

FILED  
Court of Appeals  
Division II  
State of Washington  
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NO. 50579-7-II

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

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STATE OF WASHINGTON,

Respondent,

v.

ALENE BUSH,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SKAMANIA COUNTY

The Honorable Randall C. Krog, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court violated the requirements of RCW 9.41.047(1)(a) by failing to orally notify appellant at the time of conviction or sentencing that she had lost her right to possess a firearm.

Issue pertaining to assignments of error

When a person is convicted of an offense making the person ineligible to possess a firearm, the convicting court shall notify the person, orally and in writing, that he or she must immediately surrender any concealed pistol license and may not possess a firearm unless his or her right to do so is restored by a court of record. The trial court failed to orally admonish appellant at any point of her loss of firearm rights and only notified her in writing through the judgment and sentence. Did the trial court violate the statutory requirements to notify a convicted person of the loss of her right to possess firearms?

B. STATEMENT OF THE CASE

On September 6, 2016, the Skamania County Prosecuting Attorney charged appellant Alene Bush with two counts of delivery of a controlled substance, methamphetamine. CP 103. The case proceeded to jury trial before The Honorable Randall Krog.

The State presented testimony from two law enforcement officers and an informant who described transactions with Bush on July 15 and July 21, 2016. RP 67-68, 71-73, 98, 105-06, 125-29. Statements made by Bush at the time of her arrest several weeks later were also admitted. RP 74, 83-84. The substance obtained during the July 15 transaction was identified by chemical analysis as methamphetamine, and the witnesses described the substance from the July 21 transaction as consistent with methamphetamine, although no chemical analysis was conducted. RP 73, 116, 129, 146-47. Bush testified that she did not deliver methamphetamine to the informant. RP 157-59.

The jury returned guilty verdicts. CP 61-62. The court imposed a standard range sentence of 16 months, with 12 months of community custody. CP 67-68. Although the judgment and sentence contains a provision notifying Bush she is ineligible to possess a firearm, the court did not orally advise her of the prohibition either at the verdict or at sentencing. CP 73; RP 221-33.

Bush filed this timely appeal. CP 78.

C. ARGUMENT

THE TRIAL COURT FAILED TO ORALLY ADMONISH BUSH AS REQUIRED BY STATUTE THAT SHE HAD LOST HER RIGHT TO POSSESS A FIREARM.

A person loses the right to possess a firearm if convicted in this state or elsewhere of any felony. RCW 9.41.040(2)(i). “Felony” means any felony offense under Washington law or any federal or out-of-state offense comparable to a felony offense under Washington law. RCW 9.41.010(6). Bush was convicted in this case of two felony charges of unlawful delivery of a controlled substance, and thus her convictions result in loss of the right to possess a firearm. RCW 26.50.110(5); CP 63.

At the time of conviction of a felony, “the convicting ... court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm.” RCW 9.41.047(1)(a). Here, the trial court provided written notification to Bush in the judgment and sentence that she had lost her right to possess a firearm. CP 73. But the court failed to notify Bush orally of her ineligibility to possess a firearm either at the time the jury returned the verdict or at sentencing. RP 221-33. This Court should remand to the trial court for a hearing in compliance with the statutory firearm notifications. *See State v. Hayes*, 199 Wn. App. 1040 (2017)

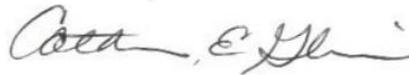
(unpublished opinion cited as persuasive authority pursuant to GR 14.1(a)).

D. CONCLUSION

The trial court's failure to comply with the notification requirements regarding Bush's loss of firearm rights necessitates remand for a hearing that complies with the statutory notification requirements.

DATED January 5, 2018.

Respectfully submitted,



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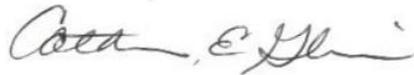
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Today I caused to be mailed copies of the Brief of Appellant in  
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9601 Bujacich Rd. NW  
Gig Harbor, WA 98332

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



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Catherine E. Glinski  
Done in Manchester, WA  
January 5, 2018

**GLINSKI LAW FIRM PLLC**

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**Transmittal Information**

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