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STATE OF WASHINGTON
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No. 98858-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND MAYFIELD WILLIAMS,

Petitioner.

RESPONDENT'S ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the August 17, 2021 published opinion of the Court of Appeals in *In re the Personal Restraint Petition of Raymond Mayfield Williams, Jr.* COA No. 53879-2-II. This decision denied the PRP as untimely.

II. POSITION OF ANSWERING PARTY

The State asks that this Court deny review.

III. ISSUES PRESENTED

1. Has Williams met his burden of demonstrating that review should be granted under RAP 13.4(b)(1) and (3) by showing the Court of Appeals decision conflicts with *State v. Bassett,*[1] or that *Bassett* is a significant change in the law that is material to him?

2. Has Williams met his burden of demonstrating that review should be granted under RAP 13.4(b)(3) and (4) by showing that the threshold procedural time bar issues present a significant question of law or an issue of substantial public interest?

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[1] 192 Wash. 2d 67, 428 P.3d 343 (2018)

IV. STATEMENT OF THE CASE

On October 15, 2008, in Cowlitz County Superior Court, Williams entered a guilty plea to an amended information charging one count of assault in the second degree. Defendant was 28 years old at the time of the plea and sentencing.

The State provided the following factual basis for the plea: "On 5 July, 2008, a gentleman by the name of Chad Gaynor was at his residence at 207 NW. 7th Ave. in the city of Kelso, Cowlitz County, state of Washington. Mr. Gaynor was inside that residence along with two females.... And at that time in the early morning hours, a masked man knocked at the door, demanded entry and brandished a firearm. The man was wearing a ski mask along with black clothing. He forced his way into the residence. He had a small firearm, semi-automatic pistol in his hand, and began demanding money as well as valuable property from Mr. Gaynor and the other individuals in the residence. He backed the individuals into a bedroom. Mr. Gaynor and the other two women then began a discussion of what they should do. They

began the discussion of whether the masked man would actually shoot them. Mr. Gaynor apparently believed that perhaps that this masked man would not shoot down, began making a motion the masked man viewed as being dangerous. The man fired one round from the .25 caliber pistol into Mr. Gaynor's lower leg. The individual fled the residence, at which point the police were called. The police responded, found Mr. Gaynor in pain from the gunshot wound to his leg, found a spent shell casing as well as later recovered a slug in the bedding underneath the area where Mr. Gaynor had been shot. Mr. Gaynor was transported to St. John's medical center, where he underwent medical treatment for the gunshot wound to his leg. Between the infection and the pain, the use of his bodily part, his leg, was substantially impaired. Although not permanently, it was impaired for a substantial period of time. Subsequent to that, investigation revealed that the defendant, Raymond Williams, was likely to be the person who had done this and shot Mr. Gaynor. A SWAT team arranged a ruse in which Mr. Williams was lured to a location and then

arrested. Subsequent to arrest, Mr. Williams was advised of Miranda warnings, waived his warnings and agreed to speak to the police. He stated that he had a history. Williams stated at that time that he owed various debts to various people for various reasons and that he was in need of money. He then concocted a plan to rob Mr. Gaynor, who he believed to have some valuable property. Went to the residence and confessed that he shot Mr. Gaynor in the leg with the pistol. Said pistol was recovered. It was a Raven .25 caliber semi-automatic handgun." The gun "was recovered from his girlfriend's residence." RP 5-7.

Addressing the court, Williams stated "the guy's a child molester and I shot him because he fucking deserved it." RP 7. He added, "In closing, I would like to say that many people believe it was a very righteous act to have harmed a 50-year-old man who I witnessed deal drugs to and have sexual relations with a 15-year-old girl. And while I still believe it was righteous, I now also believe it was stupid. I should have done things different. That's all I got to say." RP 10, 11.

Williams had the following criminal history at the time of sentencing:

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
Malicious mischief 2	9-3-05	NV	J	THURSTON CO, WA	10-31-95
Malicious mischief 2	11-21-95	NV	A	THURSTON CO, WA	12-12-95
Theft 2	6-26-95	NV	A	THURSTON CO, WA	7-21-95
Possession of stolen property 2	6-26-95	NV	A	THURSTON CO, WA	9-7-95
Possession of stolen property 2	6-26-95	NV	A	THURSTON CO, WA	9-7-95
Burglary 1	**2-14-97**	**VIOL**	**A**	**THURSTON CO, WA**	**7-8-97**
Custodial assault	5-11-97	NV	A	THURSTON CO, WA	7-8-97
Burglary 1	**9-13-03**	**VIOL**	**A**	**KING CO, WA**	**2-9-04**

CP 216 (bold emphasis added to the prior strike offenses).

As this was his third strike offense, the court sentenced Williams to life without the possibility of early release under the POAA. His two prior strikes were a burglary in the first degree in 1997, and a burglary in the first degree in 2004. The 1997 burglary in the first degree was entered in Thurston County Superior Court after Williams, then 16 years old, waived his right to be tried as a juvenile.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

"Relief by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment." *In re Pers. Restraint of Coats*, 173 Wn. 2d 123, 132–33, 267 P.3d 324 (2011). A petition for review will be accepted by the Supreme Court only: (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, or (3) if a significant question of law under the Constitution of the State of Washington or of

the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

The Court of Appeals correctly held that Williams's PRP is time-barred as neither of the two asserted exemptions to the one-year time bar applies. RCW 10.73.100 (6) is inapplicable because *Bassett* is not a significant change in the law that is material to Williams's PRP. RCW 10.73.100 (2) is inapplicable because this exception only applies to the particular substantive criminal statute Williams was convicted of, not the statute he was sentenced under. Review is not warranted because the court's opinion does not conflict with *Bassett*, and the narrow procedural issues involved present neither a significant question of law nor an issue of substantial public interest.

Williams misapprehends the proper scope of review here. He contends, "review of Mr. Williams's core constitutional challenge to the POAA is warranted under RAP 13.4(b) (3) and (4)." But only the narrow procedural and threshold questions of

timeliness are at issue. The appellate court did not reach the "core constitutional challenge to the POAA" because his PRP was untimely. Such preliminary matters are not significant questions of law or issues of substantial *public* interest. The unique facts pertain only to Williams, not the public at large.

A. RCW 10.73.100 (6) The significant change in the law exception

The Court of Appeals correctly held *Bassett* is not a significant change in the law that is material to Williams's PRP. Williams has not shown the court's opinion conflicts with *Bassett*. The court's opinion is consistent with *Bassett* and its progeny.

Bassett is not a significant change in the law material to Williams because it explicitly applied only to *juvenile* offenders. Bassett was sixteen years old when he committed aggravated murder and was sentenced to life without parole. *Bassett,* at 91. *Bassett* held that sentencing *juvenile* offenders to life without parole or early release constitutes cruel punishment. In contrast,

Williams was twenty-eight years old when he committed his third strike offense. The Court of Appeals here appropriately observed Williams "once again ignores that *Bassett* addressed *only* a LWOP sentence imposed on a *juvenile* offender. (Emphasis added) In this case, the life without release sentence was imposed on an adult offender." *Slip opinion*, at 787.

The crux of Williams's materiality argument is that despite the fact that Williams was 28 and Bassett was 16 when they committed their respective crimes, *Bassett's* holding should be expanded well beyond its explicit contours to encompass adults sentenced under the POAA who had a prior applicable juvenile strike. The Court of Appeals rejected Williams's argument because he based it on the "broad proposition" that a life without release sentence cannot be imposed based on juvenile conduct. Williams criticizes the court for reading *Bassett* in a "constricted" manner which reflects an "overly narrow understanding" of the decision. The court here did not misunderstand or read *Bassett* too narrowly. *Bassett* applied to

the sentence of a juvenile, not an adult whose criminal history included a predicate juvenile conviction. The facts and circumstances here are markedly different from *Bassett*. The court's decision here does not at all conflict with *Bassett*.

Williams contends *Bassett* "provides *new grounds* to find that outdated assumptions about offenders and culpability are constitutionally flawed when applied to strike offenses committed by children." Williams may want Washington law to go further than *Bassett*, but that desire does not mean that *Bassett* is material to his obviously different circumstances. Rather than relying on a significant change in the law, Williams is asking this court to *create* one. RCW 10.73.100 (6) requires, however, that "[t]here *has been* a significant change in the law." If it were sufficient to ask the court to create a change, the time bar would have little meaning. Since the change that Williams seeks has not yet occurred, the statutory exception is inapplicable.

The court applied the same reasoning here as in *State v. Teas*,[2] a case where defendant made a similar argument – that it is unconstitutional to sentence a class of defendants, adults who committed a predicate offense under the POAA as a "youth," to mandatory life imprisonment. The court rejected his argument, noting that in *State v. Moretti*[3] our Supreme Court held that "Article I, section 14 of the Washington Constitution does not require a categorical bar on sentences of life in prison without the possibility of parole for *fully developed adult offenders who committed one of their prior strikes a young adults."* (Emphasis added). Teas further held that punishing an adult as a persistent offender when a predicate offense was youthful does not contradict the penological goals of the POAA. *Teas,* at 619. The court stated, "Teas is not a juvenile being punished for a crime he committed as a juvenile. He was 39 years old when he raped

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[2] 10 Wash. App. 2d 111, 447 P.3d 606, review denied, 195 Wash. 2d 1008, 460 P.3d 182 (2020)

[3] 193 Wash. 2d 809, 446 P.3d 609, 619 (2019)

R.C. by forcible compulsion. Therefore, the mitigating factors of youth were not applicable when he was sentenced for this crime. Teas's constitutional challenge to his sentence fails." *Teas*, at 620.

Whether a change in the law is material to a sentence, within the meaning of the statutory exception to the one-year limitations period governing a personal restraint petition, depends upon the facts and circumstances of each case. *In re Marshall*, 455 P.3d 1163 (Wash. Ct. App. 2019). Williams mentions *Domingo-Cornelio*,[4] writing the "Court noted in its materiality analysis of *Houston-Sconiers* that Mr. Domingo Cornelio received the kind of sentence that implicates *Houston-Sconiers." Domingo-Cornelio* is distinguishable. There, Domingo-Cornelio committed several crimes between the ages of 15 and 17 but, because of delayed reporting, was not sentenced until he was 20 years old. Here, Mr. Williams was sentenced for

[4] 196 Wash. 2d 255, 265, 474 P.3d 524, 529 (2020), cert. denied sub nom.

a crime he committed in his late 20s. The facts and circumstances in that case are clearly different than here.

Williams also contends that reviewing his "core constitutional challenge to the POAA will also permit this Court to reiterate that proportionality review of POAA sentences requires consideration of both the qualifying and predicate strikes." But the Court has never explicitly held that proportionality review of POAA sentences requires consideration of both the qualifying and predicate strikes. And if the Court had, there would be no need to "reiterate" such a holding. The Court of Appeals here correctly observed, "*Moretti* did not overrule the cases on which Williams relies because those cases did not expressly hold that a court must consider all three offenses in reviewing the constitutionality of a POAA sentence." *Slip opinion*, at 787. Williams disagrees with the court here, and urges this Court as well to simply ignore its own explicit language in *Moretti* that the POAA punishes only the third offense for purposes of a constitutional analysis. This statement

in *Moretti* is clear. The court here correctly rejected Williams's attempt to ignore it. So should this Court.

B. RCW 10.73.100 (2)-The constitutionality of the statute defendant was convicted of exception

RCW 10.73.100(2) is an exception to the one-year time bar where the "statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct." It was Williams's burden to prove this exception applied.

Here, the Court of Appeals examined the language of RCW 10.73.100(2) and outlined the general law on statutory construction. The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent, which we determine by first looking to the plain language of the statute. *In re Pers. Restraint of Pugh*, 7 Wash. App. 2d 412, 418, 433 P.3d 872 (2019). To determine legislative intent, we focus on the plain meaning of the statutory language, the context of the provision within the statute, related provisions, and the statutory scheme as

a whole. *Id.* If the plain meaning of a statute is unambiguous, then we must apply that plain meaning without further construction. *In re Pers. Restraint of Dove*, 196 Wash. App. 148, 155, 381 P.3d 1280 (2016). When interpreting a statute, every word must be given meaning to avoid rendering any language meaningless or superfluous. *State v. Larson*, 184 Wash.2d 843, 850, 365 P.3d 740 (2015).

The court then correctly concluded that the plain language of RCW 10.73.100(2) provides that the one-year time limit does not apply to a PRP when "*[t]he statute that the defendant was convicted of violating* was unconstitutional on its face or as applied to the defendant's conduct." (Emphasis added.) The statute does not provide an exception for when *the statute under which the defendant was sentenced* was unconstitutional. Thus, the exception only applies to the particular substantive criminal statute that Williams was convicted of violating – second degree assault under RCW 9A.36.021 – not the life without release

sentence itself as imposed under the POAA. *Slip opinion*, at 782–83.

Williams contends the court interpreted RCW 10.73.100(2) in an "overly formalistic" manner. But the court simply applied rules of statutory construction by looking at the plain language of the statute. That language is unambiguous. Therefore there was no need for further construction. The court's analysis was hardly "overly formalistic." The court would not ignore the plain meaning of the statute. The court correctly concluded that RCW 10.73.100(2) did not apply to Williams.

The court went on to consider how RCW 10.73.100(2) was addressed in *Matter of Monschke*[5]. The petitioners there argued this statute applied as an exception to the one-year time bar, claiming RCW 10.95.030 was unconstitutional as applied to them based on their age. In a 5-4 decision the Court ruled in favor of the petitioners. But as to the preliminary time bar issue, five

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[5] 197 Wash. 2d 305, 310, 482 P.3d 276, 278–79 (2021)

Justices of the Court found that RCW 10.73.100(2) did not apply as an exemption to the one-year time bar. Four Justices found that it did apply because petitioners challenged the constitutionality of the statute they were each "convicted of violating," the aggravated murder statute. *Id.* at 310. Justice González, though agreeing with the majority on the merits, found a different time bar exemption applied.

Therefore, *Monschke* does not support Williams for two reasons. First, five Justices clearly found that RCW 10.73.100(2) only applies to violations of substantive criminal statutes that have been found unconstitutional, not sentencing statutes. Second, the four Justices who found RCW 10.73.100(2) applied under the specific facts of *Monschke* limited their analysis to the aggravated first degree murder statute. The appellate court here correctly observed *Monschke* declined to extend its ruling to all unconstitutional sentencing statutes; the ruling was limited to the application of RCW 10.95.030(1). *Slip opinion,* at 783. Thus it is distinguishable from this case.

VI. CONCLUSION

For the reasons stated above, the petition for discretionary review should be denied.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 2, 876 words, as calculated by the word processing software used.

Respectfully submitted this 18 day of October, 2021.

By:

Tom Ladouceur, WSBA #19963
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Representing Respondent

CERTIFICATE OF SERVICE

I, Julie Dalton, do hereby certify that RESPONDENT'S ANSWER TO MOTION FOR DISCRETIONARY REVIEW was filed electronically via the Washington State Appellate Courts' Portal and which will automatically cause such filing to be served on the counsel listed below:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on October 18, 2021.

Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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