

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

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

KENT HUXEL,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY, STATE OF WASHINGTON
Cause no. 07-1-00119-2

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

1. Does RCW 9.96.060 as amended by House Bill 1041 apply to this case?

B. STATEMENT OF THE CASE

The defendant pled guilty to attempted failure to register as a sex offender, a gross misdemeanor, in Klickitat County in 2008. CP 7-12. Ten years later, in March of 2018, the defendant moved to vacate a 2002 Clark County felony conviction. RP 5-6. Shortly thereafter the defendant filed a motion to vacate the Klickitat County misdemeanor conviction. CP 22-31. The trial court denied the motion on the basis that “the Defendant has had another conviction vacated in Clark County...” CP 45. The defendant appealed and briefs from both parties were submitted. While the appeal was pending, House Bill 1041, which amended the misdemeanor vacation statute was passed. The amendments in House Bill 1041 became effective July 28, 2019. The Court requested supplemental briefing on the application of the amended statute to this appeal.

C. ARGUMENT

1. The amendments to RCW 9.96.060 appeal to this case, and vacation is permitted under the new statute.

At issue in this case is the application of the recently amended RCW 9.96.060 – the misdemeanor vacation statute – to the appellant’s request to

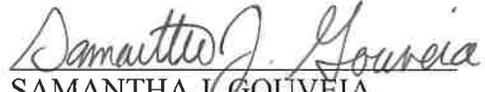
vacate his gross misdemeanor conviction for attempted failure to register as a sex offender. The State concurs with the appellant's recitation of the law as it relates to the application of amended or new laws to appeals not finalized when the laws come into effect.

The State would add that while section (2)(d) of the former misdemeanor vacation statute precluded the vacation of certain misdemeanor or gross misdemeanor violations of chapter 9A.44 RCW, including attempted failure to register as a sex offender, vacation of a conviction for attempted failure to register as a sex offender is no longer prohibited by law. See Laws 2019, ch. 331, §4(2)(d) (An applicant may not have the record of conviction for misdemeanor or gross misdemeanor offense vacated if...the offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses), *except for failure to register as a sex offender under RCW 9A.44.132...*) (emphasis added). Under the current RCW 9.96.060, the appellant's conviction is one for which vacation is permissible.

Because the appeal was not finished at the time the amended misdemeanor vacation statute became effective, the amended vacation laws apply to the appellant's matter.

D. CONCLUSION

The misdemeanor vacation statute, RCW 9.96.060, controls the appellant's motion to vacate his conviction of attempted failure to register as a sex offender, a gross misdemeanor. Vacation is no longer precluded by RCW 9.96.060. The appeal should be dismissed, and the appellant should move the court anew for vacation of the conviction at issue.


SAMANTHA J. GOUVEIA
WSBA No. 51398
Deputy Prosecuting Attorney

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
Division III

STATE OF WASHINGTON
Respondent,
vs.
KENT JEROME HUXEL,
Appellant

NO. 36191-8-III
Superior Court No. 07-1-00119-2
DECLARATION OF SERVICE

I, Samantha J. Gouveia, declare that on September 6, 2019, I emailed per agreement a copy of the Supplemental Brief of Respondent to:

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

Dated this 6th day of September, 2019.


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KLICKITAT COUNTY PROSECUTING ATTORNEY

September 06, 2019 - 1:22 PM

Transmittal Information

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