SC.NO. 104374-1

SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR REVIEW

By,

NATRONE D. BOSTICK,

PRO SE.

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A. IDENTITY OF PETITIONER

Natrone D. Bostick, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

The Court of Appeals decision to deny appeal is in direct conflict of prior and present case law. See COA decision attached as Appendix A.

The part Petitioner would like reviewed is the courts reasoning on Petitioner's failure to dispute criminal history. Id at COA decision at 4-5.

C. ISSUES PRESENTED FOR REVIEW

Was it error for the Court of Appeals to base its decision on Petitioner's failure to dispute criminal history when the "mere failure to object to criminal history is not sufficient to establish affirmative acknowledgment"?

D. STATEMENT OF THE CASE

In Sum, pursuant to State v. Blake, Petitioner was remanded to Lewis County Superior Court for resentencing. Although inartful, defense counsel inadvertently argued against its case by stating that "Mr. Bostick does not dispute that each of these adjudications is part of his criminal history" yet in the same breadth counsel claimed that none of these adjudications should be included in his offender score." See

Appendix B at 5. Although defense counsel relieved the State of its burden of proving prior convictions, the failure to properly object to the courts inclusion of prior convictions does not relieve that trial court of its duty to make a practical determination on the record. Nor does it excuse Division Two from recognizing the trial courts error by concluding that Petitioner affirmatively acknowledged his criminal history, when that very court in a most recent unpublished opinion held that a 'mere failure to object to criminal history is not sufficient to to establish affirmative acknowledgment." Id at State v. Vancil, 2025 Wash.App.LEXIS 482 (March 18, 2025 Div 2).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

INTRODUCTION

"Unless the reviewing court restricts resentencing to narrow issues, any restricting shall be de novo." State v. Dunbar, 27 Wn.App.2d 238 (2023). "During the resentencing, the sentencing judge may consider rulings by another judge during the sentencing of the offender, but the resentencing judge should exercise independent discretion." Id. "In the interest of truth and fair sentencing, a court on a sentence remand should be able to take new matters into account on behalf of either the government or the defendant." Id at ¶ 14. "On remand, the sentencing court should be free to

consider any matters relevant to sentencing, even those that may not have been raised at the first sentencing hearing , as if it were sentencing de novo." Id. at ¶27. "The offender, on resentencing, may even raise an argument that the appeals court ruled waived in the initial appeal." Id. at ¶27. "During resentencing, the trial court may impose the identical sentence or a greater or lesser sentence within its discretion." Id. at ¶28. "The resentencing judge may not rely on a previous court's sentence determination and fail to conduct its own independent review." Id. In this case, the Court of Appeals, in denying Petitioner's direct appeal based its reliance on an insufficient affirmative acknowledgment. This is contrare to its own opinion in State v. Vancil, 2025 Wash.App.2d LEXIS 482 (March 18, 2025 Div 2).

"At sentencing, the State bears the burden to prove the existent of prior convictions by a preponderance of the evidence." State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009). Requiring the State to ensure that the record before the superior court supports the criminal history determination reflects the fundamental principles of due process, which require that a sentencing court base its decision on information bearing some minimal indicium of relaibilty beyond mere allegation." Id. (internal quotation marks omitted)(quoting State v. Ford, 127 Wn.2d 472, 481, 973

P.2d 452 (1999)). However, a defendant can relieve the State of its burden to proof by affirmatively acknowledging their criminal history. Id.

The mere failure to object to criminal history is not sufficient to establish affirmative acknowledgment. Id. at 928. "Nor is a defendant deemed to have affirmatively acknowledged the prosecutor's asserted criminal history based on his agreement with the ultimate sentencing recommendation." Id. Instead, our Supreme Court has "emphasized the need for an affirmative acknowledgment by the defendant of facts and information introduced for purposes of sentencing." Id.

Here, in this case at bar, the State improperly introduced Bostick's criminal history. On appeal the State argued and the Court agreed that Petitioner affirmatively acknowledged his criminal history by counsel stating that Petitioner did not dispute that each of adjudications is part of his criminal history." Id. at Appendix B at 5.

But this is not enough under Mendoza. To sufficiently acknowledge his criminal history, Bostick must have had to affirmatively acknowledge the facts and information, specifically his prior convictions, that supported his offender score calculation and standard range. See Medoza, 165 Wn.2d at 926-29(rejecting the argument making sentencing

recommendations consistent with the sentencing range provided by prosecutor is sufficient to acknowledge criminal history). "A sentence based on insufficient evidence may not stand, we recognize that defense counsel has some obligation to bring the deficiencies of the State's case to the attention of the sentencing court." State v. Ford, 137 Wn.2d 485 (1999). However, Bostick contends it was borderline ineffective counsel where counsel inartfully argued against its own case in-chief by stating the defense was not not disputing the criminal history, but, yet offered to the sentencing court that the adjudications should not be a part of the offender score process.[1] Because Petitioner (Bostick) did not affirmatively acknowledge his prior convictions or criminal history to the degree required by our Supreme Court and because there was no evidence that the Superior Court could have relied on to support the offender score remand for another "bite at the apple" is warranted pursuant to State v. Mendoza, at 929. Supra.

RESENTENCING IS MANDATORY

Subsequent to the development of the common law rule, the legislature amended several provisions of the SRA in 2008 "to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing." LAWS of 2008, ch 231, §

1. Petitioner is not asserting (IAC) here but will raise in PRP

1. See State v. Bergstrom, 162 Wn.2d 87, 96-98, 169 P.3d 816 (2007)(permitting State to introduce new evidence where defense counsel had acknowledged criminal history over defendant's pro se objection). The "no second chance" rule served to preserve judicial economy. See Jones, 182 Wn.2d 1.

For sentencing purposes, the State carries the burden to prove a defendant's criminal history by a preponderance of the evidence. RCW 9.94A.500(1); Hunley, 175 Wn.2d at 909-10(holding that amendments to the Sentencing Reform Act of 1981 unconstitutionally shifted the burden of proof to the defendant). Although "the preponderance of the evidence is 'not overly difficult to meet,' the State must at least introduce evidence of some kind to support the alleged criminal history." Hunley, 175 Wn.2d at 910(quoting State v. Ford, 137 Wn.2d 472, 480, 973 P.2d 452 (1999)). Bare assertions do not satisfy the State's burden to prove a prior conviction. Hunley, 175 Wn.2d at 910.

A certified copy of the judgment is the best evidence of a prior conviction, however, the State may provide other comparable documents to prove prior convictions. Hunley, 175 Wn.2d at 910. Alternatively, a defendant can "affirmatively acknowledge [their] criminal history and thereby obviate the need for the State to produce evidence." State v. Mendoza, 165 Wn.2d 913, 920, 929, 205 P.3d 113 (2009)(disapproved on

other grounds).

In Hunley, the State submitted "a written statement of prosecuting attorney (prosecutor summary), summarizing its understanding of Hunley's criminal history." 175 Wn.2d at 905. The summary was an unsworn document listing six of Hunley's, alleged prior convictions, their cause numbers, and the sentencing court." Hunley, 175 Wn.2d at 913. The State did not provide a certified judgment and sentence or other comparable evdience. Hunley, 175 Wn.2d at 913. Instead, Hunley's, prior convictions "were established solely on the prosecutors summary assertion of the offenses." Hunley, 175 Wn.2d at 913. Our Supreme Court explained that "it violates due process to base a criminal defendant's sentence on the prosecutor's bare assertions or allegations of prior convictions. And it violates due process to treat the defendant's failure to object to such assertions or allegations as an acknowledgment of the criminal history." Hunley, 175 Wn.2d at 915.

In Mendoza, the court focused its inquiry "on what is required for an [affirmative] acknowledgment [of a defendant's criminal history] to occur." 165 Wn.2d at 920. The State submitted a statement summarizing 'the evidence at trial, a list asserting Mendoza's, criminal history, the prosecutor's calculation of Mendoza's offender score and

appropriate sentencing range, and a sentencing recommendation." Mendoza's, 165 Wn.2d at 917. In referencing Mendoza's, criminal history, the statement "listed the sentencing court and date of crime." Mendoza', 165 Wn.2d at 917-18. The State argued that "the defendants stipulated to their criminal history by either acknowledging the [prosecutor's] Statement or recommending a sentence in the range calculated by the prosecuting attorney." Mendoza, 165 Wn.2d at 925. The court rejected this argument and "emphasized the need for an affirmative acknowledgement by the defendant of facts and information introduced for the purposes of sentencing." Mendoza, 165 Wn.2d. at 928. The court explained that neither a defendant's "failure to object to a prosecutor's assertions of criminal history" nor a defendant's "agreement with the ultimate sentencing recommendation" constitute affirmative acknowledgment. Mendoza, 165 Wn.2d at 928-29.

Here, the State did not meet its burden in proving Bostick's criminal history by a preponderance of the evidence, nor did Bostick affirmatively acknowledge his criminal history. There is no evidence that Bostick was asked to affirmatively acknowledge his criminal history nor did Bosctick take any affirmative action concerning the facts and information of his criminal history. Just as a defendant is

not "deemed to have affirmatively acknowledged the prosecutor's asserted criminal history based on [their] agreement with the ultimate sentencing recommendation," Bostick is not deemed to have affirmatively acknowledged his alleged criminal history by trial counsel failing to dispute his criminal history. Mendoza, 165 Wn.2d 913, 928-29.

F. CONCLUSION AND PRAYER FOR RELIEF

Because Petitioner Bostick did not affirmatively acknowledge his criminal history, the Appellate Court erred when it based its decision on that principle. And where the Mendoza, court authorized remand based on the error this Court should remand for an evidentiary hearing to allow both parties to develop the record and resentence Bostick accordingly.

Respectfully submitted,

Natrone Bostick

Natrone Dale Bostick, Pro Se

Signed and Dated this 1st day of September, 2025

APPENDIX A. UNPUBLISHED OPINION DIVISION TWO

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. NATRONE DALE BOSTICK, Appellant.	No.60408-6-II UNPUBLISHED OPINION

PRICE, J. – Natrone Bostick appeals his sentence for first degree kidnapping and first degree assault committed in 2016.

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. At a resentencing in 2024, Bostick argued that four juvenile adjudications should not be included in his offender score under RCW 9.94A.525(1)(b). The trial court disagreed and included the juvenile adjudications in Bostick's offender score.

We hold that (1) the trial court did not err when it included Bostick's prior juvenile adjudications as part of his offender score when it resentenced him in 2024, and (2) the State sufficiently proved Bostick's criminal history. Accordingly, we affirm his sentence.

FACTS

Background

In May 2016, the State charged Bostick with first degree robbery, first degree burglary, first degree kidnapping, and first degree assault for an incident that occurred in April 2016. In June 2016, Bostick pleaded guilty to one count of first degree kidnapping and one count of first degree assault. The State agreed to drop the other two counts as part of the agreement. The trial court determined that Bostick's offender score was 3 for the assault conviction, based on four prior juvenile convictions and one adult conviction for unlawful possession of a controlled substance. The court sentenced him to 120 months for the assault conviction and 60 months for the kidnapping conviction, to run consecutively.

In February 2024, Bostick filed a motion for resentencing. Bostick argued that, pursuant *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521, his prior conviction for unlawful possession of a controlled substance could not be considered in his offender score. In his motion for resentencing, Bostick noted that "the original sentencing court included four non-violent, non-sex juvenile adjudications of guilt in its offender score calculation." Clerk's Papers (CP) at 123. The motion then stated, "Mr. Bostick does not dispute that each of these adjudications are part of his criminal history." CP at 123. But he argued that, pursuant RCW 9.94A.525(1)(b), his prior juvenile adjudications should not be counted in his offender score.

At the resentencing hearing, the trial court declined to apply RCW 9.94A.525(1)(b) and ruled that Bostick's offender score for the assault conviction was 2, changing his standard sentencing range for first degree assault to 111 to 147 months. Bostick's sentencing range for the kidnapping conviction was unchanged at 51 to 68 months. The court imposed the minimum

sentence on Bostick, 111 months for the assault conviction and 51 months for the kidnapping conviction.

Bostick appeals the trial court's sentence.

ANALYSIS

A. APPLICABILITY OF RCW 9.94A.525(1)(b)

Bostick argues that the trial court improperly included his juvenile offenses in his offender score because RCW 9.94A.525(1)(b) was in effect at the time of his resentencing. The State responds that the trial court correctly applied RCW 9.94A.525 in its resentencing hearing because defendants must be sentenced based on the applicable law at the time of their offense. We agree with the State.

When Bostick committed the offenses in 2016, former RCW 9.94A.525(9) (2013) stated, "If the present conviction is for a serious violent offense, count. . . one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction." First degree assault is a serious violent offense. RCW 9.94A.030(46)(a)(v).

In 2023, well after Bostick committed the offenses but before his resentencing, the legislature amended RCW 9.94A.525 to remove juvenile "adjudications of guilt. . . which are not murder in the first or second degree or class A felony sex offenses" from the offender score calculation. RCW 9.94A.525(1)(b). This amendment took effect on July 23, 2023. *See* LAWS OF 2023, ch. 415. Bostick was resentenced in April 2024.

We recently held that RCW 9.94A.525(1)(b) does not apply prospectively to sentencings that occur following the enactment of the amendment if the underlying offense was committed before the amendment was enacted. *State v. Solomon Gibson*, 33 Wn. App. 2d. 618, 621-24, 563 P.3d 1079 (2025).

Here, the underlying offenses took place in 2016, seven years before the amendment took effect. Therefore, we follow *Solomon Gibson* and hold that RCW 9.94A.525(1)(b) does not apply to Bostick's resentencing. Thus, the trial court did not err in calculating Bostick's offender score using his prior juvenile convictions.

B. PROOF OF CRIMINAL HISTORY

Bostick argues that his case should be remanded for resentencing because the State failed to prove both his criminal history and whether his previous adjudications washed out. The State responds that the totality of the circumstances shows that Bostick acknowledged his juvenile adjudications and therefore the State was not required to prove each adjudication individually. We agree with the State.

1. Legal Principles

"In determining the proper offender score, the court may rely on information that is admitted, acknowledged, or proved in a trial or at sentencing." *State v. Cate*, 194 Wn.2d 909, 913-14, 453 P.3d 990 (2019). The State has the burden of proving the criminal history by a preponderance of the evidence. *Id.* at 912-13. A prosecutor's unsupported summary of criminal history does not satisfy the State's burden. *Id.* at 913.

In addition, a defendant's failure to object to the offender score calculation does not satisfy the State's burden. *Id.* The defendant must affirmatively acknowledge the criminal history to waive the State's burden. *Id.* " '[A] defendant does not "acknowledge" the State's position . . . absent an affirmative agreement beyond merely failing to object.' " *In re Pers. Restraint of Connick*, 144 Wn.2d 442, 463-64, 28 P.3d 729 (2001) (alterations in original) (quoting *State v. Ford*, 137 Wn.2d 472, 483, 973 P.2d 452 (1999)).

Class B and C felony convictions, other than sex offenses, "wash out" and are not included in the offender score if the offender spent the necessary number of "consecutive years in the community without committing any crime that subsequently results in a conviction." RCW 9.94A.525(2)(b)-(c).

We review de novo a trial court's calculation of an offender score. *State v. Griepsma*, 17 Wn. App. 2d 606, 619, 490 P.3d 239 (2021). However, we review for substantial evidence the existence of a prior conviction, which is a question of fact. *Id.*

2. Analysis

In his motion for resentencing, Bostick noted that the original sentencing court included four juvenile adjudications in his offender score calculations, and then stated, "Mr. Bostick does not dispute that each of these adjudications [is] part of his criminal history." CP at 123. The issue argued at the resentencing hearing was only whether the amendment applied to Bostick; there was no argument over the existence of the prior adjudications. We conclude that Bostick affirmatively acknowledged his prior criminal history, which relieved the State of providing proof.

In addition, convictions cannot wash out unless the offender spends the requisite number of years in the community without a subsequent conviction. RCW 9.94A.525(2)(b)-(c). At the time of resentencing, Bostick still was serving his sentence and thus had not reentered the community. Therefore, Bostick's prior adjudications could not have washed out because he had not spent the requisite number of years in community without another conviction.

CONCLUSION

We affirm Bostick'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.

PRICE, J.

I concur:

GLASGOW, J.

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).

Maxa, J.

MAXA, P.J.

APPENDIX B.

APPENDIX B. MOTION FOR RESENTENCING

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON, Plaintiff, vs. BOSTICK, NATRONE D., Defendant.	Case No.: 16-1-00232-21 MOTION FOR RESENTENCING

I. MOTION

NATRONE D. BOSTICK, defendant in the above-captioned case, by and through his attorney, Christopher Taylor, moves this Court to vacate the sentence entered June 16, 2016 in the above-captioned case, and resentence Mr. Bostick.

II. DECLARATION OF COUNSEL

I, Christopher Taylor, declare:

1. I am over eighteen years of age, and competent to testify as to the matters herein.
2. I am the attorney representing Mr. Bostick in this case for the purposes of this motion. I mailed a limited notice of appearance for filing on December 18, 2023.

///

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3. A true and correct copy of the judgment and sentence entered on June 16, 2016 in the above-captioned case is attached to this Declaration as Exhibit A.

4. A true and correct copy of the judgment and sentence entered on June 16, 2016 in *State v. Bostick*, Lewis County Superior Court Case No. 16-1-00228-21 is attached to this Declaration as Exhibit B.

5. A true and correct copy of an Order Vacating Conviction and Dismissing Count II with Prejudice entered on August 6, 2021 in *State v. Bostick*, Lewis County Superior Court Case No. 16-1-00228-21 is attached to this Declaration as Exhibit C.

6. A true and correct copy of an Order Dismissing Petition entered on May 12, 2022 in *State v. Bostick*, Court of Appeals Case No. 55836-II, and filed in this case on June 16, 2022, is attached to this Declaration as Exhibit D.

7. A true and correct copy of the Verbatim Report of Proceedings for June 16, 2016 in this case is attached to this Declaration as Exhibit E.

8. A true and correct copy of a forensic psychological report authored by Dr. Kirstin Carlson on October 22, 2023 is attached to this Declaration as Exhibit F.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this _____ day of _____, 202__ at Olympia, Washington.

_____
Christopher Taylor

///

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III. MEMORANDUM OF AUTHORITIES

A. Offender Score Calculated at the Time of Sentencing.

"When a person is convicted of a felony, the court shall impose punishment as provided in" the Sentencing Reform Act. RCW 9.94A.505(1). "Unless another term of confinement applies" the "court shall impose" "a sentence within the standard sentence range established in RCW 9.94A.510." RCW 9.94A.505(2)(a)(i). The "standard sentence range" is "determine[d]" by reference to the "intersection of the column defined by the offender score and the row defined by the offense seriousness score" in "Table 1" of "RCW 9.94A.510." RCW 9.94A.530(1).

Thus, at the time of sentencing, the Court must calculate an "offender score" in order to determine what the standard range sentence is. And that determination occurs at the time of sentencing, not, for example, when a guilty plea is accepted. *See e.g. State v. Christen*, 116 Wn. App. 827, 67 P.3d 1158 (2003) ("true offender score" "adopted" at sentencing, differing from purported offender score at the time the plea was accepted); *see also State v. Henderson*, 99 Wn. App. 369, 993 P.3d 928 (2000).

At a sentencing hearing, the Court "shall specify the convictions it has found to exist," i.e. that "the defendant has a criminal history." RCW 9.94A.500(1). "'Conviction' means an adjudication of guilt pursuant to Title 10 or 13 RCW." RCW 9.94A.030(9). "'Criminal history' means the list of a defendant's prior convictions and juvenile adjudications." RCW 9.94A.030(11). However, "[t]he determination of the defendant's criminal history is distinct from the determination of an offender score." RCW 9.94A.030(11)(c).

The "offender score is the sum of points accrued under this section rounded down to the nearest whole number." RCW 9.94A.525. Generally, although "Class A and sex prior felony convictions shall always be included in the offender score," non-sex "Class B prior felony

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convictions" and non-sex "Class C prior felony convictions" must be recent enough. RCW 9.94A.525(2)(a), (b), and (c). Moreover, "adjudications of guilt pursuant to Title 13 RCW 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).

"If the present conviction is for a serious violent offense[1], count three points for prior adult convictions and juvenile convictions which are scorable under subsection (1)(b) of this section for crimes in this category, two points for each prior adult and scorable juvenile violent conviction (not already counted), and one point for each adult nonviolent felony conviction." RCW 9.94A.525(9).

B. *Blake* Resentencing, Changed Offender Score.

A prior conviction based on a constitutionally invalid statute may not be considered when calculating an offender score. *State v. Ammons*, 105 Wn.2d 175, 187-188 (1986). "[A] sentence that is based upon an incorrect offender score calculation is a fundamental defect that inherently results in a miscarriage of justice. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 868 (2002). The remedy for such a defect is resentencing under the correct offender score. *State v. Wilson*, 170 Wn.2d 682, 690 (2010).

"RCW 69.50.4013(1)—the portion of the simple drug possession statute creating this crime—violates the due process clauses of the state and federal constitutions and is void." *State v. Blake*, 197 Wn.2d 170, 195 (2021). "If a statute is unconstitutional, it is and has always been a legal nullity." *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 143 (1952). Where a statute is found "unconstitutional, it is as ineffectual and inoperative as though it had never been passed." *Id.* And where a defendant has been adjudged guilty of a crime, and the statute creating

1 Assault in the First Degree is a serious violent offense. RCW 9.94A.030(46)(a)(v). Kidnapping in the First Degree is also a serious violent offense. RCW 9.94A.030(46)(a)(vi).

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the crime is later declared unconstitutional, "the judgment and sentence...is void." *Kahler v. Squire*, 49 Wn.2d 911 (1956); *see also In re Hinton*, 152 Wn.2d 853, 857 (2004) ("Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face").

"In light of *Blake*" a "prior conviction for drug possession" "cannot be considered in the offender score." *State v. Jennings*, 199 Wn.2d 53, 67 (2022).

Here, Mr. Bostick was convicted, in Count III, of Kidnapping in the First Degree; and, in Count IV, of Assault in the First Degree. Decl. of Taylor, Ex. A at 1. The original sentencing Court calculated Mr. Bostick's offender score as to Count IV at "3" as to that felony[2]. *Id.* at 3. Included in that calculation was a "conviction" identified as "Possession of a Controlled Substance" under "Cause Number 16-1-00228-21." *Id.* This conviction was later vacated and dismissed with prejudice. Decl. of Taylor, Ex. C. Mr. Bostick's offender score as to Count IV should, therefore, be recalculated to not include the vacated conviction.

Additionally, the original sentencing court included four non-violent, non-sex juvenile adjudications of guilt in its offender score calculation, to wit: "UPF 2," "Escape 2," "Theft 1," and "TSP - 1." Decl. of Taylor, Ex. A at 3; *see also* RCW 9.94A.030(58), (47). Although Mr. Bostick does not dispute that each of these adjudications are part of his criminal history, none of these adjudications should be included in his offender score. *See* RCW 9.94A.525(1)(b); RCW 9.94A.525(9).

With an offender score of "0," Mr. Bostick's standard range as to Count IV is 93 to 123 months. RCW 9.94A.510.

C. *De Novo* Resentencing.

"Unless the reviewing court restricts resentencing to narrow issues, any resentencing shall be de novo." *State v. Dunbar*, 27 Wn. App. 2d 238 at ¶ 13 (2023). "During the

2 The Court calculated Mr. Bostick's offender score as to Count III at 0 pursuant to RCW 9.94A.589(1)(b).

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resentencing, the resentencing judge judge may consider rulings by another judge during the sentencing of the offender, but the resentencing judge should exercise independent discretion." *Id.* "In the interest of truth and fair sentencing, a court on a sentence remand should be able to take new matters into account on behalf of either the government or the defendant." *Id.* at ¶ 14. "On remand, the sentencing court should be free to consider any matters relevant to sentencing, even those that may not have been raised at the first sentencing hearing, as if it were sentencing de novo:" *Id.* at ¶ 27. "The offender, on resentencing, may even raise an argument that the appeals court ruled waived in the initial appeal." *Id.* "During resentencing, the trial court may impose the identical sentence or a greater or lesser sentence within its discretion." *Id.* at ¶ 28. "The resentencing judge may not rely on a previous court's sentence determination and fail to conduct its own independent review." *Id.* "Otherwise, the offender is deprived of de novo review." *Id.*

Here, the Court of Appeals, in dismissing his personal restraint petition, noted "[w]hile *Blake* invalidates his [unlawful possession of a controlled substance] conviction, it does not render his judgment and sentence facially invalid." Decl. of Taylor, Ex. D at 2. The Court of Appeals *also* noted, that *Blake* "entitles [Mr.] Bostick to be resentenced." Because the Court of Appeals did not restrict resentencing to narrow issues, this must be read as entitling Mr. Bostick to *de novo* resentencing.

D. Mitigated Concurrent Sentence.

"Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level...shall be determined using the offender's prior convictions...in the offender score and the standard sentence range for other serious violent offenses shall be

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determined by using an offender score of zero." RCW 9.94A.589(1)(b). "All sentences imposed under this subsection (1)(b) shall be served consecutively to each other." *Id.*

"A departure from the standards in RCW 9.94A.589(1)...governing whether sentences are to be served consecutively or concurrently is an exceptional sentence." RCW 9.94A.535. Thus, although a sentencing court ordinarily must impose consecutive sentences for separate serious violent offenses, the sentencing court does have the discretion to impose concurrent sentences as an exceptional sentence. *In re Mulholland*, 161 Wn.2d 322, 166 P.3d 677, 680-682 (2007).

"The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." *Id.* "Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law." *Id.* "A sentence outside the standard sentence range shall be a determinate sentence." *Id.* "The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence." RCW 9.94A.535(1).

"The purpose of [the Sentencing Reform Act] is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does eliminate, discretionary decisions affecting sentences, and to: (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history; (2) Promote respect for the law by providing punishment which is just; (3) Be commensurate with the punishment imposed on others committing similar offenses; (4) Protect the public; (5) Offer the offender an opportunity to improve himself...; (6) Make frugal use of the state's and local governments' resources; and (7) Reduce the risk of reoffending

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by offenders in the community." RCW 9.94A.010. "Evidence of rehabilitation relates" to that fifth factor, and may be considered at the time of resentencing. *Dunbar*, 27 Wn. App. 2d at ¶ 23.

There are "fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure." *State v. O'Dell*, 183 Wn.2d 680, 692 (2015). "[N]eurological differences make young offenders, *in general,* less culpable for their crimes." *Id.* (emphasis in original). Therefore, "a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender...who committed his offense[s]" soon after turning 18 years old while still, neurologically-speaking, an adolescent. *Id.* at 696.

Here, the crimes with which Mr. Bostick was convicted occurred on April 29, 2016. Decl. of Taylor, Ex. A at 1. Mr. Bostick was sentenced on June 16, 2016, less than two months later. *Id.* Mr. Bostick was born on March 20, 1997. *Id.* Thus, at the time the crimes were committed, and at the time he was sentenced, Mr. Bostick was 19 years old.

"[T]he cognitive control network, largely associated with the prefrontal cortex, coordinates higher order cognitive processing and executive functioning." Decl. of Taylor, Ex. F at 14. "Executive functions are cognitive skills essential for goal-directed behavior, including planning, thinking ahead, self-regulation, and impulse control." *Id.* "Executive functioning impairment leads to difficulties planning, attending to important information, and considering options, and thus may undermine decision making and judgment." *Id.* at 14-15. "The prefrontal cortex matures gradually over the course of adolescence and into adulthood, independent of puberty." *Id.* at 15. "Numerous studies have found this area of the brain, unlike the emotional center, is among the last to mature, and the area has been found to not reach full development until around age 25." *Id.* Therefore, because "Mr. Bostick had turned 19 years of age a little over

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a month before the...offense," "according to the research, it is unlikely that his brain was fully developed at that time." *Id.* at 22. Thus, Mr. Bostick, by virtue of his young age at the time of his offenses and sentencing, is generally less culpable.

Moreover, Mr. Bostick "likely had very little direction or attachment to his primary support persons when he was a child," "having been removed from the home and placed in foster care at a young age, and beginning in his teens was often 'on the run' from the foster care placements resulting in living in the street or relying on those around him." *Id.* at 22.

Now, however, "Mr. Bostick is 26 years of age suggesting his brain likely fully finished developing within the last year or two." *Id.* at 22. "As a result, the research would suggest that Mr. Bostick's impulse control, judgment, future-orientation, emotional regulation, and ability to consider the potential consequences of his behavior are likely better [now] than they were at the time of the index offense[s]." *Id.*

Since being in prison, "Mr. Bostick has had several jobs...and has taken several classes." *Id.* at 12. He's "held jobs such as food service worker, recycling worker, custodian, and...clerk." *Id.* He's also "completed several 'pre college' classes" and "college courses in English, business, psychology, ethics, public speaking, and creative writing." *Id.* Mr. Bostick has also availed himself "mental health" services. *Id.*

Additionally, although Mr. Bostick is "in the moderate-risk range for future violence," "[t]he most salient factors contributing to Mr. Bostick's score's being in the moderate range for future violence were related to remote history and index offense, with little to no evidence of violent ideation or behavior for the last few years." *Id.* at 8. Currently, "Mr. Bostick demonstrates good insight into the factors that led to his current incarceration and [has] taken steps toward improving his life during incarceration." *Id.*

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Finally, upon release, Mr. Bostick has family support, and was "offered a job with" "Honey Bucket," but also plans to "finish his college degree." *Id.* at 20-21.

For the foregoing reasons, Mr. Bostick respectfully requests this Court, at resentencing, impose a standard range sentence of 93 months as to Count IV, a standard range sentence of between 51 and 68 months as to Count III, but to impose a mitigated exceptional sentence by imposing the sentences on each count concurrently to each other, for a total of 93 months. More particularly, because Mr. Bostick was only 19 years old at the time of the offenses, his adolescent brain, together with the challenges he suffered during his youth, lead to the conclusion that he was less culpable for his actions.

Which is not at all to suggest Mr. Bostick was *not* culpable. He admitted as much by entering guilty pleas within less than two months of having committed the offenses. He continues to acknowledge his culpability. *See* Decl. of Taylor, Ex. F at 20 ("I felt like I deserved to come to prison"). But 93 months is a serious sentence, proportionate to the seriousness of the offenses he committed.

Moreover, Mr. Bostick has made efforts to rehabilitate himself while in prison, has support and plans when he is released, and has now has the adult brain development to allow those plans to come to fruition when released. Release after having served a 93 month sentence, as opposed to the 180 month sentence originally imposed, furthers the goals of the Sentencing Reform Act.

DATED this _____th day of _____, 202_____.

_____
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