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Court of Appeals  
Division II  
State of Washington  
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**NO. 52196-2-II**

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

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STATE OF WASHINGTON,

Respondent,

v.

**RANDY BLOUNT,**

Appellant.

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

The Honorable Scott A. Collier, Judge

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**BRIEF OF APPELLANT**

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### **A. ASSIGNMENTS OF ERROR**

1. The court abused its discretion in requiring Mr. Blount to register as a felony firearm offender.

2. The court lists the wrong date for the verdict on the judgment and sentence.

### **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the trial court, in ordering Mr. Blount to register as a felony firearm offender, abused its discretion by basing its order on a factor not supported by the record?

2. Whether the court's scrivener's error in listing the wrong date of the jury's verdict on the judgment and sentence requires remand for correction?

### **C. STATEMENT OF THE CASE**

Twenty-six-year-old Randy Blount lived with his mother and other family members at a large apartment complex in Vancouver. CP1; RP<sup>1</sup> 145-46, 214, 235. On July 7, 2016, Mr. Blount was at home when a neighbor he did not know, Daniel Tomei, appeared in front of Blount's their apartment. RP 214, 268. Tomei yelled and screamed at the top of

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<sup>1</sup> There are two consecutively numbered and paginated volumes of verbatim report of proceedings.

his voice. RP 238, 270. Mr. Blount's mother and nephew yelled back at Tomei and told him to leave. RP 238-39. Rather than leaving, Tomei persisted in his rant. RP 240, 242.

Mr. Blount perceived Tomei as very angry. RP 268. Mr. Blount feared for the safety of his own family. RP 269, 271. Tomei refused to leave. RP 270.

Mr. Blount endured violence growing up at home. RP 270. He is sensitive to violence in others and violence against his family. RP 270, 292. Mr. Blount legally owned a handgun. RP 271. He used it for target practice at the local range. RP 196. He made sure the gun was unloaded, left the apartment, walked up to Tomei and pointed it at his face because he perceived Tomei as a threat. RP 267. Mr. Blount intended to defuse the situation by explicitly encouraging Tomei to leave. RP 285.

Tomei's daughter, witnessing the standoff, approached her father and implored him to walk away. RP 160, 164. The daughter's efforts to convince her father to walk away fell on deaf ears. RP 164-65. Tomei would not calm down. RP 164. The apartment complex maintenance manager, Daniel Savares, defused the situation by driving his maintenance cart between the two men and successfully breaking up the confrontation. RP 145, 149-51.

The police arrived soon after that and arrested Mr. Blount. RP 184, 275.

The source of Tomei's anger was Mr. Blount's cousin, Timothy Thompson. Earlier, Mrs. Tomei maneuvered the family's large vehicle into the apartment complex parking area after dropping her daughter at college. RP 86-87. Mrs. Tomei almost hit Thompson in the process. RP 119-29, 132. Thompson, in return, flipped off Tomei. RP 87, 121. Tomei could not let the display of disrespect go. RP 134-35. Instead, he followed Thompson to Mr. Blount's apartment and started the ruckus that culminated in Mr. Blount's failed effort to defuse the volatile situation and his consequent arrest. RP 134, 238.

The State charged Mr. Blount with second-degree assault with a firearm enhancement. CP 7. On July 3, 2018, a jury found Mr. Blount guilty as charged. CP 115.

Mr. Blount had no criminal history. CP 119; RP 371-72. The court imposed a low-end sentence of three months on the assault. CP 121; RP 376. But because of the firearm enhancement, the court had to add 36 months to the sentence for a total of 39 months of incarceration. RP 376; CP 121.

At sentencing, the State noted that it deferred the decision whether Mr. Blount should be considered a felony firearm offender to the court. RP 370-71. The court did not ask Mr. Blount to address the felony firearm offender discretionary finding. RP 371-74. Instead, the court imposed it. CP 120.

Mr. Blount appeals all portions of his judgment and sentence. CP 133.

#### **D. ARGUMENT**

**Issue 1: The trial court abused its discretion in requiring Mr. Blount to register as a felony firearm offender.**

Sentencing courts have discretion on whether to require a person convicted of a felony offense to register as a felony firearm offender.

[W]henever a defendant in this state is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense, the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement.

RCW 9.41.330(1). In exercising this discretion, the court must consider “all relevant factors including but not limited to:”

(a) The person's criminal history;

(b) Whether the person has previously been found not guilty by reason of insanity of any offense in this state or elsewhere; and

(c) Evidence of the person's propensity for violence that would likely endanger persons.

RCW 9.41.330(2).

This court reviews discretionary decisions for abuse of discretion. *State ex. rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). “Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily and capriciously.” *Id.* A trial court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. *Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A ruling based on erroneous legal interpretation is necessarily an abuse of discretion. *Id.* A decision that “does not evidence a fair consideration” of the requisite statutory factors also constitutes an abuse of discretion. *In re Marriage of Mathews*, 70 Wn. App. 116, 123, 853 P.2d 462 (1993).

At sentencing, the State deferred to the court in deciding whether Mr. Blount should be ordered to register as a felony firearm offender. RP

RP 371. Mr. Blount had no criminal history. CP 119; RP 371-72. This unfortunate incident is Mr. Blount's only criminal offense. CP 119; RP 371-72.

The court said nothing on the record before imposing the felony firearm offender requirement. RP 371-73. The court did not ask Mr. Blount his thoughts on the registration requirement. RP 371-73. Instead, the court just checked the premarked box on the judgment and sentence indicating the court considered Mr. Blount's "propensity for violence that would likely endanger others" in making its decision. CP 120.

Nothing in the record suggested Mr. Blount had a propensity for violence. He had no criminal history prior to this instance. CP 119; RP 371-72. He responsibly practiced using the gun at a local range. RP 196-97. In this one instance, he reacted strongly to a perceived threat to his family. RP 271. He showed his menacing neighbor, a man he did not know, an unloaded gun to defuse the situation and to keep his family safe. RP 268-72. To the contrary, other than Mr. Blount's single, legally misguided effort to protect his family, the record reflects no other criminal activity and certainly no propensity for violence.

The record does not evidence a fair consideration of all three factors used to determine whether a felony firearm registration

requirement should be imposed. In *Mathews*, the court held that the trial court had abused its discretion in awarding maintenance to one spouse. Similar to the statute at issue here, Washington's maintenance statute permits the trial court to order maintenance for either spouse "after considering all relevant factors including but not limited to" six enumerated factors. RCW 26.09.090.<sup>2</sup> Because the trial court in *Mathews*

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<sup>2</sup> (1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance. RCW 26.09.090

had not fairly considered the statutory factors, it abused its discretion. *Mathews*, 70 Wn. App. at 123.

Likewise, the court in this case did not fairly consider all three statutory factors. As for the first enumerated facts, criminal history, Mr. Blount had none before this incident. RP 371-72; CP 119. On the second enumerated factor, there was no mention of Mr. Blount ever being found not guilty by reason of insanity. Thus, neither of these factors supported imposing the registration requirement.

As for the third enumerated factor, relied upon by the court, the record does not show “evidence of [Blount’s] propensity for violence that would likely endanger persons.” RCW 9.41.330(2)(c).

As for other “relevant factors,” the court did not discuss any. Mr. Blount’s nonviolent criminal history did not rationally indicate that he would pose a danger in the future. The possession of firearms does not rationally indicate a propensity for violence. *See State v. Rupe*, 101 Wn.2d 664, 708, 683 P.2d 571 (1984) (“we take judicial notice of the overwhelming evidence that many nonviolent individuals own and enjoy using a wide variety of guns”).

The court’s lack of consideration of all the enumerated statutory factors was not fair. Accordingly, the court abused its discretion. This court

should reverse and remand for a new hearing on the registration requirement. Resentencing should be in front of a different judge because the judge in this case had already expressed his view on whether Blount should be required to register. *See State v. Sledge*, 133 Wn.2d 828, 846 n.9, 947 P.2d 1199 (1997) (remanding before a new judge in light of the trial court's already-expressed views on the disposition).

**Issue 2: Mr. Blount's case should be remanded to the trial court to strike or correct a scrivener's error on his judgment and sentence.**

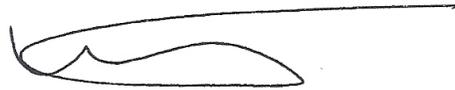
Scrivener's errors are clerical errors that result from mistake or inadvertence, especially in writing or copying something on the record. Clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time on its initiative or on the motion of any party. *State v. Coombes*, 191 Wn. App. 241, 255, 361 P.3d 270 (2015); *In re Personal Restraint of Mayer*, 128 Wn. App. 694, 701, 117 P.3d 353 (2005). The remedy for a scrivener's error in a judgment and sentence is remand to the trial court for correction. CrR 7.8(a); *State v. Naillieux*, 158 Wn. App. 630, 646, 241 P.3d 1280 (2010).

At section 2.1 of the judgment and sentence, the jury verdict is recorded as July 9, 2018. CP 130. In reality, the jury returned its verdict on July 3, 2018. CP 114-16; RP 361. Remand is necessary to correct the record.

**E. CONCLUSION**

Mr. Blount's case should be remanded for reconsideration of the felony firearm registration requirement. The court should also correct the date of the jury's verdict on the judgment and sentence.

Respectfully submitted June 18, 2019.

A handwritten signature in black ink, appearing to read "LISA E. TABBUT", written over a horizontal line.

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LISA E. TABBUT/WSBA 21344  
Attorney for Randy Blount

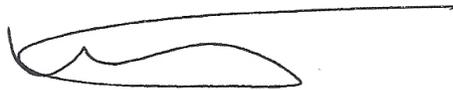
**CERTIFICATE OF SERVICE**

Lisa E. Tabbut declares as follows:

On today's date, I filed the Brief of Appellant to (1) Clark County Prosecutor's Office, at [cntypa.generaldelivery@clark.wa.gov](mailto:cntypa.generaldelivery@clark.wa.gov); (2) the Court of Appeals, Division II; and (3) I mailed it to Randy Blount/DOC#409333, Larch Corrections Center, 15314 NE Dole Valley Road, Yacolt, WA 98675.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed June 18, 2019, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344  
Attorney for Randy Blount, Appellant

**LAW OFFICE OF LISA E TABBUT**

**June 18, 2019 - 3:45 PM**

**Transmittal Information**

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