SUPREME COURT NO. _____

NO. 85790-8-I

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KAREN LYNNE FJERSTAD,

Petitioner.

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

The Honorable Anna G. Alexander, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Karen Fjerstad, respondent below and petitioner here, asks this Court to review her case.

B. COURT OF APPEALS DECISION

Fjerstad requests review of the Court of Appeals unpublished decision in State v. Fjerstad, COA No. 85790-8-I, filed August 4, 2025, and attached as an appendix to this petition.

The Court of Appeals simultaneously decided State v. Alta Hunter, No. 85792-4-I (unpublished), and State v. Karen Peterson, ___ P.3d ___, 2025 WL 2203028 (2025) (published), specifically citing Peterson as controlling in Ms. Fjerstad's case. Washington Appellate Project is seeking this Court's review in Hunter and Peterson.

C. ISSUES PRESENTED FOR REVIEW

1. Is review appropriate in this case (and its two companion cases) under RAP 13.4(b)(3) and (b)(4) because these cases involve significant questions of

constitutional law and issues of substantial public interest?

2. Under RAP 2.2(b), was the state authorized to appeal the court's CrR 7.8 order in this matter?

3. Is a motion under CrR 7.8 a proper procedural mechanism under State v. Blake[1] for a defendant to seek relief from the ongoing impacts of being charged under the state's unconstitutional strict liability drug possession statute?

4. Does refusing a refund of drug court participation fees, paid solely because petitioner was charged under the unconstitutional drug possession statute, violate due process under the Fourteenth Amendment?

5. Should the Court of Appeals have considered petitioner's alternative arguments for affirming the

[1] 197 Wn.2d 170, 481 P.3d 521 (2021).

superior court's CrR 7.8 order reimbursing petitioner's drug court fee?

D. STATEMENT OF THE CASE

1. Superior Court

Fjerstad was charged under the now defunct former RCW 69.50.4013 on March 28, 2007, for possessing heroin. CP 69-70. In May 2007, she moved for evaluation and participation in Snohomish County's CHART (Snohomish Count Drug Treatment Court) program and, on May 18, 2007, entered a drug court agreement with the Snohomish County Prosecutor. CP 62-68.

The agreement required Fjerstad to waive several constitutional trial rights, including the right to speedy trial, to a jury, to challenge the lawfulness of any search, seizure, or incriminating statement, and stipulation to the admissibility and use of police reports and materials submitted by the prosecutor in the event she was terminated from the program. CP 62-63. Fjerstad also

agreed to urinalysis testing as well as several other conditions, and the agreement subjected her to sanctions for noncompliance, including not only termination, but community service, restitution, work crew, incarceration, forcibly observing court proceedings, and increased supervision or treatment requirements. CP 64-65.

The agreement also required Fjerstad to pay $600: "I agree to pay a participant fee in an amount of $600.00 to be paid in full prior to my successful completion of the Drug Treatment Court. If I am terminated from the program, the portion of the fee already paid to the Drug Treatment Court is not refundable." CP 63.

The agreement specified that if she successfully graduated from CHART, "the prosecutor will move to dismiss the pending charges in this matter with prejudice." CP 65. This is what happened: Fjerstad graduated, the state moved to dismiss, and the court dismissed the

charge against her with prejudice on August 12, 2008. CP 60-61.

On February 25, 2021, the Washington Supreme Court decided State v. Blake. Blake struck down RCW 69.50.4013, the very statute under which Fjerstad was charged and prosecuted, as void because it criminalizes wholly innocent non-conduct that falls outside the government's police power to criminalize under bedrock U.S. Supreme Court Fourteenth Amendment due process cases. 197 Wn.2d at 183-86.

On July 11, 2023, Fjerstad moved for relief under CrR 7.8 pursuant to Blake, asserting she was owed a refund of the $600 fee she paid. CP 32-43. She asserted a due process claim based on the reasoning of Nelson v. Colorado, 581 U.S. 128, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017), despite acknowledging that it involved refunds of financial obligations upon overturning criminal convictions. CP 12-14, 36-42.

The state opposed her motion, distinguishing Nelson because it involved invalidated criminal convictions rather than invalidated criminal statutes, and arguing there was no due process violation in retaining Fjerstad's money. CP 23-27. The prosecution contended Fjerstad's motion should be transferred to the Court of Appeals as a personal restraint petition. CP 29-30.

The superior court agreed with Fjerstad, calling the state's analysis "fundamentally unfair" because "it's obvious that had these two defendants[2] pled guilty to these very same charges or were convicted by a jury of the same charges, or judge, or failed out of drug court and were convicted that way, having paid the fee, they would be entitled to receive a refund of that fee." RP 13.

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2 Defense counsel simultaneously argued motions for Ms. Fjerstad and for Alta Hunter. RP 3. As previously noted, the Court of Appeals decided Ms. Fjerstad's and Ms. Hunter's cases the same day, along with Karen Peterson's case.

The trial court also discussed State v. Olsen,[3] distinguishing it:

> the specific finding was that Olsen was not entitled to withdraw a plea on a separate type of charge, and I think that there is a difference in terms of whether it was indivisible or not. As I see it, *the only charges here* that the drug court dismissed *were the ones that are now void under Blake*, so for that reason, I'm going to grant the relief[.]

RP 13-14 (emphasis added).

The court's written order provides,

> 1. The defendant's motion is properly raised under CrR 7.8 and is hereby granted.
>
> 2. The defendant's motion shall not be transferred to the Court of Appeals as a Personal Restraint Petition because the defendant's motion is not time barred by RCW 10.73.090, and she has made a substantial showing that she is entitled to relief.
>
> 3. The charge of POSSESSION OF CONTROLLED SUBSTANCE contained in the Information filed on May 28, 2007 . . . is constitutionally defective pursuant to CrR

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[3] 26 Wn. App. 2d 722, 530 P.3d 249, review granted, 2 Wn.3d 1006, 539 P.3d 1 (2023), aff'd, 3 Wn.3d 689, 555 P.3d 868 (2024).

7.8(2) [sic] and State v. Blake and is hereby vacated;

4. Due Process requires that Ms. Fjerstad be refunded the $600 Drug Court fee previously paid pursuant to the vacated charge. The State of Washington shall determine the method of any refund herein with all deliberate speed.

4.[sic] The Clerk of the court shall immediately transmit a copy of this order vacating the charge to the Washington State Patrol Identification Section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the charge. The Washington State Patrol and any such local police agency shall immediately update their records to reflect the vacation of the charge, and shall transmit the order vacating the charge to the Federal Bureau of Investigation as required by RCW 9.96.060(7).

CP 7-8. The state appealed this order. CP 2-6.

2. Court of Appeals

On appeal, the State acknowledged that it had already refunded Ms. Fjerstad the $600 drug court fee, rendering that issue moot. BOA, at 32. However, the State asked the Court of Appeals to decide whether the

fee was improperly refunded as an issue of "continuing and substantial public interest." BOA, at 32-33.

Procedurally, the State challenged the Superior Court's authority under CrR 7.8(b) to order the State to refund the drug court fee and order the Washington State Patrol (WSP) to update its records, arguing that Fjerstad did not seek relief "from a final judgment, order, or proceeding." BOA, at 10-16. Instead, argued the State, Fjerstad's motion "should have been dismissed with leave for her to pursue a civil claim of unjust enrichment." BOA, at 16.

On the merits, the State argued that the Superior Court lacked statutory authority under RCW 9.96.060 to compel WSP to expunge non-conviction records because RCW 10.97.060 (not RCW 9.96.060) controls WSP's handling of these records. BOA, at 17-18. And the State argued that Fjerstad was not entitled to refund of the drug court fee under Nelson v. Colorado specifically – or due

process guarantees generally – because the fee was not a consequence of a wrongful conviction. BOA, at 19-32.

In response, Fjerstad argued the State's appeal should be dismissed because it fell outside the six categories of decisions the State could appeal by right under RAP 2.2(b); the Snohomish County Prosecutor's Office was not an aggrieved party in the matter; and the case was moot. BOR, at 9-21. In the event the State's appeal survived these challenges, Fjerstad argued CrR 7.8 was the proper mechanism for obtaining a drug court refund and the Superior Court properly found that refusing the refund would constitute a due process violation under the Fourteenth Amendment. BOR, at 23-29, 47-57.

Fjerstad also offered several alternative bases to affirm the $600 refund: the drug court fee was an excessive fine under the Eighth Amendment; Fjerstad was entitled to a refund under contract principles; disallowing the refund would constitute extortion; and

$450 of the fee was never statutorily authorized. BOR, at 58-77.

Division One held that its published decision in Peterson controls. Slip Op., at 5. Regarding procedural hurdles, consistent with Peterson, the Court held that the State has standing in this matter "because it has a present, substantial interest in the funding and operation of therapeutic courts." Id. The Court held the case was not moot "because we are capable of providing the relief Fjerstad sought in the trial court, vacatur of a dismissed criminal charge, and it involves a matter of continuing public interest with a likelihood of recurrence such that an exception to the mootness doctrine also applies." Id. at 6. And the Court found "the trial court order . . . appealable as it qualifies as a final decision under RAP 2.2(b)(1)." Id.

On the substantive issues – still citing Peterson – Division One held that vacatur of an already dismissed conviction was not a form of relief available to the

Superior Court under the relevant statutes. Id. at 6. Rather, "the proper means by which to pursue the removal of nonconviction data is set out in chapter 10.97 RCW." Id. at 7.

Division One also rejected refund of the $600 drug court fee based on notions of due process and Nelson v. Colorado:

> We concluded in *Peterson* that *Nelson* is not controlling here because Peterson was never convicted of a crime that was later reversed and, more critically, the drug court fee she paid was not an LFO imposed pursuant to criminal conviction. The same is true for Fjerstad.

Id. at 7 (Peterson citation omitted). While acknowledging Fjerstad's alternative arguments supporting the refund (i.e., Eighth Amendment, extortion, and multiple contract principles), the Court declined to reach them:

> Because we conclude only that CrR 7.8 is not the mechanism for a refund after successful completion of drug court on a single count of possession of a controlled substance, and do not decide the broader question of her

> entitlement to the return of the therapeutic court fee on the procedural posture presented here, we need not reach the merits of these additional arguments.

Slip Op., at 7-8.

Finally, the Court of Appeals left open other possible avenues of relief:

> This opinion, and our published opinion in *Peterson* on which we rely here, should not be misconstrued to suggest that *Blake* relief is not available to others who, like Fjerstad, chose a path through a therapeutic court solely on a simple possession charge, rather than exercising their right to trial or to accept a plea offer. At the risk of redundancy, we take this opportunity to again clearly state, by express adoption of our analysis of this point in *Hunter*, that the "policy reasons articulated by our Supreme Court in *Blake* as to its intended outcome, to restore those defendants to the same position prior to their prosecution under an unconstitutional statute, must apply equally to those who opted to pursue rigorous substance use disorder treatment, pay participation fees, and comport with conduct requirements and sanction protocols for long periods of time in order to earn dismissal of their drug possession charges." No. 85792-4-I, slip op. at 7 (Wash. Ct. App. Aug. 4, 2025). . . .

Slip Op., at 8. Without expressly deciding the matter, the Court noted that the State had suggested other proper avenues of relief, "such as civil claims or pursuit of a PRP upon demonstration of the nonconviction data or payment of participation fees as forms of restraint." Id. at 8-9.

Ms. Fjerstad now seeks this Court's review.

E. ARGUMENT

REVIEW IS APPROPRIATE UNDER RAP 13.4(b)(3) AND (b)(4) BECAUSE THESE CASES INVOLVE SIGNIFICANT CONSTITUTIONAL QUESTIONS AND ISSUES OF SUBSTANTIAL PUBLIC INTEREST.

Peterson, Hunter, and Fjerstad present significant constitutional questions of substantial public interest.

As the Court of Appeals acknowledged:

> By invalidating the simple possession statute, our Supreme Court effectively restored defendants accused and later convicted of passive nonconduct, by guilty plea or trial, to their original legal status. The same logic should apply to those who entered drug court or other therapeutic court options under the threat of prosecution for a crime under an unconstitutional statute, particularly

> those who met the stringent conditions of those programs and earned dismissals through compliance with treatment, fee, and conduct requirements. The court in *Blake* did not distinguish between individuals who were charged and convicted and those who sought resolution of their cases through programs like drug court because that question was not presented there. But, if the State never had the authority to charge, convict, or punish individuals under its simple possession statute, then it also lacked the authority to force Peterson's choice about participation in drug court under threat of prosecution.

Peterson, ___ P.3d ___; 2025 WL 2203028, at *4.

The Court of Appeals also recognized that the issues presented in these cases will reoccur. While discussing mootness, the Court said: "Many individuals who entered drug court solely on VUCSA charges brought under the prior unconstitutional statute may also seek relief under *Blake,* as illustrated by the [three companion cases here]. . . . This sufficiently establishes that the issue is likely to recur and involves a substantial public interest . . . ." Id. at *3 n.6.

The Court of Appeals recognizes that the State lacked the authority to force a choice about participating in drug court with threat of prosecutions. Peterson, at *4. And the Court of Appeals suggests there are correct methods for refunding drug court participation fees and vacating dismissed charges. Peterson, at *10. But its decisions in these three companion cases merely *suggest* the possibility of proper methods. Given the importance of this issue, the number of individuals affected, and the need for procedural clarity, review is appropriate under RAP 13.4(b)(3) and (b)(4).

In providing that clarity, this Court should reverse the Court of Appeals decision in Ms. Fjerstad's case. She maintains that the order appealed from does not qualify as an order the state is permitted to appeal under RAP 2.2(b). See BOR, at 9-12. She maintains that the Snohomish County Prosecutor's Office is not an aggrieved party in this matter. See BOR, at 13-18. She

maintains that CrR 7.8 was an appropriate mechanism to obtain relief under Blake. See BOR, at 23-29. She maintains that denying a drug court refund violates due process under the Fourteenth Amendment. See BOR, at 47-47. And she maintains that alternative grounds exist to sustain the court's order in her case. See BOR, at 58-77.

F. CONCLUSION

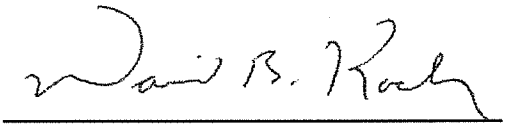
Ms. Fjerstad respectfully asks this Court to grant review in all three companion cases, acknowledge the rights of those defendants charged but never convicted under the unconstitutional possession statute, and clarify the proper procedural mechanisms for relief.

I certify that this petition contains 2,611 words excluding those portions exempt under RAP 18.17.

DATED this 3rd day of September, 2025.

Respectfully Submitted,

NIELSEN KOCH & GRANNIS, PLLC



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APPENDIX

FILED
8/4/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. KAREN LYNNE FJERSTAD, Respondent.	No. 85790-8-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, C.J. — The State of Washington appeals from an order granting Karen Fjerstad's motion for relief under CrR 7.8 and our Supreme Court's opinion in *State v. Blake.*[1] The State avers Fjerstad was not entitled to the return of fees paid under a preconviction therapeutic court agreement and, more broadly, that CrR 7.8 does not apply to dismissed charges. We rely on our opinion in a companion case, *State v. Peterson*,[2] where we concluded that the trial court lacked authority to retain and grant such a motion. As such, we reverse.

FACTS

On March 28, 2007, the State charged Karen Fjerstad with one count of possession of a controlled substance, heroin, under former RCW 69.50.4013(1) (2003), alleged to have occurred on January 31, 2007. On May 9, 2007, while the charge was pending, Fjerstad petitioned, with the agreement of the prosecuting

[1] 197 Wn.2d 170, 481 P.3d 521 (2021).
[2] No. 85791-6-I (Wash. Ct. App. Aug. 4, 2025), https://www.courts.wa.gov/opinions/pdf/857916.pdf.

attorney, for admission into the Snohomish County Superior Court CHART program,[3] which the parties and court also referred to as "drug court." Fjerstad's participation in the CHART program was contingent upon accepting an extensive set of stipulations and waivers of various constitutional rights, in addition to payment of a mandatory $600 participation fee. In exchange, the State agreed to dismiss her charge with prejudice upon her successful completion of the program. After Fjerstad paid the fee in full, successfully completed her substance use disorder treatment, and otherwise satisfied the terms of the CHART program, the State moved to dismiss the charge on August 12, 2008, and the court granted the motion.

In 2021, our Supreme Court held in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021) that former RCW 69.50.4013 (2017), the state's strict liability drug possession statute, was unconstitutional. Following that opinion, Fjerstad filed a CrR 7.8 motion to vacate her dismissed possession of a controlled substance charge and to recover the $600 drug court participation fee she had paid. She argued that, pursuant to *Blake*, the State lacked authority to charge her with possession of a controlled substance in 2007, which made the criminal charge void from inception. She contended that the plain language of *Blake* required vacatur of her dismissed drug possession charge.

Fjerstad asserted that she was entitled to relief under CrR 7.8(b), her motion was timely under RCW 10.73.100(6), and she presented a due process argument

[3] None of the documents transmitted in the record on appeal provide a definition or explanation for the apparent acronym, CHART.

based on *State v. Curtis*[4] and *Nelson v. Colorado*.[5] Her position on *Curtis* and *Nelson* was offered despite expressly acknowledging that the cases involved the refunds of legal financial obligations (LFOs) after criminal convictions were overturned, which was distinct from her case. Fjerstad nonetheless averred that she had an interest in the return of the fees she paid for participation in the CHART program because she pursued that option only because of the threat of criminal prosecution under an unconstitutional statute. Fjerstad contended that the State had no legitimate claim to retain the fees since her only criminal charge in this case was based on a void statute.

As with other, nearly identical motions filed in other cases of similarly situated defendants,[6] the State opposed Fjerstad's motion and argued that CrR 7.8 is not the proper avenue for vacating dismissed charges. It averred that Fjerstad had voluntarily agreed to participate in drug court and her agreement fell outside the scope of CrR 7.8. The State further argued that due process claims under *Nelson* only apply to fees that resulted from criminal convictions and, since Fjerstad was never convicted in this case, her due process claim had no merit. The State conceded that CrR 7.8 is the appropriate vehicle for seeking refunds of

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[4] No. 36803-3-III (Wash. Ct. App. Nov. 16, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/368033_unp.pdf. Under GR 14.1(c), we may cite to unpublished opinions as necessary for a well-reasoned opinion. *Curtis* is included here only because it was offered as authority by Fjerstad.

[5] 581 U.S. 128, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017).

[6] Fjerstad's attorney on this matter in the trial court also represented two other similarly situated Snohomish County drug court graduates and all of their motions were heard in the same week, two on the same docket. The State appealed from all three orders, which were nearly identical as they were apparently drafted by defense counsel, and presented similar arguments in each case. The companion cases are *State v. Peterson,* No. 85791-6-I and *State v. Hunter*, No. 85792-4-I.

Blake-related LFOs under this court's opinion in *Civil Survival Project v. State*,[7] but it insisted that the CHART program fees were not LFOs imposed pursuant to a criminal conviction and were therefore not subject to CrR 7.8.

The State averred that Fjerstad had already received the remedy of dismissal upon successful completion of the CHART program and, consequently, could not make a substantial showing that she was entitled to the remedy of "vacating" a charge. As such, the State asserted, her motion should be transferred to the Court of Appeals as a personal restraint petition (PRP). Alternately, it contended that Fjerstad's motion should be dismissed and that she could filed a civil claim for unjust enrichment.

The trial court conducted a hearing on August 8, 2023 and took argument from both parties before it granted Fjerstad's motion and entered the following findings and rulings:

> 1. The defendant's motion is properly raised under CrR 7.8 and is hereby granted.
> 2. The defendant's motion shall not be transferred to the Court of Appeals as a Personal Restraint Petition because the defendant's motion is not time barred by RCW 10.73.090, and she has made a substantial showing that she is entitled to relief.
> 3. The charge of POSSESSION OF A CONTROLLED SUBSTANCE contained in the Information filed on January 6, 2012, against the above-named defendant, is constitutionally defective pursuant to CrR 7.8(2) [sic] and *State v. Blake* and is hereby vacated;
> 4. Due process requires that Ms. Fjerstad be refunded the $600 Drug Court fee previously paid pursuant to the vacated charge. The State of Washington shall determine the method of any refund herein with all deliberate speed.
> 4. [sic] The Clerk of the court shall immediately transmit a copy of this order vacating the charge to the Washington State Patrol Identification Section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the charge. The Washington State Patrol and any such local police

[7] 24 Wn. App. 2d 564, 520 P.3d 1066 (2022), *review denied*, 2 Wn.3d 1011 (2023).

agency shall immediately update their records to reflect the vacation of the charge, and shall transmit the order vacating the charge to the Federal Bureau of Investigation as required by RCW 9.96.060(7).

The State timely appealed.

ANALYSIS

I. *Peterson* Controls

This is one of three companion cases that present the question of whether the trial court may retain and decide a post-*Blake* CrR 7.8 motion for relief where the sole charge was one of simple possession of a controlled substance that was dismissed upon successful completion of a drug court or other therapeutic diversion program.[8] Like the other similarly situated respondents on appeal, Fjerstad asserts that the State lacks standing, its appeal is moot, and the trial court's order is not appealable. As we held in *State v. Peterson*, the State has standing as to the Snohomish County drug court because it has a present, substantial interest in the funding and operation of therapeutic courts. No. 85791-6-I, slip op. at 9 n.10. However, the State has not demonstrated that it is authorized to bring this appeal on behalf of the Washington State Patrol. *Id.* Also, like the questions posed in *Peterson*, the State's appeal in Fjerstad's case is not moot both because we are capable of providing the relief Fjerstad sought in the trial court, vacatur of a dismissed criminal charge, and it involves a matter of continuing public

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[8] *See State v. Peterson,* No. 85791-6-I (Wash. Ct. App. Aug. 4, 2025), https://www.courts.wa.gov/opinions/pdf/857916.pdf; *State v. Hunter*, No. 85792-4-I (Wash. Ct. App. Aug. 4, 2025) (unpublished), https://www.courts.wa.gov/opinions/pdf/857924.pdf.

State v. Hunter is unpublished. Pursuant to GR 14.1(c), this court may discuss unpublished opinions where necessary for a well-reasoned opinion. *Hunter* is referenced here to establish the procedural fact of its decision alongside our published opinion in *Peterson* and the instant case.

interest with a likelihood of recurrence such that an exception to the mootness doctrine also applies. *Id.* at 5-6 n.6. Further, the trial court's order entered here, nearly identical to those under review in *Peterson* and *Hunter*, is appealable as it qualifies as a final decision under RAP 2.2(b)(1). *See id.* at 6-7.

Consistent with our holding in *Peterson*, the trial court erred here when it ordered vacatur of a dismissed criminal charge because that form of relief is simply not available for nonconviction data as defined by RCW 10.97.030(8).[9] *Id.* at 10-12. Signing orders that contain largely the same language as in both Peterson and Hunter's cases,[10] the trial court in Fjerstad's case directed that,

> 3. The charge of POSSESSION OF A CONTROLLED SUBSTANCE contained in the Information filed on May 28, 2007,[11] against the above-named defendant, is constitutionally defective pursuant to CrR 7.8(2) [sic] and *State v. Blake* and is hereby vacated;
>
> . . . .
>
> 4. The Clerk of the court shall immediately transmit a copy of this order vacating the charge to the Washington State Patrol Identification Section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the charge. The Washington State Patrol and any such local police agency shall immediately update their records to reflect the vacation of the charge, and shall transmit the order vacating the charge to the Federal Bureau of Investigation as required by RCW 9.96.060(7).

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[9] RCW 10.97.030(8) defines nonconviction data as follows:

> *all criminal history record information* relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

(Emphasis added.)

[10] The defense attorney who represented Fjerstad, Peterson, and Hunter in the trial court appears to have prepared the final orders signed in each case as they contain the same typographical errors.

[11] This date appears to be a typographical error as the charging instrument in Fjerstad's case was filed on March 28, 2007 and she was admitted to the CHART program on May 18, 2007. It stands to reason that she could not have entered the CHART program on this simple possession charge prior its filing and, more critically, the order of dismissal correctly notes the filing date as March 28, 2007.

This is a plain abuse of discretion as it is a misapplication of the vacatur statute to nonconviction data, which also implicates the ordering language in paragraph 4 as similarly improper. *See id.* at 18. This is true, in part, because the proper means by which to pursue the removal of nonconviction data is set out in chapter 10.97 RCW. *Id.*

The trial court's additional legal conclusion in the first paragraph 4[12] addresses Fjerstad's claim under *Nelson* and rules, in relevant part, that "[d]ue process requires that Ms. Fjerstad be refunded the $600 Drug Court fee previously paid pursuant to the vacated charge." We concluded in *Peterson* that *Nelson* is not controlling here because Peterson was never convicted of a crime that was later reversed and, more critically, the drug court fee she paid was not an LFO imposed pursuant to a criminal conviction. *Id.* at 12-13. The same is true for Fjerstad.

Fjerstad also argues in briefing that "refusing a drug court fee refund" would "effectuate a Fourteenth Amendment due process violation" and an "Eighth Amendment excessive fines violation" and "complete the crime of extortion in the second degree against Fjerstad." She further avers that she is entitled to restitution under "basic contract principles of mutual mistake, frustration of purpose, and violation of public policy." Because we conclude only that CrR 7.8 is not the mechanism for a refund after successful completion of drug court on a

[12] As with the orders on appeal in the companion cases, *Peterson* and *Hunter*, the order in Fjerstad's case contains two consecutive paragraphs identified as "4." The first paragraph 4 contains the ruling on Fjerstad's due process claim as to the refund of her $600 program fee and the second paragraph 4, set out in the block quote *supra*, directs the clerk and law enforcement to act on the order vacating the criminal charge.

single count of possession of a controlled substance, and do not decide the broader question of her entitlement to the return of her therapeutic court fee on the procedural posture presented here, we need not reach the merits of these additional arguments.

II. *Blake* Relief Not Foreclosed

Out of an abundance of caution, we take this opportunity to reiterate the limitations on our opinions in this case, *Peterson*, and *Hunter*. Each is constrained to the issues presented in briefing as shaped by the approach to the litigation pursued in the trial court. This opinion, and our published opinion in *Peterson* on which we rely here, should not be misconstrued to suggest that *Blake* relief is not available to others who, like Fjerstad, chose a path through a therapeutic court solely on a simple possession charge, rather than exercising their right to trial or to accept a plea offer. At the risk of redundancy, we take this opportunity to again clearly state, by express adoption of our analysis of this point in *Hunter*, that the "policy reasons articulated by our Supreme Court in *Blake* as to its intended outcome, to restore those defendants to the same position prior to their prosecution under an unconstitutional statute, must apply equally to those who opted to pursue rigorous substance use disorder treatment, pay participation fees, and comport with conduct requirements and sanction protocols for long periods of time in order to earn dismissal of their drug possession charges." No. 85792-4-I, slip op. at 7 (Wash. Ct. App. Aug. 4, 2025) (unpublished), https://www.courts.wa.gov/opinions/pdf/857924.pdf. The State argued in the trial court and on appeal that other avenues for relief may be a more appropriate path under our statutes, such as civil claims or pursuit of a PRP upon

demonstration of the nonconviction data or payment of participation fees as forms of restraint. As we may only resolve this case based on the procedural posture by which it comes to us, we hold that CrR 7.8 motions are not the proper mechanism for the relief Fjerstad sought.

Reversed.

WE CONCUR:

Feldman, J.

Bird, J.

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

September 03, 2025 - 1:45 PM

Transmittal Information

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Appellate Court Case Number:	85790-8
Appellate Court Case Title:	State of Washington, Appellant v. Karen L. Fjerstad, Respondent
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