No. 102378-2

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES ELLIS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

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A. INTRODUCTION

At sentencing, the court must carefully weigh numerous considerations about the person and the offense to determine an appropriate punishment. Restitution is part of that sentence. Because it is punishment, restitution is subject to the excessive fines clauses. Whether it is grossly disproportional depends not just on the offense but, importantly, the person's circumstances.

When James Ellis was only 18 years old, he and other teenagers committed an offense resulting in another young person's death. That youth's family was compensated by a state agency for their costs. And Mr. Ellis is poor, Black, and serving a lengthy prison sentence. Under these circumstances, the restitution to a state agency is unconstitutionally excessive.

Also, a resentencing is a full sentencing hearing. The State agreed Mr. Ellis was entitled to a full resentencing. But he did not get it. Instead, the trial court refused to consider any mitigating evidence, stating those issues were not before it. This Court should reverse.

B. ISSUES PRESENTED

1. The Eighth Amendment and article I, section 14 forbid the government from imposing "excessive fines." A payment is a fine subject to the excessive fines clauses if it is, at least, partially punitive. Under the plain language of Washington's restitution statutes and holdings by this Court, restitution is punishment and categorically subject to the excessive fines clauses.

2. A payment is unconstitutionally excessive if it is "grossly disproportional." The analysis requires consideration of both the offense and the person's circumstances, including ability to pay. Mr. Ellis is indigent. When he was 18 years old, he committed an offense where he did not profit. Mr. Ellis has been in prison for 17 years and will remain in prison for many more. A state program has already compensated the victim's family for their costs. Mr. Ellis is unable to pay, but the court ordered him to pay $7,097.32 in restitution to a state agency. This violates the excessive fines clauses.

3. When the court holds a resentencing following *Blake*,[1] it must be a full resentencing. Under the Sentencing Reform Act (SRA), a resentencing is like any other sentencing hearing, and the court must allow all arguments relevant to its decision. The SRA makes no provision for anything other than a sentencing hearing. Here, the court improperly limited the scope of Mr. Ellis's resentencing when it refused to consider any mitigating evidence.

C. STATEMENT OF THE CASE

Mr. Ellis is a Black man with a troubled childhood. CP 1; RP 9. When he was just 18 years old, he and two other teenagers tried to rob another youth they knew, which tragically resulted in that youth's death. CP 4. Mr. Ellis pleaded guilty to felony murder. CP 8-16. At sentencing, the court ordered 300 month in prison, $7,097.32 in restitution to the Crime Victims Compensation Program (CVCP), and thousands of dollars in

[1] *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

other legal financial obligations (LFOs), all with interest. CP 21-23, 35-36.

Mr. Ellis's original sentence included an unconstitutional conviction in the offender score. Eliminating that conviction after *Blake* lowered his offender score and changed the standard range. CP 38-39. The State agreed Mr. Ellis was entitled to resentencing, and the trial court scheduled a hearing. CP 38.

At the resentencing hearing, Mr. Ellis asked the court to consider his youthfulness and rehabilitation. RP 6, 8-9. Both times he tried to bring up mitigation, the court told Mr. Ellis "that's a different issue" that must be "address[ed] in a different format," not at the current hearing. RP 6, 9.

After refusing to allow any mitigating evidence or argument, the court imposed a new sentence of 289 months, which was an 11-month reduction to mirror the reduction in the standard range. RP 6-7, 9. It re-imposed all other portions of the original sentence. CP 41.

Mr. Ellis appealed his new sentence. CP 42. The Court of Appeals agreed he was entitled to a full resentencing. *State v. Ellis*, 27 Wn. App. 2d 1, 8 n.2, 530 P.3d 1048 (2023). But it concluded Mr. Ellis received a full resentencing, "even though the trial court declined to consider Ellis's youth at resentencing." *Id.* at 8 n.2, 9.

The Court of Appeals also concluded the restitution was not subject to the excessive fines clause and, alternatively, not excessive. *Id.* at 13. It did not reach Mr. Ellis's constitutional challenge to restitution interest and remanded to the trial court to reconsider interest and other LFOs in light of statutory changes. *Id.* at 15-18.

D. ARGUMENT

1. Restitution is subject to the excessive fines clauses' prohibition against disproportionate punishment, which requires consideration of both the offense and the person's circumstances.

The Eighth Amendment and article I, section 14 limit the government's power to punish. U.S. Const. amend. VIII; Const. art. I, § 14. Both indisputably apply to criminal cases to prohibit

excessive "bail, fines, and punishments." *Browning-Ferris Indus. of Vt., Inc., v. Kelco Disposal, Inc.*, 492 U.S. 257, 262, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989).

Contained within both provisions, the excessive fines clauses specifically limit "the government's power to extract payments . . . as *punishment* for some offense." *Austin v. United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (citation omitted); *City of Seattle v. Long*, 198 Wn.2d 136, 159, 493 P.3d 94 (2021) (quoting same).

This Court's "interpretation of article I, section 14 is not constrained by the Supreme Court's interpretation of the Eighth Amendment." *State v. Gregory*, 192 Wn.2d 1, 15, 427 P.3d 621 (2018) (cleaned up). Indeed, this Court has recognized article I, section 14 generally provides "greater protection than the Eighth Amendment." *Long*, 198 Wn.2d at 158. This Court has "a duty, where feasible, to resolve constitutional questions first under the provisions of our own state constitution before turning to federal law." *Gregory*, 192 Wn.2d at 14 (citing

cases). This Court dictates the minimum requirements of article I, section 14. *See State v. Bartholomew*, 101 Wn.2d 631, 644, 683 P.2d 1079 (1984). And our state provision cannot be any *less* protective than the federal provision. *Gregory*, 192 Wn.2d at 16.

The analysis under the excessive fines clauses is a two-step inquiry. The first question is whether the type of payment is a "fine." A "fine" is a payment ordered by the government in a criminal case as punishment for a criminal offense. *Browning-Ferris*, 492 U.S. at 265. After two centuries, courts extended the prohibition on excessive punishment to *civil* fines that are "at least partially punitive." *Long*, 198 Wn.2d at 161 (citing *Austin*, 509 U.S. at 609-10). But *criminal* financial punishment certainly fall within the plain terms of the Eighth Amendment and article I, section 14.

The second question is whether the fine is "grossly disproportional" in light of the offense and the person's

circumstances. *Id.* at 166, 171. If it is, it is unconstitutionally excessive.

a. Restitution is punishment.

Consistent with the history and scope of the Eighth Amendment and article I, section 14, the plain language of the restitution statutes, numerous holdings, and the real life impacts, restitution is punishment.

i. As this Court has recognized, restitution is a criminal sanction.

Restitution is criminal punishment authorized by the SRA for a criminal conviction. It is therefore a "fine." As this Court recognized, restitution furthers the SRA's purpose to "provid[e] punishment." *State v. Morgan*, ___Wn.3d___, 562 P.3d 360, 365 (2025) (quoting *State v. Davison*, 116 Wn.2d 917, 922, 809 P.2d 1374 (1991)). This Courts has also consistently held: "In Washington restitution is both punitive and compensatory." *State v. Kinneman*, 155 Wn.2d 272, 279, 119 P.3d 350 (2005); *see e.g. State v. Barbee*, 193 Wn.2d 581, 588, 444 P.3d 10 (2019) ("Restitution serves both to rehabilitate

the defendant and to compensate the victim."); *State v. Devin*, 158 Wn.2d 157, 168, 142 P.3d 599 (2006) (restitution has a "strong punitive component"); *State v. Moen*, 129 Wn.2d 535, 539 n.1, 919 P.2d 69 (1996) (the "primary purpose" of restitution is penological); *see also State v. Edelman*, 97 Wn. App. 161, 166, 984 P.2d 421 (1999) ("restitution is part of an offender's sentence and is primarily punitive"); *Kinneman*, 155 Wn.2d at 280 & n.9 (citing cases).

The plain language of the SRA supports this conclusion. *See Long*, 198 Wn.2d at 164 (examining plain language); *Austin*, 598 U.S. at 619-22 (same). Like all aspects of punishment, the court's authority to impose restitution is derived entirely from statute. *Davison*, 116 Wn.2d at 919. The SRA requires restitution as "punishment" "pursuant to a criminal conviction." RCW 9.94A.505(1), (8), .753(3)(a); *see Kinneman*, 155 Wn.2d at 281 ("[u]nder the [SRA], restitution is part of an offender's sentence" (citation omitted)); *Morgan*, 562 P.3d at 364 (same). It implicates the government's power to

order monetary punishment, which is the central concern of the excessive fines clauses.

Restitution is a criminal sanction, and it falls squarely in the purview of the Eighth Amendment and article I, section 14. And it is "at least partially punitive." *Long*, 198 Wn.2d at 161. Therefore, restitution is a "fine" and subject to the excessive fines clauses.

While the United States Supreme Court has not directly addressed whether restitution is subject to the excessive fines clause, its holdings indicate it is. Like other criminal penalties, restitution is a component of sentencing a court imposes after conviction. *See United States v. Bajakajian*, 524 U.S. 321, 328, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). The purpose of restitution is "to mete out appropriate criminal punishment for [criminal] conduct." *Pasquantino v. United States*, 544 U.S. 349, 365, 125 S. Ct. 1766, 161 L. Ed. 2d 619 (2005). Restitution "serves punitive purposes," even if it also has compensatory purposes. *Paroline v. United States*, 572 U.S.

434, 456, 134 S. Ct. 1710, 188 L. Ed. 2d 714 (2014). And restitution is a "penalty" that is "part of a criminal sentence." *Kelly v. Robinson*, 479 U.S. 36, 49 n.10, 50, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986).

The conclusion that restitution is punishment is also consistent with the historical roots of the excessive fines clause, which is derived "verbatim" from the Magna Carta's restrictions on the government's power to "amerce[]" people for wrongdoings. *Long*, 198 Wn.2d at 159-60. To "amerce" is to "impose a fine or penalty that is not fixed but is left to the court's discretion" or to "fine or punish in any manner." *Id*. at 160 n.7 (quoting Black's Law Dictionary 103 (11th ed. 2019)). This is exactly what restitution is.

The history of the excessive fines clauses was focused on criminal punishment. But the prohibition is unique because it applies so long as the payment is "at least partially punitive," regardless of whether it is criminal or civil. *Long*, 198 Wn.2d at 161; *Austin*, 509 U.S. at 610 ("punishment . . . cuts across the

division between the civil and the criminal law" (citation omitted)). It is unlike other constitutional provisions that only apply in criminal cases or where something is "so punitive" as to be equivalent to a criminal sanction and trigger those protections. *United States v. Ursery*, 518 U.S. 267, 287, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996); *see United States v. Ellingburg*, 113 F.4th 839, 841-42 (8th Cir. 2024), *cert. granted*, 2025 WL 1020364 (U.S. Apr. 7, 2025); *Kinneman*, 155 Wn.2d at 281. But most courts agree "restitution is a criminal penalty." *Ellingburg*, 113 F.4th at 842. In any event, other cases involving different constitutional provisions do not preclude the excessive fines clauses' application to restitution.

Restitution is categorically punishment for the purposes of the excessive fines clauses. Under the inquiry's first step, courts apply a "categorical analysis" that focuses on "the function of a specific sanction, not its form or duration." *Long*, 198 Wn.2d at 165; *see Austin*, 509 U.S. at 622 n.14.

Assessing the amount of restitution is the second step—the proportionality analysis—which "asks whether the particular sanction in question is so large as to be 'excessive.'" *Ursery*, 518 U.S. at 287. The amount does not change the fact it is punishment in the first place. Of course, ordering *more* than demonstrated costs would make it *more* punitive. *See Kinneman*, 155 Wn.2d at 280 (court's discretion to order up to double makes it "strongly punitive"). And ordering more could certainly indicate it is grossly disproportionate.

In sum, restitution in Washington is punishment, and it is subject to the excessive fines clauses.

ii. The real life impacts also demonstrate restitution is punishment.

The conclusion that restitution is punishment is also consistent with its impacts. Of the different types of LFOs, restitution is particularly burdensome. No statutory limit caps the amount of restitution courts can impose. *Kinneman*, 155 Wn.2d at 282. The statute expressly allows restitution far in excess of actual losses. RCW 9.94A.753(3)(a). And while the

legislature has eliminated or restricted other LFOs, restitution remains mandatory, is regularly imposed in large amounts and with interest, and has far-reaching consequences. Cynthia Delostrinos, et al., State Minority & Just. Comm'n, *The Price of Justice: Legal Financial Obligations in Washington State*, 14, 18 (2022);[2] Karl Jones, et al., Wash. State Ctr. for Court Research, *Legal Financial Obligations in Washington's Courts: Final Report to the Legislature*, 7 (2024);[3] *Morgan*, 562 P.3d at 364-65.

The vast majority of criminal defendants are poor. Delostrinos, *supra*, at 10 (about 80-90% are indigent). After conviction, they continue to be poor. Katherine Beckett, et al., State Minority & Just. Comm'n, *The Assessment and Consequences of Legal Financial Obligations in Washington State*, 3 (2008).[4] Yet courts impose LFOs such as restitution in

[2] [https://perma.cc/GJ84-HQ8E]
[3] [https://perma.cc/6ZZH-RSZY]
[4] [https://perma.cc/BUE6-YWT4]

nearly all cases, with "detrimental impacts on individuals, their families, and communities." Jones, *supra*, at 11.

Outstanding restitution subjects poor people to extended court oversight and puts them in danger of numerous additional criminal and civil sanctions. *See* RCW 9.94A.760; Bryan Adamson, *Debt Bondage: How Private Collection Agencies Keep the Formerly Incarcerated Tethered to the Criminal Justice System*, 15 Nw. J.L. & Soc. Pol'y 305, 307-08 (2020). It prevents them from vacating their criminal records or restoring other rights. *Id.* at 309; Beckett, *supra*, at 3-4; RCW 9.94A.637, .640. Unlike other debts, restitution cannot be discharged in bankruptcy. *Robinson*, 479 U.S. at 50; Adamson, *supra*, at 308 & n.19.

In addition to living with a criminal record and extended court oversight, restitution limits a person's ability to access housing, build credit, obtain employment, pursue education and training, qualify for benefits, or achieve financial stability. Beckett, *supra*, at 3-5; *State v. Blazina*, 182 Wn.2d 827, 837,

344 P.3d 680 (2015). Only people who cannot pay face these persistent harms and dangers of nonpayment.

Communities of color bear outsized amounts of legal debt and suffer its devastating impacts most heavily, reinforcing systemic inequities and intergenerational poverty. Delostrinos, *supra*, at 10; Jones, *supra*, at 9-10, 13-14; Deborah Espinosa, et al., Living with Conviction, *The Cost of Justice: Reform Priorities of People with Court Fines and Fees*, 27 (2021).[5] It exacerbates hardships and creates a health crisis not just for minorities but also their families and communities. Jones, *supra*, at 13; Espinosa, *supra*, at 22, 28. It is "physically, mentally, emotionally, and financially crushing to the individuals with LFOs and their families, both criminalizing poverty and disproportionately impacting the poor and communities of color." Espinosa, *supra*, at iv.

[5] [https://perma.cc/8ZPN-FA7F]

Yet courts regularly impose high amounts of restitution on indigent defendants. Jones, *supra*, at 7. And over 70% of restitution is payable to insurance companies, local governments, state agencies, and businesses. *Id.* at 8. But because they are poor, only a tiny portion of that debt is paid. Delostrinos, *supra*, at 11 (reporting only about 5% of LFOs were collected in superior courts, and less than half that is restitution).

These disparate harms are not new. This Court is well aware that legal debt reinforces historic wrongs and current cycles of poverty, homelessness, racial disparity, and recidivism in Washington. *See Blazina*, 182 Wn.2d at 835-37; *Long*, 198 Wn.2d at 171-72. Acknowledging "the State cannot collect money from defendants who cannot pay," Washington's courts and legislature have eliminated or restricted financial punishments for people who are poor. *Blazina*, 182 Wn.2d at 837; *see Long*, 198 Wn.2d at 171-73; *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 723-24, 497 P.3d 871 (2021);

Laws of 2023, ch. 449; Laws of 2022 ch. 260; Laws of 2018, ch. 269.

Despite these serious impacts and Washington's response to eliminate financial burdens on poor people, restitution is still often a mandatory part of a criminal sentence. RCW 9.94A.753. Restitution also remains the only LFO for which the court can impose interest. RCW 10.82.090. The astounding 12% interest rate makes restitution an even more insurmountable barrier. *Blazina*, 182 Wn.2d at 836.

Restitution does not exist in a vacuum. The staggering amounts of restitution courts impose make it an even greater burden than other LFOs, with even graver consequences. Put simply, restitution is punishment. For many, it will punish them for the rest of their lives.

b. The restitution is grossly disproportionate because Mr. Ellis is poor, young, Black, serving a long sentence, and the victim's family has been compensated.

"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality."

Long, 198 Wn.2d at 176 (citation omitted). This analysis "concerns more than just an offense itself; it also includes consideration of an offender's circumstances." *Id.* at 171. Whether a particular fine is unconstitutionally excessive will vary from case to case: "what is ruin to one man's fortune, may be a matter of indifference to another's." *Id.* (citation omitted).

The proportionality analysis includes five factors: "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused," and (5) the "person's ability to pay." *Id*. at 173 (citation omitted).

This Court added the fifth factor to honor the purpose and history of the excessive fines clause. *Id*. It recognized monetary sanctions on poor people exacerbate economic inequality, especially for communities of color in Washington. *Id.* at 171-72. It also criticized practices that fund state

programs on the backs of poor people. *Id.* at 172 (citing Adamson, *supra*, at 315).

Where restitution is equal to the costs incurred does not mean the disproportionality analysis concludes before it even begins. *Id.* at 173 (holding a *reduced* fine was grossly disproportionate). That is relevant only to one factor (extent of harm). Indeed, restitution will *always* be based on demonstrated costs. RCW 9.94A.753; *State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). In any event, while the legislature establishes criminal punishment, this Court assesses whether those penalties are excessive. *State v. Fain*, 94 Wn.2d 387, 402, 617 P.2d 720 (1980).

In this case, Mr. Ellis, an 18-year-old Black youth, was ordered to pay $7,097.32 in restitution, with interest, to a state agency. All five proportionality factors demonstrate this amount is unconstitutionally excessive.

First, regarding the nature and extent of the crime, Mr. Ellis pleaded guilty to felony murder, which he committed with

two other teenagers. CP 4, 19. This resulted in the tragic death of another young person, for which Mr. Ellis has expressed sincere remorse. RP 8. But Mr. Ellis did not profit in committing this crime. Restitution was traditionally intended for a defendant to return what they wrongfully took. Nathaniel Amann, *Restitution and the Excessive Fines Clause*, 58 Am. Crim. L. Rev. 205, 206 (2021). "[P]reventing criminals from profiting from their crimes" is also one of the purported justifications for restitution. RCW 7.68.300. Though Mr. Ellis and his co-defendants caused harm, he did not profit from his crime in any way.

Second, this was an isolated incident, unrelated to other illegal activities. While the decedent died during an attempted robbery, which was the basis for the felony murder charge, it was not related to any other crimes or part of an ongoing criminal enterprise. *Cf. Jacobo Hernandez*, 19 Wn. App. 2d at 722 (defendant was in the business of delivering drugs). Rather,

it was an impulsive offense involving several young people that ended in tragedy.

Third, the more than 24 years in prison Mr. Ellis is currently serving is already severe punishment for his offense. CP 40. He was sentenced above the mid-point of the standard range, despite being only 18 years old at the time. CP 39-40. The restitution order also subjects him to additional penalties, likely for the rest of his life. RCW 9.94A.760; *see Long*, 198 Wn.2d at 173 (petitioner was "subject to additional penalties in the form of late charges and collection efforts").

Fourth, the extent of harm was certainly serious because it resulted in someone's death. But the CVCP compensated the decedent's family for their costs. The purported remedial justification for restitution—to compensate individual victims for their costs—has already been satisfied. *See Morgan*, 562 P.3d at 369.

But all of the restitution here was payable to the CVCP. It was not a direct victim of the crime. Rather, it is a state

program with a multi-million dollar budget and does not rely on restitution from defendants such as Mr. Ellis for funding. *Id.* at 367 & nn.4-5 (citing Dep't of Lab. & Indus., *How We're Funded*;[6] Adamson, *supra*, at 330-31). Where the victim's family has already been reimbursed, requiring Mr. Ellis to pay restitution (and near-usurious interest) to a well-funded state agency weighs against the justification for restitution. *See State v. D.L.W.*, 14 Wn. App. 2d 649, 655, 472 P.3d 356 (2020) (the payee's is relevant). "Courts scrutinize governmental action more closely when the State stands to benefit." *Long*, 198 Wn.2d at 173 (citation omitted).

The ability to pay, the fifth factor, is critically important to the disproportionality analysis. Indeed, this factor alone can demonstrate a fine is excessive, even where all other factors suggest otherwise. *Jacobo Hernandez*, 19 Wn. App. 2d at 723 ("[T]he extensive history on which [*Long*] relies suggests an

[6] [https://perma.cc/42Z3-75JM]

individual's ability to pay can outweigh all other factors."). This is because "[a] fine that would bankrupt one person would be a substantially more burdensome fine than one that did not." *Id*. (quoting *Long*, 198 Wn.2d at 113).

Mr. Ellis was and still is indigent. CP 43-47. He has a high school education, no job training, has no meaningful work experience outside of prison, and he already had legal debt prior to this case. He is serving a long sentence and, unless the court on remand imposes a lower sentence, he will likely spend the majority of his life in prison. Even if he were able to afford to pay $10[7] a month, it would take him the rest of his life—nearly 60 years—to pay restitution (Figure 1). With interest, it would be multiple lifetimes.

[7] The court did not set a payment plan. This brief uses $10 monthly payment as an example. If he cannot pay that amount, it would take even longer to pay off.

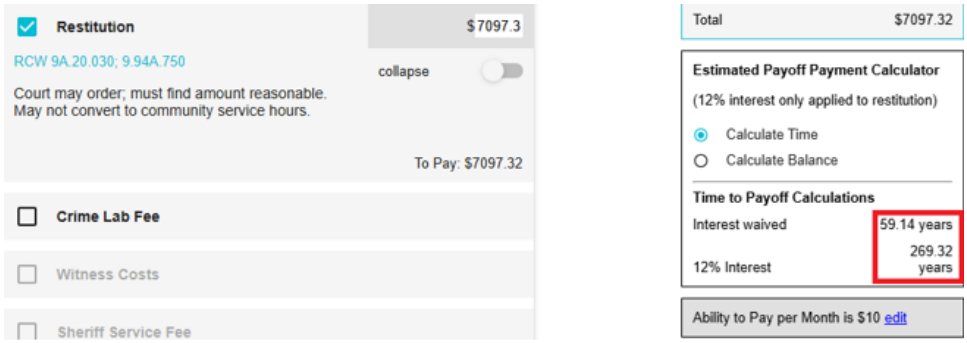

Figure 1: LFO Calculator, Washington State Minority & Justice Commission, https://beta.lfocalculator.org/.

Mr. Ellis is unable to pay restitution. While the amount in this case may be lower than other cases, it is still well above average. *See* Jones, *supra*, at 30; Beckett, *supra*, at 20. It is an excessive burden for Mr. Ellis. For a person with means, or a person who stole property and can pay it back, or even a person with a short sentence, $7,097.32 in restitution may not be excessive. For a person with an average Washington income, this amount may not be "inconceivable." U.S. Census Bureau, *QuickFacts: Washington*;[8] *Ellis*, 27 Wn. App. 2d at 14. But for Mr. Ellis, it will be ruinous. Indeed, this Court has held fines

[8] https://www.census.gov/quickfacts/fact/table/WA/INC110223

that were *far less* to be unconstitutionally excessive. *Long*, 198 Wn.2d at 173 (concluding $547.12 in fines was grossly disproportionate). What may be a matter of "indifference" to another person will be "ruin" to Mr. Ellis. *Id.* at 171 (citation omitted).

In addition, Mr. Ellis was only 18 years old at the time of his offense. His young age is relevant to his circumstances. *D.L.W.*, 14 Wn. App. 2d at 655. Indeed, had he been a little younger, the restitution order would have expired after 10 years instead of subjecting him to lifelong punishment. RCW 13.40.192(1).

In sum, the trial court ordered a poor, Black teenager to pay thousands of dollars in restitution, with interest, to a well-funded state agency, even though the victim's family has already been compensated, he is serving a long sentence, and he gained nothing from the isolated crime. All five factors demonstrate the restitution is unconstitutionally excessive. This Court should reverse to strike the restitution order.

2. The State agrees Mr. Ellis was entitled to a full resentencing after *Blake*. But that did not occur here, where the trial court limited the scope of the hearing by refusing to allow mitigating evidence.

When this Court held Washington's simple drug possession statute unconstitutional, it required courts to vacate every conviction under that unconstitutional statute. *Blake*, 197 Wn.2d at 195. It also required courts to resentence people when those unconstitutional convictions contributed to their offender score. *State v. Jennings*, 199 Wn.2d 53, 67, 502 P.3d 1255 (2022).

Mr. Ellis had one of those sentences. After excluding the unconstitutional conviction, his offender score and standard range were both lower. CP 39. The State agreed Mr. Ellis needed to be resentenced. CP 38. And the State continues to agree he was entitled to resentencing.[9] When the trial court scheduled a resentencing hearing, it effectively vacated the prior sentence and entitled Mr. Ellis to a full resentencing for

[9] Br. of Resp't at 8; Answer to Pet. for Rev. at 9.

the court "to consider all arguments and evidence presented." *State v. Vasquez*, 4 Wn.3d 208, 214-15, 560 P.3d 853 (2024) (plurality opinion).[10]

Like any other sentencing, the SRA requires the court to hear all arguments at resentencing and determine an appropriate sentence. *Id.* at 216-17 (citing RCW 9.94A.500(1), .530(2)). It does not differentiate between "whether it is a sentencing or resentencing proceeding," and it does not authorize the court to limit the scope of a resentencing hearing. *Id.*

But in this case, the court improperly limited the scope of resentencing when it refused to permit any arguments about youth or rehabilitation. When Mr. Ellis first brought up his youthfulness, the court said: "that's a different issue than the one we're talking about today." RP 6. Mr. Ellis again asked the court to "tak[e] my youthfulness into consideration" and

[10] This Court unanimously held a resentencing is a full sentencing hearing. *Vasquez*, 4 Wn.3d at 219 (lead opinion); 219 (Madsen, J., concurring); 226-27 (Gordon McCloud, J., concurring).

consider he was "a kid, young," and "alone" in a "toxic environment." RP 8-9. He told the court about his growth in the over 13 years since his actions as a teenager. RP 8-9. But the court refused to hear any of that evidence and told him it would have to be "address[ed] in a different format" than the resentencing hearing. RP 9.

The sentencing court improperly narrowed the scope of resentencing when it refused to consider arguments relevant to its sentencing decision. But as this Court made clear, there is no such thing as a limited or narrow resentencing. *Vasquez*, 4 Wn.3d at 216-17. Instead, under the SRA, there are simply sentencing hearings.

Like in *Vasquez*, not only did the court err by limiting the scope of the hearing, it did not "exercis[e] their independent discretion in sentencing" and simply treated the resentencing like a mathematical question. *Id*. at 219. The court ordered a new sentence by changing the prior sentence by the exact number of months the standard range changed. This does not

constitute a full sentencing, which must be more than a bare, mathematical calculation. *See id*. at 211, 218-19 (the court improperly limited the scope and simply calculated a new prison term "utilize[ing] the same formula"); *State v. Dunbar*, 27 Wn. App. 2d 238, 249, 532 P.3d 652 (2023) (the court must "conduct its own independent review" at resentencing).

And the fact that the court imposed the sentence Mr. Ellis's counsel requested does not remedy the court's error. Nothing in the SRA allows any party to limit the court's independent sentencing authority. *Vasquez*, 4 Wn.3d at 216-17; *see In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 872, 50 P.3d 618 (2002). In addition, this case is presently before this Court as a direct appeal of his new sentence; this is not a collateral attack, so Mr. Ellis need not show prejudice. *Vasquez*, 4 Wn.3d at 213-14.

The court did not understand its statutory obligation to conduct a full resentencing, regardless of the actual sentence imposed. *See State v. O'Dell*, 183 Wn.2d 680, 696-97, 358 P.3d

359 (2015) (the court's categorical refusal to consider youth at sentencing was error); *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017) (a person can challenge the court's procedure to impose a standard range sentence). The SRA requires the court to allow and meaningfully consider all arguments relevant to sentencing. *McFarland*, 189 Wn.2d at 56. Defense counsel's argument, or lack thereof, does not relieve the court of its independent authority to conduct a thorough sentencing. *See Vasquez*, 4 Wn.3d at 217-18 (reversing for a full resentencing even though defense counsel agreed the hearing was "limited"). Mr. Ellis tried to present mitigating evidence. The court refused to allow it.

In sum, the trial court misunderstood its authority, improperly limited the scope, and did not exercise its discretion to sentence Mr. Ellis. Instead, it simply treated resentencing as a narrow, mathematical adjustment. This Court should reverse for a full resentencing hearing where the court considers Mr. Ellis's youthfulness, rehabilitation, and any other issues he

wishes to present that would allow the court to determine a just sentence.

E. CONCLUSION

Restitution is subject to the excessive fines clauses. This Court should reverse the restitution order as unconstitutionally excessive and remand to the trial court for a full resentencing.

This brief is in 14-point Times New Roman, contains 4,998 words, and complies with RAP 18.17.

Respectfully submitted this 11th day of April 2025.

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