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Court of Appeals
Division I
State of Washington

72704-4

NO. 72704-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL COSTA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN R. RUHL

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

STEPHANIE FINN GUTHRIE
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

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A. ISSUE PRESENTED

1. Because former RCW 9.95.240's command that a defendant who received a dismissal was thereafter "released from all penalties and disabilities" matched the language of vacation statutes, a dismissal under former RCW 9.95.240 carried the same effect as a vacation. However, our supreme court has held that the subsequent enactment of separate procedures to specifically govern vacation of convictions resulted in a dismissal under current RCW 9.95.240(1) no longer carrying the effect of a vacation, despite the lack of any substantive difference between wording of former RCW 9.95.240 and current RCW 9.95.240(1). Did the trial court properly conclude that a defendant who receives a dismissal under current RCW 9.95.240(1) is no longer entitled to be "released from all penalties and disabilities"?

2. RCW 9.95.240 has never required that a statement that the defendant is "released from all penalties and disabilities" be included in a dismissal order, even back when a dismissal truly did effect such a release. Even if this Court determines that the "released from all penalties and disabilities" language in RCW 9.95.240(1) continues to have some effect short of its literal meaning, did the trial court properly exercise its discretion in

declining to include it in the dismissal order, thereby avoiding the risk of misleading the defendant or others about the scope of relief provided by the order?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State originally charged the defendant, Michael Costa, with one count of possession of depictions of a minor engaged in sexually explicit conduct in the second degree, a felony. CP 1. Costa later pled guilty to two misdemeanor counts of attempted possession of depictions of a minor engaged in sexually explicit conduct in the second degree. CP 6-8. The sentencing court deferred imposition of sentence for 24 months on each count, to run consecutively, and imposed various conditions. CP 8-10. The following year, the trial court found that Costa had completed the conditions of his deferral and entered an order withdrawing Costa's guilty plea and dismissing the case with prejudice. CP 51. The trial court declined to use the proposed dismissal order submitted by

Costa, and instead used the order proposed by the State. RP¹ 2, 19; CP 32-33, 51. Costa timely appealed that decision. CP 53-54.

2. SUBSTANTIVE FACTS.

In 2013, Costa received a 48-month deferred sentence under RCW 9.95.200 and RCW 9.95.210.² CP 8-10. The conditions of the deferral included requirements that he successfully complete a sexual deviancy program and pay financial obligations. CP 9-10. Thirteen months later, Costa requested an early dismissal under RCW 9.95.240 based on the completion of all conditions. CP 14. Costa proposed a dismissal order that contained the following language:

ORDERED that the plea of "guilty" previously entered by the Defendant is withdrawn and a plea of "not guilty" is entered, and the case is dismissed with prejudice, and he is released from all penalties and disabilities resulting from the offenses that were charged against him, and it is

FURTHER ORDERED that pursuant to the decision of the Washington Supreme Court in State v. Breazeale, 144 Wn.2d 829, 837-38, 31 P.3d 1155,

¹ The report of proceedings consists of a single volume from October 16, 2014, and will be referred to as "RP."

² Although it appears that the trial court erred in deferring sentence for longer than the 24 months allowed under RCW 9.95.210, the issue is moot because the case was dismissed after only 13 months. See State v. Parent, 164 Wn. App. 210, 214, 267 P.3d 358 (2011) (holding trial court lacks authority to impose more than a total of 24 months of probation under RCW 9.95.210 when sentencing on two misdemeanors); In re Pers. Restraint of Mattson, 166 Wn.2d 730, 736, 214 P.3d 141 (2009) (holding case is moot if court can no longer provide effective relief).

1159 (2001),¹ the defendant is entitled to assert that he has never been convicted.

CP 22-23 (footnote in original). Footnote 1 in the proposed order consisted of a quote from Breazeale:

This court has interpreted the language . . . “released from all penalties and disabilities,” to mean that a person who has been granted dismissal under RCW 9.95.240 is entitled to assert that he or she has never been convicted. In re Discipline of Stroh, 108 Wn.2d 410, 417-18, 739 P.2d 690 (1987). RCW 9.95.240 “is a legislative expression of public policy . . . [that] a deserving offender [is restored] to his [or her] preconviction status as a full-fledged citizen.” Matsen v. Kaiser, 74 Wn.2d 231, 237, 443 P.2d 843 (1968) (Hamilton, J., concurring). The Legislature intended to prohibit all adverse consequences of a dismissed conviction, with the one exception of use in a subsequent criminal conviction but with no additional implied exceptions. Blevins v. Dep’t of Labor & Indus., 21 Wn. App. 366, 368, 584 P.2d 992 (1978); State v. Walker, 14 Wn. App. 348, 541 P.2d 1237 (1975).

CP 23 n.1 (quoting State v. Breazeale, 144 Wn.2d 829, 837-38, 31 P.3d 1155 (2001)).

The State agreed to an early dismissal of the deferred sentence, but pointed out that Costa’s proposed order would have the effect of vacating the conviction, which was improper as Costa did not meet the statutory requirements for vacation of a misdemeanor conviction set out in RCW 9.96.060. RP 10, 15;

CP 25-26. A hearing was set before the trial court to resolve the issue. RP 2.

At the hearing, Costa argued that RCW 9.96.060 did not apply to him because that was a general vacation statute applying to all misdemeanors while RCW 9.95.240 was a more specific statute governing defendants who completed a deferred sentence, and because RCW 9.96.060 did not explicitly repeal or limit RCW 9.95.240. RP 3-7. He contended that an order releasing him from “all penalties and disabilities” was not the same as a vacation, for which he agreed he was ineligible, because nothing in the order would direct the clerk to transmit the order to the Washington State Patrol (“WSP”) or direct WSP to clear the record of conviction. RP 8, 18-19; CP 19-20. Costa nevertheless asserted that under Breazeale an order containing the “penalties and disabilities” language would allow him to state on an employment application that he had never been convicted of the crimes. RP 8; CP 20.

The State argued that a dismissal with release from “all penalties and disabilities” was identical to a vacation, and that a defendant is no longer entitled to automatic release from all penalties and disabilities upon dismissal of a deferred sentence because vacation of misdemeanors is now governed by

RCW 9.96.060.³ RP 12-15. The State informed the trial court that in the past, when dismissal orders containing the “penalties and disabilities” language had been entered in other cases, WSP sometimes treated it as a vacation of the conviction, causing any law enforcement agencies who subsequently ran a criminal history check on the defendant to believe that the case had been vacated; on other occasions, WSP rejected such orders as an unlawful instruction to vacate an unvacatable offense. RP 9-10. The State argued that the trial court should simply dismiss the case with prejudice, without including any language about release from penalties and disabilities. RP 17.

The trial court declined to sign Costa’s proposed order, saying, “I’m not going to do a vacation order.” RP 19. The court instead signed the State’s proposed dismissal order, which stated in relevant part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the defendant is permitted to withdraw the finding or plea of “Guilty” to the crime of Attempted Possession of Depictions of Minors in the Second Degree herein.

³ The State also argued in the trial court that RCW 9.95.240 does not apply to misdemeanors. RP 15. However, the State does not maintain that claim on appeal.

IT IS FURTHER ORDERED that the above-entitled cause is hereby dismissed with prejudice.

CP 51; RP 19.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY DECLINED TO INCLUDE LANGUAGE IN THE DISMISSAL ORDER STATING THAT COSTA WAS "RELEASED FROM ALL PENALTIES AND DISABILITIES" RESULTING FROM THE CRIME.

Costa contends that the trial court erred when it declined to include language stating that he was "released from all penalties and disabilities" in the order dismissing his case after completion of the conditions of his deferred sentence. This claim should be rejected. The dismissal of a deferred sentence under RCW 9.95.240(1) no longer releases a defendant from all penalties and disabilities, which would be the equivalent of vacating of the conviction, because the legislature has enacted separate statutes to specifically govern vacation of convictions. Even if the "released from all penalties and disabilities" language in RCW 9.95.240(1) continues to have some effect short of its literal meaning, there is no requirement in statute or case law that such language be

included in the dismissal order. The trial court therefore properly declined to include the requested language in the dismissal order.

- a. A Defendant Is No Longer Automatically Released From All Penalties And Disabilities Upon Dismissal Of A Deferred Sentence Under RCW 9.95.240.

In interpreting a statute, a court's fundamental objective is to ascertain and carry out the intent of the legislature. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Whether a defendant who receives a dismissal under RCW 9.95.240(1) is "released from all penalties and disabilities resulting from . . . the crime" is a question of law reviewed de novo. See State v. Pulfrey, 154 Wn.2d 517, 522, 111 P.3d 1162 (2005) ("Interpretation of a statute is a question of law reviewed de novo.").

For almost 50 years prior to 2003, RCW 9.95.240 stated, in its entirety:

Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he has been convicted be permitted in the discretion of the court to withdraw his plea of guilty and enter a plea of not guilty, or if he has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, **the court may thereupon dismiss the information or indictment**

against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The probationer shall be informed of this right in his probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.⁴

Former RCW 9.95.240 (1957) (emphasis added). After the Sentencing Reform Act ("SRA") was enacted in 1981, RCW 9.95.240 continued to govern pre-SRA felonies and misdemeanors. See State v. Davis, 56 Wn.2d 729, 736, 355 P.2d 344 (1960) (RCW 9.95.200-250 have applied to misdemeanors since 1949); State v. Hoffman, 67 Wn. App. 132, 133, 834 P.2d 39 (1992) (RCW Ch. 9.95 applies to pre-SRA felonies but not to post-SRA felonies).

Since its enactment, the SRA has included a provision allowing for the vacation of post-SRA felony convictions, subject to limitations on the type of crime, subsequent criminal history, and the amount of time since completion of the sentence. RCW 9.94A.640 (formerly RCW 9.94A.230). Once a conviction has been vacated under the SRA, "the offender shall be released from all penalties and disabilities resulting from the offense . . . [and] may

⁴ This language is identical to the current RCW 9.95.240(1), except that the pronouns have been rendered gender-neutral in the current provision.

state that the offender has never been convicted of that crime.”

RCW 9.94A.640(3).

In 2001, the legislature enacted RCW 9.96.060 to govern the vacation of misdemeanors, and imposed limitations similar to those in the SRA's vacation statute. RCW 9.96.060; Washington Final Bill Report, 2001 Reg. Sess. H.B. 1174. The legislature was prompted to act by a split among the divisions of the court of appeals regarding whether existing statutes provided statutory authority to vacate a misdemeanor conviction, and by the legislature's desire to provide a vacation procedure for misdemeanors equivalent to the existing procedure for post-SRA felonies. Washington Final Bill Report, 2001 Reg. Sess. H.B. 1174.

RCW 9.96.060 states, in part:

(1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. . . .

. . . .
(5) Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on

employment or housing applications, a person whose conviction has been vacated under subsection (1) of this section may state that he or she has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.⁵

However, under RCW 9.96.060 some misdemeanor crimes, including Costa's crime of attempted possession of depictions of a minor engaged in sexually explicit conduct in the second degree, are categorically ineligible for vacation. RCW 9.96.060(2)(d); RCW 9.68A.070.

Shortly after RCW 9.96.060 was enacted, the state supreme court issued its decision in State v. Breazeale, holding (in the context of a pre-SRA felony conviction) that the legislature's use of language releasing the defendant from "all penalties and disabilities" in both former RCW 9.95.240 and the SRA vacation statute reflected a legislative intent that the dismissal of a suspended or deferred sentence under RCW 9.95.240 have the same effect as a vacation under the SRA. State v. Breazeale, 144 Wn.2d 829, 837-38, 31 P.3d 1155 (2001); In re Pers. Restraint of Carrier, 173 Wn.2d 791, 806, 272 P.3d 209 (2012).

⁵ This quotation reflects the subsection numbering in the current version of RCW 9.96.060. At the time of Costa's crimes, the substance of the quoted provisions was identical, although the numbering of the subsections was different. Former 9.96.060 (2012).

Correspondingly, a defendant who had received a dismissal under former RCW 9.95.240 was entitled to state that he had never been convicted of the crime, just like a defendant whose conviction had been vacated. Breazeale, 144 Wn.2d at 837. Although Breazeale did not explicitly restrict its holding to pre-SRA felony convictions, the facts of the case involved only pre-SRA felonies, and the court did not consider the effect that the enactment of RCW 9.96.060 (which occurred after oral argument in Breazeale) might have on the proper interpretation of former RCW 9.95.240 in misdemeanor cases.

In 2003, the legislature responded to Breazeale by amending RCW 9.95.240 to add subsection (2), which states in relevant part:

After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

RCW 9.95.240(2)(a); Washington House Bill Analysis, 2003 Reg. Sess. H.B. 1346. The legislature's intent in enacting the amendment was to make the vacation of pre-SRA felony

convictions subject to the same rules and procedures that govern vacation of post-SRA felony convictions. See Washington House Bill Analysis, 2003 Reg. Sess. H.B. 1346; Carrier, 173 Wn.2d at 807-08. The legislature considered the amendment to apply only to pre-SRA felonies; this was likely because the vacation of misdemeanors was already provided for in RCW 9.96.060. See Washington House Bill Analysis, 2003 Reg. Sess. H.B. 1346.

The effect of the 2003 amendment to RCW 9.95.240 was not considered by our supreme court until In re Pers. Restraint of Carrier in 2012. In Carrier, the supreme court affirmed Breazeale's holding that a dismissal under former RCW 9.95.240 resulted in automatic "release[] from all penalties and disabilities," and that such release has the same effect as vacation of the conviction. 173 Wn.2d at 806. However, the court held that the creation of RCW 9.95.240(2) to specifically govern vacation meant that a dismissal under the current RCW 9.95.240(1) no longer has the effect of a vacation, and a defendant who obtains a dismissal must now petition the trial court separately for vacation of the conviction. Carrier, 173 Wn.2d at 807-08.

Carrier does not stand, as Costa contends, for the proposition that "release[] from all penalties and disabilities" is still

an automatic consequence of dismissal under RCW 9.95.240(1) but no longer has the same effect as vacation. Brief of Appellant at 11-12. Carrier does not explicitly address whether the “released from all penalties and disabilities” language of RCW 9.95.240(1) continues to have any effect now that the vacation of all convictions is governed by other, more stringent, statutes. 173 Wn.2d at 801-08. However, given the reasoning of Carrier and Breazeale, Carrier can only reasonably be interpreted as standing for the proposition that a defendant who obtains a dismissal under RCW 9.95.240(1) is no longer automatically “released from all penalties and disabilities.” See Carrier, 173 Wn.2d at 801-08.

If Costa’s interpretation of Carrier were correct, that decision would have completely undercut the rationale of Breazeale, which was that the legislature’s use of “release[] from all penalties and disabilities” in both vacation statutes and former RCW 9.95.240 evinced an understanding that “release from all penalties and disabilities” under former RCW 9.95.240 carried the same consequences as vacation. Yet the Carrier court gave no hint that it disagreed with the rationale of Breazeale, and instead went out of its way to clarify and affirm Breazeale’s holding. 173 Wn.2d at 806. And indeed, release from “all penalties and disabilities” remains the

hallmark of vacation for both misdemeanors and felonies. See RCW 9.96.060(5) (“Once the court vacates a record of conviction under subsection (1) of this section, the person shall be released from all penalties and disabilities resulting from the offense”); RCW 9.94A.640(3) (nearly identical language).

Despite his repeated assertions that release from “all penalties and disabilities” resulting from the crime does not provide the same relief as vacation, Costa does not accurately identify a single consequence of vacation that is not also a consequence of release from “all penalties and disabilities.” He asserts that a conviction may still be included in the defendant’s criminal history at future sentencings if the defendant has been released from all penalties and disabilities, but not if the conviction has been vacated. Brief of Appellant at 12. However, Carrier explicitly held that a dismissal with release from all penalties and disabilities under former RCW 9.95.240 prevents the conviction from being considered part of the defendant’s criminal history at future sentencings, just as would be the case after vacation of the conviction. 173 Wn.2d at 816-17.

Costa also cites State v. Smith⁶ and Matsen v. Kaiser⁷ for the proposition that release from all penalties and disabilities confers unspecified “significant benefits” short of vacation. Brief of Appellant at 13. However, both of those cases involved the benefits of vacation under either modern vacation statutes or the pre-2003 version of RCW 9.95.240. Smith, 158 Wn. App. at 503 (addressing whether conviction vacated under RCW 9.96.060 constituted a subsequent “conviction” for purposes of vacation under RCW 9.94A.640); Matsen, 74 Wn.2d at 232-34 (addressing whether conviction vacated through release from all penalties and disabilities under former RCW 9.95.240 constitutes “conviction” for purposes of statute barring convicted defendants from holding public office).⁸

Because “release[] from all penalties and disabilities” continues to have the same effect as formal vacation under the

⁶ 158 Wn. App. 501, 246 P.3d 812 (2010).

⁷ 74 Wn.2d 231, 443 P.2d 843 (1968).

⁸ The fact that Costa is unable to accurately identify how an order releasing him from “all penalties and disabilities” would differ in effect from an order vacating his conviction (which would be unlawful under RCW 9.96.060) should give this Court pause. It suggests that, as was apparent in the trial court, Costa’s ultimate goal is to obtain an order that he can later use to achieve the benefits of vacation, such as the ability to deny having been convicted, without meeting the statutory requirements for vacation. See CP 23 (proposed dismissal order states that Costa may assert that he has never been convicted and contains language from Breazeale equating release from all penalties and disabilities with vacation).

SRA or RCW 9.96.060, Carrier must be viewed as holding that a defendant who receives a dismissal under RCW 9.95.240(1) is no longer automatically “released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.” 173 Wn.2d at 801-08.

Carrier, which dealt with a pre-SRA felony, held that its departure from Breazeale's interpretation of former RCW 9.95.240 (substantively identical to current RCW 9.95.240(1)) was required by the legislature's institution of a specific procedure for vacation of pre-SRA felony convictions. Id. at 807-08. Under the same reasoning, the legislature's enactment of RCW 9.96.060 to specifically govern the vacation of misdemeanor convictions demonstrated an intent that a misdemeanant who receives a dismissal under RCW 9.95.240(1) no longer be automatically “released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.” See Carrier, 173 Wn.2d at 801-08; Smith, 158 Wn. App. at 512 (“In 2001, the legislature limited vacation of misdemeanors” by enacting RCW 9.96.060.). The dismissal of Costa's case therefore did not release him from “all penalties and disabilities” resulting from his conviction.

Because Costa was not statutorily entitled to be released from all penalties and disabilities resulting from his convictions upon dismissal of his deferred sentence, the trial court properly declined to include language releasing him from all penalties and disabilities in the dismissal order.

- b. Even If The “Penalties And Disabilities” Language Of RCW 9.95.240(1) Continues To Have Some Meaning Short Of Vacation, Nothing In The Statute Entitles Costa To Have That Language Included In The Dismissal Order.

Costa contends that because RCW 9.95.240(1) continues to include the “released from all penalties and disabilities” language, it was reversible error for the trial court to refuse to include that language in the order dismissing Costa’s case. Brief of Appellant at 6-7, 10. Yet, assuming for the sake of argument that the “release[] from all penalties and disabilities” language in RCW 9.95.240(1) continues to have some effect short of vacation, Costa has provided no authority supporting his claim that he is entitled to have that language included in the dismissal order. See DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that

counsel, after diligent search, has found none.”). Where a trial court’s order is statutorily sufficient, this Court should review the decision to not include additional language requested by the defendant for abuse of discretion. Cf. Anfinson v. FedEx Ground Package Sys., Inc., 159 Wn. App. 35, 44, 244 P.3d 32 (2010), aff’d, 174 Wn.2d 851, 281 P.3d 289 (2012) (so long as jury instructions are accurate and not misleading, a trial court’s decision regarding specific wording of instructions is reviewed only for abuse of discretion).

Nothing in RCW 9.95.240(1) suggests that a dismissal order is unlawful or insufficient if it does not include the “released from all penalties and disabilities” language. Indeed, the statute states that when a trial court dismisses the charges against a defendant, the defendant “shall thereafter be released from all penalties and disabilities” resulting from the crime. RCW 9.95.240(1). The legislature’s choice of wording suggests that release from penalties and disabilities, to the extent it continues to have some effect short of vacation, is something that occurs naturally, without specific judicial action, following a dismissal. See Carrier, 173 Wn.2d at 806 (Breazeale held that dismissal under former RCW 9.95.240 had same effect as vacation automatically, with no second step

required). The legislature could have written the statute to say that a court that dismisses charges against a defendant “shall release the defendant from all penalties and disabilities,” which would indicate that some action by the trial court is required to achieve the release; however, it chose not to do so.

Thus, nothing in current or former RCW 9.95.240 suggests that a trial court has ever been required to include language in a dismissal order specifically releasing the defendant from “all penalties and disabilities,” even back when dismissal truly did release a defendant from all penalties and disabilities, equivalent to vacation. It is furthermore undisputed that dismissal under the current RCW 9.95.240(1) does not literally release a defendant from all penalties and disabilities, as dismissal no longer provides relief as broad as vacation of the conviction would provide. See Brief of Appellant at 11-12.

To include language in the dismissal order that Costa was “released from all penalties and disabilities” resulting from his crimes would therefore have been inaccurate and misleading, and might cause Costa, or third parties who viewed the order, to misinterpret the scope of the relief that the dismissal order and RCW 9.95.240(1) provide. The potential to mislead anyone who

read the order was particularly high in light of the rest of Costa's proposed dismissal order, which contained no-longer-accurate statements, taken from Breazeale's analysis of former RCW 9.95.240, that Costa was "entitled to assert that he has never been convicted"⁹ and that a defendant who obtains a dismissal under RCW 9.95.240 "[is restored] to his [or her] preconviction status as a full-fledged citizen." CP 23 (quoting Breazeale, 144 Wn.2d at 837) (alteration in original).

Because RCW 9.95.240(1) does not require that a dismissal order include language releasing the defendant from "all penalties and disabilities," and because the inclusion of such language would have been inaccurate and misleading even if the language continued to serve some function in the statute short of vacation, the trial court properly exercised its discretion in declining to include such language in its order dismissing Costa's case.

⁹ Contrary to Costa's assertions before the trial court, it is only the vacation of a conviction (or an equivalent dismissal under former RCW 9.95.240) that allows a defendant to deny having ever been convicted. See RCW 9.96.060(5) ("[A] person whose conviction has been vacated under subsection (1) of this section may state that he or she has never been convicted of that crime."). To the State's knowledge no case interpreting RCW 9.95.240(1) post-Carrier has ever held that a defendant who merely obtains a dismissal under the current statute may lawfully deny having been convicted.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the trial court's decision not to include language stating that Costa was "released from all penalties and disabilities" in the order of dismissal.

DATED this 20th day of May, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

STEPHANIE FINN GUTHRIE, WSBA #43033
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Robert J. Wayne, the attorney for the appellant, at bwayne@trialsnw.com, containing a copy of the BRIEF OF RESPONDENT, in State v. Michael Costa, Cause No. 72704-4, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of May, 2015.

U Brame

Name:

Done in Seattle, Washington .