IN SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

|  |  |  |
| --- | --- | --- |
| THE STATE OF WASHINGTON, |  |  |
|  |  |  |
|  Plaintiff, |  | No.  |
|  v. |  |  |
|  |  | MOTION FOR ORDER VACATING CONVICTION AND DISMISSING CHARGES |
|  |  |
|  |  |
|  Defendant. |  |

COMES NOW the Defendant through undersigned counsel, and hereby moves the above-entitled court for the entry of an order vacating the defendant’s conviction for Possession of a Controlled Substance in violation of RCW 69.50.4013 (or its predecessor statutes). This motion is brought pursuant to CrR 7.8(b) and State v. Blake, Wash. S. Ct. No. 96873-0 (Feb. 25, 2021) and is based upon the records and files herein, and upon the legal memorandum and declaration attached hereto.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ WSBA No. \_\_\_\_\_\_\_

Attorney for Defendant

LEGAL MEMORANDUM

On February 26, 2021, the Washington Supreme Court declared that the Legislature exceeded its police powers in enacting RCW 69.50.4013. This opinion invalidates all convictions for violations of RCW 69.50.4013 (or its predecessor statutes). [[1]](#footnote-1)

CrR 7.8(b) permits a party to seek relief from a final judgment if “[t]he judgment is void” or for “[a]ny other reason justifying relief from the operation of the judgment.”

In this case, the Defendant requests that the Court enter an order vacating his/her conviction for Possession of a Controlled Substance and dismissing said charge(s).

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that I am an attorney licensed to practice in the State of Washington, that I represent the defendant, and that I am familiar with the facts of the above-entitled cause, and make this affidavit in that capacity:

1. The defendant was convicted of Possession of a Controlled Substance in Snohomish County Superior Court on \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ and was sentenced to \_\_\_\_\_ months in custody and \_\_\_\_\_\_\_\_ of Community Custody. (See attached Judgment and Sentence).

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 Signed in Everett, WA this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2021.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ WSBA No. \_\_\_\_\_\_

Attorney for Defendant

IN THE SUPERIOR COURT FOR STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

|  |  |  |
| --- | --- | --- |
| THE STATE OF WASHINGTON, |  |  |
|  |  |  |
|  Plaintiff, |  | No.  |
|  v. |  |  |
|  |  | ORDER VACATING CONVICITON AND DISMISSING CHARGE(S) |
|  |  |
|  |  |
|  Defendant. |  |

THIS MATTER having come on regularly upon the motion of the Defendant for an order vacating conviction and dismissing charges, and it appearing from the affidavit, files and records herein that such dismissal is in order, Now Therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The conviction entered against this defendant on the \_\_\_ day of \_\_\_\_\_\_, 20\_\_ is hereby vacated pursuant to CrR 7.8(2) and State v. Blake;
2. The charge(s) of Possession of a Controlled Substance contained in the Information filed the \_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_ against the above-named defendant, is/are hereby dismissed;
3. If the Defendant is in custody or subject to supervision as a result of this conviction, s/he shall be immediately released and the Clerk’s Office shall provide the jail or the Department of Corrections with a copy of this order;
4. The Clerk of the court shall immediately transmit a copy of this order vacating the conviction to the Washington State Patrol Identification Section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington State Patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the Federal Bureau of Investigation as required by RCW 9.96.060(7);
5. The defendant may be entitled to a refund of legal financial obligations paid pursuant to the judgment vacated herein. Upon request, the Clerk’s Office shall provide the defendant with information regarding the refund process.

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|  DATED this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_. |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Judge |
|  |
| Presented by: |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ WSBA No.Attorney for Defendant |  |

1. Washington’s strict liability simple possession statute was first enacted in 1971 as part of the Uniform Controlled Substances Act. The RCW citation to the crime has changed over the years:

RCW 69.50.4013 ‑ post July 1, 2004 (Laws of 2003, ch. 53, sec. 334)

RCW 69.50.401(d) from March 21, 1979 until June 30, 2004 (Laws of 1979, ch. 67 and Laws of 2003, ch. 53, sec. 334)

RCW 69.50.401(c) from May 21, 1971 through March 20, 1979 (Laws of 1971, ex. sess. ch. 308, secs. 69.50.401 and 69.50.607) and Laws of 1979, ch. 67) [↑](#footnote-ref-1)