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No. 100012-0

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JAVIER GARZA,
Petitioner.

BRIEF OF AMICI CURIAE
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE,
AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON, WASHINGTON DEFENDER
ASSOCIATION, THE PUBLIC DEFENDER
ASSOCIATION, TEAMCHILD and CIVIL SURVIVAL IN
SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION

In order for a young person to mitigate life-long harm resulting from involvement in the juvenile legal system, the young person must be able to vacate and seal a juvenile court adjudication. The statutory scheme clearly provides such relief—as does caselaw. And both clearly distinguish and encourage vacating and sealing juvenile adjudications in order to protect people from prolonged punishment for any prior involvement in the juvenile legal system.

II. ISSUES OF INTEREST TO AMICI

The identity and interests of Amici Curiae King County Department of Public Defense, American Civil Liberties Union of Washington, Washington Defender Association, Public Defender Association, and Civil Survival are set forth in the Motion for Leave to Participate as Amici Curiae, filed concurrently with this brief.

III. STATEMENT OF THE CASE

Amici adopt the Statement of the Case in Appellant Garza’s brief.

IV. ARGUMENT

Under the clear language of RCW 13.50.260(3), a youth may ask the Court to both “vacate its order and findings” related to a juvenile court adjudication and seal the “official juvenile court record, the social file, and records of the court and of any other agency in the case[.]” The ability to vacate and seal a juvenile court adjudication is critical because it is only vacating *and* sealing that mitigate the harsh, life-long impacts of the juvenile legal system—which disproportionately harms Black, Indigenous and youth of color (BIPOC youth).

Ensuring that youth can vacate and seal juvenile court adjudications is consistent with the goals of Washington’s juvenile legal system: a system whose primary responsibility is to be accountable for and responsive to the needs of youthful offenders, and to hold juveniles accountable for their offenses.” *State v.*

Chavez, 163 Wn.2d 262, 267-68, 180 P.3d 1250 (2008) (citing *State v. Posey*, 161 Wn.2d 638, 645, 167 P.3d 560 (2007)). See also *State v. S.J.C.*, 183 Wn.2d 408, 416, 352 P.3d 749 (2015). It is also consistent with the lack of a constitutional right to a jury trial in juvenile court which is predicated on the presumption that the nature of the juvenile legal system is predominantly rehabilitative—not punitive. See *Chavez*, 163 Wn.2d at 267-68 (holding that amendments to the JJA have not changed the rehabilitative nature of the juvenile system to the extent that a jury trial would be required); *State v. Schaaf*, 109 Wn.2d 1, 743 P.2d 240 (1987) (holding that “juvenile proceedings remain rehabilitative in nature and distinguishable from adult criminal prosecutions [thus] no right to trial by jury attaches”).

To help effectuate the intended rehabilitative nature of juvenile court, the Court should ensure that juvenile court adjudications can be meaningfully sealed and vacated. This will ensure such adjudications do not become an aggravating factor in punitive sentencing in the adult criminal legal system. In order to

provide this protection, the Court should grant Garza’s petition for review because: the issues raised by the petition for review are an issue of substantial public interest that should be determined by the Supreme Court; the Court of Appeals decision is in direct conflict with a decision of the Supreme Court; and the Court of Appeals decision is in conflict with a published decision of the Court of Appeals; and *See* RAP 13.4(b)(1), (2), and (4).

A. Review Should Be Granted Because Vacating and Sealing a Juvenile Adjudication Reduces the Harsh Impacts of the Juvenile Legal System and Is Permitted Under the Statutory Scheme and Prior Caselaw

When a juvenile adjudication is sealed, the proceedings are treated as “if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed.” RCW 13.50.250(6)(a). However, “[a]ny adjudication [resulting in the finding of criminal liability] of a juvenile offense or a crime subsequent to sealing has the effect of nullifying a sealing order[.]” RCW 13.50.260(8). Further, “[a]ny charging of an adult felony subsequent to the sealing has the [same] effect of nullifying the sealing order.” *Id.*

In addition to sealing, RCW 13.50.260(3) clearly provides the trial court the discretion to vacate and seal the adjudication—*i.e.* “expungement.” In *State v. S.G.*, Division One relied on *Barr v. Snohomish County* and *In re Firearm Rights of Nelson* when it analogized the vacation of juvenile court adjudication to vacating a conviction in adult court and recognized that “under the JJA, a juvenile adjudication ceases to exist only if the court both vacates the adjudication *and* seals the official juvenile court record under RCW 13.50.260(6)(a).” *State v. S.G.*, 11 Wn. App. 2d 74, 82, 451 P.3d 726, 730 (2019) (internal citations omitted).

In *Barr v. Snohomish County Sheriff*, 193 Wn.2d 330, 339, 440 P.3d 131 (2019), the Court found that sealing a juvenile court record does not expunge the offense, and so a sealed adjudication can be used to prevent a person from obtaining a concealed pistol license. Further, in *Barr*, the Court distinguished sealing from what occurred in *Nelson*, noting that Nelson’s adjudication had been vacated and sealed and that “Nelson, meanwhile, ‘had a full expungement, and the records have been destroyed.’ Therefore,

‘there [were] no longer official records of any such [disqualifying] offense.’” *Id.* at 339. The statutory provision (former RCW 13.50.050(11)) interpreted in *Nelson* reads:

[i]n any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file **a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case).**

In re Firearm Rights of Nelson, 120 Wn. App. 470, 474, 85 P.3d 912 (2003) (emphasis added). The statutory language interpreted by *Nelson* mirrors RCW 13.50.260(3), the statutory provision at issue in this case:

[I]f a juvenile court record has not already been sealed pursuant to this section, in any case in which information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file **a motion with the court to have the court vacate its order and findings, if any; resolve the status of any debts owing; and, subject to RCW 13.50.050(13), order the sealing of the official juvenile court record, the**

social file, and records of the court and of any other agency in the case,” (emphasis added).

The clear statutory language and previous decisions from this Court make clear that vacating and sealing is more protective than sealing alone and is permitted under the juvenile code. Review should be accepted under RAP 13.4(b)(1) because the statutory language (from former RCW 13.50.050(11)) at issue in *Nelson*, which this Court cited in *Barr* as permitting an adjudication to be vacated and sealed, *mirrors* the statutory language at issue in this case. *Id.* at 473-474. As a result, the Court of Appeals’ decision in this case, holding that the adjudication could not be vacated under RCW 13.50.260(3), is clearly wrong and in direct conflict with this Court’s decision in *Barr*.

B. BIPOC Youth Are More Likely to Be Prosecuted in the Juvenile Legal System and to Suffer Harsher Sentences in the Adult Legal System because of Juvenile Court Adjudications that Are Not Vacated

In Washington State, “Black youth are more than five times as likely to be incarcerated as White youth (representing the 22nd largest discrepancy nationwide), Latinx about two times as likely

(15th largest nationwide), American Indians more than three times as likely (4th largest nationwide).” Heather D. Evans & Steven Herbert, Juveniles Sentenced as Adults in Washington State, 2009-2019, 2 (2021) https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf (citations omitted). Specific findings of the report include the following:

Children of color are disproportionately over-represented in the juvenile justice system in Washington State, both when measured as convictions and as individuals[.]

The statewide racial disparities in the juvenile legal system are repeated and stark in King County where in 2016, 634 criminal charges were filed against Black youth and 246 criminal charges were filed against white youth. In 2020, there were 309 filings against Black youth and 175 filings against white youth. King County Zero Youth Detention Data Dashboard—Headline Metric 4, <https://kingcounty.gov/depts/health/zero-youth-detention/dashboard.aspx>. Black youth between the ages of 10 and 17 represented 9.7% of the population in 2010 and 10.5 % of the population in 2020. White youth between the ages of 10 and 17

represented 59.7% of the population in 2010 and 51.4% of the population in 2020.

1. Many juvenile court adjudications are assigned the same point value as adult court convictions and, if not vacated, are used to determine a person’s sentencing range on ranked felonies in Superior Court.

When a person is convicted of a ranked felony, the Sentencing Reform Act (SRA) applies and determines a specific sentence range within a statutory maximum. Sentences are determined by reference to a sentencing grid, which provides a standard range based on both the severity, or “seriousness level,” of the offense and the convicted person’s “offender score.” *See* Washington Sentencing Guidelines Comm’n, Adult Sentencing Guidelines Manual cmt. at 51-55 (2020) https://www.cfc.wa.gov/PublicationSentencing/SentencingManual/Adult_Sentencing_Manual_2020.pdf. The offender score is primarily based on the number of prior felony convictions, which are assigned between one-half and three points each, depending on the nature and circumstances of the present and prior offense. *Id.* at 55 (internal citations omitted). Certain prior felony convictions

“wash out” after specified crime-free time periods and are not included in an offender score. *Id.* at 53-54.

If a juvenile adjudication has not been vacated, it is included in the offender score, unless sufficient time has passed for the general wash-out provisions to apply. *Id.* Prior juvenile adjudications are often counted differently than adult convictions, depending on the nature of the prior offense and the current offense. *Id.* at 55. For example, for sentencing on a nonviolent offense, a prior nonviolent juvenile adjudication counts as one-half of a point and a prior violent juvenile adjudication counts as one point. In addition, both prior adult convictions and juvenile adjudication are assigned higher point values in certain circumstances.

For example, if a person is sentenced for residential burglary in adult court, all prior adult convictions and juvenile adjudications for burglary will count as two points. RCW 9.94A.525(10). Likewise, if a person is sentenced for a felony car offense (e.g., Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a

Motor Vehicle Without Permission 2), all prior adult and juvenile adjudications count as three points for the following offenses:

Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2.

RCW 9.94A.525(20).

2. Because BIPOC youth are over-represented in the juvenile legal system, BIPOC individuals are more likely to have harsher sentences imposed in the adult criminal legal system.

According to research done by Look2Justice, an organization that advocates for Washington State to utilize evidence-based sentencing practices, 80% of Native American people, 67% of Asian Pacific Islanders, 53% of Black people, and 44% of Latinx people in prison had juvenile adjudications used to increase sentences imposed in the adult criminal legal system. Look2Justice, <https://look2justice.org/advocacy/>. This compares to 27% of white people. *Id.*

The trial court must have discretion to vacate and seal juvenile court adjudications, as the statutory language and case law clearly permit. Failing to do so will continue to exacerbate the harms of juvenile court records—including through harsher sentences in adult court—which disproportionately fall on people of color. *See S.J.C.*, 183 Wn.2d at 432-34.

V. CONCLUSION

Amici request that the Court protect young Washingtonians and mitigate the life-long harms of juvenile court adjudications by ensuring that juvenile court adjudications are both vacated and sealed under RCW 13.50.260(3).

RESPECTFULLY SUBMITTED this 22nd day of
December 2021.

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VI. CERTIFICATE OF COMPLIANCE WITH RAP 18.17

I certify that the word count for this brief, as determined by the word count function of Microsoft Word, and pursuant to Rule of Appellate Procedure 18.17, excluding title page, tables, certificates, appendices, signature blocks and pictorial images is 2,020.

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2021, I filed the foregoing brief via the Washington Court Appellate Portal, which will serve one copy of the foregoing document by email on all attorneys of record.

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