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ASSIGNMENTS OF ERROR

(1) The trial court erred by sealing respondent's juvenile record when the record contained convictions for a Class A felony and a felony 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 Burglary in the First Degree and Rape in the Second Degree on October 7, 1991. (CP 1-2, cause number 91-8-00281-7) The respondent was convicted of those charges and disposition was entered November 21, 1991 sentencing the respondent to 193 weeks. (CP 3-5, cause number 91-8-00281-7) The respondent filed a motion to seal his juvenile record on October 31, 2005. The motion was granted, over the State's objection, on May 4, 2006. (CP 18-19, cause number 91-8-00281-7)

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.

Burglary in the First Degree is a Class A felony under RCW 9A.52.020 and Rape in the Second Degree is a sex offense under RCW 9A.04.020(42) pursuant to RCW 13.40.020(25).

The respondent was charged, pleaded guilty and had disposition prior to July 1, 1997. At that time, RCW 13.50.050(11) provided that:

The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:
(a) Two years have elapsed from the later of: (i) Final discharge of the person from the supervision of any agency charged with supervising juvenile offenders; or (ii) from the entry of a court order relating to the commission of a juvenile offense or a criminal offense.

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 respondent never had a two year period without an additional conviction, prior to July 1, 1997, that would have allowed his right to vest

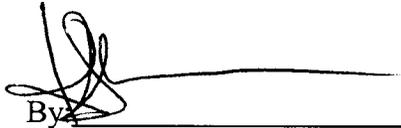
under the former statute. The respondent was convicted of Burglary 1 and Rape 2 and disposition was entered November 21, 1991 sentencing the respondent to 193 weeks. (CP 3-5, cause number 91-8-00281-7) The respondent would have been supervised until sometime in 1995 for these charges and wouldn't have been eligible for sealing until 1997. However, the respondent was charged with Escape in the First Degree in Cowlitz County in July 1994 and disposition was entered March 23, 1995. (CP 9-12, cause number 88-8-00270-1). Further, the respondent was convicted of Vehicle Prowling in the Second Degree, and he was sentenced on January 15, 1997. (CP 9-12, cause number 88-8-00270-1). Finally, the respondent was convicted of Possession of Methamphetamine, and he was sentenced on October 20, 1997. (CP 9-12, cause number 88-8-00270-1).

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.

CONCLUSION

As the respondent's right to seal his records didn't vest prior to the 1997 amendment of RCW 13.50.050, the current statute must be applied. The respondent has both class A and sex offense felonies on his record, therefore 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 _____

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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

STATE OF WASHINGTON,

Appellant,

v.

JASON L. HARNER,

Respondent.

No.: 34913-2-II

DECLARATION OF MAILING

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 16th day of October, 2006, I mailed a copy of the Brief of Appellant to Peter B. Tiller; The Tiller Law Firm; P.O. Box 58; Centralia, WA 98531 and to Jason L. Harner; 322 East 6th Street; Port Angeles, WA 98362, 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