

FILED
Court of Appeals
Division III
State of Washington
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No. 36191-8-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Division Three

STATE OF WASHINGTON,

Respondent,

v.

KENT HUXEL,

Appellant.

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

SUPPLEMENTAL BRIEF OF APPELLANT

GREGORY C. LINK
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
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A. ARGUMENT

Because Mr. Huxel's case is not yet final, the recent amendments of RCW 9.96.060 apply to his case.

Kent Huxel has appealed the trial court's refusal to vacate a prior conviction. Mr. Huxel has argued the court wrongly concluded former RCW 9.96.060(2)(h) precluded the court from granting his motion to vacate because Mr. Huxel had previously vacated a felony conviction. Mr. Huxel argues the legislature did not intend the vacation of a prior felony to bar a subsequent vacation of a misdemeanor.

After Mr. Huxel filed his brief the legislature amended RCW 9.96.060 eliminating subsection (2)(h) which formerly provided "The applicant has ever had the record of another conviction vacated." Laws 2019, ch 331, §4 (HB 1041). This amendment makes clear the statute permits vacation of a misdemeanor even if a person, such as Mr. Huxel, has previously vacated another offense. That amendment applies to Mr. Huxel's case.

Just last year the Supreme Court concluded a statutory amendment which takes effect while an appeal is pending and not yet final, and which is relevant to the issues on appeal applies to that appeal. *State v. Ramirez* 191 Wn.2d 732, 747, 426 P.3d 714 (2018). Thus, in *Ramirez* costs which were properly imposed at the time of conviction were no longer permissible when statutory amendments took effect before the appeal was final.

This Court has previously announced “where a controlling law changes between the entering of judgment below and consideration of the matter on appeal, the appellate court should apply the new or altered law.” *Marine Power & Equip. Co. v. Washington State Human Rights Comm'n Hearing Tribunal*, 39 Wn. App. 609, 620, 694 P.2d 697, 703–04 (1985).

Similarly, new decisional law applies “to all cases . . . pending on direct review or not yet final, with no exceptions for cases in which the new rule constitutes a clear break from the past.” *State v. Evans*, 154 Wn.2d 438, 444, 114 P.3d 627

(2005) (quoting *Matter of St. Pierre*, 118 Wn.2d 321, 326, 823 P.2d 492, 495 (1992). “Final” means “a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” *St. Pierre*, 118 Wn.2d at 327.

Because his appeal is pending, Mr. Huxel’s case is not yet final. Thus, the recent changes to RCW 9.96.060 apply to Mr. Huxel’s case on appeal. *Ramirez*, 191 Wn.2d at 747.

B. CONCLUSION

Mr. Huxel is entitled to have his conviction vacated. This Court should remand the matter with direction that the trial court vacate the conviction.

Respectfully submitted this 23rd day of August, 2019.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	NO. 36191-8-III
v.)	
)	
KENT HUXEL,)	
)	
APPELLANT.)	

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SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF AUGUST, 2019.

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