictions can be counted in the offender score. RCW 9.94A.525(1)(a); *see In re Estate of Kerr*, 134 Wn.2d 328, 337, 949 P.2d 810 (1998) (a specific statute controls over a general one). RCW 9.94A.345 does not control in this context.

Moreover, here the legislature expressed a clear intent that its new law should apply to all sentencings after its effective date, including when the underlying offense occurred before the effective date. The intent section of the law expresses the purpose of the law is 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 shows the legislature's judgment that it is fundamentally unfair and out-of-step to increase a person's punishment based on what that person did as a child. Consequently, this Court should accept review and reinforce the legislature's intent to end this harmful practice in all sentencings on or after July 23, 2023. *See Dorsey v. United States*, 567 U.S. 260, 273–81, 132 S. Ct. 2321, 183 L. Ed. 2d

250 (2012) (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); *State v. Rose*, 191 Wn. App. 858, 869, 365 P.3d 756 (2015) (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 intent to have law apply to pending cases).

The saving clause statute, also relied upon in the Court of Appeals here, does not change this conclusion. RCW 10.01.040 states a conviction and imposed sentence are generally not affected by a later statutory change. But for someone like Mr. Solomon Gibson, who was not yet sentenced when HB 1324 went into effect, there was no “penalt[y] . . . incurred.” RCW 10.01.040. In other words, there was no existing sentence to be impacted by the legislative change. Thus, the saving clause statute is not relevant in this situation.

Indeed, the plain language of RCW 9.94A.525(1)(a) mandates “the date of sentencing” as the point in time at which to count prior offenses and calculate the offender score. This language is unambiguous, and this Court cannot construe the statute to mean anything else without rendering the statutory language meaningless. *See J.P.*, 149 Wn.2d at 450. Therefore, for all sentencing hearings on or after July 23, 2023, the court must exclude juvenile convictions, regardless of when the

offense for which the person is being punished occurred. RCW 9.94A.525(1)(b).

Despite the statute's unambiguous language and the legislature's statement of intent, the Court of Appeals reversed Mr. Solomon Gibson's sentence and remanded so that he can be punished more harshly. The Court of Appeals' decision is contrary to RCW 9.94A.525(1)(a), related provisions, and binding precedent. This Court should grant review of this issue of broad import. RAP 13.4(b)(1), (2), (4).

F. CONCLUSION

The legislature recognized it is unjust and bad policy to increase a person's punishment based on actions taken as a child. This change in the law intended that Mr. Solomon Gibson should not be punished more harshly because of his behavior as a child. Because the Court of Appeals applied the law incorrectly, this Court should accept review.

This brief is 2,576 words long and complies with RAP 18.17(b).

DATED this 21st day of March 2025.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Willa D. Osborn", written in a cursive style.

WILLA D. OSBORN (WSBA 58879)
Washington Appellate Project (91052)
Attorney for Respondent

APPENDIX

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February 19, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 58962-1-II

Appellant,

v.

CHRISTIAN DOMINIC SOLOMON
GIBSON,

PUBLISHED OPINION

Respondent.

CRUSER, C.J. — The State appeals Christian Dominic Solomon Gibson’s sentence for an October 2023 conviction relating to a March 2023 offense. Effective July 2023, the legislature enacted RCW 9.94A.525(1)(b), which states that most juvenile adjudications may not be included in a defendant’s offender score. The trial court sentenced Solomon Gibson using an offender score that did not include his juvenile adjudications, based on RCW 9.94A.525(1)(b). The State argues that the trial court improperly excluded Solomon Gibson’s juvenile adjudications when calculating his offender score because RCW 9.94A.525(1)(b) was not in effect at the time of his offense.

We hold that the trial court erred by not including Solomon Gibson’s juvenile adjudications when calculating his offender score because the amendment to RCW 9.94A.525 at issue in this appeal does not apply to Solomon Gibson’s sentence for his offense that occurred in March 2023. Accordingly, we reverse Solomon Gibson’s sentence and remand to the trial court for resentencing.

FACTS

In October 2023, Solomon Gibson pleaded guilty to second degree unlawful possession of a firearm. This conviction related to an incident that occurred in March 2023. Sentencing occurred in November 2023.

Solomon Gibson stipulated to his prior criminal record, which included 7 juvenile adjudications and 1 adult conviction. At sentencing, the trial court did not include these juvenile adjudications when calculating Solomon Gibson's offender score based on RCW 9.94A.525(1)(b). Based on an offender score of 2, the standard sentencing range was 4 to 12 months. The court sentenced Solomon Gibson to 8 months of confinement. If the juvenile adjudications had been included in Solomon Gibson's offender score, the standard range would have been 22 to 29 months. CP 45.

The State appeals Solomon Gibson's sentence.

ANALYSIS

The State argues that the trial court improperly calculated Solomon Gibson's offender score by not including his juvenile adjudications because RCW 9.94A.525(1)(b) was not in effect at the time of his offense. Solomon Gibson argues that RCW 9.94A.525(1)(b) applies prospectively to sentencings that occur after the legislation's effective date in July 2023, even where the offenses were committed before that date. We agree with the State.

A. AMENDMENT TO RCW 9.94A.525(1)

In March 2023, when Solomon Gibson committed the crime of first degree unlawful possession of a firearm, former RCW 9.94A.525(1) (2021) contained no provision precluding prior juvenile convictions from being counted when calculating an offender score.

In 2023, the legislature amended RCW 9.94A.525(1) by adding subsection (b), which states that “adjudications of guilt pursuant to Title 13 RCW [Juvenile Courts and Juvenile Offenders] 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(1)(b). This amendment became effective on July 23, 2023. LAWS OF 2023, ch. 415, § 2.

Sentences imposed under the Sentencing Reform Act of 1981, ch. 9.94A RCW, “shall be determined in accordance with the law in effect *when the current offense was committed*” unless otherwise provided. RCW 9.94A.345 (emphasis added). And the savings clause statute provides “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 amending act. RCW 10.01.040. The savings clause applies to “substantive changes in the law,” which includes changes to “the punishment for offenses or the type of punishments possible.” *State v. Jenks*, 197 Wn.2d 708, 721-22, 487 P.3d 482 (2021). The legislature can avoid application of RCW 9.94A.345 and RCW 10.01.040 by expressing a clear intent that a statutory amendment applies retroactively. *See Id.* at 720 (addressing savings clause); *State v. Tester*, 30 Wn. App. 2d 650, 546 P.3d 94, *review denied*, 3 Wn.3d 1019 (2024); *State v. Troutman*, 30 Wn. App. 2d 592, 599-600, 546 P.3d 458, *review denied*, 3 Wn.3d 1016 (2024).

Our supreme court has held that new laws affecting costs that are not final until all appeals are completed may apply to cases that are pending on appeal. *State v. Ramirez*, 191 Wn.2d 732, 748, 426 P.3d 714 (2018). But the supreme court has rejected the argument that new laws substantively affecting terms of confinement apply to cases pending on appeal without an express

indication of legislative intent to that end. *Jenks*, 197 Wn.2d at 722-24. In *Jenks*, the supreme court held that a new law removing second degree robbery from the list of most serious offenses did not apply to cases pending on appeal at the law's effective date. *Id.* This was because "the triggering event for determining who qualifies as a persistent offender occurs when someone has been convicted of a most serious offense *and* was also, in the past, convicted of two other most serious offenses on separate occasions." *Id.* at 722.

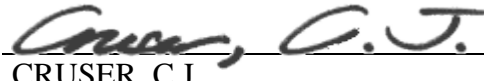
The amendment to RCW 9.94A.525 at issue in this case added a clause stating that "adjudications of guilt pursuant to Title 13 RCW [for juvenile adjudications] which are not murder in the first or second degree or class A felony sex offenses may not be included in the offender score." RCW 9.94A.525(1)(b); LAWS OF 2023, ch. 415, §2. The intent statement provides that the legislature intends to facilitate rehabilitation, reintegration, and due process, and to recognize the research of juvenile brains and the disproportionate impact of juvenile adjudications on adult sentences. LAWS OF 2023, ch. 415, §1. Because the amendment affects offender scores, it is a substantive change in the law to which the savings clause applies. *Jenks*, 197 Wn.2d at 721. Nothing in the bill mentions retroactive application or indicates that it should apply to cases pending on the effective date.¹ Applying the 2023 amendment to Solomon Gibson's case would therefore violate RCW 9.94A.345 by applying a sentencing law that was not in effect when he committed his offenses in March, 2023.

¹ See *State v. Troutman*, 30 Wn. App. 2d at 599-600 (rejecting an argument about prospective application of the amendment to cases pending on the effective date based on the plain language); *In re Pers. Restraint of Scabbyrobe*, 39562-6-III, slip op. at 4-6 (Wash. Ct. App. Jan. 25, 2024) (rejecting an argument about the retroactivity of the amendment based on the legislative history).

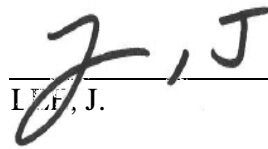
The dissent relies on *Tester*, 30 Wn. App. 2d 650, which in turn relies on dictum in *Jenks*. In *Jenks*, our supreme court, rejected Jenks’ effort to have his persistent offender sentence vacated based on the legislature’s removal of robbery in the second degree from the list of “most serious offenses” that served as a “strike” under the Persistent Offender Accountability Act (POAA). The court held that both RCW 9.94A.345 and RCW 10.01.040 (the savings statute) require that the law in effect at the time of the commission of the crime governs the sentence to be imposed. *Jenks*, 197 Wn.2d at 715-22. This was the primary holding of the court and it disposed of Jenks’ claim on appeal. However, the court went on to discuss Jenks’ additional argument that *Ramirez*, 191 Wn.2d 732, governed Jenks’ offender score calculation. The court rejected Jenks’ argument, recognizing that although it held, in *Ramirez*, that the “ ‘precipitating event’ for a statute ‘concerning attorney fees and costs of litigation’ was the termination of the defendant's case, . . . [w]e decline to expand *Ramirez*.” *Jenks*, 197 Wn.2d at 723 (internal quotation marks omitted) (quoting *Ramirez*, 191 Wn.2d at 749) (citing *State v. Blank*, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997)). The court went on to say “*Ramirez* and *Blank*, the case on which *Ramirez* was largely based, dealt with the narrow subject matter of ‘costs imposed upon conviction.’ Such subject matter is not analogous to the determination of whether a defendant qualifies as a persistent offender, as is the case here.” *Id.* (quoting *Ramirez*, 191 Wn.2d at 749) (discussing *Blank*, 131 Wn.2d at 230). We conclude that *Tester*’s reliance on dictum from *Jenks* is misplaced, and therefore disagree with the dissent’s reliance on the “triggering date” analysis from *Tester*. We further observe that the dissent’s position renders both RCW 9.94A.345 and RCW 10.01.040 meaningless.

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Accordingly, we agree with the State and hold that the sentencing court erred in failing to include Solomon-Gibson's juvenile adjudications in his offender score.


CRUSER, C.J.

We concur:


L. F. J.

MAXA, J. (dissenting) – The legislature enacted RCW 9.94A.525(1)(b), which states that most juvenile adjudications may not be included in a defendant’s offender score, after Christian Dominic Solomon Gibson committed the offense at issue but before he was sentenced. I believe that this statutory amendment applies prospectively to the calculation of Solomon Gibson’s offender score at sentencing. Therefore, I dissent.

I agree with the majority that 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.” *State v. Jenks*, 197 Wn.2d 708, 714, 487 P.3d 482 (2021) (emphasis added). But an exception is when a statutory amendment applies prospectively to an event that has not yet occurred.

“[S]tatutes are presumed to apply prospectively rather than retroactively.” *State v. Tester*, 30 Wn. App. 2d 650, 655, 546 P.3d 94 (2024). This means that “under some circumstances a prospective statutory amendment may apply to a case pending on direct appeal even though the offense occurred before enactment of the statute.” *Id.* A statutory amendment applies prospectively to a pending appeal “ ‘if the precipitating event under the statute occurred after the date of enactment.’ ” *Id.* (quoting *Jenks*, 197 Wn.2d at 722). This court looks “to the subject matter that the statute regulates to determine the precipitating event for application of the statute.” *Tester*, 30 Wn. App. 2d at 655.

In *Jenks*, the defendant was sentenced in 2017 to life in prison without parole under the Persistent Offender Accountability Act (POAA) for an offense committed in 2014. 197 Wn.2d at 711. One of his strike offenses was second degree robbery. *Id.* While the case was pending

on appeal, the legislature in 2019 enacted a statutory amendment that removed second degree robbery from the list of strike offenses under the POAA. *Id.*

The Supreme Court held that both RCW 9.94A.345 and RCW 10.01.040 precluded the application of the statutory amendment to the defendant's case. *Id.* at 719, 722. Instead, the defendant had to be sentenced under the statutory scheme in effect at the time he committed his offense. *Id.* at 715.

However, the court then proceeded to address the defendant's argument that the statutory amendment should be applied prospectively to his case because it still was pending on direct appeal when the amendment was enacted. *Id.* at 722. The court held that the statutory amendment did not apply prospectively to that case because the triggering event under the statutory amendment was the defendant's 2017 conviction, which occurred before enactment of the statutory amendment. *Id.* at 722-23.

In *State v. Troutman*, the defendant was sentenced in March 2022 for a conviction arising from a May 2019 incident. 30 Wn. App. 2d 592, 595-96 & n.2, 546 P.3d 458 (2024). The trial court included two juvenile adjudications in the defendant's offender score. *Id.* at 597. The defendant argued that her offender score should not have included her juvenile adjudications under RCW 9.94A.525(1)(b). *Id.*

Division One of this court held that under RCW 9.94A.345 and RCW 10.01.040, the law in effect at the time of the defendant's offense applied to her sentence. *Id.* at 599-600. The court also held that RCW 9.94A.525(1)(b) did not apply prospectively to that case because the triggering event under the statute was the sentencing, which occurred before the statute's effective date. *Id.* at 600.

In *Tester*, the defendant was sentenced in October 2022 for a conviction arising from a May 2022 incident. 30 Wn. App. 2d at 653. The trial court included six juvenile adjudications in the defendant's offender score. *Id.* The defendant argued that his offender score should not have included his juvenile adjudications under RCW 9.94A. 525(1)(b). *Id.*

This court held that under RCW 9.94A.345 and RCW 10.01.040, the former version of RCW 9.94A.525(1) applied to the defendant's sentence rather than RCW 9.94A.525(1)(b). *Id.* at 656. This court also held that RCW 9.94A.525(1)(b) did not apply prospectively to that case because the triggering event for determining the defendant's offender score was the defendant's sentencing, which occurred before the statute's effective date. *Id.* at 657.

For purposes of this case, the key to both *Troutman* and *Tester* is that both courts expressly stated that the triggering event for *prospective* application of RCW 9.94A.525(1)(b) was sentencing. *Troutman*, 30 Wn. App. 2d at 600; *Tester*, 30 Wn. App. 2d at 657. As this court stated in *Tester*, “[t]he triggering event for determining a defendant's offender score is the defendant's sentencing for a conviction, at which the offender score is calculated.” 30 Wn. App. 2d at 657.

The majority disregards these statements in *Troutman* and *Tester*. Instead, the majority holds that statutory amendments can never operate prospectively if RCW 9.94A.345 and RCW 10.01.040 apply. But if that were the case, the Supreme Court in *Jenks* would not have had to address prospective application after determining that RCW 9.94A.345 and RCW 10.01.040 generally precluded the application of the statutory amendment in that case. The court simply would have stated that the prospective application argument was immaterial.

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Here, the triggering event for prospective application of RCW 9.94A.525(1)(b) was Solomon Gibson's sentencing. Solomon Gibson was sentenced after the effective date of RCW 9.94A.525(1)(b). Therefore, I would hold that RCW 9.94A.525(1)(b) applies prospectively to this case.



MAXA, J.

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