

**SAMPLE MOTION AND ORDER EFFECTIVE TO ELIMINATE IMMIGRATION CONSEQUENCES.** Note: it is the express reference to Blake’s determination of unconstitutionality that is required. This is a slight modification to the original WAPA sample order (changes highlighted.) It is intended for use in all cases; not as a separate order for cases involving noncitizens. (NOTE: RCW 2.28.310 prohibits courts and prosecutors from inquiring into immigration status, citizenship, or place of birth.)

**SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY**

STATE OF WASHINGTON,

Plaintiff

vs.

\_\_\_\_\_ ,

Defendant.

CAUSE NO.

MOTION TO VACATE SENTENCE AND  
CONVICTION AND DISMISS PURSUANT  
TO *BLAKE*

**MOTION**

On [DATE], [DEFENDANT] pled guilty to, or was convicted following a bench or jury trial of, Unlawful Possession of a Controlled Substance (UPCS), or any related inchoate offense, a violation of RCW 69.50.401 or .4013.<sup>1</sup> The defendant was sentenced on [DATE], by the Honorable [JUDGE].

On February 25, 2021, the Washington Supreme Court issued its decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). In *Blake*, the court declared that RCW 69.50.4013(1) – which addresses simple drug possession and has been in effect in some form

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<sup>1</sup> 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: starting as 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); then to 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), and finally to RCW 69.50.4013 since July 1, 2004 (Laws of 2003, ch. 53, sec. 334).

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for nearly 50 years – exceeds the legislature’s police powers. Accordingly, it held that RCW 69.50.4013(1) “violates the due process clauses of the state and federal constitutions and is void.” That statement means that any person ever convicted in this state of the now-void crime of UPCS<sup>2</sup> is entitled to vacation of the sentence and conviction, and dismissal of the charge. That, however, is not the only step needed in *Blake*-affected cases. Every defendant currently serving a sentence for *any* crime where a UPCS conviction was either one of the current offenses or a prior conviction used to increase the offender score of another crime of conviction can be brought before the court and re-sentenced with a corrected criminal history after all UPCS convictions are vacated and dismissed from that individual’s record.

The State believes *Blake* demands relief for *all* affected defendants, not only those with the legal knowledge and access to an attorney to affirmatively seek out relief. By finding RCW 69.50.4013 void, the Washington Supreme Court gave the State a mandate to seek out and address affected cases. That requires more than simply vacating the conviction. Courts must vacate the sentence and conviction, order defendant’s release from custody or supervision where applicable, and relieve defendant of any and all penalties and disabilities stemming from the now void conviction. All are addressed in the attached and agreed order.

DATED: August 23, 2021

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<sup>2</sup> The decision does not distinguish among drugs and includes cocaine, heroin, methamphetamine, marijuana, all legend drugs, and any controlled substance held without a valid prescription.

**SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

\_\_\_\_\_

Defendant.

CAUSE NO.

ORDER VACATING SENTENCE AND  
CONVICTION AND DISMISSING CASE  
PURSUANT TO *BLAKE*

**Clerk's Action Required**

This matter is back before the \_\_\_\_\_ County Superior Court on [DEFENSE MOTION OR AGREED MOTION] for proceedings following the Washington Supreme Court's decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), which held convictions pursuant to RCW 69.50.4013 constitutionally void. The State of Washington was represented by Deputy Prosecuting Attorneys \_\_\_\_\_ and/or \_\_\_\_\_.

The defendant was:  physically present in the courtroom and represented by attorney \_\_\_\_\_; or  present via a videoconferencing platform or other virtual means, and represented by attorney \_\_\_\_\_ or  not present and this motion and order is presented ex parte with consent of the State,  defense counsel, and/or  the defendant; or  not present and this motion and order is presented ex parte by the State without notice to defendant.

Now, therefore, being duly advised of the facts and proceedings in this case, and being fully informed in the law, particularly *Blake*, the court hereby enters the following orders.

**ORDERS OF THE COURT**

1. **IT IS HEREBY ORDERED** that all orders below are applicable to this specific cause number and no other.

**(ORDERS LIMITED TO THIS CASE)**

2. **IT IS FURTHER ORDERED** that the sentence previously imposed is set aside and vacated **as unconstitutional**.

**(SENTENCE VACATED)**

3. **IT IS FURTHER ORDERED** that any term of community custody imposed is vacated, along with any and all conditions included therein.

**(COMMUNITY CUSTODY VACATED)**

4. **IT IS FURTHER ORDERED** that, if the defendant is in custody for this matter only, he/she shall be released immediately.

**(RELEASE FROM CUSTODY)**

5. **IT IS FURTHER ORDERED** that the conviction, however originally obtained (plea of guilty/jury verdict/bench decision), is set aside and vacated **as constitutionally void**.

**(CONVICTION VACATED)**

6. **IT IS FURTHER ORDERED** that any warrant(s) outstanding in this matter are quashed.

**WARRANTS QUASHED**

7. **IT IS FURTHER ORDERED** that all Legal Financial Obligations (LFOs) including fees, fines, costs, charges, assessments, except any separate civil judgment(s) not predicated on conviction, are vacated and stricken. The Clerk shall delete or cancel any unpaid balance thereon, including any interest. To the extent payment was received on these LFOs, including interest paid, it shall be refunded. If the defendant has unpaid, past-

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due LFOs unaffected by *Blake* in other cause(s) under this Court's jurisdiction, the Clerk may apply this refund to satisfy LFOs in such cause(s) pursuant to RCW 9.94A.760(5) and/or RCW 9.94A.7606 without further notice to the defendant. Provided, that the Clerk must file a record in this cause and the other cause(s) reflecting this action. The State of Washington shall determine the amount and method of any refund herein with all deliberate speed.

The Clerk has informed the State that the Court ordered defendant pay [ENTER TOTAL AMOUNT] in LFOs. The Court has received [AMOUNT PAID BY DEFENDANT SO FAR] in payment from defendant. The Court ordered defendant pay [RESTITUTION ORDERED] in restitution and defendant has paid [RESTITUTION PAID] towards that restitution.

**(ALL LFOS REFUNDED, SUBJECT TO REALLOCATION)**

- 8. IT IS FURTHER ORDERED** that defendant is immediately released from all penalties and/or disabilities resulting from this case, including, but not limited to, voting rights, firearm rights, legal financial obligations, and the need to admit to having been convicted on any employment application, housing application, or other form.

**(PENALTIES AND DISABILITIES ELIMINATED)**

- 9. IT IS FURTHER ORDERED** that the defendant's right to vote and right to possess a firearm are no longer restricted or revoked by this matter.

**(VOTING/FIREARM RIGHTS NO LONGER RESTRICTED)**

- 10. IT IS FURTHER ORDERED** that the \_\_\_\_\_ County Clerk's Office shall provide a copy of this order to the Department of Corrections.

**(SERVE ORDER ON DOC)**

**11. IT IS FURTHER ORDERED** that the \_\_\_\_\_ County Clerk's Office shall provide a copy of this order to the Washington State Patrol Identification Section (WASIS) and the \_\_\_\_\_ County Law Enforcement Support Agency (LESA).

**(SERVE ORDER ON WASIS / LESA)**

**12. IT IS FURTHER ORDERED** that, pursuant to RCW 9.96.060(7), the WASIS and LESA shall: 1) each update its respective criminal history records to show defendant's UPCS (or other *Blake*-affected) conviction was vacated and the charge dismissed with prejudice; 2) each notify the Federal Bureau of Investigation of these orders vacating; and 3) not disseminate or disclose a conviction that has been vacated under *Blake* to any person or organization, except other criminal justice enforcement agencies.

**(UPDATE / CORRECT / RESTRICT CRIMINAL HISTORY)**

**13. IT IS FURTHER ORDERED** that the \_\_\_\_\_ County Clerk's Office shall attach a copy of this order to the Judgment and Sentence previously entered, such that anyone who requests a copy of the Judgment and Sentence will also receive a copy of this order.

**(ATTACH ORDER TO JUDGMENT AND SENTENCE)**

**14. FINALLY, IT IS HEREBY ORDERED** that the charges are dismissed with prejudice.

**(CASE DISMISSED WITH PREJUDICE)**

This order was signed  in open court in the presence of the defendant OR  in open court with defendant appearing virtually and acknowledging this order.

OR

This order was signed ex-parte.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
JUDGE

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Presented by:

Approved as to form and content, defendant's presence waived at presentment:

\_\_\_\_\_, WSB #  
\_\_\_\_\_, WSB #  
Deputy Prosecuting Attorneys

\_\_\_\_\_, WSB #  
Attorney for Defendant

**Defendant Contact Information:** below is the last available contact information for the defendant available to the State in the LINX system. This may not reflect updated DOL or Court information and is provided only for the Court's convenience. It will not reflect the address of a correctional institution if the defendant is in custody. Also below is an opportunity for defendant to provide updated information.

Information last available to the State:

Information provided by defendant: