

**FILED**

MAY 29, 2013

Court of Appeals  
Division III  
State of Washington

No. 31109-1-III

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent

v.

HAL ROGER HARRISON

Appellant

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APPEAL FROM THE SUPERIOR COURT  
FERRY COUNTY  
HONORABLE ALLEN C. NIELSON

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BRIEF OF RESPONDENT

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**A. RESPONSE TO ASSIGNMENT OF ERROR**

The trial court properly ruled that the Defendant's firearm rights had not been restored, and thus properly denied the motion to dismiss the charge of Unlawful Possession of a Firearm in the Second Degree

**B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR**

Should the conviction for Unlawful Possession of a Firearm in the Second Degree be upheld based on the California felony conviction for child stealing.

**C. STATEMENT OF THE CASE**

On May 4, 2011, the Hal Roger Harrison, a/k/a Steven Frederick Brown, was charged with Identity Theft in the First Degree, Unlawful Possession of a Firearm in the Second Degree, and six counts of Voting by Unqualified Person. CP 1-4.<sup>1</sup> The Unlawful Possession of a Firearm count is at issue here and arises out of a 1987 California Conviction for felony child stealing. CP 5-7, 60-61, 62-63, 64, 65-66. The conviction was under the name Hal Harrison, which appears to be the Defendant's true name; after the conviction, he assumed the identity of Steven Brown, which was a young boy who had died in California in 1948. CP 34-37 (birth and death certificates of Steven Brown), CP 40-41 (Statement of Claimant or Other

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<sup>1</sup> The Clerk's Papers contain at least two numbering errors. The original information is identified as CP 1-4, though it is actually five pages long. This numbering error is consistent throughout the Clerk's Papers until you reach CP 234, which is an Order Re: Criminal History. The document immediately preceding CP 234 is the Court's Instructions, which is missing instruction nineteen.

Person).

The Defendant now urges this Court to adopt a rule that would grant him firearms rights in this State based on an uncompleted California process that does not restore his firearms rights in that State and which is not the equivalent of a Washington State Certificate of Rehabilitation.

**D. ARGUMENT**

1. *The Defendant Was Convicted of a Felony In California.*

On June 11, 1987, the Defendant was charged with violation of California Penal Code Section 278.5. CP 60-61, 65-66. The Defendant pled guilty to and was convicted of that charge on August 19, 1987. CP 62-63. He was sentenced the same date. CP 64, 65-66. This was a felony conviction. CP 64, 65-66.

2. *The California Conviction Resulted in Forfeiture of Firearm Rights Under California Law, and the Defendant's Firearm Rights Were Not Restored Under California Law.*

The Defendant's Certificate of Rehabilitation was issued pursuant to "Chapter 3.5, Title 6 of Part 3 of the Penal Code of the State of California." CP 24-25. That statute provides statutory authorization and a procedure for obtaining a certificate of rehabilitation under California law. CP 67.

The scope and effect of California's Certificate of Rehabilitation is governed by Cal. Pen. Code §§ 4852.01 through 4852.21. CP 68-86. A Certificate of Rehabilitation does not restore firearms rights. *See*, Cal. Pen.

Code § 4852.16, which provides in pertinent part:

(a) Except as otherwise provided in subdivision (b), if after hearing, the court finds that the petitioner has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner. This order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation.

CP 81. It is the governor's decision whether to grant a pardon that decides the issue of gun rights. See, Cal. Pen. Code § 4852.17, which provides in pertinent part that:

Whenever a person is granted a full and unconditional pardon by the Governor, based upon a certificate of rehabilitation, the pardon shall entitle the person to exercise thereafter all civil and political rights of citizenship, including but not limited to: (1) the right to vote; (2) **the right to own, possess, and keep any type of firearm that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 17800 and 23510 and Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6 shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.**

CP 82 (emphasis added).

The language referencing restoration of firearms rights appears only in the section referencing pardons, and is further limited therein. There is no prohibition on a person receiving a certificate of rehabilitation for a felony involving a dangerous weapon. *See*, CP 67 (Cal. Pen. Code § 4852.01). But § 4852.17 clearly establishes a class of persons whose firearms rights can never be restored. CP 82. Thus, the legislative intent is

clear -- it is the governor's pardon and not the issuance of a certificate of rehabilitation that restores gun rights, and then only to the extent permitted by § 4852.17.

A pardon was not issued. Therefore, under California law the Defendant's gun rights were not restored.

3. *The Defendant's Right to Possess Firearms Has Not Been Restored Under Washington Law.*

The statute under which Defendant is charged is RCW 9.41.040, which provides in pertinent part that:

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

For purposes of this statute, "felony" is defined as any "any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state." RCW 9.41.010(6). The Defendant does not claim the California conviction is not

comparable to a Washington felony. Nor does he deny possession of an operable firearm.

The sole remaining issue is whether the Washington Legislature intended a California Certificate of Rehabilitation -- which does not restore firearms rights in California -- to restore firearms rights under Washington law.

The Defendant relies on *State v. Radon*, 143 Wn.2d 323 (2001), but that case is inapposite. The defendant in *Radan* had all his constitutional rights -- including his right to possess firearms -- restored in Montana, where he was originally convicted. The Court in *Radan*, looked to RCW 9.41.040(3) and stated:

We agree with the Court of Appeals that RCW 9.41.040(3) requires something more than an automatic restoration of an individual's civil rights. Absent a finding of innocence, the statute requires a "pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted" prior to an ex-felon being restored the right to bear arms.

143 Wn.2d at 330 (quoting RCW 9.41.040(3)).

The Defendant urges that the California issuance of a Certificate of Rehabilitation is an "other equivalent procedure" under RCW 9.41.040(3), but the Defendant fails to acknowledge that the California process specifically requires that one more step be taken before the issue of firearms rights was even considered. The Court in *Radan* accepted the premise that a procedure from another jurisdiction that considered whether a person was fully rehabilitated could satisfy the requirements of RCW

9.41.040(3), but a procedure that does not even consider the issue of gun rights and which addresses this in a subsequent step cannot be considered an "other equivalent procedure" when that subsequent step was never taken.

The Governor of California did not issue the Defendant a pardon, either because the Governor did not consider the petition or because the Governor made a conscious decision not to grant it. Because the issue of firearms rights was not before the judge that issued the Certificate of Rehabilitation, the procedure for issuance of a California Certificate of Rehabilitation procedure cannot reasonably be considered an "other equivalent procedure" under 9.41.040(3).

#### **E. CONCLUSION**

The Defendant was found in possession of an operable firearm having once been convicted of a felony in the State of California. Although many or most of his civil rights were restored by California's issuance of a Certificate of Rehabilitation, under California law restoration of firearms rights is not automatic and the question whether his gun rights should be restored was never considered by a California judicial officer. The Governor of California did not grant Defendant a pardon, so the Defendant's gun rights were not restored. The Defendant cannot even show they were considered, and if they were, the result was apparently a denial of pardon. Thus, the Defendant's California felony conviction for child stealing leaves him ineligible to possess a firearm under Washington law.

The conviction should be affirmed.

DATED this 28th day of May, 2013.

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PROOF OF SERVICE

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I, Cynthia Nelson, do hereby certify under penalty of perjury that on September 19, 2012, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of:

**BRIEF OF RESPONDENT**

*efiling*

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DATED this 28th day of May, 2013, in Republic, Ferry County,  
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