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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____**

STATE OF WASHINGTON

Plaintiff,

v.

Defendant.

Case No. _____-1-_____

**MOTION TO APPOINT COUNSEL
FOR RESENTENCING PURSUANT
STATE v. BLAKE**

**I. MOTION TO APPOINT COUNSEL FOR RESENTENCING PURSUANT TO
STATE v. BLAKE**

COMES NOW, Defendant, and submits this motion to have counsel appointed at public expense to this case for resentencing pursuant to *State v. Blake*, 481 P.3d 521 (2021). This motion is based on *State v. Blake*, 481 P.3d 521 (2021), U.S. Const. VI, Wa. Const. art. I, § 22, CrR 3.1, Declaration contained below, and arguments contained herein.

In *State v. Blake*, 481 P.3d 521 (2021), the Supreme Court of Washington held that RCW 69.50.4013 is unconstitutionally void.¹ The results of this decision are widespread and require numerous cases to be reexamine and resented by courts across Washington State. Thus, defendants need, and the law requires the guiding hand of counsel to determine how RCW 69.50.4013 impacts a criminal offender score, time left on community custody, and other direct results. Even in cases that

¹ A defendant cannot be convicted based on a void statute. See *State v. Rice*, 174 Wn.2d 884, 893, 279 P.3d 849 (2012); see also *State v. Carnahan*, 130 Wn. App. 159, 164, 122 P.3d 187 (2005) (vacating a conviction that was based on a statute that the Supreme Court held was unconstitutional).

1 are not as intensive upon review, the guiding hand of counsel can assist clients in returning LFOs and
2 ensuring the conviction is properly vacated.

3 The right to counsel attaches to all critical stages of the proceeding. *State v. Robinson*, 153
4 Wn.2d 689, 694, 107 P.3d 90 (2005). Sentencing is a critical stage of the proceedings. *State v.*
5 *Everybodytalksabout*, 161 Wn.2d 702, 709, 166 P.3d 693 (2007). Thus, a court could not enter a new
6 sentence in the absence of counsel.

7 Individuals impacted by *Blake* are entitled to appointment of counsel to pursue a motion under
8 CrR 7.8. Appointment of counsel to pursue such a motion is appropriate where it appears the person is
9 entitled to relief. *State v. Robinson*, 153 Wn.2d 689, 696, 107 P.3d 90 (2005). For those currently
10 serving a sentence for possession of a controlled substance, their judgement is void. *Blake* at 481 at
11 534. They are entitled to relief under CrR 7.8(b)(4). Any person serving a sentence for an offense
12 other than possession of a controlled substance, but which sentence includes a possession in the
13 scoring present an "other reason justifying relief from the operation of the judgment." 7.8(b)(5). They
14 are entitled to relief. Counsel should be appointed. Finally, the Defendant is indigent and entitled to
15 publicly appointed counsel pursuant to RCW 10.101.010(3) and the Declaration below.

16 In conclusion, Defendant has the constitutional rights to have the criminal conviction subject to
17 *Blake* reviewed by this court and the right to counsel since it is a critical stage of the proceedings. The
18 additional benefit of counsel will provide judicial economy to the courts allowing impacted individuals
19 to more efficiently receive relief after decades of harsh penalties. Therefore, the Defendant
20 respectfully moves this Court to appoint counsel to address the *Blake* implication in this case.

21 Dated this _____ of 20_____.

22
23 _____
24 Signature

Printed Name

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II. DECLARATION

I, _____, (print full legal name) declare the following:

1. I am the Defendant in the above-caption case. I am over the age of 18. I have personal knowledge of the facts contained in this declaration. I make this declaration to support my motion to appoint counsel for resentencing to pursuant to *State v. Blake*, 481 P.3d 521 (2021).
2. I have a good faith belief that my current/former sentence could be impacted by the holding in *Blake* that RCW 69.50.4013 is unconstitutionally void.
3. I respectfully ask the Court to take judicial notice of my case, including my criminal history for purposes of this motion only. However, I do not waive any irregularities, defects, or potential exculpatory arguments and/or defenses related to my sentence. Furthermore, I do not waive my right to counsel.
4. I am currently incarcerated at _____ facility operated by the Department of Corrections; supervised by the Department of Correction while serving a term of community custody; not currently incarcerated and not current supervised by the Department of Corrections while serving a term of community custody; I am currently **not** incarcerated
5. The last level of education I completed was _____.
6. I am currently indigent based on the following information:
 - a. I do or I do not have a job. (check one) If I do, my annual take-home pay is: \$_____.
 - b. No one lives with me as I am in prison; I am not in prison and live alone; I am not in prison and I live with other people.
 - c. I do or I do not pay child support. (check one) If I do, I pay \$___ per month.
 - d. I do or I do not own a home. (check one)
 - e. I do or I do not own a vehicle. (check one)

1 f. I have \$_____ in my checking saving account(s). (check if
2 applicable)

3 g. I have \$_____ in stocks, bonds, or other investments. (check if
4 applicable)

5 h. I do or I do not received Social Security, Medicaid, or other public benefits.
6 (check one).

7 i. I do or I do not receive money from any other source. (check one). If so, I receive
8 \$_____.

9 j. I do or I do not have other expenses such as court-ordered fines (LFOs) or
10 medical bills, etc. (check one). If so, describe:
11 _____
12 _____
13 _____

14 k. I do or I do not have money to hire a private attorney. (check
15 one).

16 l. I previously qualified or did not qualify for a public defender in this case and/or
17 other cases. (check one).

18 7. I do not have an attorney on this case.

19 8. Without the aid of counsel, I believe I could be irreparable harmed and materially prejudiced in
20 my chances in a reduction of my sentence that I am afforded pursuant to *Blake* holding simple
21 felony drug possession statute as void.

22 I hereby certify, under penalty of perjury under the laws of the State of Washington, that the
23 foregoing is true and correct in _____, Washington.

(fill in current city)

Signature

Printed Name

Date (day/month/year²⁴)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF _____

STATE OF WASHINGTON

Plaintiff,

v.

Defendant.

Case No. _____-1-_____

ORDER ON MOTION TO
APPOINTMENT COUNSEL FOR
RESENTENCING PURSUANT TO
STATE v. BLAKE

(Clerk's Action Required)

The Court, having heard the Defendant's motion to appoint counsel for resentencing pursuant to *State v. Blake* is hereby:

- 1. GRANTED The Defendant is found to be indigent for purposes of right to counsel. The Defendant shall be provided an attorney at public expense.
- 2. DENIED without prejudice. The Court makes additional findings of:

1 3. The Clerk of this Court shall send copies of this order within 3 business days to the Defendant's
2 last known address on file, Defendant's last known DOC address, and the County's appointing
3 authority for counsel at no cost to the Defendant.

4 4. The Defendant in the above caption matter appeared in front of this Court through the following
5 manner:

- 6 a. The Defendant appeared in person.
- 7 b. The Defendant appeared by phone.
- 8 c. The Defendant did not appear.
- 9 d. Other

10 _____
11 _____

12 5. The Court also hereby orders the following:

13 _____
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19 Dated this ___ day of _____ 202__.

20
21 _____
22 Hon. Judge

ADDITIONAL PAGE

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