Supreme Court No. _____



Court of Appeals No. 87107-2

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,
Respondent,

v.

MICHAEL YEH,
Petitioner.

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# PETITION FOR REVIEW

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## I. INTRODUCTION

This Court has repeatedly issued opinions reinforcing the constitutional principle that denying pretrial credit for time served to criminal defendants based on their inability to pay for bail offends due process and equal protection. The Court of Appeals violated that maxim when it held that Michael Yeh should be denied credit for time he spent in the King County jail while he was working with counsel to resolve pending charges with an active bench warrant in Snohomish County.

This Court should grant review because the proper calculation of credit for time served is a matter of substantial public interest. This case does not merely involve the liberty interests of Mr. Yeh, but other defendants who receive concurrent sentences for cases that originate in different jurisdictions.

Review is also warranted because the decision below conflicts with this Court's precedent. By analyzing Mr. Yeh's case as a matter of statutory interpretation and taking an

unnecessarily narrow view of his constitutional entitlement to pretrial credit, the Court of Appeals misinterpreted this Court's opinions.

This Court has a long history of intervening when lower courts misinterpret the constitutional mandate to pretrial credit for time served. *See State v. Enriquez-Martinez*, 198 Wn.2d 98, 492 P.3d 162 (2021) (unanimously reversing lower court decision denying pretrial credit for time served), *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015) (same), *State v. Speaks*, 119 Wn.2d 204, 829 P.2d 1096 (1992) (same), *Reanier v. Smith*, 83 Wn.2d 342, 517 P.2d 949 (1974) (same). This Court should accept review and reinforce the guarantee that poor defendants cannot serve longer sentences than rich defendants due to their inability to pay for pretrial release.

## II. IDENTITY OF PETITIONER

The defendant Michael Yeh seeks review of the decision issued below.

## III. DECISION BELOW

The Court of Appeals' decision in *State of Washington v. Michael Yeh*, No. 87107-2, is attached as Appendix A.

## IV. ISSUE PRESENTED FOR REVIEW

When a trial court orders concurrent sentences for multiple pending charges in different counties, do the due process and equal protection clauses of the United States constitution require the award of pretrial credit for time served for the time that an individual spends in pretrial confinement in one county while an active but "unserved" bench warrant is outstanding in another county?

## V. STATEMENT OF THE CASE

### A. Trial Court Proceedings

The facts relevant to this petition are straightforward and undisputed. On June 30, 2023, the Snohomish County Prosecuting Attorney's Office charged Mr. Yeh with Robbery in the First Degree and Felony Hit and Run based on an incident that occurred on June 6, 2021. CP 85-86. At the time of

filing, the prosecutor informed the court that Mr. Yeh was "currently incarcerated in the King County jail awaiting trial on a variety of identity theft related charges." CP 81. The Snohomish County Superior Court issued a warrant for his arrest and set bail at $500,000. CP 77. The warrant accurately listed Mr. Yeh's address as the "King County Correctional Facility." CP 75-76.

Mr. Yeh learned of the Snohomish County charge and retained counsel to represent him. His attorney filed a notice of appearance in Snohomish County on August 25, 2023. CP 70-74. Over the course of several months, Mr. Yeh both litigated a motion to dismiss his Snohomish County case and engaged in plea negotiations with an eye towards obtaining a resolution of his charges in both King and Snohomish Counties. Although the court and the prosecuting attorney knew where Mr. Yeh was incarcerated throughout this time, the Snohomish County warrant was never formally "served" on him.

Mr. Yeh negotiated a global disposition of his charges. He pleaded guilty to several offenses in King County Superior Court and was sentenced on May 17, 2024. He was transported to Department of Corrections custody shortly thereafter. *See* VRP 24. On June 6, 2024, the Snohomish County prosecutor filed a motion to transport Mr. Yeh back to Snohomish County. CP 65-66. On July 2, 2024, he appeared in Snohomish County. The warrant was quashed and bail was set at $500,000. CP 63-64. Mr. Yeh pleaded guilty to the amended charge of attempted robbery in the first degree on July 15, 2024. CP 61-62.

Mr. Yeh appeared for sentencing on August 12, 2024, before Judge Jennifer Langbehn. CP 36-37. Mr. Yeh filed a sentencing memorandum outlining the difficulties he had after being abandoned by his birth parents at a young age, his serious untreated mental health issues that led to difficulty in school and psychiatric hospitalizations, and the substance abuse issues that emerged as he continually tried to self-medicate his mental health challenges with drugs. *See* CP 44-50. The parties jointly

urged Judge Langbehn to impose a sentence of 108 months' incarceration, to run concurrently with his King County sentence. VRP 5-6. Judge Langbehn followed the agreed terms of the sentence. *See* CP 2-17; VRP 22-23.

The parties disagreed, however, regarding whether the court should award pretrial credit from the filing of Snohomish County charges on June 30, 2023, until Mr. Yeh was sentenced in King County on May 17, 2024. *See* VRP 5, 24-26. After hearing argument, the court expressed consternation with the guidance provided by prior appellate decisions on the award of pretrial credit for defendants resolving cases in multiple counties. *See* VRP 10 (noting that the "*Lewis* and *Rainier* [sic]" opinions "gave us zero information about whether they were simply held on one case or not"); *see also* VRP 21 (articulating "questions" for "the *Enriquez-Martinez* Court" about its decision).

The court ultimately declined to award Mr. Yeh credit for the time he was held in the King County Jail pretrial. She

reasoned that she could not do so in the absence of "case law that supports the giving of credit for time when an outstanding warrant was issued but not served." VRP 25.

The sentencing court, however, noted that making pretrial credit contingent on the State's decision to serve a warrant could lead to arbitrary sentencing disparities, as "the issue of whether or not a warrant is served, which would allow a defendant to either post bail or to remain in custody and receive credit, is one that may largely be beyond a particular defendant's ability to do." VRP 25. During a discussion regarding the record for a potential appeal, the court expressed her "hop[e]" that Mr. Yeh would "seek clarification on this issue." VRP 26.

**B. Appellate Proceedings**

Accepting the trial court's invitation, Mr. Yeh filed a timely notice of appeal. CP 1. In his briefing before the Court of Appeals, Mr. Yeh argued that he was constitutionally entitled to pretrial credit, emphasizing this Court's decisions in *Reanier*,

*Speaks*, *Lewis*, and *Enriquez-Martinez*. COA Opening Br. at 10-16. Mr. Yeh noted that because he was unable to post bail, he would end up serving a sentence that is over ten months longer than a similarly situated defendant who could pay for pretrial release. *Id.* at 17.

Mr. Yeh informed the Court of Appeals that the statute purporting to award pretrial credit for time served, RCW 9.94A.505(6), was "superfluous" to his constitutional claim. *Id.* at 15-16 n.4. The State asserted that he was not entitled to credit for time served because the Snohomish County bench warrant had never been "served." COA Resp. Br. at 11. The State did not reference RCW 9.94A.505(6) in its brief.

The Court of Appeals issued an unpublished decision on September 8, 2025. App. A. Although the only question presented was whether Mr. Yeh was constitutionally entitled to pretrial credit, the Court began its analysis by asserting that "RCW 9.94A.505(6) governs credit for confinement time served before sentencing." *Id.* at 1. Viewing the case as one "of

statutory construction," the Court of Appeals purported to apply "the unambiguous language of RCW 9.94A.505(6)" to Mr. Yeh's circumstances. *Id.* at 2.

The court below noted that RCW 9.94A.505(6) provides that a sentencing court can award pretrial credit to a defendant who is confined "solely in regard to the offense for which the offender is being sentenced." *Id.* Thus, "the trial court could not properly grant Yeh's request for credit for confinement time served in the King County jail because RCW 9.94A.505(6) limits credit for confinement time served before sentencing to confinement in regard to the offense for which the offender is being sentenced." *Id.* at 3 (quotation marks removed)

The Court of Appeals rejected Mr. Yeh's argument that this Court's precedent mandated the award of pretrial credit. The Court of Appeals claimed it was a "[c]ritical" fact that in *State v. Enriquez-Martinez*, "the Washington warrant was served." *Id.* at 5. In Mr. Yeh's case, however, the $500,000

bench warrant was never served, meaning that he was not situated similarly to that defendant.

Finally, in a single sentence, the Court of Appeals expressed its view that Mr. Yeh was not actually serving a longer sentence than a defendant who could post bail. Specifically, the Court wrote:

> Had Yeh been able to make bail on the King County charges, he could have been released from the King County jail and either quashed the Snohomish County warrant, in which case he would not be confined on the Snohomish County charges prior to sentencing, or been confined on the Snohomish County charges prior to sentencing, in which case he would have received credit for confinement time served on those charges in accordance with *Enriquez-Martinez*.

App. A at 5. As such, the Court of Appeals held that there was no error in denying him the award of credit for time served and affirmed the trial court's decision. *Id.* at 5-6.

## VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The bottom line in this case is simple: if Mr. Yeh had been able to pay for release on all his pending charges, he

would serve a total term of imprisonment that is nearly a full year less than the sentence he is currently serving. Yet because he could not pay for pretrial release, he will spend that extra year incarcerated. This Court's precedents do not countenance such a result.

Review is warranted because this case is a matter of substantial public interest. RAP 13.4(b)(4). Given the liberty interests at stake, this Court has consistently reviewed Court of Appeals decisions related to the proper award of pretrial credit for time served. Granting review in this case would affect not only Mr. Yeh, but any defendant who is convicted of multiple offenses in different counties and ordered to serve concurrent sentences.

This Court should also grant review because the decision of the Court of Appeals conflicts with this Court's precedent. RAP 13.4(b)(1). This Court has repeatedly held that indigent individuals should not spend more time in prison than similarly-sentenced wealthy people due to their inability to post bail. In

ruling against Mr. Yeh, the Court of Appeals gave cursory treatment to this principle, incorrectly treating the case as one of statutory interpretation and ignoring the fact that he will serve nearly one extra year incarcerated due to his inability to post bail. This Court should grant review to reinforce the mandate that defendants are constitutionally entitled to credit for all time served in pretrial confinement on a criminal charge.

### A. This Case Presents an Issue of Substantial Public Interest

The question of whether a defendant is entitled to pretrial credit for time served implicates fundamental rights. Ensuring that each of the thousands of people sentenced to prison each year receives all the pretrial credit to which they are constitutionally entitled is a matter of substantial public interest. What is more, eliminating unwarranted racial disparities in the criminal legal system is also a matter of public concern. Given that pretrial release in our state is predicated on ability to pay, and given that systemic racism has resulted in BIPOC families

accumulating less wealth than white families, issuing an opinion that requires defendants who cannot post bail to serve longer sentences perpetuates unacceptable disparities.

1. *This case presents a question that affects the fundamental liberty interests of defendants throughout our state.*

The United States Constitution guards against the arbitrary deprivation of liberty. U.S. Const. Amend. V, XIV (No person shall be deprived "of life, liberty, or property, without due process of law," nor be denied "the equal protection of the laws."). In 1974, this Court ruled that due process and equal protection require that all pretrial detainees, whether incarcerated in a county jail or the state hospital, had a constitutional right to receive credit for the time they spent confined pretrial. *See Reanier*, 83 Wn.2d at 349. This Court has not hesitated to accept review of cases involving defendants' constitutional right to pretrial credit, including:

- The entitlement to credit for the time spent in pretrial detention in another state, *Enriquez-Martinez*, 198 Wn.2d 98[1];
- The availability of pretrial credit for time served for a defendant in custody for multiple pending charges, *Lewis*, 184 Wn.2d 201;
- The award of credit for time spent on a pretrial community supervision program, *State v. Medina*, 180 Wn.2d 282, 324 P.3d 682 (2014);
- The failure of a county jail to provide "good-time" credits, *In re Talley*, 172 Wn.2d 642, 260 P.3d 868 (2011);
- The award of credit for home confinement, *Harris v. Charles*, 171 Wn.2d 455, 256 P.3d 328 (2011), *State v.*

[1] This Court accepted review in *Enriquez-Martinez* despite the fact that his case presented an issue of first impression in the Court of Appeals and was moot prior to oral argument. 198 Wn.2d 103 n.1.

*Swiger*, 159 Wn.2d 224, 149 P.3d 372 (2006), *Speaks*, 119 Wn.2d 204;

- The interplay between pretrial earned early release credits and statutory sentence enhancements, *In re King*, 146 Wn.2d 658, 49 P.3d 854 (2002).

This case, like each of those cited above, presents an issue of substantial public interest that could affect many criminal defendants in our state. Washington judges imposed 6,403 prison sentences last year. Washington Caseload Forecasting Council, "Statistical Summary of Adult Felony Sentencing, Fiscal Year 2024."[2] Just 28 sentences were for "life," *id.*, meaning that accurately calculating pretrial credit will be at issue for 6,375 sentences.

Ensuring that each defendant serves the correct amount of time in custody—even if he or she spent time incarcerated

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[2] Available at https://cfc.wa.gov/sites/default/files/Publications/Adult_Stat_Sum_FY2024.pdf

pretrial in multiple counties—warrants this Court's attention. Indeed, the sentencing judge expressed consternation at the lack of clarity in this area of the law and specifically urged Mr. Yeh to seek appellate review of her decision. *See* VRP 10, 21. This Court should grant review and specify that defendants facing sentencing in multiple counties are entitled to receive pretrial credit for all the time they spend confined.

2. *Any decision that perpetuates sentencing disparities based on wealth will have disproportionate impacts on communities of color*

This Court has written that "[o]ur institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed." Washington Supreme Court, "Letter to the Judiciary and Legal Community," June 4, 2020. Not only are BIPOC individuals overrepresented in the criminal legal system, they receive worse pretrial release outcomes: "[B]lack people are subject to pretrial detention more frequently, and have bail set at higher amounts, than white people who have

similar criminal histories and are facing similar charges." Hinton, Elizabeth et al., "An Unjust Burden," *Vera Evidence Brief* (May 2018), at 8.[3]

Further, due to the legacy of slavery, Jim Crow, and racist housing and lending policies perpetrated by governments, courts, and businesses alike, BIPOC families have been far less likely to accumulate wealth than white families in the United States. *See* "What Is Behind the Persistence of the Racial Wealth Gap?", Dionissi Aliprantis and Daniel Carroll, *The Federal Reserve Bank of Cleveland* (Feb. 28 2019).[4] The median white family in the United States has a net worth ten times greater than the median Black family. *Id.* (noting a wealth gap of $163,000 for the median white family compared to $16,000 for the median Black family). Paying for pretrial

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[3] Available at https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf

[4] Available at https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2019-economic-commentaries/ec-201903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx#D1

release may be a financial inconvenience for a white family, but impossible for a Black family.

This Court should not let stand any decision that exacerbates racial disparities in the criminal legal system by predicating sentence length on the ability to pay for pretrial release. The Court of Appeals' decision endorses a system wherein individuals who can pay for pretrial release serve shorter sentences than those who cannot. It is a matter of substantial public interest for this Court to eliminate such disparities.

### B. The Court of Appeals' Decision Conflicts with this Court's Precedent

This Court should also grant review because the decision below "is in conflict with a decision of the Supreme Court" in two distinct ways. RAP 13.4(b)(1). First, the Court of Appeals erroneously treated this case as a matter of statutory interpretation. Second, the decision below conflicts with this Court's precedents holding that a defendant serving concurrent

sentences for multiple offenses must not spend longer in prison due to his inability to post bail. The Court of Appeals' analysis of the primary issue raised by Mr. Yeh—that he is serving a longer sentence than a wealthy defendant who could post bail—is simply wrong. This Court should grant review to ensure that the due process and equal protection guarantees it has previously articulated are enforced by lower courts.

1. *The Court of Appeals' decision to treat this matter as a case of statutory interpretation conflicts with this Court's precedent*

The court below incorrectly treated Mr. Yeh's appeal as a matter of statutory interpretation. The panel wrote that "RCW 9.94A.505(6) governs credit for confinement time served before sentencing." App. A at 1. Analyzing pretrial credit for time served as a matter of statutory interpretation, however, conflicts with this Court's well-established precedent that entitlement to such credit is a matter of constitutional law.

The statute RCW 9.94A.505(6) states that a "sentencing court shall give the offender credit for all confinement time

served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced." The Court of Appeals viewed this statute as dispositive to Mr. Yeh's appeal. Writing that it was "[a]pplying the unambiguous language of RCW 9.94A.505(6)," the Court found that "the trial court could not properly grant Yeh's request for credit for confinement time served in the King County jail because RCW 9.94A.505(6) limits credit for confinement time served before sentencing." App. A at 2-3.

The Court of Appeals' analysis conflicts with this Court's precedent because the question of whether a defendant is entitled to pretrial credit for time served is a matter of constitutional right, not statutory grace. *Reanier*, 83 Wn.2d at 346, *Enriquez-Martinez*, 198 Wn.2d at 103. Thus, RCW 9.94A.505(6), which purports to govern the award of pretrial credit for time served, is either superfluous or unconstitutional to the extent it conflicts with due process and

equal protection requirements.[5] Indeed, as Division III recently wrote, the statute "seemingly prohibits credit for presentence confinement served on more than one offense," which of course "makes no sense . . ." *In re Wittman*, 2023 WL 4010402 at *2, 27 Wn.App.2d 1005 (2023) (unpublished).

Mr. Yeh's briefing below did not reference RCW 9.94A.505(6) except to note that it was not relevant to his appeal. The State's response brief did not cite the statute at all. Given the constitutional nature of Mr. Yeh's claim, it should not have played any role in the Court of Appeals' analysis. Despite this, the court below issued an opinion that is inconsistent with this Court's precedent by asserting that sentencing courts are bound by the statute's "unambiguous" text.

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[5] In *Enriquez-Martinez*, this Court did not directly critique RCW 9.94A.505(6), but noted that the statute represented the legislature's "attempt[] to capture" the constitutional principle. 198 Wn.2d at 103.

### 2. *The Court of Appeals' analysis of Mr. Yeh's constitutional entitlement to pretrial credit conflicts with this Court's precedents*

Over fifty years ago, this Court held that poor people should not serve longer sentences than wealthy people by virtue of their inability to post bail. *Reanier* 83 Wn.2d at 346. This constitutional principle is rooted in "[f]undamental fairness and the avoidance of discrimination." *Id.*

In *Lewis*, this Court reiterated that courts must award pretrial detainees pretrial credit for **all** the time that they spend incarcerated while awaiting sentencing, even if they are held in multiple different charges in the same county. 184 Wn.2d at 205. This Court reasoned that if pretrial credit were "applied to only one of [the defendant's] sentences rather than all three, he would be treated differently based solely on his ability to make bail." *Id.* This Court wrote that "a person unable to obtain pretrial release may not be confined for a longer period of time than a person able to obtain pretrial release without violating due process and equal protection." *Id.*

In *Enriquez-Martinez*, this Court clarified that the rule announced in *Lewis* applied even when the defendant is detained in a different state. 198 Wn.2d at 103. The defendant was entitled to pretrial credit for time spent in Oregon jails while his Washington case was pending because "our constitution does not allow us to treat offenders who cannot obtain bail differently from those who can." *Id.* at 101-02. This Court also held that Mr. Enriquez-Martinez was entitled to pretrial custody credit even though he was being held on a "no-bail" warrant. *Id.* at 103. While prior cases had focused on issues related to "poverty," this Court clarified that its holdings were in fact based on the "broader" constitutional principle that "a defendant is entitled to credit for all the time they were confined on charges prior to sentencing." *Id.*

In summary, *Lewis* held that a defendant receiving concurrent sentences for multiple cases in a single county must receive credit for the entire time he was incarcerated pretrial. *Enriquez-Martinez* held that a defendant receiving concurrent

sentences for multiple cases in different states must receive credit for the entire time he was incarcerated pretrial. The Court of Appeals in this case, however, held that a defendant receiving concurrent sentences for multiple cases in different counties cannot receive credit for the entire time he was incarcerated pretrial. This decision was based on a flawed understanding of this Court's jurisprudence.

A sentencing court considering the issue of pretrial credit must start from the premise that an individual who is subjected to pretrial confinement cannot be forced to serve a longer total sentence than an individual who was able to obtain bail and never incarcerated pretrial. The court must evaluate the length of the sentence that a person would serve if he had been able to obtain immediate release on all pending charges, then award credit to ensure that a person incarcerated pretrial does not serve a longer total sentence than the hypothetical person who was never taken into pretrial custody. This ensures that a defendant receives credit for "**all** the time" they spent in pretrial

incarceration, "regardless of how many charges they were held on." *Enriquez-Martinez*, 198 Wn.2d at 103 (emphasis supplied).

Applying this rule to Mr. Yeh's case should have been straightforward. Mr. Yeh received concurrent sentences on all of his felony charges in King County and Snohomish County. If Mr. Yeh had been able to obtain pretrial release on all his charges in every jurisdiction, he would have served a total custodial sentence of 108 months, because all of his King County sentences would have been served concurrently with his much longer Snohomish County sentence. Instead, because Mr. Yeh was unable to post bail, he was incarcerated in King County for over 10 months while his charges were pending in Snohomish County. Having been denied credit for that time period, he will end up serving a total period of incarceration of over 118 months because he could not pay for pretrial release.

The Court of Appeals determined that there was no constitutional violation for two reasons. First, it stated that the trial court could not award pretrial credit to Mr. Yeh because

the Snohomish County warrant was never actually "served" on him in the King County Jail. App. A at 5. Yet there is nothing in this Court's precedent to support the notion that "service" of the warrant is the operative moment when a defendant begins to receive credit for time served. Warrant service is not mentioned in *Reanier,* and in *Lewis* the Court assumed the operative date was the time charges were filed. 184 Wn.2d at 204 (referencing the date that "the prosecutor charged him" with additional offenses).

This Court mentioned service of a warrant in recounting the procedural history of *Enriquez-Martinez*. Specifically, the Court referenced that the defendant had "filed a CrR 7.8 motion asking the trial judge to correct his sentence to make clear he was entitled to credit for the time he had served after the Washington warrant was served." *Enriquez-Martinez*, 198 Wn.2d at 101. There is no indication, however, that this Court viewed the "service" of the warrant to be a "critical" date. The Court of Appeals framed the question presented as whether

pretrial credit should be awarded "after Washington charges **were filed**." *State v. Enriquez-Martinez*, 14 Wn.App.2d 192, 194, 469 P.3d 1186 (2020) (emphasis supplied). Likewise, this Court's opinion twice stated that a defendant is entitled to credit for all the time he is "confined" pretrial, without reference to warrant service. *Enriquez-Martinez*, 198 Wn.2d at 103, 104. The distinction drawn by the court below that service of the warrant is the triggering point for the awarding of pretrial credit for time served appears to be cut out of whole cloth rather than grounded in this Court's precedent.

Furthermore, finding that warrant service triggers the award of pretrial credit creates arbitrary sentencing disparities. As the sentencing court noted, it is "beyond a particular defendant's ability to" control whether a warrant is served.[6] VRP 25; *see also* App. A at 1 (prosecutor represented that

[6] The Court of Appeals did not grapple with this issue, instead offering a statement in a footnote implying that Mr. Yeh's counsel should have facilitated the service of the warrant on him. App. A at 2.

service of a warrant in a different county is "not normal"). Individuals may thus earn (or lose) pretrial credit based on arbitrary policies of various prosecutors, law enforcement agencies, or jails regarding warrant service. This Court's decisions in *Enriquez-Martinez*, *Lewis*, and *Reanier* are predicated on promoting consistency in sentencing, not exacerbating arbitrary disparities.

The second justification for denying Mr. Yeh pretrial credit was that he is not actually serving a longer sentence than if he had been able to post bail. This assertion is simply wrong.

Mr. Yeh has been continuously incarcerated since the date charges were filed in Snohomish County on June 30, 2023.[7] It is undisputed that the purpose and effect of the trial court's ruling was to deny him pretrial credit from June 30,

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[7] Mr. Yeh was incarcerated in King County before charges were filed in Snohomish County. He is not raising a constitutional claim (based on pre-accusatorial delay or any other theory) that he is entitled to pretrial credit for the time period when he was incarcerated in the King County Jail prior to the filing of Snohomish County charges.

2023, until his sentencing date in King County on May 17, 2024.[8] Thus, although he was sentenced to serve 108 months for attempted robbery, over 118 months will pass from the time the case was filed until the time he will be released from custody.

The Court of Appeals analyzed this issue in the following sentence:

> Had Yeh been able to make bail on the King County charges, he could have been released from the King County jail and either quashed the Snohomish County warrant, in which case he would not be confined on the Snohomish County charges prior to sentencing, or been confined on the Snohomish County charges prior to sentencing, in which case he would have received credit for confinement time served on those charges in accordance with *Enriquez-Martinez*.

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[8] Mr. Yeh agrees that, from May 17, 2024, forward, he was not constitutionally entitled to pretrial credit for time served because he was serving a sentence rather than in pretrial incarceration. *See Lewis*, 184 Wn.2d at 206 (holding that a defendant "is not constitutionally entitled to credit for time served after he began serving a sentence").

App. A at 5. It concluded that under either scenario, "[Mr.] Yeh would not be confined longer on the Snohomish County charges than a person who could afford to make bail on those charges." *Id.*

This analysis, however, fails to apply this Court's precedent. This Court instructs sentencing courts awarding pretrial credit for time served to compare the actual defendant being sentenced with a hypothetical defendant who could have posted bail on all his pending charges. If Mr. Yeh had been wealthy, he would not have spent any time in jail in either county because wealthy individuals can post bail on a warrant and handle their entire case from out of custody. After receiving concurrent sentences for all of his charges, he would have then reported to prison to serve a total sentence of 108 months. Yet because he was unable to post bail, his combined pretrial and postconviction incarceration will end up totaling more than 118 months from the date the Snohomish County case was filed. The Court of Appeals' cursory assertion that a wealthy

defendant would not have served a shorter total sentence has no support in the record and conflicts with this Court's precedent.

## VII. CONCLUSION

This Court should grant review of Mr. Yeh's appeal and issue an opinion reiterating that a defendant is entitled to receive credit for **all** the time he spends in pretrial confinement.

I certify that, according to Microsoft Word, the portion of this memorandum subject to word limits has 4,952 words.

Respectfully submitted this 26th day of September, 2025.

*s/Mark B. Middaugh*
WSBA #51425
Attorney for Petitioner

# APPENDIX A

FILED
9/8/2025
Court of Appeals
Division I
State of Washington

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|---|---|
| STATE OF WASHINGTON,<br>Respondent,<br>v.<br>MICHAEL STEPHEN YEH,<br>Appellant. | No. 87107-2-I<br>DIVISION ONE<br>UNPUBLISHED OPINION |

FELDMAN, J. — Michael Stephen Yeh appeals his sentence for attempted robbery in the first degree. He argues the sentencing court erred when it denied his request for credit for confinement time served on other charges in another county. Finding no error, we affirm.

I

Yeh was charged in Snohomish County on June 30, 2023 with first degree robbery and hit-and-run with injury arising out of a robbery in which he drove the getaway car. That same day, the Snohomish County Superior Court found probable cause and issued a warrant for Yeh's arrest on these charges. The warrant correctly listed Yeh's address as the "King County Correctional Facility" in Seattle, but was not served on Yeh at the jail. As the Snohomish County prosecutor explained below, it is "not normal[]" to serve arrest warrants on individuals incarcerated in other counties. At that time, Yeh was held on bail in

King County jail on various King County felony offenses involving alleged identity theft. He eventually pleaded guilty to the charges and was sentenced on May 17, 2024, in King County Superior Court to 50 months of confinement with credit for time served and transported to the Washington Department of Corrections following sentencing. The King County proceedings are relevant but not at issue in this appeal.

On July 15, 2024, Yeh pleaded guilty in Snohomish County Superior Court to an amended count of attempted robbery in the first degree and was sentenced to 108 months of confinement to run concurrently with his King County sentence. Relevant to this appeal, Yeh argued he should have been given credit for confinement time served in the King County jail while he had an active felony warrant and pending charges in Snohomish County (a total of approximately 10 months). The sentencing court declined to award such credit, stating: "I do not find case law that supports the giving of credit for time when an outstanding warrant was issued but not served."

Yeh appeals.

II

Yeh argues the sentencing court erred when it denied his request for credit for confinement time served in the King County jail while he had an active felony warrant and pending charges in Snohomish County.[1] We disagree.

RCW 9.94A.505(6) governs credit for confinement time served before sentencing. It provides, "The sentencing court shall give the offender credit for all

[1] Yeh does not argue that his attorney could have but failed to facilitate service of the warrant in anticipation of a "global" resolution.

confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced." We review issues of statutory construction de novo. *Pub. Util. Dist. No. 2 of Pac. County v. Comcast of Wash. IV, Inc.*, 8 Wn. App. 2d 418, 449, 438 P.3d 1212 (2019). "Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language." *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005).

Applying the unambiguous language of RCW 9.94A.505(6), the trial court did not err in denying Yeh's request for credit for confinement time served in the King County jail while he had an active felony warrant and pending charges in Snohomish County. That is so because Yeh was confined in King County jail in regard to the identify theft charges in King County, not the pending charges in Snohomish County. Thus, the trial court could not properly grant Yeh's request for credit for confinement time served in the King County jail because RCW 9.94A.505(6) limits credit for confinement time served before sentencing to confinement "in regard to the offense for which the offender is being sentenced."[2]

Contrary to Yeh's argument, *State v. Enriquez-Martinez*, 198 Wn.2d 98, 492 P.3d 162 (2021), does not require a different result. There, Enriquez-Martinez was arrested in Oregon on charges related to sexual offenses against a minor. *Id.* at 100. While he was in custody in Oregon, charges related to abuse of the same

[2] To mandate the result advocated by Yeh, the legislature could amend RCW 9.94A.505(6) to require sentencing courts to give offenders credit for confinement time served before sentencing in regard to offenses *other than* those for which they are being sentenced where, as here, the sentences for those offenses are to be served concurrently. But that is not what RCW 9.94A.505(6) says, and "[w]e cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

victim were filed in Washington. *Id.* The Washington court issued a no-bail warrant for his arrest and served the warrant on Enriquez-Martinez in Oregon. *Id.* Enriquez-Martinez continued to be held in custody in Oregon. *Id.* Several months later, he accepted a global plea offer to resolve all charges in both states. *Id.* Under that plea deal, he would receive concurrent sentences and be given credit for confinement time served before sentencing. *Id.*

Enriquez-Martinez was subsequently transferred to Washington to enter his plea. "As part of the boilerplate language of the judgment and sentence, he received 'credit for time served prior to sentencing if that confinement was solely under this cause number.'" *Id.* at 100-01 (quoting judgment and sentence). When Enriquez-Martinez began serving his sentence in Washington, he was not given credit for time served in Oregon before sentencing. *Id.* at 101. To resolve that issue, he filed a motion "to correct his sentence to make clear he was entitled to credit for the time he had served after the Washington warrant was served." *Id.* The trial court denied his motion, and the court of appeals affirmed. *Id.*

The Supreme Court granted review and reversed. *Id.* at 100. Although Enriquez-Martinez had not been confined in Oregon *solely* in regard to the offense for which he was sentenced in Washington, the court held "a defendant is entitled to credit for all the time they were confined on charges prior to sentencing on those charges, regardless of how many charges they were held on." *Id.* at 103. The court explained:

> As a matter of constitutional law, defendants are entitled to credit for all time served in confinement on a criminal charge, whether that time is served before or after sentencing. The legislature has attempted to capture that principle in RCW 9.94A.505(6) . . . . But our

> constitution does not allow us to treat offenders who cannot obtain bail differently from those who can.

*Id.* at 101-02 (internal citations omitted). The court also explained its holding was "based on the constitutional principle that a defendant cannot be held longer because of poverty." *Id*. at 103.

Yeh's reliance on *Enriquez-Martinez* is misplaced. Critical here, the court's recitation of the facts in *Enriquez-Martinez* confirms that "the Washington warrant was served." *Id.* at 101. Thus, while Enriquez-Martinez was not confined in Oregon prior to sentencing in Washington *solely* in regard to the offense for which he was sentenced in Washington, he was nonetheless confined prior to sentencing in regard to that offense. Here, in contrast, the Snohomish County warrant was *not* served on Yeh and, thus, Yeh was *not* confined in the King County jail prior to sentencing—solely or otherwise—in regard to the offense for which he was sentenced in Snohomish County.

Nor does the trial court's ruling treat Yeh differently from an offender who could make bail on the Snohomish County charges. Had Yeh been able to make bail on the King County charges, he could have been released from the King County jail and either quashed the Snohomish County warrant, in which case he would not be confined on the Snohomish County charges prior to sentencing, or been confined on the Snohomish County charges prior to sentencing, in which case he would have received credit for confinement time served on those charges in accordance with *Enriquez-Martinez*. In either case, Yeh would not be confined longer on the Snohomish County charges than a person who could afford to make bail on those charges. For these reasons, *Enriquez-Martinez* is inapposite.

For similar reasons, Yeh's reliance on *State v. Lewis*, 184 Wn.2d 201, 355 P.3d 1148 (2015), and *Reanier v. Smith*, 83 Wn.2d 342, 517 P.2d 949 (1974), is also misplaced. In both cases, the offenders served time in confinement prior to sentencing on the offenses for which they were sentenced. *Lewis*, 184 Wn.2d at 205 (offender served time on assault and burglary charges while awaiting trials on assault, burglary, and failure to register as a sex offender charges); *Reanier*, 83 Wn.2d at 352-53 (offenders confined in state hospital prior to sentencing due to inability to make bail or because denied bail due to nature of charges). As the court explained in both cases, denying credit for time served prior to sentencing in such circumstances would unlawfully treat these offenders differently from those who can make bail in violation of due process and equal protection. *Lewis*, 184 Wn.2d at 205; *Reanier*, 83 Wn.2d at 346-47. Here, in contrast to *Lewis* and *Reanier*, Yeh was not confined in the King County jail on the offense for which he was sentenced. And as the above discussion shows, the trial court's ruling does not treat Yeh differently from an offender who can make bail. Thus, like *Enriquez-Martinez*, neither *Lewis* nor *Reanier* supports Yeh's argument.

In sum, RCW 9.94A.505(6) does not mandate the relief Yeh seeks, and the cases cited by Yeh do not compel that result on constitutional grounds. Finding no error, we affirm.

Feldman, J.

WE CONCUR:

Coburn, J.

, ACJ

**MIDDAUGH LAW, PLLC**

**September 26, 2025 - 2:55 PM**

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