

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,)	
)	No. 104208-6
Respondent,)	
)	
vs.)	ANSWER TO PETITION
)	FOR REVIEW
PRESTON BROWN-LEE,)	
)	
Petitioner.)	
_____)	

Petitioner Preston Brown-Lee seeks review of the Court of Appeals' unpublished decision in this case, *State v. Brown-Lee*, No. 85707-0-I (unpublished, Apr. 21, 2025). The State of Washington asks this Court to deny the petition for review in part and grant it in part, and to also review additional closely related sub-issues not reached by the Court of Appeals.

This Court should deny review of the Court of Appeals' holding that a July 2023 amendment to the offender score

statute applies only to crimes committed after the amendment took effect. All three divisions of the Court of Appeals have repeatedly and uniformly reached the same conclusion, and this Court has repeatedly concluded that further review of this issue is not warranted. *E.g.*, *State v. Solomon Gibson*, 33 Wn. App. 2d 618, 622–23, 563 P.3d 1079 (2025) (Div. II); *State v. Tester*, 30 Wn. App. 2d 650, 656, 546 P.3d 94 (Div. II), *review denied*, 3 Wn.3d 1019 (2024); *State v. Troutman*, 30 Wn. App. 2d 592, 599-600, 546 P.3d 458 (Div. I), *review denied*, 3 Wn.3d 1016 (2024); *State v. Bailey*, No. 39348-8-III, 2024 WL 3945078, at *6 (2024) (Div. III), *review denied*, 4 Wn.3d 1015 (2025); *In re Pers. Restraint of Curtis*, No. 40123-5-III, 2024 WL 4602007, at *2 (unpublished, Oct. 29, 2024); *State v. Farris*, No. 85718-5-I, 2024 WL 4434413, at *3 (unpublished, Oct. 7, 2024), *review denied*, 4 Wn.3d 1023 (2025); *State v. Posey*, No. 57260-5-II, 2024 WL 4357413, at *12 (unpublished, Sept. 24, 2024); *In re Pers. Restraint of Scabbyrobe*, No. 39562-6-III,

2024 WL 278559, at *3 (unpublished, Jan. 25, 2024); *State v. Bienhoff*, No. 83977-2-I, 2023 WL 8372401, at *6 (unpublished, Dec. 4, 2023), *review denied sub nom. State v. Pierce*, 547 P.3d 897 (2024). This Court should deny review again in this case.

However, this Court should grant review to affirm the Court of Appeals' conclusion that the constitution does not require that a jury, rather than the court, find that Brown-Lee was on community custody at the time of his offense for purposes of determining his offender score. Whether *Erlinger v. United States*¹ is inconsistent with this Court's decision in *State v. Jones*²—in which this Court held that the right to jury trial permits the community-custody point to be found by the trial court—is a significant question of constitutional law, and a determinative answer from this Court is needed to guide lower courts.

¹ 602 U.S. 821, 144 S. Ct. 1840, 219 L. Ed. 2d 451 (2024).

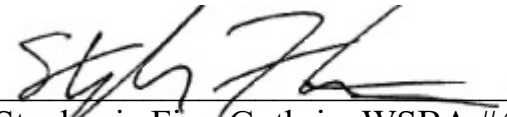
²² 159 Wn.2d 231, 149 P.3d 636 (2006).

This Court should also grant review of two closely related sub-issues that were briefed below but not reached by the Court of Appeals: (1) whether, if this Court finds a violation of the right to jury trial, such error was harmless beyond a reasonable doubt, and (2) if an error occurred that was not harmless, whether on remand the trial court may empanel a jury to make the community-custody finding rather than simply resentencing Brown-Lee without the community-custody point. Br. of Appellant at 28-31 Br. of Resp. at 34-50. If this Court concludes that jury factfinding is required in this case, then whether such an error can be harmless, whether it was harmless in this particular case, and what the remedy should be if the error was not harmless are issues necessary to the resolution of this case and issues of substantial public interest that should be determined by this Court. RAP 13.4(b).

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