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STATE OF WASHINGTON  
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Supreme Court No. \_\_\_\_\_ Case #: 1043759  
(COA No. 86464-5-I)

THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

N.E.M.,

Petitioner.

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

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PETITION FOR REVIEW

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## **A. IDENTITY OF PETITIONER**

N.E.M. asks this Court to grant review of the Court of Appeals decision under RAP 13.3 and RAP 13.4.

## **B. COURT OF APPEALS DECISION**

Mr. M. appealed the trial court's conclusion it had no authority to vacate and seal his juvenile records. The Court of Appeals affirmed. *State v. N.E.M.*, No. 86464-5-I, 2025 WL 1733253 (Wash. Ct. App. June 23, 2025).

## **C. ISSUES PRESENTED FOR REVIEW**

The legislature recognizes a child's inherent ability to change and enacted laws that prioritize rehabilitation and reintegration. Because it understands a juvenile record presents numerous barriers, the legislature established procedures that heavily favor sealing such records. To that end, RCW 13.50.260(3) allows a person to file a motion to vacate and seal "in any case." But in this case, the trial court concluded it had no authority to consider Mr. M.'s motion to vacate and seal, believing it was limited by the mandatory sealing requirements

under a different subsection. The Court of Appeals decision affirming conflicts with the plain language of the statute and is an issue of substantial public interest, requiring this Court's guidance. RAP 13.4(b).

#### **D. STATEMENT OF THE CASE**

In 1996, when Mr. M. was just 16 years old, he and four other youths were heavily intoxicated when they assaulted another teen. CP 18, 97. One of the other youths, who was the oldest in the group and 18 at the time, raped her. CP 18-19. Based on his participation, the juvenile court convicted Mr. M. of assault in the third degree, kidnapping in the second degree, and rape in the second degree. CP 2, 19. At sentencing, the court ordered him to register as a kidnapping offender. CP 19. Because Mr. M. was an accomplice rather than the principal actor in the rape, the court did not require him to register as a sex offender. CP 19.

In the decades since that horrible night, Mr. M. grew up and turned his life around. He overcame his struggles with

drugs and alcohol and has been sober and employed for years. CP 20-21, 27. He has spent many years in the community crime-free. CP 2. However, his juvenile adjudications continue to follow him: he has struggled to get a job, he is unable to get his own housing, and he is unable to be involved in his children's schooling or activities. CP 21.

In 2023, the court granted Mr. M.'s motion to relieve him of his duty to register as a kidnapping offender after he spent years in the community crime-free, far exceeding the 60-month statutory requirement, and based on his demonstrated rehabilitation. CP 11-12.

Then, Mr. M. filed a motion to vacate and seal his juvenile records under RCW 13.50.260(3). CP 1-87. Based on the evidence of his rehabilitation during the 27 years since these offenses occurred, and because he met all but one of the six requirements for mandatory sealing, and he argued the court should grant his motion. CP 2-8.

The trial court denied the motion, concluding it had no authority at all to consider a motion to vacate and seal where the requirements for mandatory sealing were not met, despite statutory language allowing the court to consider such a motion where sealing is not mandatory. CP 103-07. The Court of Appeals noted Mr. M.'s plain language argument was "reasonable." App. 5. Nevertheless, it affirmed, concluding it was bound by this Court's holding in *State v. Garza*, 200 Wn.2d 449, 518 P.3d 1029 (2022). App. 5-6.

## **E. ARGUMENT**

**RCW 13.50.260 authorizes the trial court to consider a motion to vacate and seal juvenile records "in any case." The Court of Appeals disregarded this plain language.**

Consistent with the statute's plain language, related statutes, legislative history, and relevant case law, the legislature authorized the trial court with discretion to consider any motion to vacate and seal juvenile records. This is separate



from the subsection *requiring* the court to grant a motion to seal in certain cases.

Despite all this, the Court of Appeals reluctantly concluded it was bound by this Court's holding in a case that addressed an entirely separate issue. Because this is an important issue of statutory construction with broad import, this Court should grant review.

1. *Under the statute's plain language, the trial court can decide any motion to vacate and seal. This authority is separate from the mandatory sealing requirements.*

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). This analysis begins with the text: "if the statute's meaning is plain on its face, then the court must give effect to that plain meaning." *Id.* To determine a statute's plain meaning, the court examines the text of the statute, related provisions, and the statutory scheme as a whole. *Id.* at 9-12.

“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) (citation omitted). The court also “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *Id.*

If a statute’s meaning is not plain on its face, this Court then turns to legislative history. *Campbell & Gwinn*, 146 Wn.2d at 12. This Court may also examine relevant case law. *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001). This Court reviews issues of statutory interpretation *de novo*. *Id.* at 807.

RCW 13.50.260 addresses sealing and vacating juvenile records. Subsection (3) states:

If a juvenile court record has not already been sealed pursuant to this section, in any case in which information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion

with the court to have the court vacate its order and findings, if any; resolve the status of any debts owing; and, subject to RCW 13.50.050(13), order the sealing of the official juvenile court record, the social file, and records of the court and of any other agency in the case, with the exception of identifying information under RCW 13.50.050(13).

The statute's plain text invites a person to file a motion to vacate, seal, and resolve debts "in any case" where they were charged by information or referred for diversion. This clearly vests the court with authority to decide the motion. As this Court has stated: "the plain language of the statute grants trial courts discretion to vacate and seal both adjudications and diversions." *Garza*, 200 Wn.2d at 451-52.

This plain meaning makes sense in the context of the statute as a whole,<sup>1</sup> which has a strong presumption for sealing juvenile records. The first four subsections of the statute address different scenarios. Subsections (1) and (2) do not require a party to do anything. When certain conditions are met,

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<sup>1</sup> The entire text of RCW 13.50.260 is attached. App. 7-11.

the court administratively or automatically seals juvenile records. RCW 13.50.260(1), (2). No motion to seal is needed.

Subsections (3) and (4) require a party to file a motion, but they address different situations. Subsection (3) is broad: if a juvenile record has not already been sealed, a person can file a motion to vacate, resolve debts, and seal “in any case.” RCW 13.50.260(3). Then, subsection (4) explains under what circumstances the court *must* grant a motion to seal and lists the specific mandatory sealing requirements. RCW 13.50.260(4).

Read as a whole, the plain language of subsections (3) and (4) makes clear that any motion to vacate, seal, and settle debts is generally subject to the court’s discretion, though the court *must* grant a motion to seal in certain instances. In other words, any motion that does not meet the specific requirements in subsection (4) to require mandatory sealing is subject to the court’s discretion under subsection (3).

The Court of Appeals has already addressed this exact issue in *State v. Ogle*, No. 50492-8-II, 3 Wn. App. 2d 1016

(Wash. Ct. App. Apr. 10, 2018) (unpublished).<sup>2</sup> Like in this case, Mr. Ogle filed a motion to seal even though he did not meet every mandatory sealing requirement of subsection (4). *Id.* at \*1. The Court of Appeals examined the statute’s plain language and concluded subsection (4) “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.” *Id.* at \*2. Accordingly, the plain text authorized the trial court with discretion to consider Mr. Ogle’s motion. *Id.*

The holding in *Ogle* is correct and comports with the statute’s plain language. A person can file a motion to vacate “in any case,” and the trial court has discretion to decide that motion. RCW 13.50.260(3). That a different subsection makes it mandatory to seal some records does not mean the trial court has no discretion outside those circumstances.

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<sup>2</sup> Cited pursuant to GR 14.1(a).

To conclude the trial court has no authority to decide a motion unless the circumstances of subsection (4) are met would render subsection (3) meaningless. The legislature would not invite a party to file a motion to seal “in any case” under (3) if sealing was only limited to cases that met the elements in (4). Such a reading would also add limiting language where there is none: nothing in the statute says the elements in (4) are the *only* circumstances in which a court can seal. *Cf. State v. Hawkins*, 200 Wn.2d 477, 491, 519 P.3d 182 (2022) (noting the plain language of the adult vacation statute expressly “disqualifies people with certain types of convictions from eligibility completely” (citing RCW 9.94A.640(2))). In fact, (3) makes no reference to (4) at all. And (4) does not say anything about the court’s authority to decide a motion to vacate or resolve debts.

Moreover, granting the court authority to seal and vacate “in any case” is consistent with related statutes as well as the statutory scheme. One of the purposes of the Juvenile Justice Act is to prioritize “the rehabilitation and reintegration of

juvenile offenders.” RCW 13.40.010(2)(f). To that end, the statutes heavily favor sealing juvenile records. And the legislature automatically removed nearly all juvenile offenses from an adult offender score. RCW 9.94A.525(1)(b).

In the adult context, courts have broad discretion to vacate and seal criminal records. RCW 9.94A.640; *see Hawkins*, 200 Wn.2d at 480. It does not make sense to conclude the legislature intended courts to have *less* authority to vacate and seal juvenile records than adult records. In fact, the legislature has “always” favored sealing juvenile records. *See State v. S.J.C.*, 183 Wn.2d 408, 417, 352 P.3d 749 (2015) (“The legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records.”). And courts have discretion to seal in all adult and juvenile cases, independent of statutory authority. GR 15(c); *see State v. Noel*, 101 Wn. App. 623, 627-28, 5 P.3d 747 (2000); *Ogle*, 3 Wn. App. 2d 1016, at \*2.

In sum, RCW 13.50.260(3) invites a party to file a motion to vacate, resolve debts, and seal records “in any case.” The statute’s plain language authorizes the court to decide these motions. The court’s ability to consider the motion does not hinge on whether the mandatory sealing requirements of a different subsection are met. This plain meaning is consistent with related statutes and the legislature’s explicit goals. As such, the court has discretion to decide the motion.

*2. The statute’s plain meaning is consistent with legislative history.*

RCW 13.50.260’s meaning is plain on its face, and this Court does not need to inquire further. *See Ogle*, 3 Wn. App. 2d 1016 at \*2. But any lingering ambiguity is easily resolved by legislative history.

The legislature enacted RCW 13.50.260 in 2014 and dramatically changed how courts handle juvenile records. In doing so, the legislature stated its “primary goal” was “the rehabilitation and reintegration of former juvenile offenders.”



Laws of 2014, ch. 175, § 1. It acknowledged juvenile criminal records are “substantial barriers to reintegration” and impact every important opportunity in a person’s life. *Id.* To serve its stated purpose, the legislature enacted procedures that heavily favor sealing and created an administrative sealing process. *Id.*

The 2014 legislation was in sharp contrast to the prior law that required *everyone* to file a motion and meet numerous requirements in order for a court to vacate and seal their records. The prior procedure was established in 1977, when juvenile court records became open to the public. Laws of 1977, 1st Ex. Sess., ch. 291, §§ 10, 68. Under the 1977 law, a person could file a motion to vacate and seal, and the court was required to grant the motion if certain conditions were met. *Id.* at § 12(2).

Then in 1979, the legislature allowed a person to file a motion to seal and vacate “[i]n any case” where an information was filed or referred for diversion. Laws of 1979, ch. 155, § 9(10). In a separate subsection, it delineated circumstances that

required the court to grant a motion to seal. *Id.* at (11). Since then, the legislature has consistently maintained a person's ability to file a motion to vacate and seal "in any case," even as it modified when the court must grant a motion to seal. *See* Laws of 1997, ch. 338, § 40(10)-(11); Laws of 2001, ch. 49, § 2(11)-(12); Laws of 2004, ch. 42, § 1(11)-(12); Laws of 2010, ch. 150, § 2(11)-(12); Laws of 2011, ch. 338, § 4(11)-(12).

The most distinctive aspect of the 2014 legislation was to create an automatic sealing procedure, meaning that in many cases a person will not have to file a motion at all to have their juvenile records sealed. Laws of 2014, ch. 175, §4(1)-(2). It also inverted the former standard governing sealing and eliminated the presumption against granting a motion to seal. *Compare* Laws of 2012, ch. 177, § 2(12) (the court "*shall not* grant" a motion to seal unless conditions are met), *with* Laws of 2014, ch. 174, § 4(4) (the court "*shall* grant" a motion to seal if conditions are met). But one important provision stayed the same: the legislature maintained a person's longstanding ability

to file a motion to vacate and seal juvenile records “in any case.” RCW 13.50.260(3).

Moreover, in enacting the 2014 amendment, the legislature recognized that a person’s juvenile record is a significant barrier to reintegration well into adulthood, resulting in people being “denied housing, employment, and education opportunities” for something they did as a child. Laws of 2014, ch. 175, § 1(1). These real and enduring consequences also perpetuate racial disparity. *S.J.C.*, 183 Wn.2d at 433-34.

This history demonstrates the legislature’s clear intent to expand the number of juvenile records that will be sealed, whether administratively or by motion, thereby providing greater opportunities for successful reintegration. It also supports the conclusion that the court’s authority to consider a motion to vacate and seal remains separate from the particular circumstances that require the court to grant a motion to seal.

This is also consistent with case law interpreting RCW 13.50.260. As discussed, the Court of Appeals has already

examined the statute's plain language and concluded the trial court has discretion to consider a motion, regardless of the mandatory sealing requirements. *Ogle*, 3 Wn. App. 2d 1016, at \*2. Though unpublished, this Court's holding in *Ogle* addresses the exact issue presented in this case and is factually identical.

3. *In Garza, this Court acknowledged the trial court's discretion to vacate and seal juvenile records but did not address the issue presented in this case.*

Contrary to the Court of Appeals's reluctant holding, this Court's decision in *Garza* does not require a different conclusion. The issue in *Garza* was whether RCW 13.50.260 allowed a person to file motion to vacate and seal adjudications as well as diversions. 200 Wn.2d at 451. This Court concluded it applied to both.

In so holding, this Court acknowledged the trial court's discretion to consider motions under subsection (3): "the plain language of the statute grants trial courts discretion to vacate and seal both adjudications and diversions." *Id.* at 451-52. It noted the trial court's authority under subsections (3) and (4)

are separate: “it would be inappropriate to instruct courts to simply apply the sealing guidelines in RCW 13.50.260(4) to motions to vacate and seal under subsection (3).” *Id.* at 460. It also noted “the sealing criteria in RCW 13.50.260(4) 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 subsection (3). *Id.* This is consistent with the statute’s plain language.

However, even though the issue was not before it, this Court stated a motion to vacate and seal under (3) “must still meet the sealing requirements enumerated in RCW 13.50.260(4)(a), (b), and (c).” *Id.* at 458. Not only does this conflict with the statute’s plain language and other portions of the opinion, this was dicta. The question in *Garza* was not whether the court had discretion under (3) when subsection (4) is not met. And Mr. Garza met the requirements for mandatory sealing, so the court’s authority outside those circumstances was not relevant in that case. *Id.* at 461. “An appellate court

opinion that does not discuss a legal theory does not control a future case in which counsel properly raises that legal theory.” *State v. Granath*, 200 Wn. App. 26, 35, 401 P.3d 405 (2017), *aff’d*, 190 Wn.2d 548, 415 P.3d 1179 (2018).

In short, while *Garza* addressed a different issue, it also acknowledged the trial court’s discretion to consider a motion to vacate and seal under RCW 13.50.260(3). Still, the Court of Appeals concluded it was bound by this single sentence in *Garza* and affirmed. But, as discussed, concluding the trial court has no discretion to consider a motion where the mandatory sealing requirements are not met would conflict with the plain language of the statute, render portions of it meaningless, and add language where the legislature did not. *See supra*, Section E.1. It would also be contrary to the statutory scheme, legislative history, and the legislature’s intent to balance “the dual purpose of holding juveniles accountable and fostering rehabilitation for reintegration into society.” *S.J.C.*, 183 Wn.2d at 421; *see supra*, Section E.1-2.

The plain language of RCW 13.50.260(3) vests the trial court with authority to consider a motion to vacate and seal “in any case,” even when the mandatory sealing requirements are not met. And to the extent there is any question, the legislature intended to resolve “ambiguities in favor of the person seeking to have his or her juvenile record sealed.” *State v. J.C.*, 192 Wn. App. 122, 132, 366 P.3d 455 (2016). This Court’s holding in *Garza* does not resolve the issue presented in this case.

*4. This Court should grant review of this important issue of statutory construction to ensure courts adhere to the legislature’s intent to seal juvenile records.*

Numerous people have worked hard to turn their lives around after making poor decisions as children. The legislature intended for them to move on with their lives, without the barriers of a juvenile record.

Mr. M. is one of those people. He has spent the majority of his life atoning for his actions as a child, and he has been crime-free, drug-free, and alcohol-free for many years. CP 20-21, 27. He has a job, a large and supportive family, and children

of his own. CP 27. He works hard to be “a good influence” on his children, nieces, and nephews. CP 27. RCW 13.50.260(3) entitles Mr. M. to ask the trial court to vacate and seal his juvenile records and enable him to continue on this positive, healthy path.

In addition, it is undisputed Mr. M. meets five out of six requirements for mandatory sealing. CP 2; RP 8; *see Garza*, 200 Wn.2d at 460 (noting courts can look to the mandatory sealing criteria of subsection (4) in exercising discretion under subsection (3)). The only thing preventing mandatory sealing in Mr. M.’s case is the adjudication for second-degree rape. *See* RCW 13.50.260(4)(a)(v). But Mr. M. was found guilty as an accomplice, not the principal actor, and he was never required to register as a sex offender. CP 19. These facts demonstrate his mitigated culpability and, in addition to his demonstrated rehabilitation, support granting the motion. *See e.g. J.C.*, 192 Wn. App. at 131 (requiring the court to “consider the specific



facts of the person's prior adjudication" to determine if they are entitled to mandatory sealing).

The opportunity to vacate and seal juvenile records would effectuate a new reality for hardworking, rehabilitated individuals such as Mr. M., which is what the legislature intended when it sought to eliminate the "unjustified" "stigma" and "negative consequences" of such a record. *S.J.C.*, 183 Wn.2d at 433. The trial court erred when it concluded it had no authority to consider Mr. M.'s motion to vacate and seal, and the Court of Appeals was wrong to ignore the statute's plain language and affirm. This Court should grant review to resolve this issue of statutory construction with broad implications. RAP 13.4(b).

## **F. CONCLUSION**

Based on the preceding, Mr. M. respectfully requests this Court grant review pursuant to RAP 13.4(b).

This brief is in 14-point Times New Roman, contains 3,594 words, and complies with RAP 18.17.

Respectfully submitted this 9th day of July 2025.

A handwritten signature in black ink, appearing to read "BTsai", is positioned above a horizontal line.

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

N.E.M.,

Appellant.

No. 86464-5-I

DIVISION ONE

UNPUBLISHED OPINION

COBURN, J. — N.E.M. appeals the trial court’s order denying his motion to vacate and seal his juvenile convictions. N.E.M. contends that the trial court erred when it determined that it did not have discretion to vacate and seal his juvenile records pursuant to RCW 13.50.260(4)(a). As instructed by the Washington Supreme Court’s decision in State v. Garza, 200 Wn.2d 449, 518 P.3d 1029 (2022), we affirm.

FACTS

In 1996 N.E.M. was convicted in juvenile court for assault in the third degree, kidnapping in the second degree, and rape in the second degree. After having successfully petitioned the court to relieve him of his duty to register as a kidnapping offender the previous year, in 2024 N.E.M. moved to vacate and seal his juvenile convictions under RCW 13.50.260(3). N.E.M. made his request even though his conviction of rape in the second degree prevented him from meeting the requirements for mandatory sealing pursuant to RCW 13.50.260(4)(a)(v). The trial court denied the

motion. The court ruled that because N.E.M. did not qualify for sealing under RCW 13.50.260(4)(a)(v), the court did not have discretion to vacate and seal his juvenile records. N.E.M. appeals.

## DISCUSSION

This appeal involves the relationship between two provisions of RCW 13.50.260, the statute governing the vacatur and sealing of juvenile offender's court records.

Subsection (3) states:

If a juvenile court record has not already been sealed pursuant to this section, in any case in which information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any; resolve the status of any debts owing; and, subject to RCW 13.50.050(13), order the sealing of the official juvenile court record, the social file, and records of the court and of any other agency in the case, with the exception of identifying information under RCW 13.50.050(13).

The relevant portion of subsection (4) states:

The court shall grant any motion to seal records for class A offenses made pursuant to subsection (3) of this section if:

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

(vi) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care

coverage.

RCW 13.50.260(4)(a) (emphasis added).

N.E.M. avers that meeting the conditions listed in RCW 13.50.260(4)(a) mandates sealing but does not otherwise limit a court's discretion to consider and grant a juvenile offender's motion to vacate and seal his juvenile records where the sealing conditions are not met. Because we are bound by express authority from the state supreme court, we are compelled to disagree.

We review questions of statutory interpretation de novo. State v. Haggard, 195 Wn.2d 544, 547, 461 P.3d 1159 (2020). The court must interpret statutes to "best fulfill[] the legislative purpose and intent." Id. at 547-48. Where the statute's meaning is plain on its face, the court must give effect to the plain meaning "as an expression of legislative intent." Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). However, when a statute is ambiguous, the court may discern legislative intent from the statutory construction, legislative history, and relevant case law. Jametsky v. Olsen, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). We are bound by our state Supreme Court's interpretation of a statute and conclusions of law. Yuchasz v. Dep't of Lab. & Indus., 183 Wn. App. 879, 888, 335 P.3d 998 (2014); State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 227 (1984).

The Juvenile Justice Act, chapter 13.40 RCW, has "the dual purpose of holding juveniles accountable and fostering rehabilitation for reintegration into society." State v. S.J.C., 183 Wn.2d 408, 421, 352 P.3d 749 (2015); RCW 13.40.010(2). The weighing of these competing interests led to the legislature's separate treatment of juvenile court records and conclusion that they deserve more confidentiality than other types of court

records. S.J.C., 183 Wn.2d at 421. “The legislature designed [a] mechanism for sealing juvenile court records specifically so that juvenile offenders can overcome prejudice and reintegrate into society.” State v. Cofield, 1 Wn. App. 2d 49, 53, 403 P.3d 943 (2017) (citing LAWS OF 1977, 1st Ex. Sess., ch. 291, § 12). Further contributing to this purpose is RCW 13.50.260(3)’s authorization for a juvenile court’s orders and findings to be vacated. Garza, 200 Wn.2d at 460.

In Garza, the Washington Supreme Court interpreted RCW 13.50.260(3) as part of its determination that juvenile adjudication judgments may be vacated and sealed under the plain language of the provision.<sup>1</sup> Id. at 451-52, 454-60. As part of its analysis, the court considered the State’s claim that RCW 13.50.260(3) “[could] not include juvenile adjudications because it would create the absurd result of making it easier for juveniles to vacate an adjudication than to seal one.” Id. at 457. The court observed that the state’s argument ignored the statutory language. Id. The court held that RCW 13.50.260(3) applies to motions to vacate and seal, not motions to only vacate juvenile court records. Id. at 457-58. Put differently, “the language of RCW 13.50.260(3) demonstrates that the legislature intended movants to file a motion to vacate and seal, not just a motion to vacate or a motion to seal.” Id. at 460 (some emphasis added).

The Garza court instructed that “before a trial court grants a motion to vacate and seal under RCW 13.50.260(3), it must confirm that the movant meets the criteria to seal.” Id. (emphasis added).<sup>2</sup> Thus, to prevail on a motion to vacate and seal under

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<sup>1</sup> RCW 13.50.260 was amended after Garza, but the relevant language of the statute has not been changed. Compare former RCW 13.50.260(3)-(4) (2020) with current RCW 13.50.260(3)-(4) (2023).

<sup>2</sup> The court clarified that though a juvenile offender is required to satisfy the sealing requirements in RCW 13.50.260(4) to be eligible for their records to be sealed and vacated, a

RCW 13.50.260(3), a juvenile offender “must still meet the sealing requirements enumerated in RCW 13.50.260(4)(a), (b), and (c).” Id. at 458.<sup>3</sup> Therefore, under Garza, the trial court in the instant case did not err by determining it did not have discretion to consider N.E.M.’s motion to vacate and seal his juvenile records because N.E.M. has a conviction for rape in the second degree, contrary to the requirement listed in RCW 13.50.260(4)(a)(v).

We note that N.E.M.’s plain language interpretation of RCW 13.50.260(4) is reasonable. That is, though the provision expressly identifies when a court must grant a motion to seal, the provision and the statute as a whole are otherwise silent regarding restricting the court’s authority. Under N.E.M.’s interpretation, other than when RCW 13.50.260(4) is met or when records are sealed administratively under RCW 13.50.260(1)-(2), the court can consider each individual’s circumstance and exercise its discretion as to whether sealing and/or vacatur is warranted. Nevertheless, we are bound to follow Supreme Court precedent. 1000 Virginia Ltd. Partnership v. Vertecs

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trial court may nonetheless exercise discretion to determine whether the extraordinary relief of vacatur should be granted. Garza, 200 Wn.2d at 460-61.

<sup>3</sup> Because the Garza court interpreted RCW 13.50.260(3) and .260(4) to address the state’s argument that .260(3) only applies to motions to vacate, 200 Wn.2d at 457-58, we disagree with N.E.M. that this language is dicta. Johnson v. Wash. State Liquor & Cannabis Bd., 197 Wn.2d 605, 618, 486 P.3d 125 (2021) (“Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute obiter dictum, and need not be followed.” (internal quotation marks omitted) (quoting In re Pers. Restraint of Domingo, 155 Wn.2d 356, 366, 119 P.3d 816 (2005))).



Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006); Gore, 101 Wn.2d at 487.<sup>4</sup>

We affirm.

Coleman, J.

WE CONCUR:

Seldman, J.

HSG

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<sup>4</sup> For this reason, we also decline N.E.M.'s invitation to follow our sister division's holding in State v. Ogle that pre-dates Garza. See No. 50492-8-II, slip op. at 3-4 (Wash. Ct. App. Apr. 10, 2018) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2050492-8-II%20Unpublished%20Opinion.pdf>; see also GR 14.1(a) ("Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court.").

**RCW 13.50.260 Sealing hearings—Sealing of records.** (1)(a) The court shall hold regular sealing hearings. During these regular sealing hearings, the court shall administratively seal an individual's juvenile record pursuant to the requirements of this subsection. Although the juvenile record shall be sealed, the social file may be available to any juvenile justice or care agency when an investigation or case involving the juvenile subject of the records is being prosecuted by the juvenile justice or care agency or when the juvenile justice or care agency is assigned the responsibility of supervising the juvenile. The juvenile respondent's presence is not required at any administrative sealing hearing.

(b) At the disposition hearing of a juvenile offender, the court shall schedule an administrative sealing hearing to take place during the first regularly scheduled sealing hearing after the latest of the following events that apply:

(i) The respondent's eighteenth birthday;

(ii) Anticipated end date of a respondent's probation, if ordered;

(iii) Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.

(c) The court shall not schedule an administrative sealing hearing at the disposition and no administrative sealing hearing shall occur if one of the offenses for which the court has entered a disposition is at the time of commission of the offense:

(i) A most serious offense, as defined in RCW 9.94A.030;

(ii) A sex offense under chapter 9A.44 RCW; or

(iii) A drug offense, as defined in RCW 9.94A.030.

(d) At the time of the scheduled administrative sealing hearing, the court shall enter a written order sealing the respondent's juvenile court record pursuant to this subsection if the court finds by a preponderance of the evidence that the respondent is no longer on supervision for the case being considered for sealing and has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage. In determining whether the respondent is on supervision or owes restitution, the court shall take judicial notice of court records, including records of the county clerk, and, if necessary, sworn testimony from a representative of the juvenile department.

(e) At the time of the administrative sealing hearing, if the court finds the respondent remains on supervision for the case being considered for sealing, then the court shall continue the administrative sealing hearing to a date within thirty days following the anticipated end date of the respondent's supervision. At the next administrative sealing hearing, the court shall again determine the respondent's eligibility for sealing his or her juvenile court record pursuant to (d) of this subsection, and, if necessary, continue the hearing again as provided in this subsection.

(f)(i) During the administrative sealing hearing, if the court finds the respondent is no longer on supervision for the case being considered for sealing, but the respondent has not paid the full amount of restitution owing to the individual victim named in the restitution order, excluding any public or private entity providing insurance coverage or health care coverage, the court shall deny

sealing the juvenile court record in a written order that: (A) Specifies the amount of restitution that remains unpaid to the original victim, excluding any public or private entity providing insurance coverage or health care coverage; and (B) provides direction to the respondent on how to pursue the sealing of records associated with this cause of action.

(ii) Within five business days of the entry of the written order denying the request to seal a juvenile court record, the juvenile court department staff shall notify the respondent of the denial by providing a copy of the order of denial to the respondent in person or in writing mailed to the respondent's last known address in the department of licensing database or the respondent's address provided to the court, whichever is more recent.

(iii) At any time following entry of the written order denying the request to seal a juvenile court record, the respondent may contact the juvenile court department, provide proof of payment of the remaining unpaid restitution to the original victim, excluding any public or private entity providing insurance coverage or health care coverage, and request an administrative sealing hearing. Upon verification of the satisfaction of the restitution payment, the juvenile court department staff shall circulate for signature an order sealing the file, and file the signed order with the clerk's office, who shall seal the record.

(iv) The administrative office of the courts must ensure that sealed juvenile records remain private in case of an appeal and are either not posted or redacted from any clerks papers that are posted online with the appellate record, as well as taking any other prudent steps necessary to avoid exposing sealed juvenile records to the public.

(2) Except for dismissal of a deferred disposition under RCW 13.40.127, the court shall enter a written order immediately sealing the official juvenile court record upon the acquittal after a fact finding or upon the dismissal of charges with prejudice, subject to the state's right, if any, to appeal the dismissal.

(3) If a juvenile court record has not already been sealed pursuant to this section, in any case in which information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any; resolve the status of any debts owing; and, subject to RCW 13.50.050(13), order the sealing of the official juvenile court record, the social file, and records of the court and of any other agency in the case, with the exception of identifying information under RCW 13.50.050(13).

(4)(a) The court shall grant any motion to seal records for class A offenses made pursuant to subsection (3) of this section if:

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

(vi) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any public or private entity providing insurance coverage or health care coverage.

(b) The court shall grant any motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions made under subsection (3) of this section if:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and

(v) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any insurance provider authorized under Title 48 RCW.

(c) Notwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution has been paid and the person is eighteen years of age or older at the time of the motion.

(5) The person making a motion pursuant to subsection (3) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose records are sought to be sealed.

(6)(a) If the court enters a written order sealing the juvenile court record pursuant to this section, it shall, subject to RCW 13.50.050(13), order sealed the official juvenile court record, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(b) In the event the subject of the juvenile records receives a full and unconditional pardon, the proceedings in the matter upon which the pardon has been granted shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events upon which the pardon was received. Any agency shall reply to any inquiry concerning the records pertaining to the events for which the subject received a pardon that records are

confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(c) Effective July 1, 2019, the department of licensing may release information related to records the court has ordered sealed only to the extent necessary to comply with federal law and regulation.

(7) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(13).

(8)(a) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying a sealing order; however, the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria under this section and the court record has not previously been resealed.

(b) Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order.

(c) The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(d) The Washington state patrol shall ensure that the Washington state identification system provides Washington state criminal justice agencies access to sealed juvenile records information.

(e) The Washington state patrol shall ensure that the Washington state identification system provides non-Washington criminal justice agencies access to sealed juvenile records only for the purposes of processing and purchasing firearms, concealed pistol licenses, or alien firearms licenses, or releasing of firearms from evidence.

(f) Non-Washington criminal justice agencies that access sealed juvenile records pursuant to this subsection shall not knowingly disseminate the accessed records or any information derived therefrom to any third party. Dissemination of such records or such information shall subject the disseminating agency to the jurisdiction of the courts of Washington and a civil penalty of not more than \$1,000 per violation.

(9) If the juvenile court record has been sealed pursuant to this section, the record of an employee is not admissible in an action for liability against the employer based on the former juvenile offender's conduct to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible, however, if a background check conducted or authorized by the employer contained the information in the sealed record.

(10) County clerks may interact or correspond with the respondent, his or her parents, restitution recipients, and any holders of potential assets or wages of the respondent for the purposes of collecting an outstanding legal financial obligation after juvenile court records have been sealed pursuant to this section.

(11) Persons and agencies that obtain sealed juvenile records information pursuant to this section may communicate about this information with the respondent, but may not disseminate or be compelled to release the information to any person or agency not specifically granted access to sealed juvenile records in this section.

(12) All criminal justice agencies must not disclose confidential information or sealed records accessed through the Washington state

identification system or other means, and no information can be given to third parties, other than criminal justice agencies, about the existence or nonexistence of confidential or sealed records concerning an individual. [2023 c 180 s 1; 2020 c 184 s 1; 2015 c 265 s 3; 2014 c 175 s 4.]

**Retroactive application—2020 c 184:** "This act applies to all juvenile record sealing hearings commenced on or after January 1, 2021, regardless of when the underlying hearing was scheduled or the underlying record was created. To this extent, this act applies retroactively, but in all other respects it applies prospectively." [2020 c 184 s 4.]

**Effective date—2020 c 184:** "Sections 1, 2, and 4 of this act take effect January 1, 2021." [2020 c 184 s 5.]

**Finding—Intent—2015 c 265:** See note following RCW 13.50.010.

**Findings—Intent—2014 c 175:** See note following RCW 13.50.010.

# WASHINGTON APPELLATE PROJECT

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