Supreme Court No. 95076-8

SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Respondent,

v.

KASI LYNN SLEATER,
Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. ISSUES PRESENTED FOR REVIEW

Does Ms. Sleater have a conviction for a "new crime" since the date of discharge for the purposes of vacating a felony conviction under RCW 9.94A.640 where the new crime occurred prior to the discharge date, but Ms. Sleater was convicted after the discharge date?

II. STATEMENT OF THE CASE

In October 2016, the defendant, Kasi Sleater, moved the Benton County Superior Court for an order vacating the record of a 2006 felony conviction for Unlawful Possession of a Controlled Substance (methamphetamine) (hereinafter the "2006 felony conviction"). Agreed Report of Proceedings (ARP) at 1:2-3; Clerk's Papers (CP) 1. Ms. Sleater's motion was brought pursuant to RCW 9.94A.640. CP 15-16.

Under RCW 9.94A.640(1) and (2), an offender may not have the record of a felony conviction vacated if she fails even one of several tests prescribed by statute. Under this statute, an offender may not have the record of conviction vacated if she has been convicted of a new crime since the date she was discharged under RCW 9.94A.637. *See* RCW 9.94A.640(2)(d).

In Ms. Sleater's case, she was discharged on the 2006 felony conviction on May 22, 2008. ARP at 1:3-5; CP 66. One week later, on May 29, 2008, she was convicted of a new crime (hereinafter the "2008

felony conviction"). ARP at 1:6-7; CP 53. Consequently, she is disqualified under RCW 9.94A.640(2)(d) from vacating the record of her 2006 felony conviction, unless or until her 2008 felony conviction is vacated or otherwise cleared. For this reason, the trial court denied Ms. Sleater's Motion to Vacate Felony at a hearing on October 26, 2016. ARP at 2:22-23; CP 63-65. The Court of Appeals affirmed the denial on the same basis. *State v. Sleater*, 403 P.3d 84, 86 (2017).

III. ARGUMENT

A. The Washington Supreme Court should not grant review because the Court of Appeals is not in conflict with well settled Supreme Court precedent and this case does not involve an issue of substantial public interest.

1. Supreme Court precedent remains undisturbed.

Ms. Sleater requests review of the appellate court's affirmation of the trial court's decision to deny her motion to vacate because the decision disturbs Supreme Court precedent. Petition for Review (PRV) at 3; RAP 13.4(b). Her sole argument on appeal is that the trial court erroneously interpreted RCW 9.94A.640(2)(d). She contends that under the plain language of the statute, offenders who both (1) commit a "new crime" (2) before the date of discharge and (3) are convicted of the "new crime" after the date of discharge, are eligible for vacating the record of conviction. ARP at 1:23-25. She argues that because the 2008 felony conviction was committed prior to the date of discharge for the 2006 felony conviction,

she had not been convicted of a "new crime" within the meaning of the statute. ARP at 2:1-5. This interpretation is not supported by a plain reading of the statute, the provision's context within the statute, or the broader statutory scheme.

This ruling does not depart from Supreme Court precedent regarding rules of statutory interpretation. Statutory interpretation is "'to determine and give effect to the intent of the legislature.'" *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013) (quoting *State v. Sweany*, 174 Wn.2d 909, 914, 281 P.3d 305 (2012)). The legislative intent is derived solely from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *Evans*, 177 Wn.2d at 192; *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010); *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the plain language of the statute is unambiguous, then the court's inquiry is at an end and the statute will be enforced in accordance with its plain meaning. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

The legislature clearly intended to focus on the conviction of a new crime, not the date on which the crime took place. The statute would not make sense otherwise. To give effect to the defendant's interpretation

would render section (2)(d) without consequence for committing a crime at any moment between the commission of the first crime and the date of discharge. Therefore, the legislative intent is clearly unambiguous and leaves Supreme Court precedent undisturbed.

2. The issue is not of substantial public interest.

Ms. Sleater contends that the Court of Appeals's decision will negatively impact the State's lower courts creating an issue of substantial public interest. PRV at 3. An appellate court, when deciding if an issue is of substantial public interest, considers three factors: (1) the nature of the question is public rather than private; (2) the decision will offer guidance to public officials; and (3) the question is likely to recur. *State v. Beaver*, 184 Wn.2d 321, 358 P.3d 385 (2015). The application of this criteria is necessary to ensure that an actual benefit to the public interest in reviewing a case outweighs the harm of issuing what would be essentially an advisory opinion. *Hart v. Dep't of Soc. & Health Servs.*, 111 Wn.2d 445, 450, 759 P.2d 1206 (1988). This framework, most often applied as an exception to hear the case when a controversy is moot, provides analyses in which to review the defendant's request.

The issue requested for review does not meet the test in *Beaver* because the plain reading of the statute is unambiguous. "Cases involving . . . interpretation of statutes are public in nature and provide guidance to

future public officials." *Beaver*, 184 Wn.2d at 331 (citing *State v. Hunley*, 175 Wn.2d 901, 908, 287 P.3d 584 (2012)). Only if the Court finds the statute ambiguous would Ms. Sleater's claim meet the requirements of the first two factors. In this case, no interpretation of the statute is needed because a plain reading reveals no ambiguity.

The last factor in the *Beaver* test asks whether the question is likely to recur. *Beaver*, 184 Wn.2nd at 321. Ms. Sleater's argument is based, in part, on the fact lower courts hear thousands of motions to vacate convictions every year. PRV at 3. However, the State contends the facts surrounding this case are extremely rare. Although thousands of petitions may be heard, it can be expected very few offenders apply to vacate a conviction when they have committed a second crime also requiring a petition to vacate. It is simply easier to wait for the requisite time in which the offender can vacate both. Meaning, the question presented by the Ms. Sleater is very unlikely to recur.

The Court of Appeals included a comprehensive analysis with its decision. *State v. Sleater*, 403 P.3d 84, 86 (2017). Any more commentary on this issue would essentially be an advisory opinion. *Hart*, 111 Wn.2d at 450. The Court of Appeals's decision does not create a matter of substantial public interest requiring further review.

IV. CONCLUSION

Accordingly, the petition for review should be denied.

RESPECTFULLY SUBMITTED this 3rd day of November, 2017.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on November 3, 2017.

Courtney Alsbury
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

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