NO. **1045531**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
PAUL CLARK,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

STATE'S RESPONSE TO PETITION FOR REVIEW

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COUNTERSTATEMENT OF THE CASE

Petitioner sufficiently set forth the factual and procedural history of this case for the purposes of this petition for review. The State must point out, however, that there is absolutely nothing in the record indicating that Mr. Clark had an authorization for medical marijuana at the time of sentencing nor that he intends to apply for one in the future, nor did he make that argument below or in this petition.

While he requests that this Court review the condition that he "not purchase, possess, or consume alcohol or marijuana", petition for review, p. 4, his argument focuses primarily, if not exclusively, on marijuana (or cannabis). In response to this argument generally, the Court of Appeals correctly held:

> RCW 9.94A.703(2)(c) provides that, "Unless waived by the court, as part of any term of community custody, the court shall order an offender to . . . [r]efrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions." Cannabis is a

> controlled substance, and an authorization to use medical cannabis is *not* a prescription. RCW 69.50.204(c)(17); RCW 69.51A.010(1)(b). And, "[a]s part of any term of community custody, the court may order an offender to . . . [r]efrain from possessing or consuming alcohol." RCW 9.94A.703 (3)(e). Thus, a trial court *must* prohibit any offender from possessing or consuming cannabis and other controlled substances without a prescription and *may* prohibit the offender form possessing or consuming alcohol. The fact that these conditions are not crime related is irrelevant because they are authorized by statute. *State v. Greatreaks,* 34 Wn. App. 2d 173, 186, 566 P.3d 886 (2025), *petition for review filed,* No. 104015-1.

State v. Clark, No. 57744-5-II, at 10-11 (emphasis in the original).

ACCEPTANCE OR REVIEW

A petition for review will be accepted by the Supreme Court only if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, is in conflict with a published decision of the Court of Appeals, involves a significant question of law under the state or federal or constitution, or if an issue of substantial public interest that

should be decided by the Supreme Court is involved. RAP 13.4 (b)(1), (2), (3) & (4).

Mr. Clark argues that this petition presents an issue of substantial public interest under RAP 13.4(b)(4). To the contrary, this issue has long been settled, as will be demonstrated herein.

ARGUMENT

1. The Medical Cannabis Act's prohibition on the possession and consumption of cannabis by those on supervision is valid and is consistent with the Sentencing Reform Act.

The Medical Cannabis Act (the Act) expressly excludes individuals who are under supervision for a criminal conviction:

> (1)(a) The arrest and prosecution protections established in RCW 69.51A.040 may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

> (b) The affirmative defense established in RCW 69.51A.045 may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or nails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.
>
> (2) RCW 69.51A.040 does not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

RCW 69.51A.055

The Act did not alter the legislature's requirements on conditions sentencing courts must order unless waived. The legislature has not authorized the modification Petitioner suggests to the waivable conditions imposed.

A trial court cannot "impose a community custody condition unless authorized by the legislature." *State v. Warnock*, 174 Wn.App. 608, 611, 299 P.3d 1173 (2013). RCW 9.94A.703(2)(c) *requires,* unless waived, a trial court to order

an offender to "[r]efrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions." Cannabis is a schedule I controlled substance. RCW 69.50.204 (c)(17). Moreover, a medical provider's "authorization" is not a prescription. RCW 69.51A.010(1)(b).

Division II of the Court of Appeals addressed a similar challenge in *State v. Houck,* 9 Wn. App. 2d 636, 650, 446 P.3d 646 (2019), *review denied,* 194 Wn.2d 1024 (2020). In *Houck,* the court held that the Act did not supersede the community custody conditions that trial courts shall order. The court reasoned that "the Medical Use of Cannabis Act did not implicitly or explicitly repeal the statutory classification of [cannabis] as a schedule I controlled substance." *Houck* at 646-47[1]; *see* RCW 69.50.204(c)(17). The court additionally noted that doctors are prohibited from issuing prescriptions for

[1]In 2022 the legislature replaced the term "marijuana" throughout the Revised Code of Washington with the term "cannabis." *See* Laws of 2022, ch. 16. *Houck* predates the change and uses the term "marijuana."

medical cannabis and are merely allowed to issue an authorization for its use. *Id.* at 647. Accordingly, the court rejected Houck's challenge that the sentencing court exceeded its statutory authority in prohibiting him from possessing or consuming controlled substances without an exception for medical cannabis authorizations. *Id.* at 650.

Division I also recently rejected a similar claim, relying on the reasoning in *Houck,* in *State v. Boese,* No. 86683-4-I, WL 2207410 at *6 (Aug 4, 2025).[2] In addition to agreeing with *Houck's* holding that the Medical Cannabis Act did not supersede community custody conditions that trial courts "shall order" pursuant to RCW 9.94A.703(2), the court in *Boese* noted that the condition is "unambiguously consistent with the community custody and medical cannabis statutes." *Id.* Thus, the court held that the trial court did not err in imposing the condition. *Id.*

[2] Unpublished. Cited pursuant to GR 14.1(a) to be accorded such persuasive value as this Court deems appropriate.

The sentencing court has authority to waive conditions set forth in RCW 9.94A.703(2), but it does not have authority to impose those conditions and carve out an exception for cannabis authorizations until and unless the legislature amends the statute. The trail court did not err in imposing conditions consistent with RCW 9.94A.703(2)(c).

2. Petitioner's argument requires further factual development and thus is not ripe for review, as there is nothing in the record indicating that Mr. Clark had an authorization for medical marijuana at the time of sentencing nor that he intends to apply for one in the future.

A pre-enforcement challenge to a community custody condition is ripe for review if the issues raised are primarily legal, do not require further factual development, and the challenged action is final. *State v. Cates,* 183 Wn.2d 531, 534, 354 P.3d 832 (2015). Further factual development is needed when the challenger's argument is based on the potential for "[s]ome future misapplication of the community custody

condition," which depends "on the particular circumstances of the attempted enforcement." *Id.* at 535.

In addition, courts "must consider the hardship" the appellant will face if review is declined. *State v. Sanchez Valencia,* 169 Wn.2d 782, 789, 239 P.3d 1059 (2010). For example, conditions that place immediate restrictions on the offender's conduct without the necessity of State action have been considered ripe for review. *See id.*

The issue Clark presents is primarily legal but also requires further factual development. Clark does not show that he has a medical authorization for cannabis or that he is likely to obtain one. His argument is based on the future possibility of qualifying for one. And, as previously demonstrated, his argument ignores RCW 69.51A.055 which unequivocally states that the medical cannabis chapter does not apply to persons under supervision for a criminal offense.

Further, the risk of hardship to Clark is insufficient to justify this Court granting review. According to this Court in *State v. Nelson, 4* Wn.3d 482, 565 P.3d 906 (2025), the risk of hardship is greatest when the challenged conditions will "immediately restrict [] petitioners' conduct upon their release from prison." *Nelson* at 496 (citing *Sanchez Valencia,* 169 Wn.2d at 791). As noted, nothing in the record indicates that Clark had a cannabis authorization prior to his sentencing or that he may receive one in the future.

CONCLUSION

The intent of the legislature is clear. Despite Petitioner's argument that "[t]he legislature could not have intended the senseless result embraced by the Court of Appeals," petition for review, page 23, the Medical Cannabis Act expressly excludes those on supervision for a criminal offense. This prohibition in the act is consistent with the Sentencing Reform Act. *See Houck* and *Boese, supra.* Petitioner does not even cite or

discuss *Houck* and *Boese.* This Court denied review in *Houck.* Thus, there is a published opinion addressing this issue; this Court need not weigh in.

It is the role of the legislature, not this Court, to amend the waivable conditions of RCW 9.94A.703(2) and RCW 69.51A.055 if it wishes to allow all probationers to benefit from medical cannabis authorizations. It has not done so. Instead, the legislature continues to restrict the use of medical cannabis by a person under supervision. *See* RCW 69.51A.055.

Further, there is nothing in the record indicating that Mr. Clark either had an authorization for cannabis or that he intends to apply for one in the future.

Petitioner is not entitled to review under RAP 13.4(b)(4); this issue was settled almost six years ago by *Houck*. This Court denied review of that case.

The decision below was correct. For all the reasons contained herein this petition should be denied.

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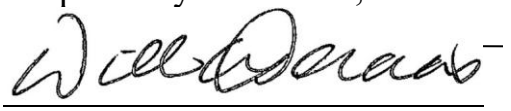
DATED this 6th day of October, 2025.

Respectfully Submitted,



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