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Supreme Court No. ____ Case #: 1046421
(COA No. 86575-7-I)

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JARED M. BUTCHER,

Petitioner.

PETITION FOR REVIEW

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A. INTRODUCTION

In both civil and criminal proceedings, trial courts often enter judgments requiring the non-prevailing party to pay money to another party in order to make them whole. However, practical difficulties may arise when a party pays ordered costs, but a reviewing court later reverses the trial court order requiring payment. How can the prevailing party on appeal get their money back? The answer is RAP 12.8. It contains a streamlined procedure that allows a court to enter an order to make the prevailing party on appeal whole.

In 2016, a trial court entered an order requiring Jared Butcher to pay over \$45,000 in restitution. On appeal, Mr. Butcher argued the Court of Appeals should reverse because (1) the court entered the order in violation of due process; and (2) the State failed to prove the causal connection between his crime and the claimed costs.¹ The Court of Appeals agreed on

¹ See *State v. Butcher I*, No. 75973-6-I, 2018 WL 2018554 (Wash. Ct. App. Apr. 30, 2018).

both points and reversed. The Court of Appeals issued a mandate requiring the sentencing court or the criminal presiding judge to place the hearing on the next available motion calendar.

However, neither the sentencing court nor the criminal presiding judge complied with the mandate. And even though the clerk's office received the mandate and knew the Court of Appeals reversed the order of restitution, the clerk garnished Mr. Butcher's wages. By 2023, Mr. Butcher paid nearly \$42,000 in restitution pursuant to a reversed order of restitution.

In November of 2023, Mr. Butcher filed a RAP 12.8 motion asking the sentencing court to reimburse the costs he paid pursuant to the invalid order. The sentencing court denied the motion.

The Court of Appeals refused to grant Mr. Butcher relief based on a novel theory offered for the first time in the State's response brief. RAP 12.8 states that when a party has paid part or all of a judgment that is "modified by the appellate court,"

the court must “enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that property[.]” According to the State, RAP 12.8 could not provide Mr. Butcher with relief because the Court of Appeals’ order reversing the order of restitution did not “modify” it. Instead, it was up to the sentencing court to “modify” the original order. The Court of Appeals agreed with this theory.

The Court of Appeals’ interpretation of RAP 12.8 violates numerous principles of construction. It is inconsistent with the plain language of the term “modify.” The dictionary defines the term “modify” to include matters that result in “fundamental changes” and “serve new ends.”² An order reversing an order of restitution fundamentally changes the original order—it no longer exists. And the reversed order often

² *Modify*, Merriam-Webster <https://www.merriam-webster.com/dictionary/modify> (last visited Oct. 1, 2025).

serves the end of ensuring that the lower court enters the order according to the law.

The Court of Appeals' construction of RAP 12.8 is also incompatible with the presumption of consistent usage, as other portions of the Rules of Appellate Procedure (RAPs) provide that "modifying" a ruling reverses the ruling.

The Court of Appeals' interpretation of RAP 12.8 also produces absurd and unjust results. Under the court's logic, RAP 12.8 only provides relief to individuals who, for example, have unauthorized statutory costs imposed on them, so the reviewing court can simply strike the costs, thereby "modifying" the original order. However, RAP 12.8 provides no relief where the court entered an order of restitution in violation of the constitution, but the court retains the discretion to once again impose costs. Counsel cannot think of a logical reason why this Court would craft relief for individuals under RAP 12.8 only in the former circumstance.

Furthermore, the Court of Appeals' interpretation of the rule produces constitutional doubts about its validity. The United States Supreme Court has ruled that when a conviction is reversed, the State must refund any money paid pursuant to the reversed conviction. But the Court of Appeals' interpretation, taken to its logical conclusion, means that RAP 12.8 cannot provide relief in circumstances where the reviewing court reverses an entire conviction (thereby reversing any resulting order of restitution), but the State chooses not to refile charges. After all, under the Court of Appeals' logic, the order reversing the conviction did not modify the underlying restitution order, as the lower court retained the discretion to once again enter the order of restitution upon a conviction.

This Court should accept review.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Mr. Butcher asks this Court to accept review of the Court of Appeals opinion that affirmed the sentencing court's denial

of his RAP 12.8 motion. The Court of Appeals issued its original opinion on September 2, 2025. The Court of Appeals withdrew its opinion and issued a corrected opinion to fix a scrivener's error on September 29, 2025. Mr. Butcher has attached the corrected opinion to this petition for review.

C. ISSUES PRESENTED FOR REVIEW

1. RAP 12.8 provides that when a party has partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court must “restore to the party any property taken from that party.” The Court of Appeals concluded the term “modified” under RAP 12.8 means that the reviewing court itself reduced the amount owed. The Court of Appeals concluded that on the other hand, RAP 12.8 does not apply when the reviewing court, as in Mr. Butcher's case, reverses the entire order of restitution, but the sentencing court retains the discretion to re-impose restitution.

This interpretation of the term “modified” under RAP 12.8 is inconsistent with several principles of construction. It is

at odds with the definition of “modified.” It is incongruous with the doctrine of consistent usage. It produces unjust and absurd results. And it raises considerable constitutional doubts about the validity of RAP 12.8. This Court should accept review. RAP 13.4(b)(1), (2), (4).

2. When the Court of Appeals enters an order invalidating a trial court judgment, the court must carry out the mandate. Here, the trial court ignored the mandate for years. This inexcusable delay caused the State to agree it had no legal authority to seek a new hearing to recover restitution.

Yet the Court of Appeals concluded Mr. Butcher could not recover the money he paid under the invalid court order under RAP 12.8. Instead, the court opined he must institute an independent civil action. This requires Mr. Butcher to hire counsel, pay court costs, and shoulder the burden of proving the law entitles him to the money.

The Court of Appeals’ ruling undermines the requirement that the trial court adhere to a reviewing court’s mandate. It also

undermines Mr. Butcher's right to due process. This is because it is contrary to United States Supreme Court precedent, which demands a streamlined procedure for the return of improperly imposed financial orders. This Court should accept review. RAP 13.4(b)(3), (4).

D. STATEMENT OF THE CASE

In January of 2016, Jared Butcher pleaded guilty to one count of assault in the fourth degree stemming from a 2014 incident with his then wife, Terri Abbey. CP 1-2, 11. The judgment and sentence ordered Mr. Butcher to pay restitution. CP 8. However, the court did not hold a restitution hearing until July of 2016, and the State requested over \$45,000 in restitution. CP 33.

Mr. Butcher disputed the causal connection between the amount sought and the assault, as the itemized expenses asked for reimbursement for purported losses that happened months and even years after the assault. CP 36. Rather than hold an evidentiary hearing where Mr. Butcher could dispute the

requested restitution, the court directed the State to provide a declaration from Ms. Abbey. CP 33. In the declaration, she claimed every single itemized expense was due to the assault. CP 33-34. The court relied only on this declaration when it ordered Mr. Butcher to pay over \$45,000 in restitution. CP 34.

Mr. Butcher appealed only the order of restitution. CP 32. On appeal, Mr. Butcher argued the court deprived him of due process when it did not hold an evidentiary hearing after he disputed material facts relevant to the order of restitution. CP 32. He also argued the State did not establish the required causal connection between the requested restitution and the assault. CP 32.

The Court of Appeals issued an opinion in April of 2018 agreeing with Mr. Butcher and reversing the order of restitution. CP 32. The Court of Appeals issued the mandate in June of 2018. CP 10. The mandate reads, “Court Action Required: The sentencing court or criminal presiding judge is to

place this matter on the next available motion calendar for action consistent with the opinion.” CP 10.

The trial court ignored the mandate.

Mr. Butcher called his trial attorney after the Court of Appeals reversed the order of restitution, and his attorney told him he “would look into the issue.” CP 53. In 2019, Mr. Butcher emailed his attorney to let him know he was still receiving bills pursuant to the reversed order of restitution. CP 53. When Mr. Butcher did not hear back from his attorney, Mr. Butcher called the clerk’s office. CP 53. The clerk’s office informed him that “the proper paperwork had not been filed to reverse the restitution order.” CP 53. When Mr. Butcher followed up with his attorney, the attorney advised him to just ignore the payment requests. CP 53.

A few months later, Mr. Butcher’s employer informed him his paychecks would be garnished at an amount of 40 percent of his salary pursuant to the restitution order. CP 53. The garnishment caused Mr. Butcher to struggle to make ends

meet for years and led him to experience depression and anxiety. CP 53-54. Sadly, Mr. Butcher's financial situation became so bad that he could not afford to fly to Texas to be with his father before he passed away. CP 54. By October of 2023, Mr. Butcher had paid nearly \$42,000 in restitution. CP 23

With newly appointed counsel, in November of 2023, Mr. Butcher filed a RAP 12.8 motion and requested that the court refund the money he paid pursuant to the reversed order of restitution. CP 20. At an initial hearing on the motion, the court ordered the clerk to stop garnishing Mr. Butcher's wages. RP 29-30.

At another hearing on the motion, a prosecutor for King County's civil division appeared and asked the court to deny Mr. Butcher's RAP 12.8 motion. CP 89-94. In sum, the prosecutor argued RAP 12.8 was not the appropriate vehicle for Mr. Butcher to obtain relief because the State had already dispersed the money, and Mr. Butcher's payments therefore did not unjustly enrich the State. CP 93.

The prosecutor further explained the clerk “filed and processed the mandate.” RP 59. However, the clerk “did not receive an order from this court, from the original trial court” that terminated the order. RP 59. So “the clerk’s office was still under the presumption that the court’s original order was in effect because it didn’t receive [a new order].” RP 61. At this hearing, Mr. Butcher reiterated that the Court of Appeals’ mandate required the court to place the matter on the next available motion calendar but that did not happen. RP 70.

At the final hearing on the RAP 12.8 motion, the court ruled RAP 12.8 did not apply and denied Mr. Butcher’s request. RP 93. In sum, the court denied the motion because it believed it did not have authority under RAP 12.8 to provide reimbursement in a criminal case where the reviewing court only reversed the order of restitution and not the judgment and sentence. CP 125-26. Furthermore, the court believed it could not provide Mr. Butcher relief under RAP 12.8 absent evidence

Mr. Butcher's restitution payments unjustly enriched the State.
CP 125-26.

Mr. Butcher appealed, arguing the court's denial of his RAP 12.8 motion (1) rested on a misapprehension of the rule; and (2) violated his right to due process. Op. Br. at 2-3. The State appeared to implicitly concede the trial court's interpretation of the rule was incorrect, as it instead argued the Court of Appeals' reversal did not "modify" the restitution order. Resp. Br. at 11-16. The Court of Appeals agreed with the State's arguments and affirmed. Op. at 6-13.

E. ARGUMENT

1. This Court should accept review because the Court of Appeals' interpretation of RAP 12.8 is contrary to the plain language of the rule, other portions of the RAPs, produces absurd and unjust results, and presents constitutional doubts about the validity of RAP 12.8.

This Court interprets court rules in the same way it interprets statutes. *Jafar v. Webb*, 177 Wn.2d 520, 526, 303 P.3d 1042 (2013). If the rule's meaning is plain on its face, this

Court gives effect to that plain meaning. *State v. Schwartz*, 194 Wn.2d 432, 439, 450 P.3d 141 (2019). To determine the rule's plain meaning, this Court examines the text of rule, the context of the rule, related provisions, and the whole statutory scheme. *See id.* Additionally, “[w]hen a [court rule] does not define a term, the court may consider the plain and ordinary meaning of the term in the standard dictionary.” *See State v. Fuentes*, 183 Wn.2d 149, 160, 352 P.3d 152 (2015). If the meaning of the statute is plain on its face, this Court must give effect to the plain meaning. *Schwartz*, 194 Wn.2d at 439.

The fact that a rule is susceptible to more than one interpretation does not render the statute ambiguous unless both interpretations are reasonable. *Id.* Indeed, this Court does not interpret statutes in a manner that would lead to absurd results because this Court presumes this Court did not intend them. *See State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

Relatedly, this Court interprets court rules in a manner that avoids unjust and unreasonable consequences. *See In re the*

Pers. Restraint of Schley, 191 Wn.2d 287, 287-89, 421 P.3d 951 (2018).

This Court also reads statutes in a manner that avoids constitutional doubts about their validity. *State v. Blake*, 197 Wn.2d 170, 188, 481 P.3d 521 (2021).

With these principles in mind, RAP 12.8 provides:

If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is **modified by the appellate court**, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution. An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

This Court reviews a court's interpretation of RAP 12.8 de novo. *Hecht*, 2 Wn. App. 2d at 366.

The Court of Appeals affirmed based on a fundamental misapprehension of RAP 12.8. Its misapprehension rested on several mistaken conclusions. First, that the term “modify” means something different than the term “reverse.” Op. at 7-8.

Second, that it is actually consistent with the doctrine of consistent usage for the court to interpret the term “modify” to exclude a “reversal.” Op. at 8-9. Third, that because RAP 12.8 contains the terms “reverse” and “modify,” the terms must have different meanings. Op. at 9-10.

The term “modify” and the term “reverse” encompass the same thing and have the same meaning, so the plain language of the terms supports Mr. Butcher’s interpretation of the rule. The dictionary defines “modify” as “to make basic or fundamental changes in often to give a new orientation or to pursue a new end.” *Modify*, Merriam-Webster.³ The dictionary defines the term “reverse” as “to overthrow, set aside, or make void (a legal decision) by a contrary decision.” *Reverse*, Merriam-Webster.⁴ Both terms provide for the same thing: modifying and reversing allow a court to fundamentally alter a

³ <https://www.merriam-webster.com/dictionary/modify> (last visited Oct. 1, 2025).

⁴ <https://www.merriam-webster.com/dictionary/reverse> (last visited Oct. 1, 2025).

lower court's order, and both contemplate a complete reversal. Modifying and reversing also allow a court to otherwise adjust a lower court's order.

Stated differently, pursuant to both terms, a court has the authority to make "basis changes" to the order or otherwise "make void" a portion of the order.

The presumption of consistent usage supports this. The presumption of consistent usage provides that "a word or phrase is presumed to bear the same meaning throughout a text."

Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts*, 170 (2012); see *State v. Ervin*, 169 Wn.2d 815, 822, 239 P.3d 354 (2010). Other portions of the RAPs provide that the term "modify" encompasses all forms of reversal. For example, RAP 17.7(a) allows an aggrieved party to file a "motion to modify" a commissioner or a clerk's ruling.

Upon a motion to modify the commissioner's ruling, the reviewing court can (a) deny the motion, leaving the

commissioner's ruling intact; (b) grant the motion and summarily reverse the ruling; (c) grant the motion in part and reverse a portion of the ruling; and (d) grant the motion and remand for further proceedings. *See In re Gronquist*, 179 Wn.2d 120, 312 P.3d 648 (2013) (granting motion to modify and vacating clerk's ruling awarding costs); *see also State v. P*, 37 Wn. App. 773, 686 P.2d 488 (1984) (granting the motion to modify the commissioner's ruling, reversing it in part, and remanding the matter for further proceedings).

The Court of Appeals wrongly believed that the term "modify" under RAP 17.7 meant only a complete reversal of the clerk or commissioner's ruling that left the lower court with no further discretion to alter the ruling. Op. at 9-10. However, this Court's caselaw plainly belies this interpretation. This Court has granted a motion to modify the commissioner's ruling denying review and then remanded for further proceedings where the Court of Appeals could exercise its ample discretion to decide the merits. *In re the Pers. Restraint*

of James, 190 Wn.2d 686, 416 P.3d 719 (2018) (granting motion to modify the commissioner’s ruling denying discretionary review and remanding for the Court of Appeals to consider the merits of the petitioner’s personal restraint petition); *accord In re Pers. Restraint of Vega*, 118 Wn.2d 449, 823 P.2d 1111 (1992).

Furthermore, the Court of Appeals’ interpretation ignores that it is the very act of granting the motion to modify that functions to reverse the commissioner or the clerk’s ruling. The Court of Appeals’ interpretation to the contrary is untenable.

The Court of Appeals also reasoned that because this Court used the terms “reverse” and “modify” within RAP 12.8 and throughout the RAPs, it had to presume these terms meant two separate things. Op. at 9-10. When different words are used throughout a text, this Court has held it “usually means” the drafters “intenders the words to have different meanings.” *State v. Keller*, 143 Wn.2d 267, 278, 19 P.3d 1030 (2001). But where the terms have overlapping meanings, this presumption does

not apply. *State v. Mitchell*, 169 Wn.2d 437, 446, 237 P.3d 282 (2010); accord *City of Seattle v. Kopperdahl*, 22 Wn. App. 2d 708, 714-15, 513 P.3d 139 (2022). Because “reverse” and “modify” have overlapping meanings, the Court of Appeals’ reliance on this tool of construction was misplaced.

Reliance on this tool of construction is also mistaken because the Court of Appeals’ interpretation of RAP 12.8 leads to absurd and unjust results. *See Mitchell*, 169 Wn.2d at 446-47. Under its interpretation, relief under RAP 12.8 is only available if the Court of Appeals independently strikes certain imposed costs. This means relief under RAP 12.8 is limited to the basis of the lower court’s error—for example, if the lower court’s error rests in imposing a non-authorized cost, RAP 12.8 is an available form of relief.

However, if the lower court’s error rests in a constitutional violation or a procedural violation—which usually results in a reversal and remand for the lower court to comply with the law—then RAP 12.8 provides no relief.

Counsel cannot think of a logical or just reason for this Court to have drafted a rule that denies relief under RAP 12.8 for constitutional or procedural violations.

Finally, the Court of Appeals' interpretation also presents constitutional doubts about the validity of RAP 12.8. As discussed in detail below, when a conviction is reversed, the State must refund any money paid pursuant to the reversed conviction. *Nelson v. Colorado*, 581 U.S. 128, 135-39 (2017).

But the Court of Appeals' interpretation, taken to its logical conclusion, means that RAP 12.8 cannot provide relief in circumstances where the reviewing court reverses an entire conviction (thereby reversing any resulting order of restitution), but the State chooses not to refile charges. This is because the Court of Appeals' interpretation means the order reversing the conviction did not modify it, as the court theoretically retained the discretion to once again enter the order of restitution upon a re-conviction. Interpreting RAP 12.8 in this restrictive manner would be unconstitutional.

This Court should accept review.

2. This Court should also accept review because the Court of Appeals' opinion violates due process and contradicts United States Supreme Court precedent.

The Court of Appeals' opinion also violates due process.

When the State has zero claim of right to property, it cannot impose anything more than minimal procedures for a person to obtain a refund. RAP 12.8 provides these minimal procedures and streamlines reimbursement of these funds. Yet the court's ruling essentially demands that Mr. Butcher hire a private attorney, pay that private attorney, pay additional court costs, file a civil claim, bear the burden of proving he is entitled to the money, and wait months or years in order to obtain reimbursement. The court's demand for Mr. Butcher to undergo a more onerous procedure to obtain his money is contrary to due process.

Nelson v. Colorado makes this plain. *Nelson* involved two petitioners. 581 U.S. at 131. A jury convicted both petitioners of several crimes and ordered them to pay thousands of dollars in court costs, fees, and restitution. *Id.* A reviewing court later reversed their convictions; a jury acquitted one of the petitioners upon retrial, and the State elected not to re-try the second petitioner. *Id.*

Between the petitioner's convictions and the invalidation of their convictions, the petitioners paid a large portion of the court ordered costs, fees, and restitution. *Id.* Colorado dispersed the money to several state entities, including the compensation fund and the victims and witnesses assistance and law enforcement fund. *Id.* at n. 1, 2. The money was also dispersed to the purported victims as restitution. *Id.*; *see also People v. Nelson*, 362 P.3d 1070 (Colo. 2015), *reversed by Nelson v. Colorado*, 581 U.S. 128.

“[B]oth petitioners moved for return of the amounts Colorado had taken from them.” *Id.* at 132. For one petitioner,

the court outright denied the motion. *Id.* For the other, the court refunded the costs and fees, but not the restitution. *Id.* The case eventually made its way to the Colorado Supreme Court, and the court held both courts lacked statutory authority to issue the refund. *Id.* The court held the only statutory authority that existed to refund the petitioners was through Colorado's Exoneration Act, which the petitioners had not pursued. *Id.* Under this Act, "a petitioner must show, by clear and convincing evidence, her actual innocence of the offense of conviction." *Id.* at 133-34.

Upon review in the United States Supreme Court, the court held this scheme violated due process and reversed. *Id.* at 134. The court used the *Mathews v. Elridge* balancing test to make this conclusion. *Id.* at 135. This was because "no further criminal process [was] implicated," as the cases involved the continuing deprivation of property after a court reversed their convictions. *Id.* at 134-35. Under the *Mathews* test, the court evaluates (a) the private interest affected; (b) the risk of

erroneous deprivation of that interest through the procedures used; and (c) the governmental interest at stake. *Id.*

Regarding the first factor, the court noted the petitioners had an “obvious interest in regaining the money they paid to Colorado.” *Id.* at 135. While Colorado obtained the funds when the orders were validly in place, the State had no right to retain the funds after a reviewing court reversed the convictions. *Id.* at 136.

Furthermore, the risk of erroneous deprivation was high, as Colorado’s Exoneration Act only provided relief if the petitioners proved their actual innocence with clear and convincing evidence. *Id.* at 137. However, “once those convictions were erased, the presumption of innocence was restored.” *Id.* at 135. Consequently, “to get their money back, defendants should not be saddled with any proof burden. Instead, [...] they are entitled to be presumed innocent.” *Id.*

Finally, the court concluded that because the State had “zero claim of right” to the money, the State had no interest in

withholding it. *Id.* at 139. Accordingly, the court held Colorado's scheme violated due process. *Id.*

Here, as in *Nelson*, the court's ruling requires Mr. Butcher to undergo a more onerous procedure than due process will tolerate. First, it is important to note that the *Mathews* framework applies here for several reasons. While the restitution order at issue here is tangentially related to Mr. Butcher's original judgment and sentence for his underlying offense, the only order he appealed was the original order of restitution. CP 11. And the legislature has directed this Court to treat restitution like any other civil judgment. *Ramos*, 24 Wn. App. 2d at 227.

Furthermore, by reversing the restitution order in Mr. Butcher's original appeal, the Court of Appeals reinstated the presumption that the State did not prove the causal connection between the claimed damages and Mr. Butcher's crime. *See State v. Griffith*, 164 Wn.2d 960, 965-66, 195 P.3d 506 (2008). Accordingly, the *Mathews* framework controls.

As in *Nelson*, a careful application of the *Mathews* factors demonstrates the court's ruling contravenes Mr. Butcher's right to due process. Like in *Nelson*, Mr. Butcher has an "obvious interest" in regaining the money the State wrongfully obtained from him. And as in *Nelson*, the State had no right to retain the money after this Court reversed the order of restitution. Yet here, in circumstances even more appalling than the circumstances in *Nelson*, the State continued to obtain Mr. Butcher's money for years after it received a mandate stating this Court reversed the order of restitution. The State even went as far as to garnish his wages after it received the mandate.

Also, here, as in *Nelson*, the court's order and the Court of Appeals' opinion—which denies Mr. Butcher relief under RAP 12.8 and therefore compels him to obtain relief in civil court—imposes an unacceptably high risk of erroneous deprivation of these funds. Once this Court reversed the disputed order of restitution, this restored the presumption that

the State did not prove the causal relationship between the money requested and Mr. Butcher's crime. *See State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

Consequently, the court could not saddle Mr. Butcher with any proof burden. But he would undoubtedly be saddled to a proof burden in civil court. He would also be saddled with the cost of paying a private attorney and other court costs. This is unacceptable.

Finally, here, just as in *Nelson*, because the State had zero right to Mr. Butcher's money, it had no interest in withholding it.

The Court of Appeals' opinion is contrary to *Nelson*. This Court should accept review.

F. CONCLUSION

For the reasons stated in this petition, Mr. Butcher respectfully requests that this Court accept review.

This petition uses Times New Roman Font, contains 4,575 words, and complies with RAP 18.17.

DATED this 2nd day of October, 2025.

Respectfully submitted,

/s Sara S. Taboada
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Washington Appellate Project
Attorney for Petitioner

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JARED MICHAEL BUTCHER,

Appellant.

No. 86575-7-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, J. — In early 2016, Jared Butcher pleaded guilty to domestic violence assault in the fourth degree. The plea agreement reserved the determination of restitution for a future hearing. In October 2016, the trial court ordered Butcher to pay \$45,456.04 in restitution. Butcher appealed and this court reversed and remanded, ordering an evidentiary hearing on the causal connection between the conviction and amount of restitution ordered. No hearing was held and restitution continued to be collected as originally ordered.

In 2023, Butcher moved to request refund payments with interest under RAP 12.8. The court denied the motion, concluding the principle under RAP 12.8 of unjust enrichment which allows restitution in appropriate circumstances did not entitle Butcher to a refund. Butcher appealed, arguing the trial court abused its discretion when it denied his motion for restitution under RAP 12.8 and violated his right to due process. Because the court did not abuse its discretion when it

denied Butcher restitution, nor were Butcher's due process rights violated, we affirm.

FACTS

Background

In July 2015, the State charged Jared Butcher with assault in the second degree stemming from an altercation between Butcher and his former wife, Terri Abbey.¹ In King County Superior Court, Butcher pleaded guilty to the lesser offense of assault in the fourth degree. Butcher's judgment and sentence included an order of restitution, which the court noted would be determined at a later hearing.

The court held a restitution hearing in July 2016, and ordered Butcher to pay \$45,546.04 in restitution, including \$13,656.61 to Abbey, \$9,758.21 to the Crime Victim Compensation Program, and \$22,131.22 to Abbey's medical insurer. At the hearing, Butcher argued the State failed to establish a causal connection between the amount sought and the crime for which he was convicted. The court issued an order directing the State to provide a declaration from Abbey addressing her medical services and associated costs. After Abbey submitted her declaration, the court held another restitution hearing. Butcher again claimed the State failed to establish a nexus between the restitution

¹ The facts concerning Butcher's initial appeal come from this court's unpublished opinion in *State v. Butcher*, No. 75973-6-I, (Wash. Ct. App. April 30, 2018) (unpublished), <https://www.courts.wa.gov/opinions/pdf/759736.pdf>.

amount and the crime committed. The court rejected this argument and ordered Butcher to pay the full amount of restitution.

Butcher appealed, asserting the court deprived him of his due process rights by relying on Abbey's declaration and not affording him an evidentiary hearing. This court held that the trial court abused its discretion when it denied Butcher the opportunity for an evidentiary hearing and relied solely on Abbey's declaration to establish the amount of restitution. The appellate court reversed the restitution order and remanded for an evidentiary hearing. The mandate specified, "The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion." An evidentiary hearing was never held.

Butcher continued to pay restitution through 2018, and in early 2019, Butcher stopped making payments. After Butcher stopped making payments, the King County Superior Court clerk's office contacted Butcher's employer and began garnishing his wages to fulfill the restitution payments. In July 2023, Butcher retained new counsel and moved for refund of restitution payments. At a hearing in February 2024, the court reserved ruling on whether Butcher was entitled to a refund, but ordered the clerk's office to release any of Butcher's funds in its possession and cease the garnishment of his wages.

In March 2024, the trial court held a hearing concerning Butcher's request for a refund of his restitution payments. The court concluded RAP 12.8 did not entitle Butcher to a refund for restitution, even though the initial order granting

restitution was reversed and remanded, because the clerk's office, prosecutor's office, or the court had not been unjustly enriched. Butcher appeals.

ANALYSIS

RAP 12.8

Butcher contends the trial court erred when it denied his reimbursement request under RAP 12.8. Because RAP 12.8 is not applicable to Butcher's case and, even if it were, it was not an abuse of discretion for the court to deny his request for reimbursement of restitution, we affirm.

This court reviews an award under RAP 12.8 for abuse of discretion. *Arzola v. Name Intel., Inc.*, 188 Wn. App. 588, 592, 355 P.3d 286 (2015). A court abuses its discretion when its actions are "exercised in a manifestly unreasonable manner or on untenable grounds." *Arzola*, 188 Wn. App. at 592. An appellate court will not find an abuse of discretion simply because it would have come to a different conclusion. *L.M. v. Hamilton*, 193 Wn.2d 113, 134, 436 P.3d 803 (2019).

"Restitution under RAP 12.8 is an equitable remedy and 'trial courts have broad discretionary power to fashion equitable remedies.'" *Ehsani v. McCullough Fam. P'ship*, 160 Wn.2d 586, 589, 159 P.3d 407 (2007) (quoting *Sac Downtown Ltd. P'ship v. Kahn*, 123 Wn.2d 197, 204, 867 P.2d 605 (1994)).

Under RAP 12.8,

[i]f a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate

circumstances, provide restitution. An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

The plain language of RAP 12.8 is ambiguous because it allows restitution in “appropriate circumstances,” but neither the rule nor related statutes defines appropriate circumstances. *State v. Hecht*, 2 Wn. App. 2d 359, 366-67, 409 P.3d 1146 (2018). Because of its ambiguity, interpreting RAP 12.8 requires judicial construction. *Ehsani*, 160 Wn.2d at 590. The Washington Supreme Court has noted, “the historical background of RAP 12.8 indicates that the purpose of the ‘in appropriate circumstances, provide restitution’ language is to encourage both practitioners and courts to look to the common law of restitution in applying or construing RAP 12.8.” *Ehsani*, 160 Wn.2d at 591 (quoting RAP 12.8). To determine common law principles of restitution applicable to RAP 12.8, we look to the *Restatement of Restitution*. *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 45, 802 P.2d 1353 (1991).

Restatement of Restitution § 74 (Am. L. Inst. 1937) provides,

A person who has conferred a benefit upon another in compliance with a judgment, or whose property has been taken thereunder, is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable or the parties contract that payment is to be final; if the judgment is modified, there is a right to restitution of the excess.

An exception to this rule is where “restitution would not serve the purpose of remedying unjust enrichment.” *Ehsani*, 160 Wn.2d at 592.

1. Modification

The State asserts in its response brief that RAP 12.8 does not apply to Butcher's circumstances because a reversal and remand from the appellate court does not "modify" the trial court's decision. In reply, Butcher contends reversing and remanding an order fundamentally alters the lower court's decision.² We agree with the State.

We review issues of statutory interpretation de novo. *Crossroads Mgmt., LLC v. Ridgway*, 2 Wn.3d 528, 538, 540 P.3d 82 (2023). When interpreting a statute, our primary objective is to "ascertain and carry out the Legislature's intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If a statute is clear on its face, we must give effect to that plain meaning. *State v. Keller*, 2 Wn.3d 887, 910, 545 P.3d 790 (2024). But, if a statute is ambiguous, we " 'may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.' " *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014) (quoting *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007)). Words are given their ordinary meaning, and "[w]henever possible, statutes are to be construed so 'no clause, sentence or word shall be superfluous, void, or insignificant.' " *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451-52, 210 P.3d 297 (2009) (quoting *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804,

² The trial court noted in its ruling that Butcher's judgment and sentence was not overturned; rather, only the amount of restitution was reversed by the Court of Appeals.

420 P.2d 346 (1966)). It is well established that when distinct words are used in a statute, those terms are accorded their own meaning. *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005).

“Modification” is not defined by RAP 12.8, therefore, this court must interpret the rule and ascertain the legislature’s intent when it crafted the rule. First, we look to the plain language of the words used. *Black’s Law Dictionary* defines “modify” as, “[t]o make somewhat different; to make small changes to (something) by way of improvement, suitability, or effectiveness.” *Black’s Law Dictionary* 1200 (12th ed. 2024). “Reverse” is defined as, “[t]o overturn (a judgment or ruling), esp[ecially] on appeal.” *Black’s Law Dictionary* 1580 (12th ed. 2024).

Here, Butcher contends a decision reversing and remanding a restitution order is subsumed within the meaning of the term “modify” because a reversal nullifies, therefore fundamentally altering, the underlying order. But concluding an appellate court modifies a judgment every time it reverses an order is too broad. While some reversals may be modifications, not all reversals necessarily modify a judgment. To be considered a modification, the appellate court must make a change to the order. This change can be made by the court itself or remanded for the trial court to implement. *Compare In re Marriage of Mason*, 48 Wn. App. 688, 740 P.2d 356 (1987) (citing *In re Marriage of Mason*, 40 Wn. App. 450, 698 P.2d 1104 (1985) (noting it had vacated an award of attorney fees), *with Boone v. Drown*, 195 Wn. App. 74, 380 P.3d 573 (2016) (reversing a judgment of

restitution and remanding to the trial court to enter judgment for the other party). When a court reverses and remands for further proceedings, any changes to the order are left to the discretion of the trial court—the appellate court does not modify the order. In fact, the trial court was not prohibited from entering the same judgment amount after considering the evidence presented at the evidentiary hearing on remand. And RAP 12.8 is clear that it applies only to trial court decisions modified by the appellate court.

Butcher relies on *Mason* to contend this court has already stated a reversal is a modification, but, Butcher misreads our ruling in *Mason*. In *Mason*, this court reversed a trial court decision and vacated an award of attorney fees. 48 Wn. App. at 690. By vacating the award of attorney fees, this court necessarily made a change (i.e., modified) the judgment. But in Butcher’s case, we reversed the judgment and remanded for the trial court to conduct further proceedings. Accordingly, this court did not modify Butcher’s order. Any modifications to Butcher’s judgment would have been made subsequently by the trial court.³

Butcher also claims a reading of “modify” to include reversal is consistent with other portions of the RAPs. Butcher uses RAP 17.7 as an example and cites to *In re Pers. Restraint of Gronquist*, 179 Wn.2d 120, 312 P.3d 648 (2013) and *State v. Jones*, 85 Wn. App. 797, 934 P.2d 1224 (1997), to support his

³ Alternatively, the trial court could have entered a judgment for the same exact amount of restitution, thereby not making any modifications to the judgment.

contention. But RAP 17.7 and these cases are consistent with a definition of “modification” that does not necessary include reversal.

RAP 17.7 allows an aggrieved party to file a motion to modify a commissioner’s or clerk’s ruling. In both *Gronquist* and *Jones*, the appellate court granted a party’s motion to modify. In *Gronquist*, the appellate court granted a motion to modify the clerk’s ruling and vacated an award of costs. 179 Wn.2d at 121. In that case, the appellate court made the final decision of vacating the award—the appellate court made the change itself and did not remand for further proceedings. In *Jones*, the appellate court reversed and remanded for the trial court to dismiss the charges against Jones. 85 Wn. App. at 802. The appellate court communicated to the trial court what action to take (dismissal), thereby leaving the trial court with no discretion. Unlike Butcher’s situation, where the appellate court remanded for further proceedings, in each of these cases, the appellate court made the modification—whether directly or indirectly—and left no discretion for the trial court to make further changes to the order.

Contrary to Butcher’s contention that a reading of the RAPs provides support for the notion that the term “modify” encompasses all forms of reversal, the language of RAP 12.8, as well as other RAPs, make clear “modify” and “reverse” are not the same. RAP 12.8 uses both the words “modif[y]” and “reverse[.]” to refer to actions of a court. If a reversal was always subsumed within the meaning of “modification,” it would be superfluous to use both words.

It must be presumed these words have different meanings. See *Roggenkamp*, 153 Wn.2d at 624. Similarly, under RAP 12.2, “The appellate court may reverse, affirm, or modify the decision being reviewed.” Again, “modify” and “reverse” are separate actions contemplated by the RAPs.

Additionally, *Restatement* § 74 makes a distinction between the appropriate relief for a party when a judgment is reversed or set aside versus modified. The *Restatement* notes a party is “entitled to restitution if the judgment is reversed or set aside,” but goes on to state “if the judgment is modified, there is a right to restitution of the excess.” *Restatement* § 74. The *Restatement’s* distinction between appropriate relief for a reversal versus a modification provides further support that the two actions are not the same.

Because an appellate court’s decision to reverse and remand is not a “modification” as contemplated by RAP 12.8, the rule is not applicable to Butcher’s circumstances. Accordingly, we affirm.⁴

⁴ Butcher also makes several claims of abuse of discretion. We need not address these claims because we affirm on other grounds, but we will briefly address Butcher’s claim that the trial court abused its discretion when it concluded it could only provide restitution to Butcher under RAP 12.8 if the clerk’s office was unjustly enriched. Butcher contends RAP 12.8 does not contemplate unjust enrichment and should not have been considered. But, while RAP 12.8 does not explicitly discuss unjust enrichment, both the Washington Supreme Court and this court have reiterated that in identifying appropriate circumstances to award restitution, we “look to the common law of restitution as set forth in the *Restatement of Restitution*.” *Arzola*, 188 Wn. App. at 593; see also, *Ehsani*, 160 Wn.2d at 591-92.

Due Process

Butcher claims his due process rights were violated when the trial court denied his RAP 12.8 motion. Because RAP 12.8 only contemplates restitution in appropriate circumstances, which do not apply to Butcher, no due process violation occurred.

Under the due process clause of the Fourteenth Amendment, no state shall “deprive any person of life, liberty or property, without due process of law.”⁵ U.S. CONST. amend. XIV, § 1. “To comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.” *Nelson v. Colorado*, 581 U.S. 128, 139, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017). When a criminal conviction is overturned, the defendant is entitled to a refund of fees, court costs, and restitution paid to the State. *Hecht*, 2 Wn. App. 2d. at 368.

Butcher contends the court deprived him of property and required him to file a civil action to obtain a refund, thereby imposing more than “minimal procedures” and violating his due process rights. He relies mainly on *Nelson* to support his claim, but *Nelson* can be distinguished. In *Nelson*, Shannon Nelson’s and Louis Alonzo Madden’s (petitioners) convictions were invalidated.⁶ 581 U.S. at 131. Petitioners moved for return of the funds (costs, fees, restitution) they

⁵ The Washington State Constitution has a near identical due process provision as the federal constitution: “No person shall be deprived of life, liberty, or property, without due process of law.” CONST. art. 1, § 3.

⁶ Nelson’s conviction was reversed and on retrial, she was acquitted of all charges. *Nelson*, 581 U.S. at 131. Madden had two convictions—one was reversed and the other was vacated. *Id.*

had paid to the state pursuant to their convictions. *Id.* at 132. On appeal, the Colorado Supreme Court reversed the lower court's ruling that the petitioners were entitled to a refund, stating, "[A] court must have statutory authority to authorize a refund from public funds, and it did not in this case." *People v. Nelson*, 2015 CO 68, 362 P.3d 1070, 1077, rev'd and remanded sub nom. *Nelson*, 581 U.S. 128. The court also noted no due process violation occurred because the petitioners could seek a refund under the Exoneration Act.⁷ *Nelson*, 362 P.3d at 1077.

The U.S. Supreme Court reversed, noting it violated due process to require an exonerated individual to prove actual innocence to receive a refund of monies paid in satisfaction of a judgment. *Nelson*, 581 U.S. at 134. The Supreme Court's *Matthews v. Eldridge*⁸ analysis concerned "the continuing deprivation of property after a conviction has been reversed or vacated, with no prospect of reprosecution." *Nelson*, 581 U.S. at 135.

Here, Butcher's underlying conviction was not reversed and the original judgment and sentence contemplating restitution remained in force; therefore, he cannot liken his situation to that in *Nelson*, where the petitioners were presumed innocent.⁹ Butcher was also afforded due process. The court contemplated a

⁷ The Exoneration Act, C.R.S.A. § 13-65-101-103 (2015), provides a claim for relief " 'to compensate an innocent person who was wrongly convicted.' " *Nelson*, 581 U.S. at 133 (quoting *Nelson*, 362 P.3d at 1075).

⁸ 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d. 18 (1976).

⁹ For the same reason, Butcher's reliance on *State v. Bianchi*, No. 5135839 (Wash. Ct. App. Dec. 17, 2024) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2058958-3-II%20Unpublished%20Opinion.pdf>, is inapplicable.

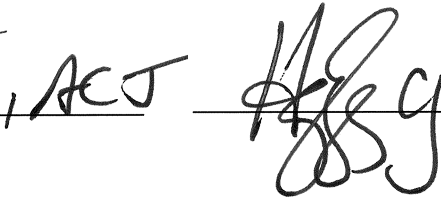

refund under RAP 12.8, but found restitution was not appropriate in Butcher's circumstances because the clerk's office was not unjustly enriched. And Butcher is not without procedure to provide redress. Butcher may bring a civil action against the clerk's office or a claim against the parties who ultimately received the money he paid.

Because Butcher's underlying conviction was not overturned, *Nelson* is not applicable. Additionally, Butcher has procedures available to him which would allow him to seek recovery. Accordingly, no due process violation occurred.

We affirm.



WE CONCUR:



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