No. 104375-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

N.E.M.,
Petitioner.

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

MEMORANDUM OF AMICI CURIAE, IN SUPPORT OF PETITION FOR REVIEW

King County Department of Public Defense
Kate Benward, WSBA No. 43651
kbenward@kingcounty.gov
Katherine Hurley, WSBA No. 37863
khurley@kingcounty.gov
Jonathan Nomamiukor, WSBA No. 53324
jnomamiukor@kingcounty.gov
710 Second Ave., Suite 200
Seattle, WA 98104
Phone: (206) 477-4945

Civil Survival
Teresa Groves, WSBA No. 38588
teresa.groves@civilsurvival.org
Maddisson Alexander, WSBA No. 56575
maddisson.alexander@civilsurvival.org
P.O. Box 634
Port Orchard, WA 98366
(206) 484-4755

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington State Supreme Court Decisions

Washington State Court of Appeals Decisions

Statutes

Rules

Other Authorities

I. INTRODUCTION

In *State v. Garza*, 200 Wn.2d 449, 518 P.3d 1029 (2022), this Court corrected the Court of Appeals' misinterpretation of RCW 13.50.260(3) that wrongly denied people the ability to vacate and seal their juvenile records. Unfortunately, courts now use *Garza*'s brief discussion of another section of the sealing statute—RCW 13.50.260(4)—to again wrongly deny people relief from the harm of a juvenile criminal record.

Under RCW 13.50.260(4), a court *must* seal a juvenile record when its criteria are met, but this does not mean a person is *required* to meet these criteria to vacate and seal under RCW 13.50.260(3). This Court's statements in *Garza* regarding RCW 13.50.260(4) were ancillary to the issues in that case, and a response to the State's mischaracterization of the statute. But lower courts have unfortunately latched onto these dicta to deny deserving people like Mr. M. the opportunity to seal and vacate their juvenile records under RCW 13.50.260(3). This Court should accept review.

II. IDENTITY AND INTEREST OF AMICI

The identities and interests of amici curiae are set forth in the accompanying Motion for Leave to File an Amici Curiae Memo.

III. ISSUE PRESENTED

The Court of Appeals mistook dicta in *Garza* as "express authority from the state supreme court" to wrongly interpret the mandatory sealing requirements of RCW 13.50.260(4) as a prerequisite for the court's exercise of its discretion to seal and vacate under RCW 13.50.260(3).

But turning a mandatory entitlement into an exclusionary criterion is a misinterpretation of the juvenile sealing statute that effectively nullifies the broad relief available under RCW 13.50.260(3). This statement was not necessary to *Garza's* holding and is plainly refuted by careful analysis of RCW 13.50.260(4) and RCW 13.50.260(3).

This is a matter of public interest because lower courts now routinely claim *Garza* requires them to wrongly deny

rehabilitated, deserving people like Mr. M. a critical means of reentry, upward mobility and social inclusion that the legislature intended to provide in the juvenile sealing statute. This Court should accept review. RAP 13.4(b)(3).

IV. STATEMENT OF THE CASE

Twenty-seven years after Mr. M. was adjudicated for juvenile offenses, he filed a motion to vacate and seal his juvenile records under RCW 13.50.260(3). CP 1-87. He showed the court impressive evidence of his rehabilitation despite the hardship his juvenile adjudication created in obtaining employment and housing and participating in family activities. CP 7, 20-21.

The trial court believed it could not consider Mr. M.'s motion to vacate and seal because he did not meet one of the six requirements for mandatory sealing under a different section of the sealing statute, RCW 13.50.260(4). CP 103-07. But this section states only that the court *shall* grant a motion to seal when those criteria are met, not that the criteria must be met for

the court to grant a motion to seal. *Id*. Rather than conduct the statutory analysis urged by Mr. M., the court claimed it was bound by *Garza* and refused to consider Mr. M.'s motion to vacate and seal. *Id.*

The Court of Appeals affirmed, claiming that *Garza* was "express authority from the state supreme court" that bound them to deny Mr. M. relief under RCW 13.50.260(3). *State v. N.E.M*., 86464-5-I, 2025 WL 1733253, at *2 (Wash. Ct. App. June 23, 2025).

V. ARGUMENT

This Court should accept review to correct the lower courts' misinterpretation of the juvenile sealing statute that wrongly deprives people of the ability to seal and vacate their records.

This Court should accept review and clarify that RCW 13.50.260(3)'s grant of discretion to courts to vacate and seal juvenile records is not constrained by the narrow, specific requirements that require them to seal a record under RCW 13.50.260(4).

a. *Garza*'s statements about RCW 13.50.260(4) were a response to misguided arguments by the State—not a careful interpretation of the statute that should bind future courts.

The issue in *Garza* was whether RCW 13.50.260(3) allowed a court to vacate and seal juvenile adjudication and disposition orders, or whether, as the Court of Appeals had determined, the court's authority to seal and vacate its "order and findings" under RCW 13.50.260(3) applied only to diversion orders. 200 Wn.2d at 451, 456. This Court analyzed the plain language of RCW 13.50.260(3) and relevant statutes in the Juvenile Justice Act (JJA) to hold that RCW 13.50.260(3) allowed a court to vacate and seal juvenile adjudications and disposition orders because they were equivalent to a court's "order and findings." *Garza,* 200 Wn.2d. at 456.

After dispensing with the State's various failed statutory construction arguments related to RCW 13.50.260(3), this Court addressed the State's concern that RCW 13.50.260(3) would give courts "boundless discretion." 200 Wn.2d at 460. In

addressing this claim, this Court commented upon a different section of the sealing statute that was not directly at issue—RCW 13.50.260(4). *Id.*

This section of the statute states: "The court shall grant any motion to seal records . . . made under subsection (3) of this section" for differing levels of offenses if certain stringent criteria are met. RCW 13.50.260(4) *mandates* a court seal a juvenile record when the enumerated criteria are met. But if a person does not meet all criteria, they are not disqualified from having their record sealed—it just means that the court is not *required* to seal their record when a person brings a motion to vacate and seal under RCW 13.50.260(3). In other words, if a person meets all the criteria in RCW 13.50.260(4)(a), (b) or (c) when they bring a motion to vacate and seal under RCW 13.50.260(3), the court *must* seal their record. If these criteria are not met, the court retains the discretion to seal and vacate under RCW 13.50.260(3).

This is how courts interpreted RCW 13.40.260(4) before *Garza*. In *State v. J.C.,* the Court of Appeals noted that RCW13.50.260(4) was amended to promote the sealing of juvenile offenses to "overcome prejudice and reintegrate into society." 192 Wn. App. 122, 132, 366 P.3d 455 (2016). The court read the plain language of RCW 13.40.260(4)(a) to state, "juvenile records containing sex offenses—including class A felony sex offenses—are *required* to be sealed if six conditions are met." *J.C.,* 192 Wn. App. at 126. Similarly, in *State v. Ogle*, the court reiterated that "RCW 13.50.260(4)(a) discusses only when a court is *required* to grant a motion to seal a juvenile's records. The statute does not say that a court is *prohibited* from sealing juvenile court records when the conditions requiring sealing are not met." 2018 WL 1729778*,* at *2, 3 Wn. App. 2d 1016 (2018) (GR 14.1).

This is also apparent in the legislative history of the statute. The former version of RCW 13.50.260(4) used to state a court "shall not grant any motion to seal" unless the eligibility

criteria of RCW 13.50.260(4)(a) and (b) were met. Laws of 2011, ch. 338, § 4 (12)(a),(b). This exclusionary language was changed in 2014 to mandate sealing when the criteria were met: "the court shall grant any motion to seal" based on the same criteria. Laws of 2014, ch. 175, §4 (a), (b).

But in *Garza*, the State misunderstood RCW 13.50.260(4) to impose eligibility criteria for sealing as it did before the 2014 change to mandate sealing when its criteria are met. Supplemental Brief of Respondent Yakima County Prosecutor's Office at 9-10, *State v. Garza*, No. 100012 (Washington State Supreme Court, April 18, 2022) (stating "RCW 13.50.260(4) establishes certain requirements for sealing convictions."). Based on this misconception, the State argued that "RCW 13.50.260(3) cannot include juvenile adjudications because it would create the absurd result of making it easier for juveniles to vacate an adjudication than to seal one." *Garza,* 200 Wn.2d at 457.

The State's argument was premised on a mistaken belief that RCW 13.50.260(4)'s criteria must be met for the court to seal their record, rather than *requiring* the court seal the record when the criteria are met. It is therefore not "easier" to seal and vacate under (3) in cases where a person does not meet the mandatory sealing criteria under (4). A court retains discretion under (3) to seal and vacate when a person is not entitled to mandatory sealing under RCW 13.50.260(4).

Unfortunately, in responding to the State's flawed argument, this Court in *Garza* repeated the State's mistaken assertion that a person must "meet the sealing requirements enumerated in RCW 13.50.260 (4)(a), (b), and (c)" to succeed on a motion to seal and vacate under RCW 13.50.260(3). *Garza,* 200 Wn.2d at 458.

But this Court's consideration of the State's incorrect claim that RCW 13.50.260(4) imposed eligibility criteria for sealing is dictum. Dicta are "[s]tatements in a case that do not relate to an issue before the court and are unnecessary to decide

the case." *Johnson v. Liquor & Cannabis Bd.,* 197 Wn.2d 605, 618, 486 P.3d 125 (2021). This Court's statement that a person must meet the criteria to seal under RCW 13.50.260(4) is not necessary to this Court's holding that "RCW 13.50.260(3) gives courts authority to vacate and seal a juvenile's adjudication." *Garza,* 200 Wn.2d at 462.

This dictum is belied by the Court's statement that the sealing criteria in RCW 13.50.260(4) simply "provide a good starting point in helping trial courts determine if they should exercise their discretion to grant a motion to vacate and seal" under RCW 13.50.260(3). *Id.* at 460.

Nevertheless, the Court of Appeals cited to *Garza*'s dicta about RCW 13.50.260(4) as "express authority from the state supreme court" in ruling it had no discretion to vacate and seal under RCW 13.50.260(3) because Mr. M. did not satisfy one of the criteria of RCW 13.50.260(4) that would have mandated the court seal his juvenile record. *N.E.M.*, 2025 WL 1733253, at *2-3.

Garza's passing comment in response to the State's misinterpretation of RCW 13.50.260(4)—a different provision of the sealing statute than was at issue in the case—is contrary to the plain language and legislative intent of the juvenile sealing statute. It leads to the absurd result of turning a mandatory entitlement to seal under RCW 13.50.260(4) into an exclusionary criterion for the court's exercise of its discretion to seal under RCW 13.50.260(3).

b. This Court should accept review and clarify that RCW 13.50.260(4)'s mandatory sealing criteria do not preclude relief under RCW 13.50.260(3) due to the substantial public interest in this matter.

This is a matter of substantial public interest. Lower courts are once again misconstruing the juvenile sealing statute to wrongly deny people relief from the continued harm of a juvenile record, contrary to the plain language of the juvenile sealing statute. The continued misapplication of RCW 13.50.260(3) exacerbates racial disproportionality within our state's criminal legal system.

Excluding people from vacating and sealing their juvenile record based on a misreading of the statutes wrongly deprives deserving people of access to housing, educational opportunity, and economic advancement that juvenile sealing provides. *See State v. S.J.C.,* 183 Wn.2d 408, 433, 352 P.3d 749 (2015). Moreover, wrongly excluding people from the relief afforded by the juvenile sealing statute perpetuates the racial disproportionality of the juvenile legal system's harm to youth of color, who are convicted at much higher rates than whites. In 2021, this Court received the Second Report and Recommendations of the Task Force on Race in Washington's Criminal Legal System—a report that focused primarily on the juvenile legal system. The Task Force 2.0 Juvenile Justice Subcommittee reported that in 2021, Black youth were convicted at a rate 4.25 times higher than white youth, Latinx youth at a rate 1.74 times that of white youth, and Indigenous youth at a rate 2.72 times that of white youth. The Task Force 2.0 Juvenile Justice Subcommittee, *Report and*

Recommendations to Address Race in Washington's Juvenile Legal System: 2021 Report to the Washington Supreme Court, 45 Seattle U. L. Rev. 1025, 1052 (2022). The Task Force 2.0's report demonstrates how systemic racism plagues every facet of our criminal legal system. In its conclusion, the report noted that youth affiliated with Washington's juvenile legal system face worse outcomes "in their health, education, housing, employment, future involvement in the criminal legal system, and other measures of wellness" than their non-affiliated counterparts. *Id.* Additionally, youth of color routinely face harsher treatment than their white counterparts in the criminal context. *See* Barbara Robles-Ramamurthy & Clarence Watson, *Examining Racial Disparities in Juvenile Justice*, 47 J. Am. Acad. Psychiatry L. 48, 50 (2019). The result is that people of color are disproportionately impacted by "collateral consequences" that limit access to housing, employment, and education as illustrated by the Task Force's report.

Addressing the continued misinterpretation of RCW 13.50.260(3) presents an important opportunity to provide relief to Washington's most marginalized individuals and is consistent with this Court's declaration of its commitment to combatting systemic racism and its role in perpetuating the "devaluation and degradation of black lives." Letter from the Supreme Court, State of Washington, to Members of the Judiciary and the Legal Community (June 4, 2020).[1] Moreover, wrongly denying people the opportunity to remove the stigma of a juvenile conviction is a matter of substantial public interest. As such, this Court should accept review.

VI. CONCLUSION

Based on the foregoing, this Court should accept review.

---

[1] https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf [https://perma.cc /LS56-6WF5]

DATED this 28th day of August 2025.

Respectfully submitted,

s/ Kate L. Benward
Kate Benward, WSBA No. 43651
kbenward@kingcounty.gov

s/ Katherine Hurley
Katherine Hurley, WSBA No. 37863
katherine.hurley@kingcounty.gov

s/ Jonathan Nomamiukor
Jonathan Nomamiukor, WSBA No. 53324
jnomamiukor@kingcounty.gov

King County Department of Public Defense
710 Second Ave., Suite 200
Seattle, WA 98104
Phone: (206) 477-4945

Counsel for Amicus Curiae
King County Department of Public Defense.

s/ Maddisson Alexander
Maddisson Alexander, WSBA No. 56575
maddisson.alexander@civilsurvival.org

s/ Teresa Groves
Teresa Groves, WSBA No. 38588
teresa.groves@civilsurvival.org

Civil Survival
P.O. Box 634
Port Orchard, WA 99366

(206) 290-3986

Counsel for Amicus Curiae
Civil Survival.

VII. CERTIFICATE OF COMPLIANCE WITH RAP 18.17

I certify that the word count for this brief, as determined by the word count function of Microsoft Word, and pursuant to Rule of Appellate Procedure 18.17, excluding title page, tables, certificates, appendices, signature blocks and pictorial images is 2,194.

RESPECTFULLY SUBMITTED this 28th day of August 2025.

s/ Kate L. Benward
Kate Benward, WSBA No. 43651
kbenward@kingcounty.gov
King County Department of Public Defense
710 Second Ave., Suite 200
Seattle, WA 98104
Phone: (206) 477-4945

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2025, I filed the foregoing brief via the Washington Court Appellate Portal, which will serve one copy of the foregoing document by email on all attorneys of record.

s/Julie van Arcken

Julie van Arcken, Program Manager
jvanarcken@kingcounty.gov
King County Department of Public Defense
710 Second Avenue, Suite 200
Seattle, WA 98104
Phone: (206) 848-0461

KING COUNTY DPD - DIRECTOR'S OFFICE

August 28, 2025 - 7:52 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,375-9
Appellate Court Case Title:	State of Washington v. N.E.M.

The following documents have been uploaded:

- 1043759_Letters_Memos_20250828074627SC257746_8872.pdf
  This File Contains:
  Letters/Memos - Other
  The Original File Name was Memo of Amici Curiae.pdf
- 1043759_Motion_Plus_20250828074627SC257746_5858.pdf
  This File Contains:
  Certificate of Service
  Motion 1 - Other
  The Original File Name was Motion for Leave to File Memo of Amici Curiae.pdf

A copy of the uploaded files will be sent to:

- beverly@washapp.org
- greg@washapp.org
- jnomamiukor@kingcounty.gov
- jvanarcken@kingcounty.gov
- katherine.hurley@kingcounty.gov
- kbenward@kingcounty.gov
- paoappellateunitmail@kingcounty.gov
- rschmidt@kingcounty.gov
- wapofficemai@washapp.org
- wapofficemail@washapp.org

Comments:

Memorandum of Amici Curiae in Support of Petition for Review, Motion for Leave to File Memorandum of Amici Curiae

---

Sender Name: Julie Van Arcken - Email: jvanarcken@kingcounty.gov
Filing on Behalf of: Kate Benward - Email: kbenward@kingcounty.gov (Alternate Email: jvanarcken@kingcounty.gov)

Address:
710 Second Ave.
Suite 200
Seattle, WA, 98104
Phone: (206) 263-2816

Note: The Filing Id is 20250828074627SC257746