

SAMPLE MOTION EFFECTIVE TO ELIMINATE IMMIGRATION CONSEQUENCES. Note: it is the express reference to Blake’s determination of unconstitutionality that is required. This can be used in all cases – no “special” motions or orders are required for noncitizens.

IN THE SUPERIOR COURT OF WASHINGTON FOR _____ COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

_____ ,

Defendant.

No.

MOTION TO VACATE
CONVICTION, DISMISS
COUNT(S), AND
CORRECT OFFENDER
SCORE

COMES NOW, the defendant by and through the undersigned attorney, and moves this Court for 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 statute, dismissing those counts, and amending the defendant’s offender score on the remaining count(s). This motion is brought pursuant to CrR 7.8(b) and State v. Blake, 197 Wash.2d 170, 481 P.3d 521 (2021), holding that RCW 69.50.4013 is unconstitutional,

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

Dated this _____ day of _____, _____.

Attorney for Defendant, WSBA #

LEGAL MEMORANDUM

The defendant was convicted in this cause number of ____ counts of Possession of a Controlled substance in violation of RCW 69.50.4013 or its predecessor statutes,¹ and of one or more additional felony crimes .

On February 26, 2021, in State v. Blake, the Washington Supreme Court declared that the Legislature exceeded its police powers in enacting RCW 69.50.4013 and found the statute unconstitutional. Convictions under an unconstitutional statute are themselves unconstitutional. *In re Hinton*, 152 Wn.2d 853, 857, 100 P.3d 801, 803 (2004) (where defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face).

Under CrR 7.8(4) and (5), a defendant may move the court for relief from judgment if “[t]he judgment is void” or for “[a]ny other reason justifying relief from the operation of the judgment.” The defendant, therefore, is seeking both an order vacating the conviction for violating RCW 69.50.4013 and dismissal of those counts.

The vacation and dismissal of the defendant’s conviction for violation of RCW 69.50.4013 and the exclusion of prior convictions for violations of RCW 69.50.4013 require an adjustment of

¹Washington’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)

the defendant's offender score as to any remaining count(s) in this cause. The defendant's recalculated offender score for the other count(s) and the defendant's new standard range appears in the following table:

Count No.	Offense	Corrected Offender Score	Level	Corrected Standard Range (not including enhancements)	Corrected Total Standard Range	Original Sentence

Because the defendant has already served a period of incarceration that exceeds the defendant's original sentence on these counts, this Court cannot provide the defendant with any relief beyond granting the defendant's immediate release and ordering the correction of the defendant's offender score(s) for these felony offenses. For this reason, resentencing for the remaining counts is unnecessary.

Furthermore, the defendant requests that the Court grant the requested relief promptly as the defendant is either currently in the custody of the Department of Corrections (DOC) or subject to Community Custody and is entitled to be released or free from the restrictions of supervision immediately if s/he has served the sentence imposed on his/her remaining felony sentences.

Respectfully submitted this ___ day of _____, _____.

Attorney for Defendant, WSBA #