

FILED  
Court of Appeals  
Division III  
State of Washington  
4/10/2019 4:35 PM  
No. 36191-8-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Division Three

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STATE OF WASHINGTON,

Respondent,

v.

KENT HUXEL,

Appellant.

---

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

---

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred and misunderstood its authority to vacate the record of Kent Huxel's prior gross misdemeanor conviction.

B. ISSUES PERTAINING TO ASSIGNMENT

RCW 9.94A.640 allows a court to vacate the record of conviction for a felony. The statute expressly states that vacation relieves a person of all disabilities flowing from the conviction except the possibility that the conviction may be used in a subsequent criminal prosecution. That statute does not prevent a court from granting subsequent motions to vacate.

A court granted Mr. Huxel's motion to vacate a felony conviction under RCW 9.94A.640. When Mr. Huxel subsequently moved to vacate a misdemeanor offense, a different court concluded that a separate statute, RCW 9.96.060, precluded it from granting a motion to vacate due to the previously vacated felony. Because the statute under which the felony was vacated does not preclude future

vacations and eliminates all disabilities from the conviction the trial court erroneously believed it could not grant Mr. Huxel's later motion to vacate the misdemeanor in this case.

C. STATEMENT OF THE CASE

In 2008, Mr. Huxel pleaded guilty in Klickitat County to attempted failure to register as a sex offender, a gross misdemeanor. CP 8-12.

In March 2018, a court granted his motion to vacate a 2002 Clark County felony conviction. 6/4/18 RP 5-6.

About one month later, Mr. Huxel filed a motion to vacate his Klickitat County misdemeanor conviction. CP 22-31.

The trial court denied the motion, concluding that because the felony conviction was vacated, the court did not have authority to vacate the felony. CP 45; 6/4/18 RP 78.

D. ARGUMENT

**The trial court misunderstood the authority it had to grant Mr. Huxel's motion to vacate his conviction.**

*a. A court's failure to understand and properly exercise its authority requires reversal.*

Interpretation of a statute is reviewed *de novo*. *State v. Bacon*, 190 Wn.2d 458, 463, 415 P.3d 207 (2018). A court's failure to properly apply sentencing provisions requires reversal. *See State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005) (court's refusal to consider available sentencing alternative required new sentencing hearing).

*b. Vacation of a felony conviction does not preclude a court from granting a subsequent motion to vacate another conviction.*

In RCW 9.94A.640, the legislature has provided a means for people to seek to vacate their record of conviction for a felony. That statute does not limit the number of times a person may seek and have a conviction vacated. The statute provides:

Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense

shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

RCW 9.94A.640(3). As is clear, the only disability that remains after the felony is vacated is the potential that a vacated conviction may be used in a subsequent prosecution.

This Court construes this language “to reflect the legislature’s intent to prohibit all adverse consequences of a vacated conviction, with the exception of its use in a subsequent criminal conviction.” *State v. Smith*, 158 Wn. App. 501, 508, 246 P.3d 812 (2010). Unlike the express exception for use in subsequent prosecutions, there is no language in RCW 9.94A.640 even suggesting the vacated conviction bars subsequent motions to vacate other convictions.

In contrast, as a condition of sealing a misdemeanor or gross misdemeanor, RCW 9.96.060(2)(h) requires a person not

have had the record of another conviction vacated. It is that statute which the trial court relied on to deny Mr. Huxel's motion to vacate. However to read that limitation as applying to the prior vacation of a felony is contrary to the language of RCW 9.94A.640 and leads to absurd results.

A court's fundamental purpose in construing statutes is to ascertain and carry out the legislature's intent. *State v. Bigsby*, 189 Wn.2d 210, 216, 399 P.3d 540 (2017) (citing *Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn2d 1, 9-10, 43 P.3d 4 (2002)). Courts should look to "other statutes dealing with the same subject matter in order to discern legislative intent." *Washington Public Utility Districts' Utilities Systems v. Public Utility District 1*, 112 Wn.2d 1, 7, 771 P.2d 701 (1989). "Statutes on the same subject matter must be read together to give each effect and to harmonize each with the other." *US West Communications, Inc. v. Washington Utilities & Transportation Commission*, 134 Wn.2d 74, 118, 949 P.2d 1337 (1997).

Because RCW 9.94.640 and RCW 9.96.060 concern the same subject matter, vacation of convictions, they should be read together and harmonized to give effect to the legislature's intent. The provisions are harmonized by looking to the statute governing vacation of the offense to determine the limits or effects of the order vacating an offense under that statute.

RCW 9.96.060 pertains only to vacating nonfelony offenses. As such, the statute's limitation on prior vacations should be limited only to prior vacations of nonfelony offenses. In that circumstance, the prior vacation will have been pursuant to RCW 9.96.060 and it makes sense to apply the limits of that statute regarding the effect of vacation only to those nonfelony offense.

In contrast, RCW 9.94A.640 pertains to the vacation of felony offenses. That statute makes no mention of the preclusive effect of a prior order vacating a felony. Indeed, courts have interpreted this statute and its predecessor to

permit vacation even where a person has had a previous conviction vacated.

The statutes' provisions are harmonized where the future effects of a vacated offense are determined solely by the statute that governed vacation of the offense in the first place. Thus, a nonfelony vacated under RCW 9.96.060 precludes a subsequent motion to vacate a nonfelony under that statute because that statute expressly limits future vacation. A felony vacated under RCW 9.94A.640 does not preclude the subsequent vacation of any offense.

This construction gives effect to the legislative intent behind both statutes. Moreover, this construction avoids the absurd outcome that the timing or sequence of a motion to vacate determines its availability.

There is no question that RCW 9.94A.640 would have permitted Mr. Huxel to vacate any number of felony convictions one after the other so long as the other conditions are met. Too, the State would agree that had Mr. Huxel first vacated the misdemeanor he would have also been free to then

seek vacation of the felony. But by the trial court's reading, Mr. Huxel is now precluded from vacating that misdemeanor solely because he did not seek to vacate that offense first. That is an absurd outcome.

*c. Because Mr. Huxel is entitled to have his conviction vacated this Court should remand the matter to the trial court.*

Because RCW 9.94A.640 does not preclude subsequent motions to vacate, the court was wrong to deny Mr. Huxel's motion to vacate his misdemeanor conviction. This Court should remand the matter to permit the vacation of his prior conviction.

E. CONCLUSION

The trial court misunderstood the authority it had to vacate Mr. Huxel's conviction. This Court should remand the matter to permit the court to vacate the conviction.

Respectfully submitted this 9<sup>th</sup> day of April, 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.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> DAY OF APRIL, 2019, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS – DIVISION THREE AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 10<sup>TH</sup> DAY OF APRIL, 2019.

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# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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