

9/24/21

Justice Charles Johnson
Justice Mary Yu
Co-Chairs, Supreme Court Rules Committee
Washington Supreme Court
415 12th Ave SW
Olympia, WA 98501-2314

RECEIVED
SEP 27 2021

Washington State
Supreme Court

Re: proposed changes to CrR 3.1 and CrR 7.8

Dear Justice Johnson and Justice Yu:

For a number of years, I was a contract attorney representing people in Clark County accused of criminal offenses who could not otherwise afford an attorney. I have since taken a different position and no longer practice in that jurisdiction. Despite being the fifth most populous county in the state, with more than half a million residents, Clark County does not have a public defender's office. It operates solely with contract appointed counsel, most of whom are solo practitioners or in small firms. Currently, Clark County has more than 30 separate contracts for representation of individuals accused of criminal offenses in Superior Court. Despite assertions to the contrary, I have not found evidence the county is coordinating or arranging for an organized review of cases based on the data from DOC.

It is imperative that the Court approve the proposed amendment to CrR 3.1 and CrR 7.8. While such an amendment may be superfluous or unnecessary in some counties in Washington State, it is a vital change in at least one.

I want to share some examples to demonstrate how this change could assist individuals who are eligible for relief.

L. J.¹

A former client of mine from Clark County filed a *pro se* 7.8 motion on March 30, 2021 using the form motion provided by DOC. He heard nothing back from the Clark County Superior Court about his motion. On April 22, he managed to find my current office number, and called me about his case. Based on my initial calculations, one point used to calculate his offender score would now be invalid and he would be eligible for immediate release if resentenced.

I emailed the prosecutor's office on April 22, letting them know I wasn't able to represent this client, but that I believed he might be eligible for immediate release. That prompted the prosecutor to take action on his case, and on April 27, the prosecutor's office filed a motion to transport the client from prison to Clark County. L. J. made an initial appearance in Clark County Superior Court on May 17, and at that hearing was finally appointed counsel. He was resentenced on May 26. As my former client remarked to me, "If there's no attorney that contacts the court, nothing will happen."

¹ L.J. gave me permission to share his story.

03/30/2021 Motion -	Comment CR 7.8
04/26/2021 Notice of Hearing -	Comment "Not Docketed"
04/29/2021 Affidavit of Service by Mail	
04/27/2021 Order to Transport	
05/06/2021 Notice of Hearing -	Comment "NOT DOCKETED"
05/05/2021 Motion -	Comment CR 7.8
05/17/2021 Review Hearing -	Judicial Officer Stahnik, Daniel L. Hearing Time 8:30 AM Comment #9 CR 7.8 RESENTENCING
05/17/2021 Review Hearing -	Comment NO BAIL HOLD
05/17/2021 Order Appointing Attorney	
05/17/2021 Memorandum -	Comment OF DISPO
05/26/2021 Review Hearing -	Judicial Officer Falgauf, John P. Hearing Time 8:30 AM Comment #9 - SET SENTENCING DATE VIA DEPT 6
05/26/2021 Order -	Comment to Rescind NCO
05/26/2021 Order for Probation From Civil Harassment	
05/26/2021 Motion Hearing	
05/26/2021 Waiver -	Comment of presence at rst hrg
05/26/2021 Advice of Rights	
05/29/2021 Notice of Ineligibility to Possess a Firearm	
05/26/2021 Memorandum -	Comment of Disposition
05/26/2021 Felony Adjudgment and Sentence -	Comment Amended
06/03/2021 Probation Report	
08/21/2021 Notice -	Occurring DOC
08/21/2021 DOC Cleare Report	

In the interim, this client received no information about his case, aside from whatever information I was able to provide when he called my office. He twice attempted to note his motion on a docket, but those motions were merely filed, with someone writing "Not Docketed" on the citations. ²

2/1
AP

WASHINGTON COURT FOR THE COUNTY OF CLARK

FILED
APR 26 2021

STATE OF WASHINGTON
Plaintiff / Petitioner

No. 17-1- [redacted] State Ct. Dist. Ct. Co. 347P

NOTE FOR MOTION TO DOCKET COURT CALENDAR (Client's Appearances)

Defendant / Respondent

** Not Docketed **

To: CLARK COUNTY Court Clerk and
PROSECUTOR

PLEASE TAKE NOTICE that the Plaintiff, by [redacted] Acting Pro Se moves the above court on the 18 day of MAY, year of 2021 at 7:00 AM, a/clock.

I [] With oral argument(s), and that the undersigned will bring on for hearing a motion or motions for [redacted] RE-SENTENCING PURSUANT STATE V. BLAKE MOFF (90873-0) RESENTENCING WITHOUT INCLUSION PRIOR CONVICTION FOR POSSESSION. See Exhibit A

Nature of the Case:
[] Criminal, or
[] CIVIL

Date: APR 21st 2021

[redacted]
Signature
[redacted]
Print / Type Name

129

Citation filed by L.J. marked "not docketed"

Docket from L.J.'s case

² In March of 2021, the Superior Court sent an email to local counsel stating "Defendants and defense counsel are not allowed to cite CrR 7.8 motions onto dockets without permission from the assigned judge." This policy has apparently communicated to the Clerk's Office, which accordingly does not docket a hearing when requested by a *pro se* defendant.

It is the written policy of the Superior Court in Clark County to appoint counsel on a *pro se* 7.8 motion only after the Prosecuting Attorney has reviewed the case and agreed that the relief is re-sentencing.

In the case of L.J., the court was following its written policy – if an individual files a *pro se* 7.8 motion with the Court, it is forwarded to the prosecutor’s office and no future date is set. *See*, Appendix A, p. 2-3; Appendix B; Appendix C. At best, the individual gets a form response indicating the motion has been forwarded to the prosecutor’s office. Any attempts by the individual to set the motion on for a hearing are refused.

Under the policy established by the Court, the *prosecutor* requests appointment of counsel only after they review the request for some indeterminate amount of time and have agreed to resentencing. App. B at (4)(2)(1). An individual who believes they may be eligible for immediate relief can have their motion “prioritized” by the prosecutor’s office only if “the defense attorney ... attach[es] the defendant’s judgment and sentence.” App. B, at (1)(1). Individuals in prison often do not have ready access to their judgment and sentence (or the Court’s website to learn about this procedure).

If the prosecutor is only agreeing to vacation, under the policy, they do not request counsel be appointed. There is no provision in the policy for appointment of counsel if the prosecutor does not agree to relief.

Further examples from Clark County

Below are several more examples from Clark County. They include cases of individuals whose names appear on spreadsheets distributed by DOC, listing inmates who may be affected by *Blake*. I reviewed the court files and dockets in their cases.

A.W.

A.W. is in prison serving a sentence after a 2011 trial. It appears from his judgment and sentence that 5 of his 13 points are void post-*Blake*.

A.W. has filed *pro se* petitions to vacate in all 5 of these cases. He has not been appointed counsel in any of them. Three were vacated with A.W. as a *pro se* defendant. One example is below:

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CLARK	
STATE OF WASHINGTON, Plaintiff, v: A [REDACTED] W [REDACTED], Defendant	No. [REDACTED] JOINT MOTION FOR ORDER VACATING CONVICTION AND ORDER VACATING (CrR 7.8(b)) CLERK'S ACTION REQUIRED

COMES NOW the State of Washington, by and through its attorney, Daniel A. Gasperino, Deputy Prosecuting Attorney, joined by A [REDACTED] W [REDACTED], Pro Se Defendant. The parties now ask this Court to vacate A [REDACTED] W [REDACTED]'s conviction for Possession of a Controlled Substance under RCW 69.50.4013(1).

Two petitions are still pending, including one A.W. filed in April:

- 04/06/2021 Appearance Pro Se

- 04/06/2021 Declaration Affidavit ▾
 - Comment (D)

- 04/06/2021 Motion ▾
 - Comment CrR 7.8

- 04/06/2021 Notice of Hearing ▾
 - Comment *Not Docketed*

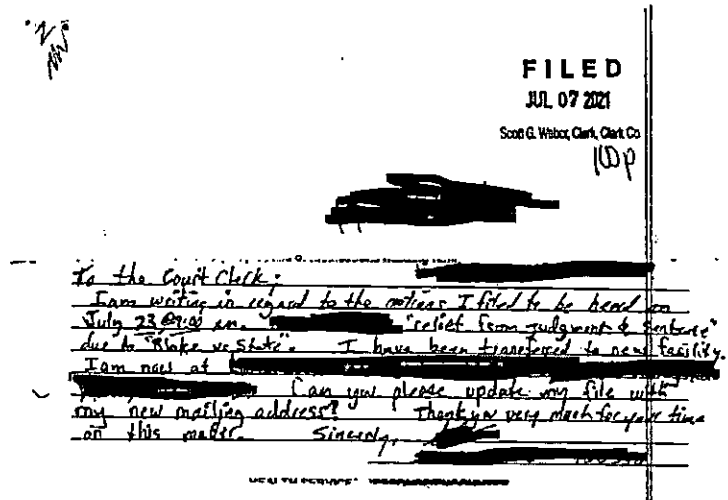
Docket from one of A.W.'s cases

A.W. has not filed the one motion that would actually affect his sentence, possibly by years, a motion for resentencing on the offense for which he is currently incarcerated. It is impossible to tell from the record A.W.'s reason for not filing a motion for resentencing, but it could be because he has never had the benefit of counsel to navigate post-Blake relief in his case. Perhaps he will file such a motion in the future and be appointed counsel at some point, or perhaps he will not, and remain in prison for years beyond the time he would have been released after a resentencing.

S.B.

S.B. is serving a sentence in prison. It appears from his judgment and sentence that 10 of his 17 points are void post-Blake. He filed a *pro se* 7.8 petition in June of 2021.

He even updated his address with the Court when he was transferred to a different prison.



06/25/2021 Appearance Pro Se
06/25/2021 Motion ▾
Comment CrR 7.8
06/25/2021 Affidavit
06/25/2021 Motion
06/25/2021 Proposed Order Findings
06/25/2021 Notice of Hearing ▾
Comment *Not Docketed*
06/25/2021 Affidavit of Service by Mail
07/07/2021 Notice of Change of Address ▾
Comment (D)
09/10/2021 Resentencing Hearing ▾
Judicial Officer Sheldrick, Emily
Hearing Time 1:30 PM

The docket indicates the Court has scheduled a resentencing hearing on September 10, but nothing in the court file indicates that hearing actually occurred. There is no indication S.B. has been appointed counsel.

C.N.

C.N. is serving a prison sentence from a Clark County conviction. It appears from his judgment and sentence that 5-6 of his 12 points are void post-Blake. C.N. filed a *pro se* 7.8 motion in April of 2021.

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RW
00.02.2022

FILED
APR 27 2021
Scott G. Weber, Clerk, Clark Co.

IN THE Clark COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff,

NO. [REDACTED]

MOTION FOR RELIEF FROM
JUDGMENT.

v.
[REDACTED]
Defendant.

MOTION

[REDACTED] Defendant, a PRO-SE incarcerated person, moves this
Court pursuant to CrR 7.8 for relief from judgment and for resentencing.
[REDACTED]'s judgment should be vacated because it is invalid on its face.

04/23/2021 Motion ▾
Comment
CrR 7.8

04/27/2021 Motion ▾
Comment
CrR 7.8

There is nothing in the court file after C.N. filed his motion. According to data provided by DOC, C.N.'s earned release date is in April of 2022.

The Court should adopt the proposed changes to CrR 3.1 and CrR 7.8.

Some counties are delaying or denying relief; the proposed changes to CrR 3.1 and 7.8 will allow those affected to timely challenge barriers to justice.

As Ms. Chen, in her comment, rightly points out, "[t]here is already a right to counsel at sentencing (resentencing)." However, under the policy in Clark County, for a *pro se* petitioner, the prosecuting attorney (PA) decides *if* the petitioner has the right to a resentencing, and therefore, has the right to counsel. The prosecutor also decides *when* that person has the right to resentencing by keeping the petition under review for some indeterminate period of time.³ While the case is under review by the PA, the Court blocks any attempt by a *pro se* petitioner to set a case for a hearing.

Whether a person is entitled to resentencing (or whether requesting a resentencing is in the best interest of the defendant) post-Blake is not a clear-cut issue. The Clark County PA takes the position that moving to resentence on a corrected offender score is a breach of the plea agreement such that charges or enhancements dismissed as part of a plea may be refiled. The Cowlitz County Superior Court has dismissed charges the Cowlitz County PA re-filed after a request for resentencing, and the case is currently on appeal in Division II.⁴

³ I checked on the status of C.N. and S.B.'s with the PA's office prior to submitting this comment, and they confirmed both cases are still under review within their office.

⁴ *State v. Bell*, No. 55941-2

The Clark County PA had also taken the position that an individual is not entitled to resentencing when the individual's offender score changes but their sentence range does not. Division II recently disagreed, finding an individual is eligible for resentencing when he was not sentenced to the low end of the range, and his offender score was now lower. *State v. Taylor*, No. 54049-5-II (Div. II, Sept. 9, 2021). (Notably, this case did not come out of Clark County.)

The proposed changes to CrR 7.8 are also necessary to ensure those individuals affected by *Blake* have timely access to the court. Under section 5 of the Clark County Superior Court policy:

5. If the PA's office disagrees with the requested relief, it will file a written response outlining our position.
 1. The PA's office will file its response and send copies to defendant/defense and the Court. [sic]
 2. Judge reviews the State's response and determines if a hearing is necessary pursuant to CrR 7.8 or if the motion should be transferred to the COA as a PRP.

App. B at (5) (emphasis added – this wording seems to indicate the policy was drafted by the PA office).

The delay for *pro se* petitioners in Clark County is mainly in the time their petition is under review by the PA. The proposed changes to CrR 7.8 clarify that the court does not need to consider whether the motion should be transferred as a PRP. The court can simply go directly to CrR 7.8(c)(3), and “fix a time and place for a hearing and directing the adverse party to appear and show cause why the relief should not be granted.” This eliminates any review or filings *prior* to setting a hearing.

Attorneys representing individuals serving a sentence and eligible for resentencing need adequate time to prepare for sentencing.

As Division III recently reaffirmed, a resentencing on a post-*Blake* corrected offender score “will be a full sentencing, because it will entail imposing a sentence on the basis of an offender score that the parties agree will be reduced, and thereby an exercise of discretion. Cf. *State v. Ramos*, 171 Wn.2d 46, 49, 246 P.3d 811 (2011) (resentencing that would include imposing conditions of placement would not be ministerial), *aff'd*, 187 Wn.2d 420, 387 P.3d 650 (2017).” *State v. Wright*, No. 37429-7-III (Div. III, Sept. 14, 2021) (unpublished).

An attorney can assist in a re-sentencing by obtaining records from DOC to demonstrate for the Court that her client has, for instance, taken advantage of programming opportunities and remained infraction-free. The attorney can put together a release plan, get statements of support from friends and family, and present other mitigation to the Court. The attorney may need to litigate issues, such as whether a point from a bail jump based on a PCS charge is void. In the case of my former client, L.J., counsel was not appointed until 9 days before his resentencing, almost two months after he filed his *pro se* 7.8 motion. This vital work cannot be done in 9 days.

For those in custody, every day they are delayed or denied relief is potentially a day of their liberty needlessly taken away. These individuals need access to attorneys from the outset of the process.

The State should not leave it to individuals serving a sentence based on an unconstitutional statute to undo the damage themselves.

None of the individuals mentioned in this letter passed the unconstitutional drug possession statute or convicted or sentenced themselves under an unconstitutional statute. Yet we are expecting them to unwind the resulting damage by themselves, with limited documents, no legal training, and while incarcerated. These individuals, some of whom should not be in custody, are utterly at the Court's mercy. They are not permitted to docket their own hearings, and must wait until the prosecutor agrees before getting counsel and coming before the Court.

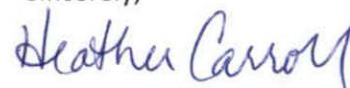
The State should not be permitted to shirk its responsibility to these individuals it wrongly convicted, sentenced, and imprisoned by slow-walking their relief until it becomes moot. These cases are difficult and time consuming to address, but the legislature appropriated money to assist the counties in responding to *Blake*, as it recognized it as important to move quickly to get people out of prison and off DOC supervision.

According to the most recent report by the Washington State Office of Public Defense, 95% of criminal cases in filed in Clark County Superior Court were assigned to appointed counsel at the trial level.⁵ These individuals are indigent, and it seems highly unlikely their financial circumstances improved while incarcerated.

Many may think these changes are not necessary, because high profile counties like King, Snohomish, and Pierce, are pro-actively working to get counsel to those who need it. Some counties, like Kitsap and Cowlitz, have entered standing orders automatically appointing counsel to individuals under sentence who contact those counties. But this is not happening in at least one less-visible area of the state. We should not tacitly condone justice by geography; every person in Washington should get the same level of representation and consideration no matter the county.

I urge the Rules Committee to adopt the proposed changes to CrR 3.1 and CrR 7.8

Sincerely,



Heather Carroll

⁵ In 2018, 2,428 out of 2,569 adult felony cases filed in Clark County superior court were assigned to appointed counsel. *2019 Status Report on Public Defense in Washington State*, Washington State Office of Public Defense (July 2020). https://www.opd.wa.gov/documents/00799-2020_StatusReport.pdf

APPENDIX A

Web page: <https://clark.wa.gov/superior-court/notice-criminal-practitioners>

Captured 9/18/2021



- Superior Court
- Daily Court Docket
- General Information +
- Clerk
- Where Is My Case?
- Submit Strike/Set Over
- ADA Policy
- CD and Transcript Requests
- Civil Information +
- Criminal Law Information x
 - Information for Criminal Practitioners
- Family Law Information +
- Forms
- General Orders and Local Rules +
- Guardians ad Litem
- Interpreter Services
- Jury Information +
- Therapeutic Specialty Courts

Notice to Criminal Practitioners

[Zoom Hearing Links](#)[Virtual Hearing Information](#)[Criminal/Civil Trial Judge Schedule - updated May 10, 2021](#)

Information for Criminal Practitioners

Hearing Appearance Information

- First Appearance, Criminal, and Readiness dockets will be held using a hybrid method. This allows for in person or Zoom appearances on these dockets.
- Out of Custody Change of Plea defendants must be present for sentencing in order to sign their judgment and sentence and be fingerprinted (required in adult and juvenile felony cases; see RCW 10.64.110) even if the charge is a misdemeanor or gross misdemeanor. These rules apply to juvenile disposition hearings as well. Attorneys and other participants may appear over Zoom.
- In custody change of plea and sentencings will primarily be conducted via Zoom.
 - The assigned department may approve special set sentencing hearings on a case by case basis if unusual circumstances are present. (Seriousness of offense, high degree of community interest, extensive victim impact evidence, substantial sentencing arguments, etc.)
 - If a special set sentencing is approved, a shackling decision must be made by the Judge presiding over the hearing.
 - The Sheriff's Department needs three (3) days notice prior to the hearing to prepare and serve a shackling motion. See generally, *State v. Jackson*, 195 Wash.2d 841 (2020); *State v. Lundstrom*, 6 Wash.App. 388 (2018).
 - The process for a special set sentencing is outlined below
 1. Special set COP and sentencing (with judge's permission) cited before a judge at least 3 days prior to the date and time for the hearing.
 2. Judicial assistant notifies the jail of the hearing.
 3. Jail decides if it wants to keep the defendant shackled, if so it notifies defense counsel, prepares a shackling motion; defense prepares input. Jail files its shackling motion, defense files its input (if any), both provide copies to the assigned COP judge. All this occurs two days prior to the COP docket.
 4. Judge makes shackling decision, signs and files order, decision communicated to jail, prosecutor, defense counsel. This occurs one day prior to the COP docket.
 5. Day of COP and sentencing; defendant brought over from the jail; COP and sentencing occurs.

Hearings Requiring Defendant's Physical Presence

Defendant's physical presence is required for the following hearings:

- CrR 3.5/CrR 3.6
- RCW 98.44.130
- Contested Competency
- Out of Custody Change of Plea and Sentencing (Including cases reduced to misdemeanor only charges)
- Supervised Release Violations
- Criminal Trials.

Use of Break Out Rooms

Break out rooms should only be used when absolutely necessary to speak with a client during a hearing. They are not a substitute for speaking to a defendant prior to a hearing. Break out room use substantially increases the length of dockets, forcing attorneys to wait for long periods to have their matters heard.

Interpreters Involvement In Change of Plea and Sentencing Hearings

After a non-English speaking defendant has been sentenced, the interpreter should review the judgment and sentence with the defendant and sign the attestation on the J&S. If the interpreter is at a remote location and unable to sign the J&S, the interpreter should sign an affidavit indicating they have read the J&S to the defendant and file it with the clerk's office as soon as is convenient after the sentencing. The verbiage on the form is the same as is found on the J&S. The form is available through the court's interpretation office.

Cut off Time for Add-ons

The cut off time for add-ons to any criminal docket is noon the day prior to the docket.

Speedy Trial Waivers - Court Approved Form

Speedy trial waivers need to be signed by defendants prior to or at the hearing where the defendant is in person and they will be moving for a continuance. Please use the court approved form.

Written speedy trial waivers are one of the ways a criminal defendant's commencement date can be reset. CrR 3.3(c)(2)(i).

Written speedy trial waivers need to be completed and filed at or before a motion for continuance will be heard. If the waiver is filed before the hearing, it must be filed far enough in advance so that it will appear in the electronic court file at the time of the hearing. If this cannot be done the original or a duplicate of the speedy trial waiver must be provided to the court before or at the hearing. E-mailing a copy to the court during the hearing is not acceptable.

Defense counsel should not send speedy trial waivers to the PA's office or the assigned DPA and expect either to get a copy of the waiver to the court prior to a hearing. This is the responsibility of defendant and his or her attorney. Additionally, attorneys should not e-mail speedy trial waivers to the judicial assistants prior to the hearings. Judicial assistants are not available to review e-mails and print off large numbers of speedy trial waivers right before or during a docket, especially before the readiness dockets.

Agreed Continuance Procedure

Parties are to follow the below criteria and can make use of the following procedure for agreed continuances off docket.

Agreed Continuance Criteria:

1. Case no older than 1 year since filing
2. Length of Continuance is no longer than 90 days
3. Cases can only contain class b and c felonies; No class A
4. Trial date must be agreed and the parties must have chosen a future trial date from the assigned departments available dates
5. Defendant must sign a speedy trial waiver, a copy must be attached to the motion
6. Parties must prepare and sign a scheduling order

Agreed Continuance Procedure:

1. Defense and DPA are to ensure the case meets the above criteria and to work out the agreed dates for trial and readiness hearing and calculation of elapsed days based on the assigned departments available trial dates.
2. Defense counsel will prepare the speedy trial waiver and scheduling order forms to present to the defendant.
3. Defendant will be advised by defense counsel of the waiver of speedy trial form with new commencement date and advised of the dates in the new scheduling order. Defendant and defense counsel will sign the forms.
4. Defense counsel will send the signed forms to the DPA for DPA's signature.
5. DPA will review and sign the forms, print them, and get them to the assigned department for the judge's signature. This must be done no later than 4:30 pm on the Friday afternoon the week prior to the week the case is set for a readiness hearing.
6. Judge confirms the forms have been signed by the parties, decides whether to grant the motion. If the motion is granted the judge signs the forms and has them filed. If the judge denies the motion he or she notes the decision on the forms and has them filed. The parties are notified of the court's decision by e-mail.
7. Defense counsel will advise the defendant that the forms have been filed and provide copies to the defendant.

CrR 7.8 Procedures for Motions Based on State v. Blake (As of April 14, 2021)

1. Defense attorney/Pro se defendant files CrR 7.8 motion with the clerk's office, provides copies to Superior Court and the clerk's office.
 1. Defense attorney copies Aaron Bartlett/Ashley Smith on motion/email when they believe the granting of the motion will result in the release of their client within the next two months. If the defense attorney wants the motion prioritized, he or she should attach the defendant's associated judgment and sentence and other relevant documents.

2. Court receives motion; forwarded to assigned Judge (this is the department that entered the judgment and sentence or its successor department if the department is no longer in the criminal/civil rotation).
3. Appeals Unit will review the CrR 7.8 motion
4. If PA's office agrees to the requested relief, they will notify the Court and defense counsel.
 1. If agreed relief is vacation of a conviction, the PA will prepare an agreed order vacating the conviction.
 2. If agreed relief is re-sentencing, the PA will notify defense and the court; then within the PA's office the matter will be sent back to the appropriate trial team and assigned to a particular DPA to handle the resentencing. The DPA will work with the defense and the court to schedule a time for re-sentencing.
 1. If it is a pro se motion, the PA will ask the Court/Indigent Defense to appoint a defense attorney.
 2. At a time that is decided by the Court, the PA will cite the matter in for a remote resentencing using Zoom, the PA will coordinate with DOC and the clerk's office. Alternatively, the PA will file a motion and order to transport the defendant from prison to Clark County jail.
 3. The PA will work with the assigned Judge's JA and defense counsel to find a time for the re-sentencing (either as a special set as circumstances call for, or on a COP docket. As volume increases the court may establish resentencing dockets.
 4. Re-sentencing will occur. The order vacating the original sentence will be entered at this time.
5. If the PA's office disagrees with the requested relief, it will file a written response outlining our position.
 1. The PA's office will file its response and send copies to defendant/defense and the Court.
 2. Judge reviews the State's response and determines if a hearing is necessary pursuant to CrR 7.8 or if the motion should be transferred to the COA as a PRP.
 1. Appropriate order entered (either transferring it or setting a show cause hearing).
 2. If hearing was ordered;
 1. PA's office works with the Court and defense to set a time for the hearing
 2. PA's office then files a motion and order to transport the defendant from prison (if Defendant is in prison).
 3. Hearing held (once hearing is held the Court may decide on the merits instead of transferring to the COA).
 1. Relief denied
 1. Order entered
 2. Order to transport Defendant back to prison entered.
 2. Relief granted
 1. Order entered
 2. Re-sentencing hearing set (if relief requested was a resentencing hearing).
 1. Re-sentencing held.

Blake Re-Sentencing Hearings (6/04/21)

Recently there has been some confusion concerning resentencing hearings necessitated by *State v. Blake*,

For in person re-sentencings:

Once the State and the defense have agreed that resentencing is appropriate, the parties will find an available date on a COP docket at least two weeks away and will cite the matter on that docket. Please note that re-sentencings need to be cited before the judge that did the original sentencing or his or her successor (as an example, in front of Department 6 for cases sentenced by Judge Johnson).

1. The State will prepare a motion and order to transport and have it signed by a judge.
2. If the defendant appears on a first appearance docket after arriving in the jail, he or she will be set over to the previously arranged COP docket. The resentencing will not be done on the first appearance or criminal docket.

For remote re-sentencings:

1. A state-level workgroup is meeting to develop a set of uniform procedures to be used for remote re-sentencings. As of today, the workgroup has not published any recommended procedures.
2. If the parties are able to arrange for a remote resentencing, they must cite the matter onto one of the COP dockets.
3. The parties must ensure that each participant (defense, PA, clerk, DOC, judge, judicial assistant) knows exactly what his or her role is and who is responsible for each step in the resentencing process.
4. The parties must inform the court what time the matter is set to be heard and have all required paperwork prepared and to the assigned judge before the beginning of the hearing.



proud past, promising future

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APPENDIX B

Section of Web page: <https://clark.wa.gov/superior-court/notice-criminal-practitioners>

Captured 9/18/2021

CrR 7.8 Procedures for Motions Based on State v. Blake (As of April 14, 2021)

1. Defense attorney/Pro se defendant files CrR 7.8 motion with the clerk's office, provides copies to Superior Court and the clerk's office.

1. Defense attorney copies Aaron Bartlett/Ashley Smith on motion/email when they believe the granting of the motion will result in the release of their client within the next two months. If the defense attorney wants the motion prioritized, he or she should attach the defendant's associated judgment and sentence and other relevant documents.

2. Court receives motion; forwarded to assigned Judge (this is the department that entered the judgment and sentence or its successor department if the department is no longer in the criminal/civil rotation).

3. Appeals Unit will review the CrR 7.8 motion

4. If PA's office agrees to the requested relief, they will notify the Court and defense counsel.

1. If agreed relief is vacation of a conviction, the PA will prepare an agreed order vacating the conviction.

2. If agreed relief is re-sentencing, the PA will notify defense and the court; then within the PA's office the matter will be sent back to the appropriate trial team and assigned to a particular DPA to handle the resentencing. The DPA will work with the defense and the court to schedule a time for re-sentencing.

1. If it is a pro se motion, the PA will ask the Court/Indigent Defense to appoint a defense attorney.

2. At a time that is decided by the Court, the PA will cite the matter in for a remote resentencing using Zoom. The PA will coordinate with DOC and the clerk's office. Alternatively, the PA will file a motion and order to transport the defendant from prison to Clark County jail.

3. The PA will work with the assigned Judge's JA and defense counsel to find a time for the re-sentencing (either as a special set as circumstances call for, or on a COP docket. As volume increases the court may establish resentencing dockets.

4. Re-sentencing will occur. The order vacating the original sentence will be entered at this time.

5. If the PA's office disagrees with the requested relief, it will file a written response outlining our position.

1. The PA's office will file its response and send copies to defendant/defense and the Court.

2. Judge reviews the State's response and determines if a hearing is necessary pursuant to CrR 7.8 or if the motion should be transferred to the COA as a PRP.

1. Appropriate order entered (either transferring it or setting a show cause hearing).

2. If hearing was ordered:

1. PA's office works with the Court and defense to set a time for the hearing

2. PA's office then files a motion and order to transport the defendant from prison (if Defendant is in prison).

3. Hearing held (once hearing is held the Court may decide on the merits instead of transferring to the COA).

1. Relief denied

1. Order entered

2. Order to transport Defendant back to prison entered.

2. Relief granted

1. Order entered

2. Re-sentencing hearing set (if relief requested was a resentencing hearing).

1. Re-sentencing held.

APPENDIX C

Docket and response from Court in after *pro se* 7.8 filing

KPH

FILED

2021 AUG 23 PM 4:23

SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

Cause No. [REDACTED] Date: 8/19/21
State of Washington vs [REDACTED]
(defendant)

A motion was filed by the defendant in the above listed case on 8/19/21
And is being forwarded to Dept # 11. Please indicate below what type of action is
to be taken regarding this motion. [Signature] Deputy Clerk.

- Assigned Department will respond with a letter to the defendant.
- The Clerk is directed to note the motion for hearing on this court's next
criminal docket date _____ at 9:00 a.m. / 1:30 p.m.
- The defendant may cite this motion to the Probation Violation Docket.
- No action to be taken.
- A copy of the motion is being sent to the Prosecuting Attorney for their
response.

Other st v Blake motion -
sent to NPA

Dated this 23 of August, 2021
[Signature]
(Judge or Judicial Assistant)

08/19/2021 Motion ▾
Comment CrR 7.8
08/23/2021 Response ▾
Comment f/Dept 11