

SECOND LOOK NEWSLETTER

Redemption Project of Washington



Pictured: Marcus Price speaking at a resentencing workshop.

Welcome to the third issue and collaboration edition of our newsletter!

This version's newsletter is more community-focused and collaborative in nature. You'll see a mix of pieces from different agencies and community organizations in Washington.

We hope you enjoy!

As always, if you have questions, suggestions, or concerns, you are welcome to write us at:

The Redemption Project
20415 72nd Avenue South, Suite 1-415
Kent, Washington, 98032

IN THIS ISSUE:

WELCOME AND MEET THE TEAM

COURT DECISIONS

RIGHT TO COUNSEL FOR APPEALS

HOW DOC CAN AID IN RESENTENCING

COLLECTION OF ESSAYS AND ARTICLES

FREQUENTLY ASKED Q'S

MEET THE REDEMPTION PROJECT NEWSLETTER TEAM



Cindy,
Washington Defender
Association Resource
Attorney



Jeff,
Redemption Project of
WA Staff Attorney



Anthony,
Seattle Clemency
Project, Senior
Reform Strategist



Percy,
Washington Defender
Association
Community Outreach
Specialist



Blaze,
Redemption Project of
WA Paralegal



Kaitlyn,
Redemption Project of
WA Research and
Writing Specialist

RPW Update from the Courts: Pending Issues Related to Resentencing (as of 08/01/2024)

By Cindy Arends Elsberry, Washington Defender Association

Pending Issues:

There are several cases with important issues related to resentencing pending in the Washington Supreme Court. Each are listed below.

Is resentencing available for a person who was 18 or older at the time of the offense, before scientific evidence existed demonstrating that adolescents may be less culpable due to differences in brain development?

In *In re PRP Frazier*, No. 102295-6, the court will consider whether scientific understanding of brain development is “newly discovered evidence” that justifies resentencing outside the one-year time limit for post-conviction collateral relief. A trial court sentenced Mr. Frazier in 1989 to an exceptional sentence above the standard range based on the court’s conclusion that Mr. Frazier’s young age at the time of offense, two weeks past his 18th birthday, made him more dangerous. (Oral argument 5.28.24).

At resentencing hearings, should trial courts conduct a full resentencing hearing (de novo) and consider other issues, such the mitigating qualities of youth at the time of offense?

In *State v. Vasquez*, No. 102045-7, the Court will consider the scope of resentencing hearings. Must trial courts conduct full resentencing hearings unless an appellate court restricts the scope? Mr. Vasquez argues that the trial court can consider other sentencing issues beyond the change in score due to *Blake* at his resentencing hearing, including the mitigating qualities of his youth at the time of offense. (Oral argument 2.15.24).

Can courts impose weapons enhancements concurrently?

In *State v. Kelly*, No. 102003-3, (consolidated with 102003-1), the Court will consider whether the trial court had discretion to run multiple weapons enhancements concurrently at a resentencing hearing. Mr. Kelly was resentenced pursuant to *State v. Blake*. At the resentencing hearing, the trial court reduced his sentence by 60 months by running two firearm enhancements concurrently instead of consecutively. (Oral argument 2.15.24).

RPW Update from the Courts: Pending Issues Related to Resentencing (as of 08/01/2024) Continued

By Cindy Arends Elsberry, Washington Defender Association

What if the standard range does not change after Blake invalidates convictions previously included in the calculation of the offender score?

In *State v. Kelly*, No. 102003-3 (consolidated with 102003-1), the Court will consider whether a person must be resentenced where the standard range does not change after removing *Blake* convictions from calculation of the offender score. At a resentencing hearing on a case from 2006, Mr. Kelly's offender score went down by two points, but because his offender score remained the same at 9+, his standard range did not change. The trial court resentenced him and reduced the original sentence by 60 months by ordering that two firearm enhancements run concurrently with each other. (Oral argument 2.15.24)

Can a person ask for resentencing based on changes in the law without breaching a plea agreement? If a breach of the plea agreement occurs, can the person withdraw their guilty plea?

In *State v. Harris*, No. 102311-1, the Court will consider whether a person who was 17-years-old at the time of an offense can seek a resentencing hearing pursuant to *State v. Houston-Sconiers* without breaching the plea agreement. If asking for resentencing does breach a plea agreement, can the defendant move to withdraw his guilty plea? (Oral argument 6.27.24).

Can a person move to withdraw their guilty pleas to remaining counts when one or more counts is invalid pursuant to *State v. Blake*?

In two cases, *State v. Willyard*, No. 102325-1, 102326-0, and *State v. Olsen*, No. 102131, the Court will consider whether a person who pleaded guilty to multiple offenses under a single plea agreement can withdraw their plea to all offenses if one offense, possession of a controlled substance, was invalidated pursuant to *State v. Blake*. (Oral argument is not set as of 2.15.24).

Recent Second Look Decisions (Outside WA):

By The Redemption Project of Washington, quoting the Sentencing Project

Recent State Court Decisions (outside of Washington):

New Jersey:

The New Jersey Supreme Court held that youth placed on the sex offender registry have the right to be removed at any time, as long as they can prove they are not likely to pose a threat to the safety of others (*In the Matter of Registrant R.H.*).

Rhode Island:

The Rhode Island Supreme Court rules that “Mario’s Law” namesake can seek parole after serving 20 years. Mario’s Law gives incarcerated people a chance for parole after serving 20 years if the crime occurred before their 22nd birthday. The Attorney General challenged the law when applied to Mario Monteiro arguing that the law did not apply to those serving life sentences (*Neves v. State of Rhode Island*).

Michigan:

The Michigan Supreme Court ruled that juvenile lifers can be ordered to pay restitution on resentencing (*People v. Neilly*).

Massachusetts:

The Supreme Court of Massachusetts decided that the failure to apply new felony murder law retroactively did *not* violate the 8th Amendment (*Commonwealth v. Shepherd*).

Issues Currently On Appeal (outside of Washington):

Florida:

Whether mandatory LWOP sentences violates the 8th Amendment when applied to a person who neither caused nor intended to cause a death (*Sadik Baxter v. Florida*).

Pennsylvania:

Whether mandatory LWOP for individuals convicted of felony murder results in sentences that are disproportionate, racially biased, and unconstitutional (*Commonwealth v. Derek Lee*).

Michigan:

Whether mandatory life without parole for felony murder violates the state constitutional ban on cruel or unusual punishments (*Michigan v. Edwin Langston*).

Post-Conviction Relief: A Steep Hill to Climb

By Ann Joyce, Office of Public Defense Consultant, Post-Conviction Team

The Washington State Constitution (*Article I, Section 22*) guarantees the right for all its citizens to file a Notice of Appeal following a criminal conviction. This is called a **direct appeal**. If an attorney cannot be afforded, the state will appoint counsel and representation will be at public expense. The constitutional right to counsel at public expense ends at the conclusion of the direct appeal and most people have to seek post-conviction relief *pro se*.

The Washington State Office of Public Defense understands the great barriers people encounter when seeking *pro se* post-conviction relief, especially within the confines of DOC, and is working towards change. In 2023, the Washington State Legislature passed Senate Bill 5046. This OPD-supported bill provides funding to provide counsel for a small number of clients to file a Personal Restraint Petition (PRP). Although we are only able to appoint counsel for a small number of applicants, every application is reviewed to determine possible options for relief.

OPD will be filing a report with the legislature in December 2024 to share our findings, demonstrate the often unsurmountable challenge of filing a timely PRP without a law degree, and recommend legislative and court-rule changes needed to ensure a fair PRP process.

OPD has been conducting workshops in prisons to educate about the 5046 program – but mostly to be present and listen. It has been a rewarding and humbling experience. We plan to continue these visits.

5046 applications are available in the DOC libraries upon request or by contacting OPD.

Contact Us:

Email:

postconviction@opd.wa.gov

Phone:

360-586-3164, ext. 186 / Toll Free Phone: 800-414-6064

Mail:

Washington State Office of Public Defense

P.O. Box 40957

Olympia, WA, 98504-0957

How DOC Can Aid in Resentencing

By Maurya Ayala, Department of Corrections Resentencing and Release Manager

Did you know that DOC has a Resentencing team that is here to help you with your reentry? The Resentencing team first came out of the *State v. Blake* decision. The legislature provided funding to support individuals that were impacted by Blake and released sooner than expected to ensure they had housing, essential need items and Reentry staff to assist with resource connections. Fast forward three years and the Resentencing team is now providing services to individuals impacted by any type of resentencing or court action and clemency hearing that result in a release.



Pictured: The DOC Resentencing and Release Team

Who We Are:

Our team includes two Resentencing Specialists, a Resentencing and Release Manager, an Administrative Assistant, and one Continuity of Care Coordinator.

What We Do:

The Resentencing Specialist is there to provide you with connection to resources, community organizations and essential need items. They provide both pre- and post-release reentry support. They will work with you, your Classification Counselor, other facility staff, legal team, and community to help you identify goals, reduce barriers and connect you to resources and organizations. They also collaborate with SCP and RPW staff to support mutual clients. The Continuity of Care Coordinator can assist you pre- and post-release with health insurance, medical equipment, release medications, and other medical/mental health needs.

Things to Know:

As DOC staff, we must remain neutral when it comes to resentencing and clemency. This means that we cannot advocate for your release, but we are there to assist with your reentry to prepare for your potential release. Since we are a small team and focus on the immediate release of individuals impacted by resentencing, we likely won't meet with you until you have a resentencing hearing scheduled within the next 30 days.

How DOC Can Aid in Resentencing Continued

By Maurya Ayala, Department of Corrections Resentencing and Release Manager

The support we provide you will be individualized. Some people need more, some need less, while some would rather not work with a DOC staff member post-release, and that is okay too. We can still connect you to a community organization that you feel more comfortable with. What matters is that you are supported and have someone to walk along side you as you navigate your reintegration.

What You Can Do:

Whether you are going to be resentenced next month, next year or currently do not have a pathway to release, work on a reentry plan. Create a back-up plan, and a back-up plan to that back-up plan because life happens! If you haven't already, check out the DOC Individual Reentry Plan and fill it out. If that document doesn't resonate with you, complete your own. Just have A Plan. Engage in programming that is available to you. Identify your short-term and long-term goals and steps to achieve them; identify barriers you might face, and how you will overcome them. Map out those first couple of weeks after release. Be mindful of taking things slow to start out. You don't have to make up for lost time; you now get to create your own time. List out small goals you plan to work on each day and each week after release. Each small goal accomplished gets you closer to those bigger, long-term goals.

As you work on your reentry plan, of course, you will want to address housing, employment, education, and income source, medical and mental health, but don't underestimate the power of a support network.

At the end of the day, you can have all the resources in the world, a roof over your head and income, but if you don't have someone to turn to when you are struggling, reintegration suddenly becomes a mountain that you can't imagine getting on the other side of.

**As you work on
your reentry
plan ... don't
underestimate
the power of a
support
network**

Questions? Send us a Kiosk message at Resentencing HQ

The Importance of Participatory Defense

By Ginny Parham, founder of Families Shoulder to Shoulder

The Participatory Defense Movement is spreading throughout Washington State. So, what is it? Participatory Defense is a community organizing model for people facing charges, their families and communities to impact the outcomes of cases, and transform the landscape of power in the courtrooms.



Families Shoulder to Shoulder (FSTS) is a nonprofit that started in 2019 in Pierce County. We are now empowering communities not only in Pierce County but also in King County, Thurston County, Yakima County, Snohomish County, Spokane County, and Gray's Harbor County. We meet you wherever your case is being heard.

Although we are not attorneys, we assist incarcerated individuals and their loved ones at various stages of the legal process through Participatory Defense. We involve families in the defense process in order to impact individual cases and to contribute to a more just legal system.

We have in person and online weekly Participatory Hub meetings where we create space for families to gather, share their experiences and learn from one another fostering a supportive community. In this supportive community, legal complexities are clarified, individuals are respected, and everyone is treated with dignity and fairness.

**The goal of
participatory
defense is to
empower people**

The goal of Participatory Defense is to empower people to participate and be proactive in their own and their loved ones cases. This is important because it changes the dynamics of power. Perhaps more importantly, it boosts our agency in the process, which is essential in the criminal legal system.

The Importance of Participatory Defense, Cont.

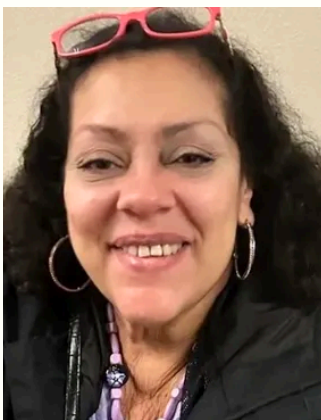
By Ginny Parham, founder of Families Shoulder to Shoulder

Families Shoulder to Shoulder (FSTS) engages with the courts on behalf of individuals through letter writing, court attendance, providing testimony about support upon release, and by providing information to help tell the story of the whole person. Since 2019, FSTS has supported around 120 families and written approximately 670 letters that are sent to sentencing Judges, as well as the Clemency and Pardons Board.

We are part of the process of reuniting families and bringing incarcerated individuals home. We are no longer powerless; we are members of the community, not just defendants or bystanders. We are letting courtrooms know that we do welcome transformed incarcerated individuals back into our communities. We let courtrooms know that just because an incarcerated individual is missing from our communities does not mean that they are forgotten.

We let courtrooms know that just because an incarcerated individual is missing from our communities does not mean they are forgotten.

For inquiries or to learn more: familiesshouldertoshoulder@outlook.com.



About the Author:

My name is Ginny Parham and I am the founder of Families Shoulder to Shoulder. I founded Families Shoulder to Shoulder because I was personally impacted by incarceration when I bravely supported my son during his 25-year prison sentence. I recognized the profound isolation, the hopelessness and disempowerment experienced by families who were pulled into the criminal justice system.

Systemic Disappearance

By Jeff Ellis, *Redemption Project of Washington*

“The Leftovers” was a fictional television series based on Tom Perrotta’s novel of the same name. The show takes place three years after a global event known as the “Sudden Departure,” which caused the unexplained disappearance of 2% of the world’s population. The focus of the series is the grief experienced by those who knew someone who had “departed.”

“We all basically live in a world that we define by the people who have disappeared. People just want finality, an end to their grief. But with departures, there is no end.”
-The Leftovers

While the series and book are considered by some to be science fiction, it is and has been reality for far too many people.

Today, there are nearly two million people in American prisons and jails – a 500% increase over the last 50 years. In 2020, over 200,000 people in U.S. prisons were serving life sentences – more people than were in prison with any sentence in 1970. Nearly one-third of people serving life sentences are 55 or older, amounting to over 60,000 people. People of color, particularly Black Americans, are represented at a higher rate among those serving lengthy and extreme sentences than among the total prison population. At the end of 2023, almost 14,000 people were incarcerated in Washington State. While the number is a decrease from pre-pandemic numbers of 19,000, it is still an incredibly high number.

In other words, we have engaged in the systemic “disappearance” of millions who leave behind broken and hurt communities where the collective suffering often never ends.

Systemic Disappearance, Continued

By Jeff Ellis, Redemption Project of Washington

There is, of course, an obvious solution. Return those who we “disappeared” to us. Even better, engage in “restoration” with the same vigor that we put into mass incarceration. After all, understanding the scope of what we did is necessary to understanding the scope of what we need to do in order to find an adequate solution.

While the criminal justice system recently has been willing to take second looks and give second chances, the burden placed on us to get a second look is in many cases far too high and there have been far too many people cut out of that opportunity. The law regarding the sentencing of juveniles in adult court changed and the change was retroactive. However, many juveniles were excluded from resentencing based on other rules regarding “substantive prejudice,” “time bar” and the “other adequate remedy” rules, none of which is concerned with the injustice of a person’s current sentence.

As we propose legislation or argue for new judicial rules, it is important that we propose rules that apply to the broad groups without exceptions. And, if we need to take a half step, then we must keep on pushing. Legislation that slightly alters the provisions of the SRA will inevitably get caught up in its many procedural traps. Victories in court that require a showing of prejudice in order to return to sentencing will almost certainly run into that restriction down the line. We need to think big and seek solutions unencumbered by the past—a legacy that was created to enforce finality over justice.

Our communities have been enriched by those who have returned. It’s time to stop leaving so many people behind.

**It’s time to
stop leaving
so many
people
behind**

Prison is where you are at, it doesn't define who you are

By Marcus Reed, currently incarcerated

My story is just like yours. We started out as good kids, we share similar youthful trauma and tough childhoods. We've been subject to plenty of unhealthy influences and flawed ideologies. We've made the same mistakes. We've lost more than we realized we had to give. We didn't really have a clue until now, if you're reading this, then you were forced to finally get it, like me.

I didn't really understand that I had choices, I never considered the future, and my actions showed that I didn't value my life. Although I got struck out at 24, I recently won my appeal and am going up for resentencing. Sadly, I had to grow up in institutions, but maturity comes with its own wisdom and it seems I'm only now thinking with true clarity 10 years later. I realize that the possibility of another chance isn't the determining factor for my personal growth, I want better for myself and also I know that its possible. And if that's true for me, then it is for you too.

When's the last time you faced yourself? I mean really took a deep look inside and asked the hard questions that make you think and come up with answers that hold the potential to change everything. Do you truly know what it is you want in life? What's that look like and how can you get there? Furthermore, who are YOU and do you want better for yourself?

Sometimes the hardest thing to do is waking up to face the everyday challenges in prison: constantly being surround by negativity, land mines, and difficult differences. To add the stress of all the outside world problems that we can't control but have to deal with nonetheless...lets just say that the psychological pressure can easily break anyone, or at the same time, create diamonds.

When's the last time you faced yourself? I mean really took a deep look inside and asked the hard questions...?

Prison is where you are at, it doesn't define who you are, continued

By Marcus Reed, currently incarcerated

To consider this, it makes you wonder how those before us/like us, found ways to navigate through this storm, made it out and made something of themselves. What did they do that was so exceptional? While that's tough to pin down, we do know who these trail blazers are, and we know what they didn't do. They didn't sit around doing nothing. They stopped getting involved in negative situations. Instead, they got involved in positive activities and programs, and utilized resources we all have access to. They created hope by utilizing their time to invest in themselves, whether by going to school or self learning. They became better people because they wanted a better life, regardless of where they were at. They made something of themselves long before they left and in doing so, showed us that there's no excuses.

Even those that didn't make it out but made still made those positive changes, still show how real their transition is because they didn't resort back to the negative, back to the being the person that got them in this situation. Therefore, they continue on with their positive journey because even in here, their life is made better. Moreover, if that opportunity comes, they're not gonna let out that same person as before. I don't agree with the system, but I do agree with positive change, self-improvement.

“You don't know who you really are until you fail.”

A wise saying is that you don't know who you really are until you fail. So even when we lose, what can be done and how do we start winning, or at least, stop losing? It starts by wanting better for yourself and that means becoming a better person regardless of circumstance. That means no more excuses. If you only look, examples show themselves all the time like the ones I listed earlier, and the possibilities for growth and success are all around us.

Prison is where you are at, it doesn't define who you are, continued

By Marcus Reed, currently incarcerated

We are in a golden age right now for education in prison: the Edovo is an abundance of free education on every tablet, actual college credits are on the way, TEACH education offers to pay for college credit correspondence courses, the Office App on the tablets give you all the options of a digital office, there are countless podcasts available, every institution has an education department that allows anybody to attend and I get it, a lot of these classes may not be what you what brings you joy, but they will open your mind. And while the challenges of learning new things can be difficult, just think about the challenges you've already survived. It's different but possible. Be on the lookout for workshops and surveys, they sometimes give you a chance to impact things that affect you.

Lastly, if all this is made available to you, why would you spend your days doing nothing? Why do what hasn't got you anywhere? Try something new. Get involved in positive programming.

If you want a better life, then you owe it to yourself to at least try. Fill your hours with things that will make a difference, that's what the trail blazers did, and it wasn't easy for them either. As long as you're learning and breathing, you have a chance to do something better than yesterday. We can't control anything but ourselves, meaning that we are the only ones holding us back. So its time for you to design what success looks like because ultimately, its up to you to succeed!



About the Author:

My name is Marcus Reed and you might know me as "Magic." I'm from Tacoma and am 36 years old. I spend my time building my future while trying to restore my past, as I help others along the way. My current focus is developing positive peer-led programs inside WA prisons, obtaining my AA degree, and helping others to prevent from making the same mistakes I did. I'm a member of the Black Prisoners Caucus. I am a dedicated father and believe in education and community outreach. My goal is to be the same person I am here and now, that I would be out in the world.

ASK US:

“When will the next Redemption Project workshop be at my facility?”

We are currently undergoing scheduling for the second round of workshops. We will have more details for you in the newsletters to come.

“When will the next newsletter come out?”

Newsletters are released bi-monthly. Please look out for the next issue of the newsletter in mid-October.

“Can I submit a request if I want to see something specific addressed in the newsletter?”

Of course! If you would like to see an article on a certain topic or a specific question answered, please write a letter to The Redemption Project of WA (address on first and last page). Requests may include, but are not limited to, updates on court cases, questions on general resentencing legal issues, and pieces written by RPW staff!

“I sent a letter to The Redemption Project and have not heard back. Why?”

We receive large volumes of mail every day. Once received, all mail at The Redemption Project is carefully screened, internally reviewed, and categorized. This review process can be lengthy. If you sent us a letter and have not heard back, please be patient. If you are worried that we did not receive or letter or it has been a significantly long period of time, please write us another letter.

“How do I get my question answered here?”

Send us a letter with your question, addressed to The Redemption Project of Washington (address on first and last page). At the top of your letter, please write, “NEWSLETTER QUESTION.” In your letter, please *only* include the relevant question.

CLOSING THOUGHTS AND REMINDERS:

By The Redemption Project of Washington Team

The purpose of this newsletter is to provide helpful information to you. If you are not seeing something that you would like to see in this newsletter, please write in with your suggestions!

When you write us, please address your mail in the following way:

**Redemption Project of WA
20415 72nd Avenue S, Suite 1-415
Kent, WA, 98032**