

FILED
COURT OF APPEALS

06 JUL 10 AM 9:08

STATE OF WASHINGTON

SEAL

NO. 34221-9-II

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

STATE OF WASHINGTON,
Petitioner,

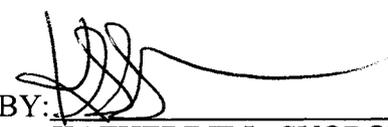
v.

M.D.P.,
Respondent.

THE HONORABLE GORDON L. GODFREY, JUDGE

ON APPEAL FROM THE SUPERIOR COURT
FOR GRAYS HARBOR COUNTY JUVENILE DIVISION
(AMENDED)

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY: 

KATHERINE L. SVOBODA
Deputy Prosecuting Attorney
WSBA #34097

OFFICE AND POST OFFICE ADDRESS
County Courthouse
102 West Broadway, Room 102
Montesano, Washington 98563
Telephone: (360) 249-3951

TABLE

Table of Contents

ASSIGNMENTS OF ERROR 1

ISSUES PRESENTED FOR REVIEW 1

STATEMENT OF THE CASE 1

ARGUMENT 1

CONCLUSION 2

TABLE OF AUTHORITIES

Table of Cases

State v. D.S., 128 Wash.App. 569,
115 P.3d 1047, (2005) 2

State v. Gilkinson, 57 Wash.App. 861,
790 P.2d 1247 (1990) 2

Lundin v. Superior Court, 102 Wash. 600,
174 P. 473 (1918) 2

State v. T.K., 139 Wash.2d. 320,
987 P.2d 63 (1999) 2

Statutes

RCW 9.94A.030(41) 1

RCW 9A.44.083(2) 2

RCW 13.40.020(25) 2

RCW 13.50.050(12)(d) 1, 2

ASSIGNMENTS OF ERROR

(1) The trial court erred by sealing respondent's juvenile record when the record contained convictions for three counts of a Class A sex offense.

ISSUES PRESENTED FOR REVIEW

RCW 13.50.050 prohibits the trial court from sealing a juvenile record when the record contains convictions for Class A offenses or sex offenses.

STATEMENT OF THE CASE

The respondent was charged by information with three counts of Child Molestation in the First Degree in 1998. (CP 1-2) The respondent pleaded guilty to those charges in 1999 and disposition was entered July 22, 1999. (CP 3-9) The respondent filed a motion to seal his juvenile record on September 27, 2005. The motion was granted, over the State's objection, on October 13, 2005. (CP 10-14)

ARGUMENT

The current statute authorizing the sealing of juvenile records, RCW 13.50.050(12)(d), provides as follows:

[t]he court shall not grant any motion to seal records made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless it finds that... [t]he person has not

been convicted of a class A or sex offense.
Child Molestation in the First Degree is a Class A felony under RCW 9A.44.083(2) and a sex offense under RCW 9.94A.030(41) pursuant to RCW 13.40.020(25).

The respondent was charged, pleaded guilty and had disposition after July 1, 1997. There is no case law or statutory authority that the State is aware of that would allow his record to be sealed. This Court has previously held that “the disposition of criminal records is a matter that would appear to be related to the punishment and reformation of offenders,” and “[s]uch functions...are uniquely within the legislature’s domain.” *State v. Gilkinson*, 57 Wash.App. 861, 866, 790 P.2d 1247, 1249 (1990) *see State ex rel. Lundin v. Superior Court*, 102 Wash. 600, 174 P. 473 (1918). Thus, as in *Gilkinson*, the court here, absent a statutory grant of authority, lacked any inherent authority to seal the respondent’s record.

The Supreme Court in *State v. T.K.* determined that the “precipitating event for application of RCW 13.50.050(11) is satisfaction of the statutory conditions” to seal. *State v. T.K.*, 139 Wash.2d 320, 335, 987 P.2d 63 (1999). This was upheld in *State v. D.S.*, which held that juveniles whose right to seal vested prior to the 1997 amendment of 13.50.050 could not be divested of that right by the enactment of the amendments. *State v. D.S.*, 128 Wash.App. 569, 115 P.3d 1047, 1051-1052 (2005).

The original 1997 amendment to RCW 13.50.050, that was in effect when the respondent pleaded, provided:

The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:

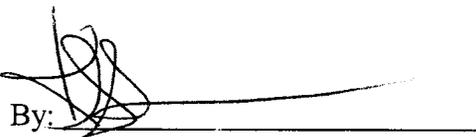
(d) The person has not been convicted of a class A or sex offense;

Thus, under all versions of RCW 13.50.050 in effect since the respondent was charged, the respondent could never vest a right to seal his record, and the analysis of *D.S.* and *T.K.* do not apply in this case.

CONCLUSION

The trial court erred by sealing the juvenile record of the respondent. The order sealing the respondent's juvenile record should be vacated, and the respondent's convictions should be reinstated and remain on his criminal history.

Respectfully Submitted,

By: 
KATHERINE L. SVOBODA
Deputy Prosecuting Attorney

FILED
COURT OF APPEALS

05 JUL 10 AM 9:08

STAT. CLERK

BY _____
TATITY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

STATE OF WASHINGTON,

Petitioner,

No.: 34221-9-II

v.

DECLARATION OF MAILING

M.D.P.,

Respondent.

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 6th day of July, 2006, I mailed a copy of the Amended Brief of
Petitioner to Peter B. Tiller; Attorney at Law; P. O. Box 58; Centralia, WA 98531-0058, and
Mathew D. Patterson; 5038 South Hardy Drive #2122; Tempe, AZ 85282, by depositing the
same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct to the best of my knowledge and belief.

Barbara Chapman