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Court of Appeals
Division III
State of Washington

No. 34851-2

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION III

State of Washington, Respondent

vs.

Kasi L. Sleater, Appellant

Appellant's Opening Brief

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ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Ms. Sleater's motion to vacate the record of her felony conviction under RCW 9.94A.640.
2. The trial court erred by finding that Ms. Sleater has been convicted of a new crime since the date of discharge in paragraph 2.5 of the Order on Motion Re: Vacating Record of Felony Conviction, entered on October 26, 2016.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where Ms. Sleater committed a new felony offense on May 15, 2008, received a certificate of discharge for a 2006 felony offense on May 22, 2008, and was convicted of the new felony offense on May 29, 2008, is she prohibited from vacating the record of her 2006 felony conviction under RCW 9.94A.640? This is an issue of first impression.

STATEMENT OF THE CASE

On February 8, 2006, the Benton County Superior Court convicted Kasi Sleater of a violation of the Uniform Controlled Substances Act, a class C felony, under cause number 05-1-00637-8. Agreed Report of Proceedings (ARP) at 1:2-3; Clerk's Papers (CP) at 1. On October 26, 2016, the court issued an Amended Certificate and Order of Discharge effective May 22, 2008 for that offense. ARP at 1:3-5; CP at 66. On May 29, 2008, the Benton County Superior Court convicted Ms. Sleater of another violation of the Uniform Controlled Substances Act, a class B felony, under cause number 08-1-00529-5. ARP at 1:6-7; CP at 53. This offense was committed on May 15, 2008. ARP at 1:7-8; CP at 53. As such, the date of Ms. Sleater's discharge under cause number 05-1-00637-8 (May 22, 2008) occurred between the dates she committed and was convicted of the offense in cause number 08-1-00529-5 (May 15, 2008 and May 29, 2008). ARP at 1:8-10.

On October 12, 2016, Ms. Sleater (through counsel) filed a motion to vacate the 2005 conviction under RCW 9.94A.640. ARP at 1:11-12; CP at 15. The State filed a response in opposition to Ms. Sleater's motion on October 21, 2016. ARP at 1:12; CP at 17. The State argued that the term "new crime," as used in RCW 9.94A.640(2)(d), merely refers to a crime committed after the offense sought to be vacated. ARP at 2:16-17. The

State maintained that the plain language of this statute does not require that both the date of commission and the date of conviction of the new crime occur after the date of discharge in order to disqualify the offender from vacating an offense. ARP at 2:17-19. Rather, as long as the date of conviction of the new crime is after the date of discharge, the offender is ineligible to vacate. ARP at 2:19-20.

A hearing on Ms. Sleater's motion was held in Benton County Superior Court on October 26, 2016. ARP at 1:12-13. At the hearing, Ms. Sleater argued that reading the statute as a whole, both the commission date and the conviction date of the new offense must occur after the date of discharge for the previous offense in order to render the previous offense ineligible for vacation. ARP at 1:23-25. Adopting the State's interpretation reads the word "new" or the words "since the date of the offender's discharge" out of the statute, violating principles of statutory construction. ARP at 2:1-11. And even if the State's interpretation is valid, so is Ms. Sleater's, which renders the statute ambiguous. ARP at 2:12. Because the statute is ambiguous, the court must apply the rule of lenity to resolve the ambiguity in Ms. Sleater's favor. ARP at 2:13.

Following oral argument, the Court entered an order denying Ms. Sleater's motion and adopting the State's argument. ARP at 2:22-23; CP at

63. Ms. Sleater filed a notice of appeal to the Court of Appeals, Division III on November 8, 2016. ARP at 14-15.

ARGUMENT

RCW 9.94A.640 allows Ms. Sleater to vacate the record of her 2006 felony conviction because the commission of her 2008 felony occurred prior to the certificate of discharge for the 2006 felony.

RCW 9.94A.640 sets out eligibility requirements for vacating the record of a felony conviction. It provides, in pertinent part, that the record of conviction may not be cleared if "the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637." RCW 9.94A.640(2)(d).[1] The language "convicted of a new crime . . . since the date of . . . discharge" dictates that the subsequent crime must be "new." A crime that occurs prior to the date of discharge, even if the conviction for that crime occurs after the date of discharge, is not "new." Therefore, Ms. Sleater is statutorily eligible to vacate the record of her 2006 felony conviction. This Court should reverse and remand.

[1] This is the only eligibility requirement at issue in this appeal.

1. Standard of Review

The trial court's dismissal was based on its interpretation of RCW 9.94A.640. Courts review questions of statutory construction *de novo*. *State v. Reeves*, 184 Wn. App. 154, 158, 336 P.3d 105 (2014).

2. RCW 9.94A.640's plain language supports Ms. Sleater.

To determine legislative intent, courts first look to the plain language of the statute. *Reeves*, 184 Wn. App. at 158, 336 P.3d 105. Under RCW 9.94A.640(2)(d), the crime must be "new" and the only triggering event mentioned in the statute is the date of discharge. The State essentially argues that the triggering event is not the date of discharge for the offense to be vacated, but rather some other point prior to that, such as the commission date or the conviction date of the offense to be vacated. There is no statutory language to support that argument. Thus, the plain language of "convicted of a *new* crime . . . since the date of . . . discharge," means that the offender must commit and be convicted of a new crime after receiving a certificate of discharge to be ineligible. Because the commission of Ms. Sleater's 2008 offense occurred prior to her discharge for the 2006 offense, she remains statutorily eligible to vacate the record of her 2006 conviction and this Court should reverse and remand.

3. Principles of statutory construction support Ms. Sleater.

"If the plain language of the statute is susceptible to more than one reasonable interpretation, the statute is ambiguous." *Reeves*, 184 Wn. App. 158, 336 P.3d 105. Courts resolve ambiguities by considering principles of statutory construction. *Id.* A settled principle of statutory construction is that each word is to be accorded meaning and legislators are presumed to have used no superfluous words. *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005). Courts must accord meaning, if possible, to every word in a statute. *Id.* Courts "may not delete language from an unambiguous statute[.] . . . Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Id.* Courts may also "compare the wording of statutes that relate to the same person or thing, or the same class of persons or things." *Reeves*, 184 Wn. App. at 161, 336 P.3d 105.

Assuming without conceding that the State's interpretation is reasonable, that renders the statute ambiguous. Adopting the State's interpretation violates principles of statutory construction. The State's interpretation effectively reads the word "new" out of the statute. If the legislature had intended the State's interpretation, the statute could read "has been convicted of a crime . . . since the date of . . . discharge" without the need for the word "new."

Alternatively, the State's interpretation reads the words "since the date of . . . discharge" out of the statute. If the legislature had intended the State's interpretation, the statute could read "has been convicted of a new crime" without the need for the words "since the date of . . . discharge." Reading the words "since the date of . . . discharge" out would also remove the only triggering event mentioned by the statute, rendering the triggering event unclear. By contrast, the misdemeanor vacate statute includes the conviction date as the triggering event. RCW 9.96.060(2)(g) ("The offender has been convicted of a new crime . . . since the date of conviction"). Comparing RCW 9.94A.640(2)(d) and RCW 9.96.060(2)(g), the legislature intended a specific triggering event in both instances, even if the triggering events themselves are different. Adopting the State's interpretation to read "since the date of . . . discharge" out of RCW 9.94A.640(2)(d) would leave that statute without a specific triggering event.

Interpreting the statute in Ms. Sleater's favor is the only way to align the statute with the principles of statutory construction. Because the commission of Ms. Sleater's 2008 offense occurred prior to her discharge for the 2006 offense, she remains statutorily eligible to vacate the record of her 2006 conviction and this Court should reverse and remand.

4. The rule of lenity supports Ms. Sleater.

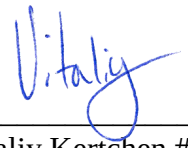
If principles of statutory construction are insufficient to resolve the ambiguity, courts must apply the rule of lenity to interpret the statute in favor of the defendant. *Reeves*, 184 Wn. App. at 158-59, 336 P.3d 105. "We will construe an ambiguous criminal statute against the defendant only where the principles of statutory construction clearly establish that the legislature intended such an interpretation." *Id.* at 159.

Here, even if the Court does not find that Ms. Sleater prevails by the plain language of the statute, or by application of the principles of statutory construction, the Court must apply the rule of lenity and interpret the statute in her favor. Therefore, the Court should reverse and remand.

CONCLUSION

Based on the foregoing, the Court should reverse the trial court's denial of Ms. Sleater's motion to vacate and remand.

Respectfully submitted,



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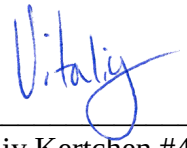
I, Vitaliy Kertchen, being of sound age and mind, declare that on 3/1/17, I served this document on the Benton County Prosecutor by uploading it using the Court's e-filing application and emailing a copy of the document using that process to prosecuting@co.benton.wa.us.

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

Respectfully submitted,



Vitaliy Kertchen #45183
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Court of Appeals, Division III	No. 34851-2
State of Washington, Respondent, vs. Kasi L. Sleater, Appellant.	**Declaration** ☐ Clerk's action required

I, Vitaliy Kertchen, being of sound age and mind, declare as follows:

1. On 3/1/17, I served the Appellant's Opening Brief on the appellant, Kasi L. Sleater, by mailing a hard copy of that document to 103907 E Badger Rd, Kennewick, WA 99338 using United States first class mail, postage prepaid.

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

Respectfully submitted,

Vitaliy

Vitaliy Kertchen
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