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4 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
5 **IN AND FOR THE COUNTY OF \_\_\_\_\_**

6 **STATE OF WASHINGTON**

7 **Plaintiff,**

8 **v.**

9 \_\_\_\_\_,  
10 **Defendant.**

Case No. \_\_\_\_\_-1-\_\_\_\_\_ - \_\_\_\_\_

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

11  
12 **I. MOTION TO APPOINT COUNSEL FOR RESENTENCING PURSUANT TO**  
13 **STATE v. BLAKE**

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

18 In *State v. Blake*, 481 P.3d 521 (2021), the Supreme Court of Washington held that RCW  
19 69.50.4013 is unconstitutionally void.<sup>1</sup> The results of this decision are widespread and require  
20 numerous cases to be reexamine and resented by courts across Washington State. Thus, defendants  
21 need, and the law requires the guiding hand of counsel to determine how RCW 69.50.4013 impacts a  
22 criminal offender score, time left on community custody, and other direct results. Even in cases that

23 \_\_\_\_\_  
24 <sup>1</sup> 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 \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

1 **II. DECLARATION**

2 I, \_\_\_\_\_, (print full legal name) declare the following:

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

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

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

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

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

20 I hereby certify, under penalty of perjury under the laws of the State of Washington, that the  
foregoing is true and correct in \_\_\_\_\_, Washington.

21 (fill in current city)

22 \_\_\_\_\_  
Signature

22 \_\_\_\_\_  
Printed Name

23 \_\_\_\_\_  
Date (day/month/year)

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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

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

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

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

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

5. The Court also hereby orders the following:

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

Dated this \_\_\_ day of \_\_\_\_\_ 202\_\_.

\_\_\_\_\_  
Hon. Judge

