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SUPREME COURT NO. \_\_\_\_\_  
Case #: 1041799

NO. 59750-1-II

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRENDON JACQUES,

Petitioner.

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

The Honorable Jennifer K. Snider, Judge

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PETITION FOR REVIEW

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JARED B. STEED  
Attorney for Petitioner  
NIELSEN KOCH & GRANNIS, PLLC  
The Denny Building  
2200 Sixth Avenue, Suite 1250  
Seattle, Washington 98121

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Brendon Jacques, petitioner here and respondent below, asks this Court to grant review of the Court of Appeals' unpublished decision in State v. Jacques, No. 59750-1-II (April 22, 2025) (Appendix).

B. ISSUE PRESENTED FOR REVIEW

The Sentencing Reform Act (SRA) 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. Here, Jacques was sentenced after the effective date of the legislative change, and the trial court excluded his juvenile conviction from its offender score calculation as the current statute required. The State appealed Jacques' sentence and the Court of Appeals reversed. This Court should grant review because the Court of Appeals opinion conflicts with the plain language of RCW 9.94A.525

and other published opinions, and because this case presents an issue of substantial public interest.<sup>1</sup> RAP 13.4(b).

C. STATEMENT OF THE CASE

On April 12, 2023, respondent Brendon Jacques, was charged with second degree robbery for an alleged incident that occurred the day before. CP 5. Over the next six months, Jacques who suffers from schizophrenia and severe opioid and stimulant disorders, was subjected to competency restoration treatment. RP 23; CP 49-115.

Once Jacques' competency was deemed restored, he pled guilty to second degree robbery on October 25, 2023. CP 18-31, 114-15; RP 15-21. Sentencing was held immediately thereafter. RP 10-13, 24; CP 31-44. Both parties had filed sentencing briefs in advance. CP 6-17.

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<sup>1</sup> This issue is currently pending review by this Court in State v. Solomon Gibson, No. 103998-1. Consideration of Solomon Gibson's petition for review is currently scheduled for this Court's June 30, 2025, motion calendar.

Jacques argued recent amendments to the SRA that terminate the use of most prior juvenile adjudications in calculating an adult offender score should apply at his sentencing, thereby rendering his offender score as “0” instead of “2.” The defense argued the triggering date for whether the amendments applied was the date of sentencing, not the date of the offense. CP 6-11; RP 5-6.

The prosecution filed a separate memorandum addressing the recent SRA amendments. It argued they should not apply at Jacques’s sentencing because he committed the offense on April 11, 2023, prior to the effective date of the new legislation, which was July 23, 2023. CP 11-17; RP 7. The prosecution made the same argument on appeal. Brief of Appellant at 4-18.

The trial court heard oral arguments on whether the amendments applied. RP 5-7. In its oral ruling the trial court recognized the date on which Jacques was sentenced was important. RP 11. As the court explained,

But if the Legislature wants to change the scoring rules and not otherwise state when they take effect, then they take effect on the day when you're figuring out what the sentence is. And that's what 9.94A.525(1)(a) says (as read): 'A prior conviction is a conviction that exists before the date of sentencing for the offense for which the offender score is being computed.' The date of sentencing is key.

RP 12. The court noted that to conclude otherwise meant that someone in the same position as Jacques, would receive a lesser sentence just by virtue of having committed the charged offense on July 24 instead of July 22. RP 10.

After ruling recent amendments applied, the court imposed a sentence of 5 months, a mid range standard sentence, based on an offender score of "0." The trial court also imposed 12 months of community custody. CP 31-44; RP 24. Jacques was given credit for 126 days of confinement and has since been released from custody. CP 111-12, 117.

The State appealed, arguing that HB 1324 did not apply to Jacques' sentencing because his offense predated the amendment. Although Judge Maxa dissented, a majority of the

Court of Appeals agreed with the State and reversed Jacques' sentence and remanded to the trial court for resentencing based on an offender score including Jacques' juvenile conviction. App. at 3-9.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

**Review is necessary to determine 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 SRA directs a sentencing court to calculate a person's offender score by counting their prior convictions as of "the date of sentencing." RCW 9.94A.525(1)(a). When the legislature removed nearly all juvenile adjudications from the court's offender score calculations 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) (citations 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).<sup>2</sup>

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<sup>2</sup> Juvenile first and second degree murder and class A felony sex offenses are still considered “prior convictions” to be

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 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

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included in the calculation of an offender score. RCW 9.94A.525(1)(b).

convictions 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 (emphasis in original), review denied, 127 Wn.2d 1006, 898 P.2d 308 (1995).

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 State v. 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, review denied, 3 Wn.3d 1019, 556 P.3d 1094 (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 State v. 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, review denied, 3 Wn.3d 1016, 554 P.3d 1217 (2024).

As summarized by the dissenting opinion in State v. Solomon Gibson, “[T]he key to both *Tester* and *Troutman* is that both courts expressly stated the triggering event for prospective application of RCW 9.94A.525(1)(b) was sentencing.” Solomon Gibson 33 Wn. App. 2d 618, 563 P.3d 1079, 1983 (2025) (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 Solomon Gibson’s sentencing which occurred after the effective date of RCW 9.94A.525(1)(b). The same is true in Jacques’s case. App. 10 (Maxa, J., dissenting).

In ruling that RCW 9.94A.525(1)(b) did not apply to Jacques’ 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 and RCW 10.01.040. The Court reasoned that the legislature did not express a clear intent that RCW 9.94A.525(1)(b) should apply retroactively. App. 8 (citing Solomon Gibson, 33 Wn. App. 2d at 622).

For the above reasons, the Court of Appeals incorrectly assumes that RCW 9.94A.525(1)(b) needs to apply retroactively at all to apply to Jacques' 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." 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.3d 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.

This statement of intent shows the legislature's judgement 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), review denied, 185 Wn.2d 1030, 377 P.3d 716 (2016).

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

Jacques, 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. 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 Jacques’ 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), and (4).

E. CONCLUSION

For the reasons stated, Jacques respectfully asks this Court to grant review and affirm the judgment and sentence excluding his juvenile conviction for offender score calculation purposes.

**I certify that this document contains 2,663 words,  
excluding those portions exempt under RAP 18.17.**

DATED this 14<sup>th</sup> day of May, 2025.

Respectfully submitted,  
NIELSEN KOCH & GRANNIS, PLLC

A handwritten signature in black ink, appearing to read 'Jared B. Steed', is written over a horizontal line.

JARED B. STEED,  
WSBA No. 40635  
Attorney for Petitioner

April 22, 2025

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

BRENDON WAYNE JACQUES,

Appellant.

No. 59750-1-II

UNPUBLISHED OPINION

GLASGOW, J.—The plain language of both RCW 9.94A.345 and the saving clause in RCW 10.01.040 require that sentencing courts apply the sentencing law in effect at the time the defendant committed the relevant offense, absent a clear statement of intent supporting retroactivity. Brendon Jacques committed a second degree robbery in April 2023, then pleaded guilty and was sentenced in October 2023. In July 2023, after Jacques’ crime, before his sentencing, the legislature enacted an amendment to RCW 9.94A.525(1)(b), which states that most juvenile adjudications cannot be included in a defendant’s offender score. The legislature did not make the amendment retroactive.

The trial court sentenced Jacques using an offender score that did not include his prior juvenile adjudication, based on the amendment to RCW 9.94A.525(1)(b). The State appeals, arguing that the trial court improperly excluded Jacques’ juvenile adjudication when calculating his offender score because RCW 9.94A.525(1)(b) was not in effect at the time of his offense.

Following our recent decision in *State v. Solomon Gibson*,<sup>1</sup> we hold that the trial court erred by not including Jacques' juvenile adjudication when calculating his offender score because RCW 9.94A.525(1)(b) does not apply to Jacques' sentence for an offense that occurred before the effective date of that statute. Accordingly, we reverse Jacques' sentence and remand to the trial court for resentencing.

### FACTS

In April 2023, the State charged Jacques with second degree robbery for an incident that occurred on April 11. In July 2023, after Jacques' crime, before his guilty plea and sentencing, the legislature enacted an amendment to RCW 9.94A.525(1)(b), which states that most juvenile adjudications cannot be included in a defendant's offender score. LAWS OF 2023, ch. 415, § 2.

Jacques pleaded guilty to the second degree robbery charge in October 2023. Jacques had a prior juvenile adjudication of second degree assault with a deadly weapon, which under the version of RCW 9.94A.525 in effect at the time of his offense would count as 2 points when calculating his offender score. Former RCW 9.94A.525(8) (2021). However, the trial court ruled that the current version of RCW 9.94A.525(1)(b) applied because the amendment took effect before the court determined Jacques' offender score and sentenced him. Therefore, the trial court calculated Jacques' offender score as 0.

With an offender score of 0, Jacques' standard sentencing range was three to nine months. The trial court sentenced Jacques to five months in confinement.

The State appeals the trial court's sentence.

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<sup>1</sup> 33 Wn. App. 2d 618, 563 P.3d 1079 (2025).

## ANALYSIS

### A. Amendment to RCW 9.94A.525(1)

In April 2023, former RCW 9.94A.525(8) provided, “If the present conviction is for a violent offense . . . count two points for each prior adult and juvenile violent felony conviction.” Second degree robbery and second degree assault are both violent offenses. RCW 9.94A.030(58)(viii), (xi).<sup>2</sup>

In 2023, the legislature amended RCW 9.94A.525(1) by adding subsection (b), which states that juvenile “adjudications of guilt . . . 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 took effect on July 23, 2023. *See* LAWS OF 2023, ch. 415. Jacques was sentenced in October 2023.

### B. RCW 9.94A.345 and the Saving Clause

“In Washington, ‘the fixing of legal punishments for criminal offenses is a legislative function.’” *State v. Jenks*, 197 Wn.2d 708, 713, 487 P.3d 482 (2021) (internal quotation marks omitted) (quoting *State v. Hughes*, 154 Wn.2d 118, 149, 110 P.3d 192 (2005)). “It is therefore ‘the function of the legislature and not of the judiciary to *alter* the sentencing process.’” *Id.* (internal quotation marks omitted) (quoting *Hughes*, 154 Wn.3d at 149). And “[t]he court’s fundamental objective in construing a statute is to ascertain and carry out the legislature’s intent.” *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010) (quoting *Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217 (2004)). Generally, “we

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<sup>2</sup> This statute has been amended since Jacques’ offense, but the amendment does not affect our analysis. We cite the current version of the statute.

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interpret statutes to render no part of them superfluous.” *Wash. Conservation Action Educ. Fund v. Hobbs*, 3 Wn.3d 768, 771, 557 P.3d 669 (2024).

RCW 9.94A.345 provides that sentences imposed under the Sentencing Reform Act of 1981, chapter 9.94A RCW, “shall be determined in accordance with the law in effect when the current offense was committed.” And the saving clause statute states,

Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act.

RCW 10.01.040. “The saving clause applies to ‘substantive changes in the law,’ which includes changes to ‘the punishment for offenses or the type of punishments possible.’” *Solomon Gibson*, 33 Wn. App. 2d. at 621 (quoting *Jenks*, 197 Wn.2d at 721-22).

“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.” *Id.*; see *Jenks*, 197 Wn.2d at 720. “[S]tatutes are presumed to apply prospectively rather than retroactively.” *State v. Tester*, 30 Wn. App. 2d 650, 655, 546 P.3d 94 (2024).

C. Cases Applying RCW 9.94A.345 and the Saving Clause

The Washington Supreme Court recently applied RCW 9.94A.345 and RCW 10.01.040 in *Jenks*, where 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. *Jenks*, 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. The Supreme Court also addressed the defendant's argument that the statutory amendment should be applied to his case because his case still was pending on direct appeal and not yet final when the amendment was enacted. *Id.* at 723. A statutory amendment may apply prospectively to a pending appeal in this way "if the precipitating event under the statute occurred after the date of enactment." *Id.* at 722. (quoting *In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 809, 272 P.3d 209 (2012)).

We look to the subject matter that the statute regulates to determine the precipitating event. *Id.* For example, the Supreme Court has held that new laws affecting costs may apply to cases pending on appeal and not yet final because in those cases, the precipitating event is sentencing. *State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714 (2018). But in *Jenks*, the Supreme Court rejected the argument that the precipitating event is sentencing where a new law substantively affects terms of confinement, without an express indication of legislative intent to that end. 197 Wn.2d at 723-24. The *Jenks* court held that the statutory amendment at issue in that case, which substantively affected the term of confinement, did not apply because the precipitating event under the statute was instead the defendant's 2017 conviction which occurred before enactment of the statutory amendment. *Id.* at 723.

In *Solomon Gibson*, this court recently addressed the applicability of the 2023 amendment to RCW 9.94A.525(1)(b) under facts similar to this case. 33 Wn. App. 2d at 620. Solomon Gibson committed his offense in March 2023; the statutory amendment occurred in July 2023, and

Solomon Gibson was sentenced in November 2023. *Id.* Solomon Gibson’s criminal record included seven juvenile adjudications and one adult conviction. *Id.* The trial court applied the 2023 amendment to RCW 9.94A.525(1)(b) at sentencing and did not include the juvenile adjudications when calculating Solomon Gibson’s offender score. *Id.*

We held that because the amendment was not in effect when Solomon Gibson committed the offense in March 2023, it did not apply to the calculation of his offender score. *Id.* We concluded that RCW 9.94A.345 and RCW 10.01.040 mandated that Solomon Gibson’s sentence be determined based on the law in effect when he committed the offense. *Id.* at 621-23. “Because the amendment affects offender scores, it is a substantive change in the law to which the saving clause applies.” *Id.* at 622.

Moreover, we reasoned that the Washington Supreme Court’s discussion of the precipitating event in *Jenks* did not change this result. In *Jenks*, the Washington Supreme Court distinguished between changes in the law substantively affecting the length of a sentence and changes in the law affecting “costs imposed upon conviction.” 197 Wn.2d at 723 (quoting *Ramirez*, 191 Wn.2d at 749). Where a change involved costs, the precipitating event was the termination of the defendant’s case. *Id.* But where the statutory change involved a substantive change to the length of confinement, not costs, the plain language of the saving clause applies. *Solomon Gibson*, 33 Wn. App. 2d at 622. The *Solomon Gibson* court emphasized that otherwise, RCW 9.94A.345 and RCW 10.01.040 would be meaningless. *Id.* at 623.

D. Jacques’ Arguments in this Case

We agree with the analysis in *Solomon Gibson*. RCW 9.94A.345 and RCW 10.01.040 make it clear that a defendant’s sentence must be determined based on the law in effect when they

committed the offense, and the Supreme Court has applied these statutes consistent with their plain language. *Jenks*, 197 Wn.2d at 715, 719.

Here, the trial court's application of the new language in RCW 9.94A.525(1)(b) ignored RCW 9.94A.345 and RCW 10.01.040. The trial court's approach also ignored that it is the legislature's function to alter the sentencing process through statutory amendments, and it is the court's function to interpret the relevant statutes harmoniously, seeking to render no part of them superfluous or meaningless. *Jenks*, 197 Wn.2d at 713; *Lake*, 169 Wn.2d at 526; *Hobbs*, 3 Wn.3d at 771. RCW 9.94A.345 and RCW 10.01.040 would be meaningless if courts determined that the sentencing was always the precipitating event and thus that the statutes in effect at sentencing always applied.

Jacques claims that the plain meaning of RCW 9.94A.525(1)(a)<sup>3</sup> is that the date of sentencing is the operative date for calculating the offender score. RCW 9.94A.525(1)(a) states, "A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed" and, "[c]onvictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed 'other current offenses.'" Jacques argues that RCW 9.94A.525(1)(a) focuses on the date of sentencing for determining an offender's prior convictions. Jacques contends that RCW 9.94A.525(1)(a) creates an exception to RCW 9.94A.345 because it indicates that the date of sentencing is the operative date for purposes of calculating an offender score. But RCW 9.94A.525(1)(a) says nothing about what law applies to sentencing; RCW 9.94A.345 provides that rule. And setting

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<sup>3</sup> This provision was subsection (1) before the 2023 amendments at issue in this case and is now subsection (1)(a). The 2023 amendment did not change the wording of this subsection. For clarity, we cite the current version of the subsection.

aside RCW 9.94A.345 and RCW 10.01.040 as Jacques suggests, would contradict the Supreme Court's reasoning in *Jenks*.

In the alternative, Jacques argues that the statutory amendment's statement of intent demonstrates that the legislature intended that RCW 9.94A.525(1)(b) apply to pending cases, even if the offense occurred before its effective date. The legislature stated that the intent of the 2023 amendment was to “[g]ive real effect to the juvenile justice system’s express goals of rehabilitation and reintegration”; bring Washington in line with other states that “do not consider prior juvenile offenses in sentencing range calculations for adults”; recognize the research showing that an “adolescent’s perception, judgment, and decision making differs significantly from that of adults”; facilitate due process in juvenile adjudications; and “[r]ecognize how grave disproportionality within the juvenile legal system may subsequently impact sentencing ranges in adult court.” LAWS OF 2023, ch. 415, § 1. But neither this statement of intent nor the plain language of RCW 9.94A.525(1)(b) states that the amendment should be applied retroactively. *See Solomon Gibson*, 33 Wn. App. 2d at 622.

Finally, Jacques argues that RCW 9.94A.525(1)(b) applies to his case because it is remedial. “Remedial statutes generally involve procedural matters rather than substantive matters.” *Tester*, 30 Wn. App. 2d at 658. But ““changes to criminal punishments are substantive, not procedural.”” *Id.* (quoting *Jenks*, 197 Wn.2d at 721). In any event, “the remedial nature of an amendment is irrelevant when the statute is subject to RCW 10.01.040.” *Id.* at 658-59.

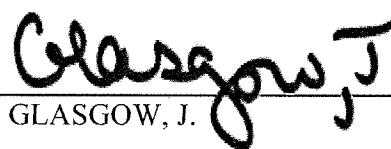
Accordingly, we hold that the trial court erred when it applied the 2023 amendments to RCW 9.94A.525(1)(b) when calculating Jacques’ offender score.

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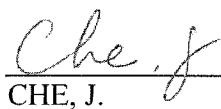
CONCLUSION

We reverse Jacques' sentence and remand to the trial court for resentencing.

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.


  
GLASGOW, J.

I concur:

  
CHE, J.

No. 59750-1-II

MAXA, P.J., (dissenting) – I dissent for the reasons stated in my dissent in *State v. Solomon Gibson*, 33 Wn. App. 2d 618, 563 P.3d 1079 (2025).

  
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MAXA, P.J.

**NIELSEN KOCH & GRANNIS P.L.L.C.**

**May 14, 2025 - 2:19 PM**

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