NO. 102378-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES LARON ELLIS,

Petitioner.

Appeal from the Superior Court of Pierce County
The Honorable Judge Philip K. Sorenson

No. 08-1-01518-3

SUPPLEMENTAL BRIEF OF RESPONDENT

MARY E. ROBNETT
Pierce County Prosecuting Attorney

Teresa Chen
Deputy Prosecuting Attorney
WSB # 31762 / OID #91121
930 Tacoma Ave. S, Rm 946
Tacoma, WA 98402
(253) 798-6517

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Federal and Other Jurisdictions

Constitutional Provisions

Statutes

Rules and Regulations

Other Authorities

I. INTRODUCTION

When James Ellis was resentenced following the issuance of *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), the parties did not ask the court to revisit the agreed restitution order. Instead, they agreed that provisions in the original judgment that were not altered at the resentencing would remain intact. Because the resentencing court did not exercise independent judgment as to restitution, the restitution order is not reviewable.

However, if the Court reaches the merits, it should hold that restitution for actual loss and injury only is neither a fine nor excessive under the Eighth Amendment and Article 1, §14.

Ellis and his codefendants are jointly and severally liable for $7097.32 toward their murder victim's funeral expenses. Such order is not an excessive fine. It is not a punitive fine where the order only recompenses the victim's family, not the sovereign, for actual compensatory damages. The order for funeral expenses is not constitutionally excessive in the context of this murder, the legislative authorization, the defendants'

ability to pay, and the Department of Labor and Industries' ability to reduce or waive the order at any time in the interest of justice and for the rehabilitation of the defendant.

At the resentencing, the prosecutor asked the court to maintain the negotiated sentence. After hearing and considering Ellis' request for consideration as a young adult offender, the court imposed the reduced sentence that Ellis recommended. There was no abuse of discretion.

II. RESTATEMENT OF THE ISSUES

A. Whether a reviewing court will review an aspect of the judgment which was not revisited at resentencing and contrary to the precedent of *State v. Kilgore*, 167 Wn.2d 28, 40, 216 P.3d 393 (2009) and *State v. Barberio*, 121 Wn.2d 48, 49-52, 846 P.2d 519 (1993)?

B. Whether restitution ordered to compensate the victim's family for actual funeral expenses is a punitive fine?

C. Whether restitution for actual funeral expenses of the murder victim is constitutionally excessive?

D. Whether the resentencing court abused its discretion in considering the Defendant's argument and allocution before imposing the very sentence the Defendant requested?

III. STATEMENT OF THE CASE

A. Ellis' date of finality was 2009.

James Ellis was an adult when he persuaded two co-defendants to assist him in robbing Javon Holden against whom Ellis had a score to settle. CP 1, 4-5, 19. The three robbers entered Holden's resident at 2 am and demanded drugs and money. CP 4-5. When Holden refused, Ellis' accomplices beat the victim with their fists and a clothing iron. CP 4. Ellis then executed Holden with a bullet to the head before turning the gun on Holden's girlfriend, "apparently contemplating whether or not to shoot her." CP 4.

Ellis pled guilty to a reduced charge of second-degree felony murder with a firearm enhancement. CP 1-3, 6-8, 11. Ellis had an offender score of four and a standard range of 225-325 months, and plea negotiations resolved in a recommendation of 300 months. CP 9, 11, 20. On January 12, 2009, the court imposed the recommended 300 months. CP 19, 22-23.

The judgment indicated that restitution may be imposed at a later date. CP 21. On May 8, 2009, Ellis, through his attorney, agreed to entry of the restitution order. CP 36. It requires Ellis, joint and several with his two co-defendants, to pay Crime Victims Compensation $7097.32 for the victim's funeral expenses. CP 35-36.

Because Ellis did not appeal, 2009 became his date of finality. RCW 10.73.090; *State v. Kilgore*, 167 Wn.2d 28, 43, 216 P.3d 393 (2009) (stating finality occurs when the availability of appeal had been exhausted).

B. Following *State v. Blake*, the court revisited Ellis' term of incarceration while leaving the unchallenged, agreed restitution amount intact.

In February of 2021, this Court determined that Washington's drug possession statute was unconstitutional. *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). Ellis had been convicted under this statute as a juvenile, and, as a result of *Blake*, that conviction was vacated. CP 20, 31 n.2. While the vacation of this history altered Ellis' offender score and standard

sentence range in the murder case, the 300-month sentence was still authorized within the adjusted range of 214-314 months. CP 20, 32-33. Nevertheless, on July 20, 2021, Ellis was resentenced on the murder. CP 30-41.

No motion preceded the hearing. The court explained the hearing was to determine how *Blake* "might impact [the defendant's] sentencing." RP 4. The court's order indicates "the State and defendant agree the court should correct the judgment and adjust the sentence" to reflect an offender score of 3 and a standard range of 214-314 months. CP 31.

The judge asked Ellis whether he was prepared to move "forward today with the issues we have to talk about." RP 5-6. Ellis equivocated, saying "[i]n a sense," "but also no," because he "would like to just bring awareness of my youthfulness." RP 5. The court agreed: "That certainly is an issue that the courts have acknowledged is something that should be taken into account in certain circumstances." RP 6. But Ellis had not prepared any briefing, exhibits, or witnesses in support of an

exceptional sentence. The court asked again, "Do you believe you are prepared to go forward today?" RP 6. Ellis replied in the affirmative. RP 6.

The only aspect of the judgment discussed at the hearing was the term of incarceration. The prosecutor asked the court to leave intact the negotiated 300-month sentence. RP 6. Defense counsel requested a proportional reduction to 289 months. RP 6-7. Ellis himself did not recommend any specific term of months. Nor did he provide any evidence of diminished culpability. He only told the court that he was remorseful "for what I've done" and claimed without proof to have "accomplished a lot of education, training, and things of that nature," become involved "with different groups like Washington Prisons Urban League," and "grown into something better." RP 8-9. Ellis asked the court to take his "youthfulness into consideration." RP 8 ("I got to prison at 19 years old").

The court granted Ellis' request—imposing the defense recommendation of 289 months. CP 33.

Reflecting the parties' agreement regarding "terms and conditions [ ] that are not corrected or adjusted" by *Blake* (CP 31-32), the court left the unchallenged aspects of the 2009 judgment intact, ordering that "all other terms and conditions of the original Judgment and Sentence dated January 9, 2009, shall remain in full force and effect as if set forth in full herein." CP 34. This included the agreed restitution order. CP 35-36.

C. The court of appeals rejected Ellis' excessive fines challenge to his restitution order on the merits.

The court of appeals permitted Ellis to file a late notice of appeal from his July 20, 2021 resentencing. CP 42 (notice filed on May 24, 2022); Ruling (No. 56984-1-II, July 6, 2022).

Ellis has alleged that the court failed to consider his youth and that the joint and several restitution was an excessive fine.[1] Slip Op. at 1-2. The court of appeals' 2023 opinion noted that

[1] The petition for review does not revisit Ellis' challenges to other legal financial obligations, including restitution interest, which have been remanded based on recent statutory amendments.

Ellis "received a full resentencing hearing" at which the court adopted Ellis's recommendation. *Id*. at 4 n.2, 5.

> Here, Ellis does not argue that the sentencing court failed to recognize its discretion to impose an exceptional sentence. At the sentencing hearing, Ellis argued for a sentence within the standard range, which the trial court granted.

Id. at 5. The opinion rejected the State's RAP 2.5 objection to the restitution claim. *Id.* at 6. Reaching the merits, it found the burial expenses were compensatory, not punitive, and therefore not a fine. *Id*. at 7-9. And it found the amount was not constitutionally excessive. *Id.* at 5, 8, 10-11.

IV. ARGUMENT

A. Ellis is procedurally barred from challenging the agreed 2009 restitution order which was not disturbed or reconsidered in his 2021 *Blake* resentencing.

This Court should deny Ellis' challenge to the restitution order on procedural grounds. The order was entered in 2009 upon Ellis' agreement. It was not revisited at his 2021 resentencing. Therefore, the 2009 order is the law of the case and may not be raised for the first time in this 2022 appeal.

The general rule is that questions that were not raised at the trial court level or that could have been raised in a prior appeal will not be considered in a subsequent appeal. *State v. Sauve*, 33 Wn. App. 181, 185, 652 P.2d 967 (1982), *aff'd*, 100 Wn.2d 84, 87, 666 P.2d 894 (1983); 2A Wash. Prac., Rules Practice RAP 2.5, Comment, (9th ed.).

At a resentencing, the court's discretion is broad, "the same as exists at any sentencing." *State v. Vasquez*, 4 Wn.3d 208 560 P.3d 853, 857 (2024); *see also State v. Carter*, 3 Wn.3d 198, 226-27, 548 P.3d 935, 951 (2024) (holding court had discretion to resentence on error-free counts); *State v. Kilgore*, 167 Wn.2d 28, 42, 216 P.3d 393 (2009) (citing RAP 2.5). That discretion includes the decision ***not*** to reconsider previous aspects of the judgment. *Vasquez*, 4 Wn.3d at 217; *Kilgore*, 167 Wn.2d at 42-43; *State v. Barberio*, 121 Wn.2d 48, 49-52, 846 P.2d 519 (1993).

If the court does not disturb some aspect of the judgment at a remand or resentencing, the finality of that aspect is also undisturbed. *In re the Pers. Restraint of Adams*, 178 Wn.2d 417,

424, 309 P.3d 451 (2013); *State v. Rowland*, 174 Wn.2d 150, 154-56, 272 P.3d 242 (2012); *In re the Pers. Restraint of Goodwin*, 146 Wn.2d 861, 877, 50 P.3d 618, 627 (2002) ("Correcting an erroneous sentence [ ] does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed"); *In re the Pers. Restraint of Carle*, 93 Wn.2d 31, 34, 604 P.2d 1293 (1980). Thus, while RAP 2.5(c)(1) permits an appellate court to review a trial court decision that was not disputed earlier, this is true **"[o]nly if the trial court, on remand, exercised its independent judgment, reviewed and ruled again on such issue."** *Barberio*, 121 Wn.2d at 50 (emphasis added). The "choice itself" ***not*** to revisit some aspect of the judgment "is not an exercise of independent judgment." *State v. Kilgore*, 167 Wn.2d 28, 40, 216 P.3d 393 (2009).

In 1993, relying on RAP 2.5(c), this Court refused to review an exceptional sentence that had not been revisited on remand. *Barberio*, 121 Wn.2d at 49. Again, in 2009, this Court upheld the *Barberio* principle, refusing to review an exceptional

sentence that had been imposed prior to *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) and which had not been revisited on remand. *Kilgore*, 167 Wn.2d at 32-34; *accord Rowland*, 174 Wn.2d at 154-56. *Barberio*, *Kilgore*, and *Rowland* remain good law. *Vasquez*, 4 Wn.3d at 215-16.

In Ellis' case, no party requested that the resentencing court reconsider the 2009 agreed restitution order. On the contrary, the parties agreed that the court should correct the offender score while leaving "in full force and effect" all unadjusted terms and conditions. CP 31-32. The court acted consistent with the parties' agreement. CP 34. It did not exercise any independent judgment on the restitution matter. Accordingly, the order is the law of the case and is not appropriate for review. *Barberio*, 121 Wn.2d at 50-51.

The State preserved this RAP 2.5 argument. Br. of Resp. at 27; Slip Op. at 6. The procedural bar controls.

///

///

B. The restitution which the parties agreed to does not violate the Excessive Fines Clause.

If the Court reaches the merits, it should hold that the agreed, joint-and-several $7097.32 restitution for the murder victim's funeral expenses is not prohibited under the Excessive Fines Clauses of the federal and state constitutions[2] as it is neither a fine nor excessive. Slip Op. at 2, 8-11 (discussing U.S. Const., amend. VIII and Wash. Const. art. I, §14).

1. Joint and several restitution which recompenses the victim's family for funeral expenses is not a fine.

The first element in an excessive fines challenge is a qualifying fine. *City of Seattle v. Long*, 198 Wn.2d 136, 162-63, 493 P.3d 94 (2021). Ellis' restitution order is not a fine, because it is not revenue paid to the state, and it is compensatory rather

[2] In the absence of a *Gunwall* analysis, the two constitutions are viewed as "coextensive for the purposes of excessive fines." *City of Seattle v. Long*, 198 Wn.2d 136, 159, 493 P.3d 94 (2021). *See also State v. Ramos*, 24 Wn. App. 2d 204, 216-23, 520 P.3d 65 (2022), *review denied*, 200 Wn.2d 1033, 525 P.3d 152 (2023); *State v. Tatum*, 23 Wn. App. 2d 123, 133, 514 P.3d 763 (2022) (finding the provisions coextensive after analysis).

than punitive. Because it is not a fine, it cannot violate the Excessive Fines Clause.

Ellis relies on two cases for his claim that restitution is a fine—*neither of which are excessive fines cases*. The first is a Sixth Amendment jury right case. *State v. Kinneman*, 155 Wn.2d 272, 277-78, 119 P.3d 350 (2005) (asking whether "punishment for purposes of *Apprendi* and *Blakely*" includes more than incarceration). And the second is a double jeopardy case. *Harris v. Charles*, 171 Wn.2d 455, 467, 256 P.3d 328 (2011) (asking whether pretrial electronic home monitoring is punishment in the context of the prohibition against multiple punishments).

However, different contexts have different tests. For example, there is a specific test for deciding "what is 'punishment' for double jeopardy purposes." *State v. Catlett*, 133 Wn.2d 355, 364-65, 945 P.2d 700 (1997) (discussing *United States v. Ursery*, 518 U.S. 267, 277-78, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996) which asks whether the legislature intended the provision to be criminal or civil and whether the provision is

so punitive that it cannot be viewed as civil in nature despite congressional intent).

The Washington Supreme Court anchors its interpretation of the Excessive Fines Clause to the reasoning in the excessive fines cases of *Austin v. United States*, 509 U.S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) and *United States v. Bajakajian*, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). *Long*, 198 Wn.2d at 166.

"The purpose of the Eighth Amendment [ ] was to limit the government's power to punish." *Austin*, 509 U.S. at 609, 113 S. Ct. at 2805. Therefore, the first element in an excessive fines challenge is a qualifying "fine," which is defined as a punishment (as opposed to remediation) paid to a sovereign for some offense. *Bajakajian*, 524 U.S. at 327-28, 118 S. Ct. at 2033 (quoting *Browning–Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc*., 492 U.S. 257, 265, 109 S.Ct. 2909, 2915, 106 L.Ed.2d 219 (1989)); *Austin*, 509 U.S. at 610, 113 S. Ct. at 2806; *Long*, 198 Wn.2d at 162-63. *See also Timbs v. Indiana*, 586 U.S. 146, 153-

54, 139 S. Ct. 682, 689, 203 L. Ed. 2d 11 (2019) (fines are a source of revenue which, when excessive, can chill political speech); *State v. Grocery Manufacturers Ass'n*, 198 Wn.2d 888, 898, 502 P.3d 806 (2022) (same).

Austin and *Bajakajian* were both forfeiture cases. Forfeitures are paid to the government and serve to deter crime, not to compensate any governmental loss. *Bajakajian*, 524 U.S. at 329, 118 S. Ct. at 2034.

Restitution, on the other hand, is paid to the victim, not the State, specifically to compensate for the burial expenses of Ellis' murder victim. Because restitution is not paid to the government, limiting the court's ability to compensate the victims in the criminal case has no effect on the government's power to punish.

A victim could obtain the same compensatory damages in a separate civil suit. RCW 9.94A.753(3)(a) ("easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury"); *Bowers v. Fibreboard Corp*., 66

Wn. App. 454, 460, 832 P.2d 523 (1992) (the wrongful death statute only authorizes compensatory damages, not punitive damages). Because Ellis would be collaterally estopped from denying fault in a civil suit, requiring the filing of a second case would not prevent victims from recovering compensatory damages. It would only serve to inconvenience grieving victims by complicating the process for recovery.

Citing *Kinneman*, Ellis argues that this Court has "held categorically" that all restitution is punishment. Pet. at 18. No such language exists in the opinion. And, notably, *Kinneman* does not discuss the meaning of punishment *in the context of the Excessive Fines Clause*. Slip Op. at 9. If the case is helpful at all, it is in its observation that restitution is compensatory unless and until the court "exceeds the amount necessary to compensate the victim." *Kinneman*, 155 Wn.2d at 280-81 (citing RCW 9.94A.753(3) (authorizing the court to impose up to "double the amount of the offender's gain or the victim's losses")). Ellis' restitution order did not exceed actual compensatory damages.

In fact, the order does not even cover the victims' full losses. *See* CP 36 (indicating that the Crime Victims Compensation Fund was holding the claim open for the victims to provide data on additional funeral expenses). Because the court only imposed actual documented expenses, under *Kinneman*'s reasoning, Ellis' restitution order is purely compensatory.

Ellis argues that the question is not whether his actual restitution order is a fine, but whether any possible, hypothetical restitution order could be. Pet. at 19-20. He does not cite any excessive fines authority for this proposition. Under the relevant precedent, the material questions are whether the alleged fine is paid to a sovereign and whether it is punishment (i.e., whether the court imposed more than actual compensatory damages). The answers to each question will be easy to ascertain from the face of the restitution order but they will differ depending upon the particular order. Because this is so, and because Ellis' claim is as-applied, the court of appeals' approach is reasonable.

Where a trial court imposes actual compensatory damages only, the restitution order is not punitive. Slip Op. at 9.

In this case, the restitution order is not a fine within the meaning of the Excessive Fines Clause. Therefore, there is no constitutional violation. This Court should hold that restitution limited to actual compensatory damages is not a fine.

2. Joint and several restitution which compensates the victim's family for $7097.32 in funeral expenses is not excessive.

If the Court reaches the merits and finds a qualifying fine, it should find that joint and several liability for partial funeral expenses of $7097.32 is not excessive in this murder case.

The second element of an excessive fines claim is whether a qualifying fine is excessive. *Long*, 198 Wn.2d at 166. A fine is excessive when it is grossly disproportional to the gravity of the offense. *Grocery Manufacturers Ass'n*, 198 Wn.2d at 899 (citing *Bajakajian*, 524 U.S. at 334, 118 S.Ct. at 2036).

The Court considers:

1. the nature and extent of the crime;

2. whether the violation was related to other illegal activities;
3. other penalties that may be imposed;
4. the extent of the harm caused;
5. and the Defendant's ability to pay.

Grocery Manufacturers Ass'n, 198 Wn.2d at 899.

The nature of the offense, a murder in the course of an attempted armed robbery, was significant. CP 1-6. The murder is a "serious violent" offense and a "most serious" or strike offense. RCW 9.94A.030(32), (46)(a)(iii). Ellis gathered accomplices to settle a score with the victim, Javon Holder. CP 4-5. They entered his home at two in the morning, demanded his drugs and money, and beat him with their fists and a clothes iron. *Id.* Then Ellis killed the victim with a bullet to the head in the presence of Holden's pregnant girlfriend. *Id.* One accomplice immediately vomited at the sight. *Id.* Ellis then pointed the gun at Keona Smith as if contemplating whether or not to shoot her before fleeing with his accomplices. *Id.* While one of Ellis' accomplices expressed remorse by telling police the truth, Ellis

refused to admit the attempted robbery or to assist the police in recovering the murder weapon. *Id*.

The murder was related to a burglary and an attempted robbery while armed with an illegally possessed firearm. CP 1-3.

The legislature authorized the court to impose a fine up to $50,000 for the class A felony. CP 6; RCW 9A.20.021(1)(a); RCW 9A.32.050(2).

The harm Ellis caused was the loss of a human life worth far more than the partial funeral expenses in the restitution order.

Ellis has an ability to earn income upon his release from incarceration. RP 8 (claiming to have "accomplished a lot of education, training, things of that nature" in prison). The joint and several amount is not so large as to require the Court to conclude Ellis (and his co-defendants who received shorter sentences) would not be able to pay the amount. Slip Op. at 11. If Ellis' circumstances change, the Department of Labor and Industries is authorized to reduce or waive restitution at that time

in the interest of justice and for the rehabilitation of the Defendant. RCW 7.68.120(5).

The consideration of these factors should compel a finding that the restitution order is not constitutionally excessive.

The superior court entered an order of indigency for purposes of appointing counsel. CP 46-47; RCW 10.101.010(3)(d) (defining indigency as the inability to afford to retain private counsel). Ellis argues that such an indigency finding "trumped all other factors" in one case. Br. of Ap. at 25 (citing *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 724, 497 P.3d 871 (2021) (holding grossly disproportionate the civil forfeiture of appellant's motor vehicle which had been used to hide methamphetamine but which had not been purchased with drug money)). However, the balance of factors in that case (the civil forfeiture of appellant's only asset in the context of a nonviolent drug offense) is readily distinguishable from Ellis' case (joint and several restitution payable over time to a murder

victim's family and waivable by the Department in the interest of justice or for the rehabilitation of the defendant).

Moreover, this factor weighs differently when the alleged fine is restitution to the victim rather than civil forfeiture to the sovereign. In *United States v. Dubose*, 146 F.3d 1141 (9th Cir. 1998), the court considered two cases in which the defendants were ordered to pay restitution ($4500+ for a bank robbery and $120,000+ for an arson). The court noted "[f]orfeiture and restitution are distinct concepts." *Dubose*, 146 F.3d at 1145. "Where the amount of restitution is geared directly to the amount of the victim's loss caused by the defendant's illegal activity, proportionality is already built into the order." *Id.* (quoting *United States v. Dean*, 949 F.Supp. 782, 786 (D.Or.1996)). Thus, while the court considers the defendant's financial condition, this one factor does not eclipse the court's discretion. *Id.* at 1146. In the context of a forfeiture, the court should limit the seizure "to an appropriate portion or the most poisonously tainted portion of the property." *Id.* at 1146 (quoting *United*

States v. Real Prop. Located in El Dorado Cnty. at 6380 Little Canyon Rd., El Dorado, Cal., 59 F.3d 974, 987 (9th Cir. 1995)). "[B]ecause the full amount of restitution is inherently linked to the culpability of the offender, restitution orders that require full compensation in the amount of the loss are not excessive." *Id.* at 1146; *accord State v. Ramos*, 24 Wn. App. 2d 204, 230, 520 P.3d 65 (2022), *review denied*, 200 Wn.2d 1033, 525 P.3d 152 (2023).

This Court should hold that Ellis' restitution order is not excessive. The State also endorses a bright line rule which would determine that restitution limited to actual compensatory damages is, at least presumptively, not constitutionally excessive.

C. The resentencing court did not abuse its discretion in considering Ellis' allocution and request for a standard range sentence before imposing the very sentence Ellis requested.

Ellis' remaining claim relies on a factual, rather than a legal, dispute. Ellis argues that the resentencing court did not consider or did not appreciate its discretion to consider his youth.

Pet. at 13. The State disagrees with this characterization of the record.

Notwithstanding the facial validity of the final 2009 judgment,[3] the judge believed he had discretion to do more than merely correct the offender score and standard range. He held a de novo sentencing hearing, repeatedly referring to it as such. RP 5 ("Are you okay with me being the judge that sentences you now?"), 7-8 (soliciting Ellis' allocution "regarding your sentence"), 9 ("this resentencing"). The judge did not prevent Ellis from presenting any evidence or argument relevant to youth. He did not interrupt or otherwise limit either the allocution or the attorney's recommendation. RP 6-7, 8-9. And

[3] *In re the Pers. Restraint of Toledo-Sotelo*, 176 Wn.2d 759, 767-69, 297 Pd 759 (2013) (holding an error in the standard sentence range did not invalidate a sentence imposed within the correct range); *In re the Pers. Restraint of Coats*, 173 Wn.2d 123, 135-36, 267 P.3d 324 (2011) ("we have never found a judgment invalid merely because the error invited the court to exceed its authority when the court did not in fact exceed its authority"). N.B. The State has not cross-appealed the resentencing on this or any other issue.

he did not refuse to consider Ellis' arguments regarding youth, such as they were. The judge agreed that youth was not only an appropriate consideration at sentencing, but "in certain circumstances" was required of the court. RP 6.

The court's only concern was whether Ellis was actually prepared for a resentencing given his initial ambivalence and expressed intent to raise this more complicated issue. *Id*. The concern was warranted. While Ellis repeatedly asked the court to "use your discretion in taking my youthfulness into consideration," he did not present any exhibits or testimony to show that his culpability had been mitigated by immaturity. RP 5, 8, 9.

The court had discretion to impose a low-end sentence. But Ellis did not ask for anything less than the 289 months the court granted. He did not ask for an exceptional sentence or provide a lawful basis for a downward departure under RCW 9.94A.535, stating only that he was 19 when he went to prison and had "grown into something better" over the last decade. RP

8-9. Those two points were insufficient for an exceptional sentence as a matter of law. *State v. Anderson*, 200 Wn.2d 266, 291, 516 P.3d 1213 (2022) (a youth departure requires proof that the *crimes* reflected immaturity); *State v. Gregg*, 196 Wn.2d 473, 486, 474 P.3d 539 (2020) (defendant bears the burden of proving a mitigating circumstance); *In re the Personal Restraint of Light-Roth*, 191 Wn.2d 328, 335, 422 P.3d 444 (2018) (age alone is not a basis for departure).

Ellis argues the facts of his hearing are comparable to those in *State v. Dunbar*, 27 Wn. App. 2d 238, 248-49, 532 P.3d 652 (2023) (sentence reversed where court felt it had not been free to consider the defendant's rehabilitation). Pet. at 16. They are not. Unlike Ellis, Dunbar produced exhibits and witnesses to prove and endorse his maturation. *Dunbar*, 27 Wn. App. 2d at 241. Unlike Ellis' judge, Dunbar's judge explicitly endorsed the position that he could not consider evidence of rehabilitation. *Id*. at 242 ("the problem is … that the Court cannot take that into

consideration and should not take that into consideration"). The cases are not the same.

The court did not abuse its discretion in hearing and considering everything the defense and Defendant offered and then in imposing the sentence the defense requested.

V. CONCLUSION

The State requests this Court affirm the court of appeals, remanding "to strike the DNA collection fee and community custody supervision fees from the judgment and sentence and to reconsider imposition of interest on restitution, the VPA, the criminal filing fee, and attorney fees." Slip Op. at 14.

///

///

///

///

This document is in 14-point font and contains 4,682 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 11th day of April, 2025.

MARY E. ROBNETT
Pierce County Prosecuting Attorney

s/ Teresa Chen
TERESA CHEN
Deputy Prosecuting Attorney
WSB # 31762 / OID #91121
Pierce County Prosecutor's Office
930 Tacoma Ave. S, Rm 946
Tacoma, WA 98402
(253) 798-6517
teresa.chen@piercecountywa.gov

Certificate of Service:
The undersigned certifies that on this day she delivered by E-file to the attorney of record for the appellant true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

4/11/2025	*s/ Kimberly Hale*
Date	Signature

PIERCE COUNTY PROSECUTING ATTORNEY

April 11, 2025 - 1:39 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,378-2
Appellate Court Case Title:	State of Washington v. James Laron Ellis
Superior Court Case Number:	08-1-01518-3

The following documents have been uploaded:

- 1023782_Briefs_20250411133918SC920553_4521.pdf
  This File Contains:
  Briefs - Respondents Supplemental
  The Original File Name was States Supplemental Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- beverly@washapp.org
- katehuber@washapp.org
- pcpatcecf@piercecountywa.gov
- wapofficemail@washapp.org

Comments:

Sender Name: Kimberly Hale - Email: kimberly.hale@piercecountywa.gov
Filing on Behalf of: Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7400

Note: The Filing Id is 20250411133918SC920553