NO. 104109-8

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

JOHN PHI TRUONG,

Petitioner.

ANSWER TO PETITION FOR REVIEW

RYAN P. JURVAKAINEN
Cowlitz County Prosecuting Attorney

DAKOTA BLACK, WSBA #54090
Deputy Prosecuting Attorney
Attorneys for Respondent

HALL OF JUSTICE
312 SW First Avenue
Kelso, WA 98626
(360) 577-3080
Office ID No. 91091

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

Cases

U.S. Cases

Statutes

Rules

I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Dakota Black, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS' DECISION

The Court of Appeals' decision that the order vacating Truong's conviction did not entitle him to relief because DOC (Department of Corrections) had "authority under RCW 9.94A.631(1) to search Truong's residence because law enforcement relied on the community custody only to the extent that it contributed to the circumstances supporting reasonable cause to search, and law enforcement's reliance on former RCW 69.50.4013(1) was reasonable because the statute was presumptively valid at the time" is correct.[1] A such, the Court of Appeals' holding that his mother's affidavit did not constitute newly discovered evidence that would change the result of the

---

[1] *State v. Truong*, 33 Wn. App. 2d 1071, 7, WL 455283 (2025) (unpublished). GR 14.1.

trial in light of DOC's authority is also correct. The Respondent respectfully requests this Court deny review of *State of Washington v. John Phi Truong*, Court of Appeals No. 59648-2-II.

III. ISSUES PRESENTED FOR REVIEW

(1) Does the Court of Appeals' decision affirming the trial court's ruling that DOC had valid authority to search and that Truong's mother's affidavit did not constitute newly discovered evidence meet criteria for review under RAP 13.4(b)?

IV. STATEMENT OF THE CASE

John Phi Truong was convicted by a jury of unlawful possession of a controlled substance (UPCS) with the intent to deliver with a firearm enhancement and unlawful possession of a firearm in the first degree. CP 8 (clerk's papers). The original judgement and sentence was entered on February 20, 2019. CP 8. Truong did not challenge the search or evidence. *State v. Truong*, 16 Wn.

App. 2d 1064, 2, WL 872688 (2021) (unpublished)[2]. Truong lived in his mother's garage which had been converted into a living space. *Id.* at 1; CP 39-40. Truong and two others spent the night in a garage and did drugs together. *Id.*; CP 40. The next day, Truong believed drugs were missing and pulled out a firearm. *Id.*; CP 40. The mother of one of the individuals in the garage called law enforcement. *Id.*; CP 40. Police and the Department of Corrections responded to the residence. Law enforcement did not have a warrant, but officers obtained consent from Truong's mother to search. *Id.*; CP 40. Since Truong had conditions of community custody in place, DOC had reasonable cause to believe he violated a condition of his sentence: failing to notify DOC of a change of address. *Id.* at 2, n.1; CP 41. Officers assembled in front of the garage door where the garage eventually rolled up and Truong appeared. *Id.* at 1; CP 41. Truong sprinted across the driveway and ran into a DOC officer,

---

[2] Cited pursuant to GR14.1, the Court of Appeals previously laid out the facts of the case.

where he was arrested. *Id.*; CP 41. Truong had a scale with apparent drug residue on it on his person. *Id.*; CP 41. DOC began to search the garage, and a police officer observed a bag from the outside. *Id.* at 2; CP 41. DOC retrieved the bag. *Id.*; CP 41. The officer observed contents of the bag and instructed DOC to hold on to the bag. *Id.*; CP 41. The bag was searched pursuant to a warrant and inside was a safe. *Id.*; CP 42. The safe was opened, and officers found a revolver, ammunition, controlled substances, drug paraphernalia, cash, and documents with another individual's name on them. *Id.*; CP 42.

After the trial, Truong was sentenced to one-hundred-eighty months total confinement and appealed. *Truong*, 16 Wn. App. 2d at 2. In his first appeal, he challenged the search for the first time on appeal. Truong argued that the police officer conducted an unlawful search and evidence from that search was used to convict him. *Id.* Notably, Truong did not dispute that his mother gave consent, but rather that she did not have authority to give consent. *Id.* at 3. Truong also argued that his attorney was

ineffective. *Id.* at 5-6. Finally, Truong argued several issues in a statement of additional grounds. The Court affirmed the conviction, finding that his unpreserved challenge was not manifest error and the record was insufficient. *Id.* at 7, Further, the Court of Appeals held that there was sufficient evidence and that the judgement and sentence does not violate a prohibition on double-jeopardy. *Id.* at 2-3, 7. The matter was ultimately remanded for resentencing. CP 37.

At resentencing, the parties agreed on an offender score of four and a range of sixty-eight months plus a day to one hundred months for the possession with intent to deliver conviction, which also included thirty-six months for a firearm enhancement. *State v. Truong*, 25 Wn. App. 2d 1002, 1, WL 17820227 (2022) (unpublished)[3]; CP 66. The court imposed a low-end range of seventy months with a thirty-six-month firearm enhancement plus thirty-six months for unlawful possession of a firearm to run

[3] Cited pursuant to GR 14.1 for background.

concurrently. *Id.* at 2; CP 67. Truong again appealed and argued that the trial court did not give meaningful consideration to his youthfulness in considering a request for an exceptional downward sentence and also claimed the court erred by not running the firearm enhancement concurrent to the base sentence. *Id* at 2-3; CP 66-67. The Court of Appeals affirmed, but the court did not have authority to run the enhancement concurrent with the low-end sentence of possession with intent to deliver. *Id.* at 3; CP 67.

On March 16, 2023, over five years after the original judgment and sentence was entered on February 20, 2019, Truong filed a CrR 7.8 motion for newly discovered evidence.[4] CP 71. He provided an affidavit from himself. CP 87-89. He also provided one from his mother. CP 84-86. He attempted to again litigate the propriety of the search by arguing that law enforcement's search under DOC's statutory authority was

[4] It should be noted that the motions and affidavits appear in the clerk's papers more than once.

invalid because he was on community custody from a conviction for UPCS. Specifically, Truong claims the newly discovered evidence in play is an order to vacate the record of his felony conviction as well as an affidavit from his mother. CP 75-78. Truong provided an untranslated affidavit from his mother. CP 84-86. Truong used his mother's belated affidavit and argued that his mother did not provide consent to search. He also argued that DOC's search was unlawful because his community custody was predicated on a conviction for possession of a controlled substance. CP 75-78. The trial court held a hearing, considered Truong's motion, and denied the motion. The court ruled that the evidence does not meet the factors for newly discovered evidence under CrR 7.8 and rejected the argument that the DOC search was unlawful. RP 29-30 (Report of Proceedings). Truong once again appealed.

The Court of Appeals affirmed the trial court's decision. In its reasoning, the Court of Appeals held that the order vacating his UPCS conviction did not entitle him to relief because DOC

had separate, valid statutory authority that DOC relied on to search Truong. Additionally, the UPCS statute Truong had previously been convicted under providing the basis for his community custody which was valid at the time of the search. Further, Truong had not moved to vacate his conviction at the time of the search and was still subject to the terms of his judgement and sentence. Finally, his mother's affidavit and testimony are not newly discovered evidence. They would not change the outcome of a trial because DOC had valid authority to search. Truong now petitions this Court for review of that decision.

V. THIS COURT SHOULD DENY A REVIEW BECAUSE THE COURT OF APPEALS' RULING DOES NOT MEET CRITERIA FOR REVIEW

Under RAP 13.4(b), 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 a published 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).

Truong's assertions regarding the Court of Appeals' decision affirming the trial court do not meet the criteria for review under RAP 13.4(b). Truong does not assert grounds for review under RAP 13.4(b)(2).

First, under RAP 13.4(b)(1), Truong now argues that the Court of Appeals' improperly extended this Court's holding in *State v. Olsen*, 3 Wn.3d 689, 55 P.3d 868 (2024) (In part rejecting that the UPCS statute is void ab initio) to Truong's matter and, furthermore, under RAP 13.4(b)(3), that the Court of Appeals' reliance on *Olsen* conflicts with U.S. Supreme Court holdings regarding

retroactivity. He uses this to ask the court to determine the retroactive effect of a statute.

Here, Truong jumps past the topical decisions of the Washington Supreme Court regarding *State v. Blake,* 197 Wn.2d 170, 481 P.3d 521 (2021) to go to non-*Blake* related U.S. Supreme Court decisions to argue that this statute should be considered void ab initio. However, this Court, in considering federal case law, has rejected claims that this State's unlawful possession of a controlled substance is a non-existent crime and void ab initio. *Olsen*, 3 Wn.3d at 701; *State v. Willyard*, 3 Wn.3d 703, 715-16, 555 P.3d 876 (2024). The Court of Appeals properly followed precedent from this Court and the ruling does not conflict with the Washington or U.S. Supreme Court.

In *Olsen*, this Court reviewed a motion to withdraw guilty pleas in light of *Blake.* 3 Wn. 3d at 691. Lower courts vacated the UPCS conviction but denied a request to withdraw other pleas. *Id.* This Court held that the matter

was time-barred. *Id.* at 702. In part, the knowing and voluntariness of the pleas was attacked. *Id.* at 699. This Court rejected the argument that a plea was not knowing because *Blake* and that the statute should be considered void ab initio. *Id.* This Court disagreed that "an unconstitutional statute is a nullity, void ab initio, that renders a plea unknowing and unvoluntary. *Id.* at 701.

Instead, Olsen's pleas were valid under the law at the time they were entered. The proper remedy rather than absolute nullity was to vacate the conviction, not to "retroactively render his guilty pleas unknowing and involuntary." *Id.* In doing so, this Court noted its rejection of the concept that a law declared unconstitutional is automatically deemed a legal nullity from the beginning. *Id.* at 700. This Court noted the Supreme Court's rejection of an absolutist view on nullity of unconstitutional statutes. Rightfully so, this Court cited cases in its decision, such as *Chicot County Drainage Dist. v. Baxter,*

308 U.S. 371, 374, 60 S. Ct. 317, 84 L. Ed. 329 (1940) ("The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration."), *Dobbert v. Florida*, 432 U.S. 282, 97 S. Ct. 2290, 53 L. Ed. 2d 344 (1977), and *McKesson Corp. v. Div. of Alcohol Beverages and Tobacco,* 496 U.S. 18, 110 S. Ct. 2238, 110 L. Ed. 2d 17 (1990).

The U.S. Supreme Court has explicitly recognized the issue and rejected that laws are always treated as absolute nullities and will still have affects to them. Washington Courts have held that the statute existed and have provided certain remedies based on the unconstitutionality of the statute, such as allowing the vacatur of UPCS convictions, and correction of offender scores, among others. But courts have also routinely rejected other claims, such as withdrawal of pleas, due to

the nature of the existence of the law as an operative fact, which also applies here.

In *Willyard*, this Court held similarly. Willyard brought a motion to withdraw guilty pleas, including UPCS. Willyard argued that an unconstitutional statute is a legal nullity. *Willyard*, 3 Wn.3d at 715. This Court rejected that notion and acknowledged that the doctrine of void ab initio was abandoned and, further, that the "line of cases is no longer good law and does not support the conclusion that a statute later found to be unconstitutional is a nonexistent crime."

The decisions of this Court are applicable to Truong because the doctrine of void ab initio is not a pick or choose proposition which is context dependent: either the statute is treated to have existed, or it was deemed to never exist.

This Court rejected the notion that the state statute should be treated as non-existent and void from the

beginning. Because the Court of Appeals followed this Court's determination, which considered the rejection of absolute nullity by the Supreme Court, it is not in conflict with Washington or the U.S. Supreme Court. Truong's UPCS conviction existed and was valid at the time of the DOC search.

Second, Truong argues that review should be granted because the issues in this case complement issues in *State v. Balles*, 32 Wn. App. 356, 556 P.3d 698 (2024), *review granted*, 4 Wn.3d 1006 (2025). However, he does not specifically present how this meets the requirements under RAP 13.4(b). Nevertheless, while *Balles* does involve a DOC search where *Blake* is implicated, the circumstances of *Balles* that merit review are much different than in Truong's case.

In *Balles*, the Court of Appeals reviewed the validity of a secretary's warrant that was issued before the decision in *Blake* but served after. *Balles*, 32 Wn. App. 2d

at 702. The real issue in that case involved the validity of the secretary's warrant after this Court's ruling in *Blake*. *See Balles*, 32 Wn. App. at 703. The court in Truong's matter also acknowledged that the main issue in *Balles* was whether the validly issued warrant remained valid and could be served after *Blake*. The holding in *Balles* regarding the validity of a warrant based on UPCS conviction served after *Blake* does not have an effect on the validity of a DOC search that occurred pre-*Blake*.

In stark contrast to *Balles*, the search in Truong's matter occurred entirely prior to *Blake*. Truong was on community custody due to a UPCS conviction. The Department of Corrections relied on his then valid UPCS conviction and judgement with community custody conditions as well as their statutory authority under RCW 9.94A.631(1) to search Truong based on reasonable cause of a violation. As courts have ruled that the UPCS statute was not void ab initio nor nonexistent, the conviction

placing him on community custody was valid at the time of Truong's search. Moreover, there was nothing to indicate to DOC or others that the UPCS conviction that predicated his community custody was unconstitutional. Courts prior the *Blake* had repeatedly held the statute to be constitutional. *See*, *e.g.*, *State v. Bradshaw*, 152 Wn.2d 528, 98 P.3d 1190 (2004), *overruled in part by Blake*, 197 Wn.2d 170, 481 P.3d 521; *Matter of Pleasant*, 21 Wn. App. 2d 320, 340, 509 P.3d 295 (2022).

The Court of Appeals in Truong's matter did not rely squarely on *Balles* to conclude DOC had authority, nor is *Balles* the only supportive authority. In *State v. Moses,* the court reviewed the issue of probable cause for a search warrant that was based on a statute and crime later deemed unconstitutional. The Court of Appeals rejected the idea that the invalidation of a statute retroactively affects probable cause for a warrant that was based on the statute. *State v. Moses*, 22 Wn. App. 2d 550, 512 P.3d 600

(2022), *review denied*, 518 P.3d 205 (2022). Of note in this decision, is the recognition that officer's reliance on the statute, RCW 69.50.4013(1), was reasonable because it was presumptively valid at the time. *Moses*, 22 Wn. App. at 561; *see Michigan v. DeFillippo,* 443 U.S. 31, 38, 99 S. Ct. 2627, 61 L. Ed.2d 343 (1979) ("The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality—with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws."); *Pleasant*, 21 Wn. App. 2d at 339 ("At the time Detective Jones sought a warrant to search Mr. Pleasant's car, persons of reasonable prudence would not have perceived former RCW 69.50.4013 as flawed in a way that made it unconstitutional"); *State v. Brockob,* 159 Wn.2d 311, 341–43, 150 P.3d 59 (2006) (Warrantless search incident to arrest based on later invalidated statute was lawful.)

The above logic similarly applies here. DOC reasonably relied on a conviction under a presumptively valid statute and crime that placed community custody conditions on Truong. Without indication that RCW 69.50.4013 would be considered unconstitutional and, having reasonable cause of a violation of the community custody conditions, DOC then exercised their lawful statutory authority under RCW 9.94A.631(1) to search Truong. *Balles* presents a unique contextual issue, Truong does not.

Third, Truong argues that the Court should grant review to "give guidance" for newly discovered evidence in light of his mother's belated affidavit indicating she did not provide consent to search, citing RAP 13.4(b)(4). However, the Court of Appeals did not rule on the merits of the argument because it ruled that DOC had valid authority to search and that consent was immaterial. Instead, Truong attempts to relitigate the issue on the

merits but does not provide how this Court can provide guidance nor how the matter meets the standard for review under RAP 13.4(b)(4) as an issue of substantial public interest that should be determined by the Supreme Court. Because the Court of Appeals was correct that DOC had authority, consent was immaterial. If this Court ultimately holds otherwise, the issue on newly discovered evidence should instead be remanded.

VI. CONCLUSION

Because the petition does not raise valid grounds for review under RAP 13.4(b), it should be denied.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial

images, the word count of this document is 3,023 words, as calculated by the word processing software used.

Respectfully submitted this 27th day of June 2025.

Dakota Black, WSBA #54090
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that RESPONDENT'S ANSWER TO PETITION FOR REVIEW was filed electronically through the Supreme Court Portal to:

Gregory Charles Link
Ariana Downing
Washington Appellate Project
1151 Third Ave., Ste 610
Seattle, WA 98101-1683
greg@washapp.org
ariana@washapp.org
wapofficemail@washapp.org

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on June 27, 2025.

Jacqueline Renny

Jacqueline Renny

COWLITZ COUNTY PROSECUTORS OFFICE

June 27, 2025 - 3:11 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,109-8
Appellate Court Case Title:	State of Washington v. John Phi Truong
Superior Court Case Number:	18-1-01156-3

The following documents have been uploaded:

- 1041098_Answer_Reply_20250627151055SC549423_3569.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 20250627151253473.pdf

A copy of the uploaded files will be sent to:

- appeals@co.cowlitz.wa.us
- ariana@washapp.org
- greg@washapp.org
- wapofficemai@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: Jacqueline Renny - Email: rennyj@cowlitzwa.gov
Filing on Behalf of: Dakota Michael Black - Email: blackd@cowlitzwa.gov (Alternate Email: appeals@cowlitzwa.gov)

Address:
312 SW 1St Avenue
Kelso, WA, 98626
Phone: (360) 577-3080 EXT 6618

Note: The Filing Id is 20250627151055SC549423