

FILED
NOVEMBER 3, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

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|----------------------|---|---------------------|
| STATE OF WASHINGTON, |) | No. 38578-7-III |
| |) | |
| Respondent, |) | |
| |) | |
| v. |) | UNPUBLISHED OPINION |
| |) | |
| ROBERT MARTINEZ JR., |) | |
| |) | |
| Appellant. |) | |


PENNELL, J. — In 2012, Robert Martinez Jr. was convicted of his third strike offense and was sentenced under the Persistent Offender Accountability Act of the Sentencing Reform Act of 1981, chapter 9.94A RCW, to life in prison without the possibility of release. One of his previous strike offense convictions was for second degree robbery. In 2021, Mr. Martinez filed a motion to remit and vacate his legal financial obligations (LFOs). The court denied the motion, finding it time-barred, but waived all interest on the LFOs from the 2008 and 2012 convictions. Mr. Martinez then filed an appeal regarding the court’s denial of his motion to remit LFOs.

While his appeal was pending, Mr. Martinez filed a statement of additional grounds for review, indirectly arguing his robbery conviction was no longer classified as a strike offense due to a change in law. The State agreed and filed in this court a motion to remand for resentencing.

We accept the State's concession. Under RCW 9.94A.647(1), which became effective on July 25, 2021, Mr. Martinez's prior second degree robbery conviction may not be used to sentence him as a persistent offender. The statute is explicitly retroactive, meaning individuals such as Mr. Martinez who have been sentenced as persistent offenders based on a second degree robbery conviction are entitled to resentencing. *Id.*

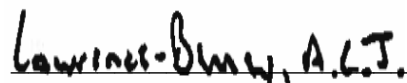
We grant the State's motion for remand and resentencing. This matter is remanded for resentencing pursuant to RCW 9.94A.647. Because Mr. Martinez is entitled to resentencing, his other claims on review are moot.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, J.

WE CONCUR:



Lawrence-Berrey, A.C.J.



Fearing, J.