

In wake of 'Blake,' 1,500 drug convictions scrubbed in Snohomish County

After Washington's Supreme Court shot down felony drug possession, it created a domino effect in 200,000 cases statewide.

By Jonathan Tall

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Percy Levy, who served 17 years for a drug house robbery, outside his new business Redemption Auto along Highway 99 on Thursday, Sept. 21, 2023 in Everett, Washington. (Olivia Vanni / The Herald)

EVERETT — Since he was 13 years old, Percy Levy lived in and out of the criminal justice system.

From 2002 to 2019, he was behind bars for a drug house robbery.

“Everybody’s path is different to change in there, it’s never like a light switch,” Levy said. “For most people, they just start recognizing things and talking to different people, then it just happens.”

Levy, 53, now works as an outreach specialist with the Redemption Project, a partnership between the Washington Defender Association and the Seattle Clemency Project to support prisoners being resentenced due to high court decisions.

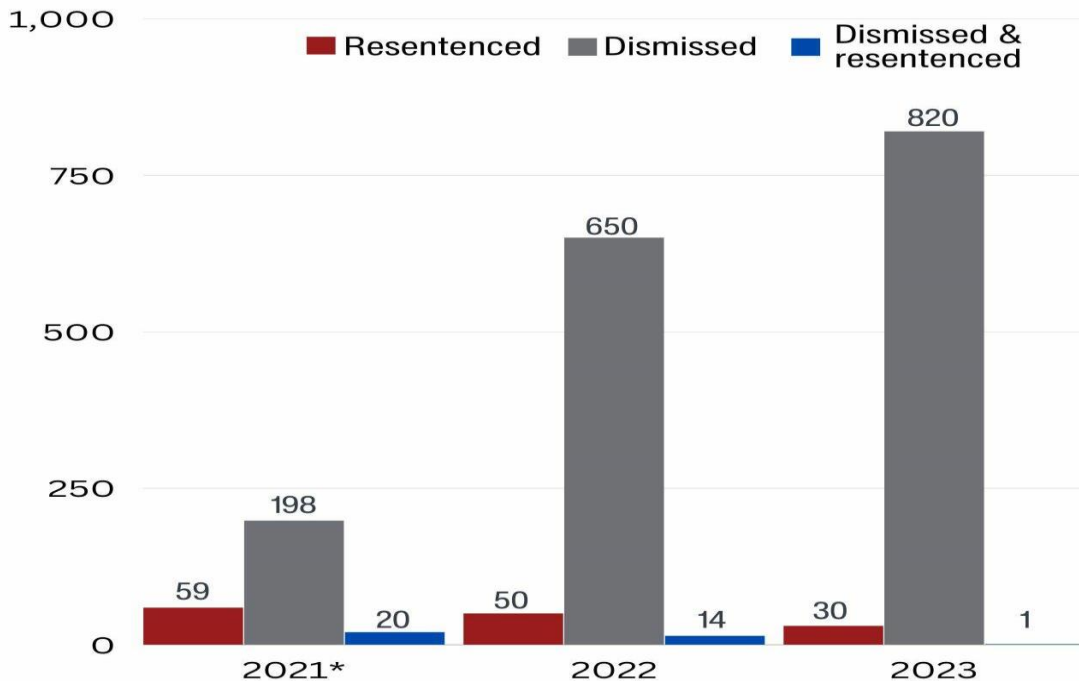
Tens of thousands of cases were upended in the aftermath of *State v. Blake*, a far-reaching state Supreme Court ruling in 2021 that found a felony drug possession statute was unconstitutional because it “did not require intent, or knowledge of possession.” In the wake of Blake, state lawmakers passed a bill reclassifying drug possession as a gross misdemeanor.

But many old felony convictions needed to be wiped from criminal records.

On top of the cases it directly knocked down, Blake also created a domino effect. Any defendant with a prior drug conviction could be resentenced, because at the time of the sentencing hearing, they would’ve had a higher “offender score” — effectively a measure of someone’s criminal history, on a system of points like a golf score, where lower is better. In Washington, a rap sheet is a major factor in deciding how much time a defendant serves.

Snohomish County Superior Court cases vacated or resentenced after State v. Blake

The number of court cases resentenced, dismissed, or a combination of the two as a result of State v. Blake.



Source: Snohomish County Public Defender Association

* 2021 data was not tracked for the entire year



(Kate Erickson / The Herald)

Kyle said the lawyers are “just getting started” on the work to dismiss convictions, as the county’s resources have been focused on clients eligible for resentencing.

More than 200,000 cases statewide needed to be adjudicated again due to the Blake decision, said Grace O’Connor, managing attorney for the Blake Defense Program. The state Office of Public Defense set up the program specifically to deal with the legal headaches the Blake decision created.

In February, the state Department of Corrections began counting the incarcerated people who received court orders to either dismiss a Blake conviction or be resentenced. Since 2021, Corrections had reviewed 1,756 resentencing orders and 3,602 dismissals, for 3,131 people who were still in prison at the time.

Another 24,000 people who were already out of custody had filed for 638 resentencings and close to 33,000 vacate orders, according to the statewide data.

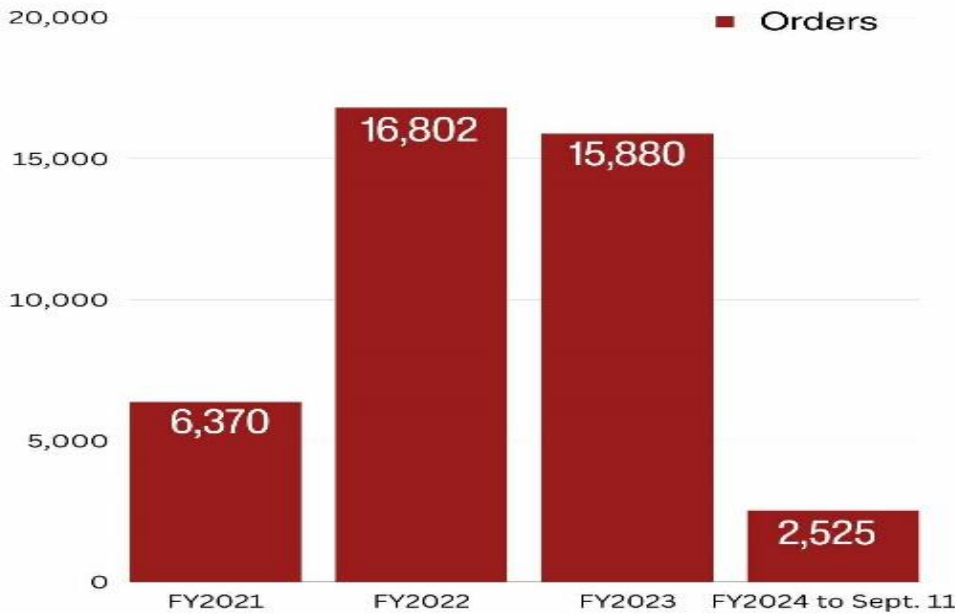
Any legal financial fees also qualified for reimbursement.

But some things the courts cannot fix. They can't get former inmates their time back or their lives back on track. During his years in prison, Levy would occasionally dream of using drugs — a remnant of his past addiction. In many ways, he understands the world of thousands of “Blake” defendants, who have lost their community support. They often have no one to show up at their court hearings, no one to understand the struggle of battling addiction while trying to reenter society.

“The one thing that is going to bring people back is stress,” Levy said. “People aren't owed everything when they get out of a prison for committing a crime. But they deserve an opportunity to get out and transition without being overwhelmed, because that will lead back to what most people end up in prison for — addiction.”

Cases upended by State v. Blake

The number of court orders reportedly issued as a result of the state Supreme Court's ruling in State v. Blake. Most of these orders vacated a conviction, but some dismissed a case, released a defendant or stayed a conviction. Not all courts across the state had submitted data.



Source: Washington State Department of Corrections

Note: FY2024 is July 1, 2023 to June 30, 2024



(Kate Erickson / The Herald)

Justice by geography

Twice a month, defense attorneys across Washington meet via Zoom to talk about “Blake.”

It has become like group therapy for lawyers, who outline their grievances while navigating the tangible legal work.

In early September, dozens of attorneys watched a guest presentation from the law group Civil Survival about “legal financial obligation relief.”

Afterward, attorneys’ questions ranged from leaving a voicemail for incarcerated clients to the difficulty of waiving DNA fees on retroactive court cases. Others patiently waited for their turn to air frustrations about how slow counties can be when dealing with Blake orders.

“Let’s be really clear on something,” said Harry Gasnick, a public defender from Clallam County. “Just because (the) Legislature has chosen not to set aside money for these people, if we get an order, that order is enforceable. Just like if I choose not to set aside money for my utility bill, amazingly enough, my utility company still insists that I pay my bill.”

In smaller counties, such as Lewis, getting clients resentenced, or even prior drug possession sentences dismissed, is a tall task, defense attorney Angela Avery said.

When she began doing Blake work in rural counties, Avery emailed prosecutors about vacate orders for simple possession cases. Some ignored her. Prosecutors also told her if she went through with the court orders, they “reserved the right” to refile charges against her clients.

“They like to prosecute the (expletive) out of everything,” Avery said at the meeting. “If felt to my clients that they were getting ganged up on by the prosecutors and by the court. The court is supposed to be impartial, but it didn’t feel that way.”

Several of Avery’s clients, she said, declined to go through with dismissing Blake convictions because they did not want to run the risk of a new, longer sentence.

Meanwhile, some larger counties, such as King and Pierce, have shortages of lawyers available to manage the caseload. Some counties still have much resentencing work to get through.

“The process remains a slow path,” state Office of Public Defense attorney Nat Jacob said. “Their civil rights were deprived from the past 50 years of bad law. A lot of people are never going to fully be made whole by this process, no matter how much we try and perfect it because the damage is done.”

Jacob said people have completely different outcomes for their conviction depending on which jurisdiction they were initially arrested in.

Washington does not have a unified court system — a single judicial body that consolidates all legal work in the state. Instead, it is split up between different counties and cities, and in overlapping jurisdictions, there are separate superior, district and municipal courts. Jacob argued this creates vastly uneven outcomes throughout the state.

“If you’re a few miles south of the Thurston County border, you’re probably going to have a completely different experience than if you’re on the north side,” Jacob said. “When something like this happens and it impacts people across the state, it should impact them equally. But that’s not how it works.”

‘A chain they carry with them’

The Blake-related legal work has flowed much smoother in Snohomish County than other places, said Jason Schwarz, director of the county’s Office of Public Defense.

Blake cases “move backwards,” he said. The process is about undoing work done years ago.

“The writing had been on the wall for all of us, for a long time, that the War on Drugs was not going to come to an everlasting peace, and there were a lot of collateral consequences,” Schwarz said. “The legal system is not the place to resolve all of our social ills.”

In the fiscal year of 2022, the Legislature earmarked \$47 million to handle dismissed possession convictions and sentencing adjustments. Another \$51 million was set aside for legal refunds. The same amount is reallocated annually, according to the Administrative Office of the Courts.

In August, that state office launched the Blake Refund Bureau, an [online portal](#) where people can get reimbursements for legal fees tied to Blake-related convictions.

The counties were left to decide how to distribute the state money, Schwarz said. The Snohomish County Public Defender Association, under contract with the Office of Public Defense, opted to use its \$900,000 to have in-house lawyers tackle the Blake backlog.

After the Blake decision, the prosecutor’s office worked with the Department of Corrections to create detailed lists of people who had drug possession convictions, county Prosecutor Jason Cummings said.

“The Supreme Court threw us a major curveball,” Cummings said. “That curveball had consequences.”



The Snohomish County Superior Courthouse is pictured on Friday, Sept. 29, 2023, in Everett, Washington. (Ryan Berry / The Herald)

It was a tiered list: Priority was given to people exclusively held on felony possession charges, trickling down to those whose Blake charge affected their offender score at sentencing.

Then came those not in prison, but who wanted their criminal history cleaned up anyway, Kyle said.

“For some people, it’s been a thing in their past, and they’ve moved on, but it’s a chain that they carry with them,” Schwarz said. “They can’t get jobs, or housing, and we can’t undo that.”

In late 2021, for example, an Everett man convicted of murder had his prison sentence reduced by 7½ years. A jury found Matthew McGowan guilty of first-degree murder for tying Michael Boone to a tree and leaving him to die in the cold. He was initially sentenced to 45½ years. That was knocked down to just over 38 years.

McGowan had previous drug possession convictions. Once they were wiped clean, his offender score went down.

The new ruling created plenty of complex legal scenarios, Cummings said. For instance, if somebody was charged with possession of a controlled substance with intent to deliver, which is still a crime, but pleaded down to a simple possession charge, prosecutors would have to re-evaluate the case.

“In the immediate aftermath of Blake, we started running through our own case management system — there were literally thousands of convictions throughout the state,” Cummings said. “How do we go and find someone who had a (possession of a controlled substance) charge in 1989? Somebody needs to find those records and make it available.”

In Cummings’ view, it was always uncommon to see prosecutors charge people with the “unwitting” possession of a controlled substance. Even simple drug possession became a rare charge in recent years. The goal of the prosecutor’s office was to get those who were arrested into alternative forms of sentencing, he said.

Making drug possession a misdemeanor shifted the burden of drug cases from county superior courts — where felonies are handled — to city and district courts.

“It takes facilities, and it takes resources and staffing,” Cummings said. “I don’t know if we’re ultimately prepared to get people into treatment, I don’t know if there’s enough risk for an individual who is being prosecuted for a misdemeanor (possession of a controlled substance) to say, ‘I’ll sign up for 18 months of treatment.’”

‘Every kind of trauma’

Levy’s experience in prison didn’t prepare him for a changed world. He had never used an iPhone, sent an email or logged on to the internet. Adjusting to new technology puts a lot of pressure on ex-convicts, Levy said.

It’s hard to find housing with a criminal record and no rental history. To make money, Levy recently started his own business, Redemption Auto, an auto shop in a parking lot next to Highway 99, leased from the owner of Sky’s Auto Sales in Everett.

“It’s hard when you get out at 50 with nothing,” Levy said. “There is no saving for retirement.”

Like Levy, state Rep. Tarra Simmons, of Bremerton, was convicted for the first time at 13 years old. And in 2011, Simmons was sentenced to 2½ years in prison for felony drug convictions and retail theft. When she was released, she had few options. She could go back to selling drugs, if she was willing to risk being caught and separated from her two children, or she could work a minimum wage job and be unable to provide for her family.

“I didn’t like either of those options,” Simmons said.

Yet Simmons considers herself one of the luckier ones. About a year after being released, she enrolled in law school at Seattle University with the help of her friend, Shon Hopwood, a formerly incarcerated lawyer who wrote a book about his experiences.

The legislator has had a lot of firsts in her life. She was the first in her family to graduate high school and college; the first to become a lawyer; the first to not have her kids be lost within the confines of the criminal justice system.

Last month marked another first: Her entire criminal history was dismissed.

“I’ve experienced every kind of trauma that an individual can: I was trafficked as a young girl, I’ve been sexually abused, I’ve been beaten and robbed,” said Simmons, who ran for state office and won as a Democrat in 2020. “I wasn’t healthy until I got into really good mental health care for many years and learned how to regulate my emotions.”

Trauma is cyclical, passing through each generation, Simmons said. Meaningful relationships hold people accountable and can help break that curse.

For people charged with simple drug possession, Simmons believes jail time isn’t the answer. There are already plenty of obstacles to prevent people from breaking the cycle of addiction: the time spent in prison, lost income, getting evicted, losing kids to foster care, and so on.

“The mere possession of having drugs on you is an indication of a behavioral health issue, and they’re not hurting anybody else,” Simmons said.

Simmons said treating the root causes of crime is more important than punishing it.

“There should be more avenues,” she said, “for people to be made completely whole.”

Questions about prior convictions?

If you’ve been convicted of a drug crime in Snohomish County, visit the website of the Snohomish County Public Defender Association to connect with a defense attorney: snocopda.org