

MAY 26 2021

Scott Tinney
Lewis County Clerk

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Defendant.

No. [REDACTED]

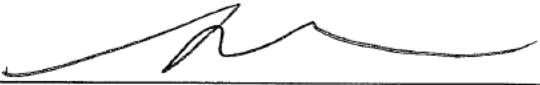
MOTION TO VACATE CONVICTION
AND DISMISS WITH PREJUDICE

COMES NOW the State of Washington by and through Sara I. Beigh, Deputy Prosecuting Attorney, and moves the Court for entry of an order vacating the Defendant's conviction for possession of marijuana under 40 grams in violation of RCW 69.50.4014 or its predecessor statute. This motion is brought pursuant to CrR 7.8(b) and *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

This motion is based on the records and files herein, and upon the legal memorandum and declaration attached hereto.

DATED this 26th day of May, 2021

JONATHAN L. MEYER
Lewis County Prosecuting Attorney


SARA I. BEIGH, WSBA #35564
Deputy Prosecuting Attorney

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LEGAL MEMORANDUM

The defendant, [REDACTED] was convicted in the cause number of possession of a controlled substance in violation of RCW 69.50.4014.

On February 25, 2021, the Washington Supreme Court declared that the legislature exceeded its police powers in enacting RCW 69.50.4013. The opinion holds that the failure to include a mens rea element for possession of a controlled substance has rendered RCW 69.50.4013 unconstitutional. *Blake*, 197 Wn.2d at 184-86, 193-95. Possession of marijuana under 40 grams, RCW 69.50.4014, also lacks a mens rea element, and therefore is not constitutional under *Blake*. This opinion therefore, invalidates all convictions for violations of RCW 69.50.4013 and RCW 69.50.4014.

The State may bring a motion for relief from judgment pursuant to CrR 7.8(b). A State initiated motion to vacate conviction, if granted, bars the State from refiling the charges or related charges. See *State v. Hall*, 162 Wn.2d 901, 177 P.3d 680 (2008). The State, therefore, is seeking both an order vacating the defendant's conviction and an order directing that the charge(s) be dismissed with prejudice.

A defendant whose conviction is vacated is entitled to a refund of all restitution, fees, and fines (collectively "LFOs") that have been paid that relate solely to the vacated conviction. See *Nelson v. Colorado*, 137 S. Ct. 1249, 197 L. Ed. 2d 611 (2017). If a defendant owes LFOs in another cause number, the Court may direct that the LFOs paid in this cause number be applied to any past due LFOs in the other cases. See generally RCW 9.94A.7606 (order to withhold and deliver as to any funds that are due to the offender to pay past-due LFOs).

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1 The State requests that the Court enter an order vacating the defendant's
2 conviction promptly as the defendant is facing direct and/or collateral consequences
3 solely upon this conviction for possession of marijuana under 40 grams in violation of
4 RCW 69.50.4014.

5 The defendant's attorney of record, Brian Conry, has reviewed this motion and
6 the proposed order. Mr. Conry agrees with this motion and approves the order.
7

8 Respectfully submitted this 26th day of May, 2021.
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10 JONATHAN L. MEYER
11 Lewis County Prosecuting Attorney



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14 SARA I. BEIGH, WSBA #35564
15 Deputy Prosecuting Attorney
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