FILED
Court of Appeals
Division II
State of Washington
4/23/2019 2:25 PM

NO. 52457-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL MATTHEWS,

Appellant.

RESPONSE TO BRIEF OF APPELLANT

SEAN M. BRITTAIN/WSBA 36804
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
KELSO, WA 98626
(360) 577-3080

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I. ISSUE

Should this Court remand this matter for a hearing to orally inform the Appellant that he is ineligible to possess firearms pursuant to his conviction?

II. SHORT ANSWER

No.

III. FACTS

The State agrees with the Appellant's recitation of the facts in his brief.

IV. ARGUMENT

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). Upon conviction, "the convicting...court 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 unless his or her right to do so is restored by a court of record." RCW 9.41.047(1)(a). Here, the Appellant was convicted of Failure to Register as a Sex Offender. Therefore, he is prohibited from possessing a firearm. The trial court failed to orally notify the Appellant of this; however, the trial court did provide written notice.

The Appellant is correct – the trial court failed to orally notify the Appellant that he lost his right to possess firearms pursuant to his

conviction. The Appellant points to a previous matter with almost identical circumstances where this Court remanded back to the trial court to conduct a hearing to orally advise the defendant of the firearm possession prohibition. *State v. Hayes,* 199 Wn. App. 1040 (2017) (unpublished). The State respectfully requests this Court to take another view of this matter.

First, this Court must recognize that the Appellant has six prior felony convictions. CP at 43. Each of these convictions have terminated the Appellant's right to possess firearms. Thus, he is already well-aware that he cannot possess firearms. Second, the Appellant is currently serving his sentence in DOC custody. To conduct a hearing as requested by the Appellant would disrupt whatever programs/treatment the Appellant may be participating in while in custody. A disruption in services would be detrimental to the Appellant and cease any and all progress that he could be making while in custody. Finally, in regards to judicial economy, the Appellant's request would be a waste of resources. Upon remand, the State would be required to TRO (temporary removal order) the Appellant back to Cowlitz County, conduct a 30-second hearing, and then transport him back to current place of incarceration.

The trial court did fail to comply with RCW 9.41.047(1)(a) when it did not orally notify the Appellant. However, remand is not appropriate here where the Appellant is already aware that he cannot possess firearms based

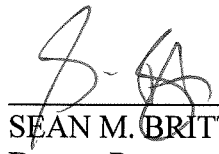
upon prior convictions, would potentially be detrimental to his current custody status, and would be a burden upon judicial resources.

V. CONCLUSION

The State respectfully requests this Court to not remand this matter to the trial court.

Respectfully submitted this 23 day of April, 2019.

RYAN P. JURVAKAINEN
Cowlitz County Prosecuting Attorney



SEAN M. BRITTAIN/WSBA #36804
Deputy Prosecuting Attorney
Representing Respondent

CERTIFICATE OF SERVICE

Julie Dalton certifies the Response to Brief of Appellant was served electronically via portal to the following:

Court of Appeals Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

and,

Catherine E. Glinski
Attorney at Law
Glinski Law Firm PLLC
PO Box 761
Manchester, WA 98353-0761
glinskilaw@wavecable.com

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

Signed at Kelso, Washington April 23, 2019.

Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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RESPONSE TO BRIEF OF APPELLANT 52457-1

Sender Name: Julie Dalton - Email: dalton.julie@co.cowlitz.wa.us
Filing on Behalf of: Sean M Brittain - Email: brittains@co.cowlitz.wa.us (Alternate Email: appeals@co.cowlitz.wa.us)

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