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No. 60552-6-I

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

R. P. H.

Appellant

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STATE OF WASHINGTON
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OPENING BRIEF OF APPELLANT

On Appeal from King County Superior Court, Juvenile Division,
The Hon. Julie Spector and Carol Schapira, Presiding

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ORIGINAL

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it entered an order denying appellant's motion to restore his firearm rights. CP 41-42; App. A.

2. The trial court erred when it denied appellant's motion to reconsider the earlier order denying his motion to restore firearm rights. CP 57; App. B.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was Appellant Patrick Ryan Hunter statutorily eligible under RCW 9.41.040(4) to have his firearm rights restored?

2. Did the trial court improperly exercise discretion when it denied Mr. Hunter's petition to restore firearm rights based upon his traffic tickets, where RCW 9.41.040(4) did not give the court such discretion?

3. When the trial court terminated Mr. Hunter's obligation to register as a sex offender, did the court also effectively find that Mr. Hunter was rehabilitated, such that he was eligible to possess firearms under RCW 9.41.040(3)?

4. Where the judge who sentenced Mr. Hunter had earlier ruled that Mr. Hunter could receive his firearm rights back, and the State

never objected to that ruling, were the parties and the court then bound to apply the earlier ruling?

5. Is a statute that bars children who commit sex offenses from lifetime firearm ownership constitutional?

C. STATEMENT OF THE CASE

By information filed on October 24, 2000, in the Juvenile Division of the King County Superior Court, the State of Washington charged 13-year-old Patrick Ryan Hunter (“Ryan”)(DOB: 1-31-87) with two counts of rape of a child in the first degree, based upon allegations that he had sexual intercourse with his two younger sisters. CP 1-2. On December 14, 2000, Ryan pled guilty to these offenses, CP 3-7, and, on January 12, 2001, was sentenced to a SSODA (Special Sex Offender Disposition Alternative), which was a treatment-based disposition CP 8-14.

When young Ryan entered the guilty plea, the guilty plea form stated that he could not possess, own or have under his control a firearm “unless my right to do so is restored by a court of record.” CP 5. When Ryan was sentenced, the judge, the Hon. Julie Spector, told Ryan that he would have to sign a form prohibiting his possession of firearms, stating “that right can be restored at a later date . . . It can only be reinstated by

court order.” RP 8. The written notification form given to Ryan, and signed by him, stated:

Pursuant to RCW 9.41.047, RCW 9.41.040, and RCW 9.41.010, you are ineligible to possess a firearm unless your right to do so is restored by a court of record.

CP 15; App. C.

Ryan’s father told Judge Spector that hunting was a tradition in their family and inquired whether they could still hunt with archery. RP 8. After some discussion, Judge Spector ruled that while Ryan was actively in treatment and on probation, he could not possess any weapons. However, after Ryan successfully completed treatment, “there can be an exception made after he’s done and the case is, you know, dismissed, we hope. As far as the firearms, that’s going to have to wait a little longer. So two years wait, hopefully everything will go well, then the archery can come into play. But the firearms will even take longer to reinstate.” RP 9-10. Ryan then asked if he could restore “those rights” after he completed his treatment, to which Judge Spector stated “Yeah. But there’s a two-step process. Your dad’s talking about archery.” RP 10. The following exchange then occurred:

THE COURT: I don't have any problem with that as long as the program is completed and you've been successful.

Then the bigger issue, and this is going to be until some years down the line, the right to bear arms, firearms, that's your next step.

RYAN HUNTER: Yeah. So firearms will be the last.

THE COURT: The last thing, right.

RYAN HUNTER: Okay.

RP 10.

Mr. Hunter successfully completed the treatment program, and six and half years later, petitioned the juvenile court to (1) terminate his obligation to register as a sex offender and (2) restore his firearm rights. CP 16-28, 29-31. Mr. Hunter submitted, along with his pleadings, a letter from his former sex offender treatment provider, Timothy Kahn, who noted that Mr. Hunter was now 20 years old, that he completed treatment successfully in 2002, that he had graduated from high school and was working toward an associate's degree at a community college, that he was in a stable romantic relationship, that he had found employment and that he had been involved in no criminal activity since he was 13, although he had some traffic matters. Because Mr. Kahn believed that Mr. Hunter was

a low risk for sexual reoffense, he supported Mr. Hunter's petition to be relieved of registration requirements. CP 20-21.

On August 7, 2007, the two matters were heard by the Hon. Carol Schapira. The State opposed the two petitions because of the impact of the crime on the victim and because Mr. Hunter had traffic tickets. RP 22-23; CP 32-40. Judge Schapira granted the motion to lift the sex offender registration requirement, but she had concerns about the number of traffic tickets, and therefore did not restore firearm rights, suggesting that Mr. Hunter return to court in a year. RP 26-27, CP 41-42. When counsel argued that restoring firearm rights was mandatory, under State v. Swanson, 116 Wn. App. 67, 65 P.3d 343 (2003), Judge Schapira said that she would entertain a motion for reconsideration, RP 28-30, a motion that Mr. Hunter did in fact then file. CP 43-46.

At that point, the State filed a pleading arguing that Mr. Hunter could never have his firearm rights restored, given the fact that he had a sex offense as a conviction, citing Division Two's decision in Graham v. State, 116 Wn. App. 185, 64 P.3d 684 (2003). CP 47-51. In reply, Mr. Hunter argued that the Court should not follow Division Two's decision in Graham and that, while the court had not granted him a formal "certificate

of rehabilitation,” it had made findings that supported the conclusion that he was not a danger and no longer presented a threat of recidivism. CP 52-56.

Judge Schapira denied the motion for reconsideration without comment on August 31, 2007. CP 57. This appeal then timely followed. CP 58-63.

D. ARGUMENT

1. Introduction

When Ryan Hunter was only 13 years old, he had sex with his sisters. He successfully completed treatment, grew up and went on to lead a stable and productive life. Indeed, Judge Schapira essentially recognized his rehabilitation by granting the motion to terminate Mr. Hunter’s obligation to register as a sex offender, an order that she could only have entered if she concluded that Mr. Hunter had proven that future registration would not serve the purposes of the registration statute. RCW 9A.44.140(4)(b). Still, because Mr. Hunter had been given some traffic infractions, Judge Schapira denied Mr. Hunter’s petition to restore his firearm rights.

When Mr. Hunter argued that Judge Schapira did not have discretion to deny his petition, the prosecutor, for the first time, argued that the statute precluded Mr. Hunter from ever restoring his firearm rights because the conviction was a sex offense. Under the State's argument, no matter how many years passed, and no matter how law-abiding Mr. Hunter was, he could never possess firearms based upon his conduct as a 13-year-old child. Yet, when Judge Spector initially sentenced Mr. Hunter, and revoked his right to possess firearms, she specifically stated that Mr. Hunter would be eligible to reinstate his firearm rights, a ruling to which the State never objected and never appealed.

Judge Schapira's order ignored Judge Spector's earlier ruling, and was legally incorrect. RCW 9.41.040 cannot be read in the restrictive fashion argued by the State. RCW 9.41.040(4) does not prohibit all people with sex offense convictions from ever restoring their firearm rights, and a judge has no discretion, under that statute, to deny a petition for restoration (because of traffic tickets, for instance) if the defendant is otherwise eligible. Moreover, Judge Schapira's own order terminating Mr. Hunter's obligation to register as a sex offender necessarily was based on findings that constitute the equivalent of a "certificate of rehabilitation," entitling

Mr. Hunter to restoration under RCW 9.41.040(3). Next, even if the statute does not allow for restoration to Mr. Hunter, respect for Judge Spector's rulings at the time of disposition require allowing Mr. Hunter to restore his rights. Finally, a statutory scheme that allows someone to lose his or her rights to bear arms for life simply because of a conviction, as a 13-year-old child, of a sex offense is unconstitutional under U.S. Const. amend. 2 and Wash. Const. art. 1, § 24.

Accordingly, Judge Schapira's order should be vacated and the matter remanded for entry of an order restoring Mr. Hunter's right to possess firearms.

2. **The Trial Court Lacked the Discretion to Deny Mr. Hunter's Petition for Firearm Rights Restoration**

Wash. Const. art. 1, § 24 gives individual citizens the right to bear arms:

The right of the individual citizen to bear arms in defense of himself, or the State, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Wash. Const. art. 1, § 24, must be read in light of the absolute language of Wash. Const. art. 1, § 29, which states that "provisions of this constitution

are mandatory, unless by express words they are declared to be otherwise."¹

Certainly, the right to bear arms is not absolute and is subject to reasonable government regulation for safety purposes, which includes restrictions on firearm ownership by those who commit certain crimes. State v. Schmidt, 143 Wn.2d 658, 676 & n.76, 23 P.3d 462 (2001).

However, the explicit constitutional protections accorded to firearm ownership need to be considered whenever a court analyzes the meaning of statutory restrictions promulgated by the Legislature. See Wash. Const. art. 1, § 32 (“A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.”).

RCW 9.41.040(1) & (2) make it a felony for persons with certain convictions from possessing or owning a firearm. RCW 9.41.040(3) & (4) then set out provisions which either exclude certain categories of convictions from the prohibition or set up procedures for firearm rights restoration:

¹ U.S. Const. amend. 2 also protects individual rights. See Parker v. District of Columbia, 478 F.3d 370 (D.C. Cir.), *cert. granted sub. nom District of Columbia v. Heller*, 128 S. Ct. 645 (2007).

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting

firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b) (i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.²

Just as this statute gives no discretion to a convicting or committing court “to decide which crimes or commitments shall affect a person’s firearm rights,” State v. Swanson, 116 Wn. App. at 75, so too

² Although this statute dates back in some form to 1935, Laws of 1935, ch. 172, § 4, it has been frequently amended, with language that is sometimes difficult to follow and understand, mostly in the 1990s.

does the statute give no discretion to a court to grant or deny a petition for firearm rights restoration if the requirements of the statute are met. Id. at 75-78. Once a person can show that he or she satisfies the requirements set out in the statute, a trial court's job is ministerial only. A court cannot deny a petition on "safety" grounds. Id.

In this regard, if Mr. Hunter was otherwise eligible for firearm rights restoration under the statute, it was error for the trial court to deny his petition because he had received some traffic infractions. The fact that Mr. Hunter received traffic tickets is not a legitimate factor to be considered in this analysis. Accordingly, Judge Schapira's denial of Mr. Hunter's firearm rights restoration petition based upon his traffic tickets was error, and the matter should be remanded back to the trial court for entry of an order restoring Mr. Hunter's right to possess firearms.

3. **Mr. Hunter Is Not Statutorily Ineligible for Firearm Rights Restoration**

For the first time, in response to Mr. Hunter's motion for reconsideration, the State argued that Mr. Hunter was statutorily ineligible to restore firearm rights because he was convicted of a sex offense. CP 47-51. Judge Schapira denied Mr. Hunter's motion for reconsideration

without addressing the State's arguments. CP 57. Nonetheless, the State was incorrect in its analysis of RCW 9.41.040.

The State's arguments were based on Division Two's decision in Graham v. State, *supra*. Accord Smith v. State, 118 Wn. App. 464, 76 P.3d 769 (2003) (Division Three). However, these decisions are premised on an incorrect interpretation of RCW 9.41.040(4), and should not be followed by this Court.

RCW 9.41.040(4) allows some categories of felons to petition to restore firearm rights:

Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section *and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both*, the individual may petition a court of record to have his or her right to possess a firearm restored:

....

(b) (i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm

counted as part of the offender score under RCW 9.94A.525. . .

Emphasis added.

Here, Mr. Hunter has spent five or more years in the community without being convicted of any crime and he has no prior felony convictions that prohibit the possession of a firearm that count on his offender score. The issue is whether the italicized portion of the statute bars Mr. Hunter from restoring firearm rights due to being “previously been convicted . . . of a sex offense prohibiting firearm ownership. . . .”

Division Two in Graham held that the word “previously” meant having a sex offense conviction at the time of the petition for firearm rights restoration, not that the defendant had one previous to the current conviction. In coming to this conclusion, Division Two noted that the provision in question was enacted as part of the “Hard Time for Armed Crime Act” in 1995, Laws of 1995, ch. 129, § 16, and that the law was intended to stigmatize the carrying and use of deadly weapons by criminals. 116 Wn. App. at 189. Thus, Division Two concluded:

that the reference to "previous convictions" in the second sentence of RCW 9.41.040(4) means any conviction prior to the time of the petition, not a conviction prior to the one that disabled the petitioner's firearm rights. Such a construction is consistent with statutory intent of

stigmatizing the use and possession of firearms and discouraging criminals from possessing and using firearms to commit crimes.

116 Wn. App. At 190.³

The so-called “Hard Time for Armed Crime Act” was adopted in 1995 by the Legislature pursuant to Initiative 159. As the ballot title reflected, Initiative 159 was “[a]n act related to increasing penalties for armed crimes” and included a series of sentence enhancements for defendants convicted of crimes involving weapons. The stated goals of this initiative were set out in § 1:

(1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements

³ Division Three in Smith did not look at legislative intent, but reached the same conclusion as Division Two in Graham. The main thrust of Smith involved the defendant’s petition for a certificate of rehabilitation under RCW 9.41.040(3), assuming he was not eligible for restoration under RCW 9.41.040(4).

provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes.

Laws of 1995, ch. 129, § 1.

Contrary to Division Two's conclusions, nothing about this statement of intent reveals a desire by the voters or the Legislature to attach a lifetime ban on firearm possession to all persons convicted of sex

offenses (including people like Mr. Hunter, who were children at the time of conviction). Initiative 159's goal was clearly to increase prison sentences and to stigmatize those defendants who used firearms and deadly weapons during the commission of crimes, not to attach a lifelong stigma to those who did not use firearms during the commission of their crimes.

Indeed, because of Initiative 159's intent to increase the penalties for armed crimes, the initiative's purpose expressly does not support a conclusion that people convicted of sex offenses who do not use deadly weapons or firearms should be denied firearm rights if they are otherwise eligible. Division Two's analysis actually would lead to a situation where sex offenders were barred forever from restoring firearm rights, while an offender who possessed a deadly weapon while dealing drugs could have his or her rights restored, an interpretation directly contrary to the intent of Init. 159.⁴

⁴ Similarly, under Division Two's analysis, those people convicted of such Class B felonies as Drive By Shooting (RCW 9A.36.045), Possession of an Incendiary Device (RCW 9A.40.120), Manslaughter in the Second Degree (RCW 9A.32.070), or Possession of a Stolen Firearm (RCW 9A.56.310), could have their firearm rights restored, but not Mr. Hunter whose disqualifying juvenile conviction did not involve weapons of any kind. Indeed, under Division Two's analysis, even those people with multiple convictions for Class B felonies involving firearms could have their firearm rights restored if enough time passes between the offenses so that the convictions "washout" under RCW 9.94A.525.

Division Two's construction of Init. 159 also conflicts with settled precepts of statutory construction. First, the statute is clearly penal in nature in that it defines crimes and sets penalties for those crimes. Thus, RCW 9.41.040 must be strictly construed against the State, and in favor of a criminal defendant. See State v. Radan, 143 Wn.2d 323, 329-30, 21 P.3d 255 (2001); State v. Gore, 101 Wn.2d 481, 485-86, 681 P.2d 227 (1984).⁵ Secondly, the statute impacts the exercise of constitutional rights – the right to bear arms protected under Wash. Const. art. 1, § 24 and U.S. Const. amend. 2. This Court should avoid reaching constitutional issues if the matter can be resolved on statutory grounds. Washington State Farm Bureau Fed'n v. Gregoire, 162 Wn.2d 284, 291 n.7, 174 P.3d 1142 (2007).

⁵ Mr. Hunter's proposed construction of RCW 9.41.040 is identical to the one that Judge Spector adopted when she sentenced Mr. Hunter, since she told Mr. Hunter that he a court could in fact restore his firearm rights after he successfully complied with the disposition order. To the extent that Judge Spector and Division Two differ in their interpretations of the statute, it is clear that reasonable jurists could disagree about what RCW 9.41.040 means, and thus the Rule of Lenity requires this Court to adopt the construction that favors the defendant.

Moreover, it is apparent that if the Legislature (and the voters through the initiative process) wanted to enact a lifetime bar to gun ownership by people like Mr. Hunter, wording could easily be drafted that made this intent clear. RCW 9.41.040 could have stated: "A person disqualified from firearm possession under RCW 9.41.040(1) & (2) may petition a court of record to have his or her right to possess a firearm restored after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with a felony, gross misdemeanor or misdemeanor crimes. However, the right to petition the court for restoration under this subsection does not apply to an individual who is disqualified under RCW 9.41.040(1) or (2) from firearm possession because of a conviction for a sex offense."

Thus, the Court should avoid reaching constitutional issues raised by the adoption of an interpretation of RCW 9.41.040 that provides for a lifetime ban on firearm ownership due to a conviction for a sex offense when someone was only 13 years of age.⁶

Finally, the plain language of the statute supports the conclusion that only those defendants who have a prior conviction for a sex offense or a Class A felony (a conviction prior to the disqualifying conviction) are barred from firearm restoration under RCW 9.41.040. The use of the term “not previously been convicted” must mean a conviction previous to the one that resulted in the loss of firearm rights. Otherwise, RCW 9.41.040(4)(b)’s language setting out who was eligible for restoration would not make any sense:

(b) (i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525. . .

⁶ See infra § D(6).

Emphasis added. The highlighted section obviously refers to convictions prior to the conviction for which firearm rights were lost (the disqualifying conviction).⁷

Thus, the proper reading of the statute is that felons convicted of non-sex offenses and Class B and C felonies can have their firearm rights restored if they spend five or more consecutive years in the community without any new convictions or current charges and if they have no *prior* convictions (other than the disqualifying conviction) which have not “washed.” However, felons who have prior convictions (prior to the disqualifying conviction) for sex offenses, Class A felonies or with a maximum sentence of 20 years, can never have their firearm rights restored under RCW 9.41.040(4) no matter how many years have passed. Thus, the statute prohibits firearm restoration for people who committed serious offenses in the past and went on to commit another felony. This statute operates to punish and stigmatize recidivism. However, a sex

⁷ If “prior felony convictions” in RCW 9.41.040(4)(b) meant the disqualifying conviction, the statute would mean that a person with a disqualifying Class B felony, with a “washout” period of ten years under RCW 9.94A.525, would not be able to petition to restore his or her firearm rights after five consecutive years in the community (without new convictions or current charges) because the individual had a “prior” conviction (i.e. the disqualifying conviction) that counted as part of the offender score. This reading of the statute would make no sense.

offender, who does not engage in further criminal activity, can obtain his or her firearm rights back.

Accordingly, Division Two's decision in Graham should not be followed. Mr. Hunter is eligible under RCW 9.41.040(4) for firearm rights restoration, and this Court should remand the case back for entry of an order restoring his rights.

4. Mr. Hunter Received the Equivalent of a Certificate of Rehabilitation

Even if Mr. Hunter is not eligible for firearm restoration under RCW 9.41.040(4), the determination that he no longer had to register as a sex offender constituted the equivalent of a "certificate of rehabilitation" entitling him to firearms restoration under RCW 9.41.040(3). This statute states in part:

A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted

Here, based upon evidence that was provided to the trial court, it is apparent that Mr. Hunter was in fact rehabilitated and was no longer a threat either to members of his family or to others.⁸

In order to terminate Mr. Hunter's obligation to register as a sex offender under RCW 9A.44.130, the trial court necessarily had to conclude that Mr. Hunter had proven "by a preponderance of the evidence that future registration . . . will not serve the purposes of" the sex offender registration statutes. RCW 9A.44.140(4)(b). As the Supreme Court recently explained:

When the legislature enacted the sex offender registration statute, RCW 9A.44.130, it made the following findings:

The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by

⁸ Conceivably, Mr. Hunter is already eligible to possess firearms based upon the trial court's rulings on the sex offender registration issue under RCW 9.41.040(3). However, the prudent course of action is to seek judicial clarification before risking arrest and prosecution. In re Firearm Rights of Nelson, 120 Wn. App. 470, 480, 85 P.3d 912 (2003).

regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in section 402 of this act.

Laws of 1990, ch. 3, § 401. From this declaration, we have concluded that the "purpose behind sex offender registration is to assist law enforcement agencies' protection efforts." State v. Heiskell, 129 Wn.2d 113, 117, 916 P.2d 366 (1996). . . .

State v. Watson, 160 Wn.2d 1, 9, 154 P.3d 909 (2007).

Thus, by entering the order lifting Mr. Hunter's registration requirement, the trial court must have concluded that Mr. Hunter no longer posed a high risk to reoffend – in short, he was rehabilitated (the goal of a treatment-based sentence in juvenile court). See State v. Chavez, ___ Wn.2d ___, ___ P.3d ___ (No. 79265-8, March 20, 2008) (recognizing rehabilitative goals of juvenile system).

This Court has previously held that there is no certificate of rehabilitation process in Washington State that would qualify for relief under RCW 9.41.040(3). State v. Masangkay, 121 Wn. App. 904, 91 P.3d 140 (2004), *review granted* 153 Wn.2d 1017 (2005).⁹ Division Three also

⁹ Review was granted in Masangkay, but, before oral argument, the case was mooted out after the Superior Court restored Mr. Masangkay's firearms rights when more than five years finally passed since conviction. (Mr. Masangkay had tried to obtain his rights back after three years so that he could join the Marines.)

concluded that there is no authority for a superior court to grant a
“certificate of rehabilitation.” Smith v. State, 118 Wn. App. at 470. But
see Smith v. State, 118 Wn. App. at 470-71 (Sweeney, J, concurring)
(suggesting that superior courts have the constitutional power to restore
firearm rights unless otherwise prohibited).

In contrast, the Supreme Court has recognized the equivalent of a
certificate of rehabilitation in State v. Radan, supra, a case where there had
been a judicial determination that a probationer in Montana qualified for
early termination of supervision:

Radan's final contention is that this Court should
look beyond the automatic restoration of rights conferred by
Montana law and look to the specific facts related to his
"early" discharge from supervision. Radan was granted
early discharge based upon Montana Code § 46-23-1011,
which states:

(6)(a) Upon recommendation of the
probation and parole officer, a judge may
conditionally discharge a probationer from
supervision before expiration of the
probationer's sentence if:

(i) the judge determines that a
conditional discharge from supervision:

(A) is in the best interests of the
probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense[.]

MONT. CODE ANN. § 46-23-1011. Radan contends that the statutory considerations are equivalent to a finding of rehabilitation. The Court of Appeals disagreed, concluding without the benefit of authority that "the exemption applies only when it is established that the procedure included a fact-finding inquiry resulting in a finding of the rehabilitation or innocence of the felon." [State v. Radan, 98 Wn. App. [652] at 658, [990 P.2d 962 (1999)]. We disagree. Even though RCW 9.41.040 unambiguously requires a "finding of rehabilitation," this phrase is undefined. Additionally, the Legislature's use of the phrase "other equivalent procedure" suggests the Legislature intended some deference to the practices of other jurisdictions, as long as the practice involved a finding of rehabilitation. [Footnote omitted]

The letter from the Montana Department of Corrections recommending Radan's early discharge indicates that the recommendation was based in part on the following facts: (1) Radan had no new arrests; (2) he had paid his restitution; and (3) he did not wish to return to Montana. However, more important is the fact that the statute authorizing Radan's early discharge requires a finding that a conditional discharge from supervision is in the best interests of the probationer and society and "will not present unreasonable risk of danger to the victim of the offense." MONT. CODE ANN. § 46-23-1011. While we decline to establish a precise definition for the phrase "finding of rehabilitation" we believe that for purposes of RCW 9.41.040 the finding in Radan's case is equivalent to an "other equivalent procedure" based upon a "finding of rehabilitation."

Radan, 143 Wn.2d at 334-35.

Division Three's decision in Smith does not mention or attempt to distinguish Radan at all, and thus the decision is of limited value. This Court's decision in Masangkay does discuss Radan, but limited its holding:

In State v. Radan, 143 Wn.2d 323, 329, 21 P.3d 255 (2001), instead of addressing whether Washington had a certificate of rehabilitation procedure, the Supreme Court determined whether the "certificate of rehabilitation or other equivalent procedure" language of RCW 9.41.040(3) could be satisfied by certain Montana procedures. Again, the court recognized the existence of the certificate of rehabilitation language in RCW 9.41.040(3), but it did not hold that a procedure to issue certificates of rehabilitation exists in Washington.

Masangkay, 121 Wn. App. at 909. The Court went on to hold that it was a legislative, not judicial, job to create a procedure for the issuance of certificates of rehabilitation. 121 Wn. App. at 909-14.

Reading Masangkay¹⁰ and Radan together, the conclusion is that superior courts do not have the authority to issue "certificates of rehabilitation," but that Washington courts still have the authority, under RCW 9.41.040(3), to recognize the restoration of firearm rights based

¹⁰ With all due respect, Mr. Hunter believes that Masangkay was wrongly decided, that the Supreme Court would have reversed this Court's decision had the case not been mooted out. Superior courts in Washington are courts of general jurisdiction and have the power under Wash. Const. art. 4, § 6 to grant a "certificate of rehabilitation."

upon some other recognized procedure that confirms the defendant has in fact been “rehabilitated.” The other procedure need not be one that explicitly announces a finding of “rehabilitation.” Otherwise, the Montana procedure in Mr. Radan’s case would not have passed muster. Moreover, nothing in Radan limits the equivalent of a finding of rehabilitation to a procedure from some other state, and nothing in Radan precludes a finding of rehabilitation under other aspects of Washington law from being used to restore firearm rights under RCW 9.41.040(3).

By recognizing the power of Washington courts to restore firearm rights based upon some other existing procedure for determining rehabilitation, RCW 9.41.040(3) would be read in consistently with RCW 9.41.047(1), which requires that courts, at the time of sentencing, inform defendants, on the record at the time of sentencing, that “that the person may not possess a firearm unless his or her right to do so is restored *by a court of record*.” Emphasis added. This language (repeated both in the guilty plea form and in the standard notice of ineligibility to possess firearms, CP 5 & 15) would make no sense if the only route to firearm restoration for someone like Mr. Hunter was by means of a pardon, as Division Three concluded. Smith v. State, 118 Wn. App. at 470. RCW

9.41.047(1) (like CP 5 & 15) makes no reference to a Governor's pardon, and plainly assigns the task of firearm restoration to *courts of record*.

Thus, applying Radan to this case, while there is no authority under Masangkay for a superior court to issue a "certificate of rehabilitation," the trial court should have recognized another procedure – the termination of the obligation to register as a sex offender under RCW 9A.44.140 -- that was predicated on the conclusion that Mr. Hunter essentially had been rehabilitated. Indeed, the trial court's determination that Mr. Hunter no longer needed to register as a sex offender was based on almost the same exact factors that led Montana to discharge Mr. Radan early from supervision – the lack of new arrests, compliance with the sentence, and not posing a danger. Thus, while not called a "certificate of rehabilitation," the order terminating the registration requirement in this case was *equivalent* to a certificate of rehabilitation. Just as Mr. Radan was entitled to possess firearms after being discharged early from supervision, so too should Mr. Hunter be allowed to possess firearms.

Based upon the trial court's own findings in response to Mr. Hunter's petition to be removed from sex offender registration, the trial court should have entered an order under RCW 9.41.040(3) that Mr.

Hunter was eligible to possess firearms. The trial court erred and this matter should be remanded to the superior court for entry of such an order.

5. **Mr. Hunter Was Entitled to Restore Firearm Rights Because of the Ruling of the Sentencing Judge**

When Mr. Hunter was sentenced, Judge Spector had him sign a form acknowledging that he was ineligible to possess a firearm. Both this form and Mr. Hunter's guilty plea statement informed him that he could not possess firearms unless his rights were restored *by a court of record*. CP 5 & 15. When Mr. Hunter and his father had questions about firearm rights restoration, Judge Spector told Mr. Hunter that he could in fact obtain his firearms rights back at a later time. RP 8-10.

The State did not object to this ruling, nor did the State object to the written notification which told Mr. Hunter that he could not possess firearms unless his rights were restored by a court of record, CP 15, nor did the State object to the language in the guilty plea statement which followed this same language. CP 5. Notably, the written notification, CP 15, said nothing about having to seek a pardon by the Governor to obtain firearm rights restoration. Finally, the State did not appeal from Judge Spector's rulings.

A criminal defendant has a legitimate expectation in the finality of the judgment entered at the time of sentencing. See State v. Hall, 162 Wn.2d 901, ___ P.3d ___ (2008) (State cannot move to vacate felony murder conviction invalid under In re Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), without defendant's consent). One hallmark for determining whether a party has an expectation in the finality of the judgment and sentence is whether the time for appeal (30 days) has passed or whether the time for collateral attack has passed. Certainly, under RCW 10.73.090,¹¹ any petition by the State for post-conviction relief would be untimely at this late date. Notably, RCW 10.73.090 makes no distinction between motions to vacate filed by a defendant and motions to vacate filed by the State. The rigid time-bars which are routinely used to deny prisoners access to the courts apply with equal weight to the State. See,

¹¹ RCW 10.73.090 provides in part:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

e.g., State v. Dearbone, 125 Wn.2d 173, 883 P.2d 303 (1994). Having failed to seek modification of Judge Spector's rulings in the seven years since Judge Spector entered the order of disposition, the State cannot now try to tamper with her orders.

In State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (2008), and in State v. Leavitt, 107 Wn. App. 361, 27 P.3d 622 (2001), two defendants were misled at the time of sentencing about their firearm rights and were never given the notice required by RCW 9.41.047. In both instances, the courts reversed convictions for violations of RCW 9.41.040. In Leavitt, the Court of Appeals pointed to the due process problems that would arise under U.S. Const. amend. 14 by requiring a defendant to exercise a standard of care exceeding that exercised by a judge. 107 Wn. App. at 372-73.

Similarly, in this case, while Mr. Hunter used caution and sought a ruling by a court before he possessed firearms, the same principles apply here as in Leavitt and Minor. Mr. Hunter must be given the benefit of Judge Spector's rulings at the time of disposition and he should be allowed to have his firearm rights restored. Otherwise, due process of law under U.S. Const. amend. 14 would be violated.

6. **A Life-Time Ban on Firearm Possession Due to a Sex Offense as a Child Violates the United States and Washington Constitutions**

Mr. Hunter was a child when he had sex with his sisters. Under the State's theory, Mr. Hunter can never possess a firearm unless he receives a pardon by the Governor. Under the State's theory, sixty years from now, Mr. Hunter will not be able to keep a gun in his home for self-protection because of something that happened when he was 13 years old. This lifetime ban violates U.S. Const. amend. 2 and Wash. Const. art. 1, § 24.

Citizens have a constitutional right to bear arms under both the Second Amendment and art. 1, § 24. State v. Williams, 158 Wn.2d 904, 912, 148 P.3d 993 (2006). This right is an individual right, rather than a collective right. See Parker v. District of Columbia, 478 F.3d at 380 & n. 6 (citing Williams as a decision that recognized that the Second Amendment protects individual rights). Both the state and federal constitutions protect the right to possess traditional "arms" to be used for self-defense, a category that includes firearms. Seattle v. Montana, 129 Wn.2d 583, 600-01, 919 P.2d 1218 (1996) (opinion of Alexander, J.); Parker, 478 F.3d at 397-400.

To be sure, the right to bear arms is not absolute and is subject to reasonable regulation, which includes prohibitions by felons from owning guns. Parker, 478 F.3d at 399; State v. Tully, 198 Wash. 605, 89 P.2d 517 (1939). However, no case has upheld, under the state or federal constitutions, a lifetime ban on firearm possession based upon a juvenile conviction. Such a ban exceeds the bounds of reason and is not “one that is reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought.” Seattle v. Montana, 129 Wn.2d at 594 (opinion of Talmadge, J.). There is no reason to suspect that a child who commits a sex offense as a 13-year-old child will pose any more danger to society generations later, as an adult, than any other person, especially where the 13-year-old child goes through treatment and is rehabilitated. Wherever the boundaries of the right to bear arms are located, a lifetime ban imposed on Mr. Hunter exceeds those bounds and is unconstitutional under U.S. amend. 2 and Wash. Const. art. 1, § 24.

Accordingly, this Court should reverse the superior court’s order denying Mr. Hunter’s petition for restoration of firearm rights.

E. CONCLUSION

For the reasons set out above, the trial court erred. This Court should reverse the superior court's orders and remand the case for entry of an order restoring Mr. Hunter's right to possess firearms.

Dated this 28 day of March 2008.

Respectfully submitted,



NEIL M. FOX, WSBA NO. 15277



LIZA E. BURKE, WSBA NO. 23138

Attorneys for Appellant

Appendix A

C10801

FILED
KING COUNTY WASHINGTON
AUG 07 2007
SUPERIOR COURT CLERK
BY LARRY D. FORD, SR.
DEPUTY

SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR KING COUNTY JUVENILE DEPARTMENT

STATE OF WASHINGTON
Plaintiff

Patrick Ryan Hunter
Respondent

1/31/87
DOB

In Custody Out of Custody

NO. 00-8-05234-2

ORDER ON:

CONTINUANCE OF _____

REVIEW OF _____

OTHER: Relief from sex off. Reg. and
Restoration of Firearms rights

Commencement date: _____

Expiration date: _____

Clerk's Action Required

Persons appearing: Deputy Prosecuting Attorney Elsner, JPC Dixon
Counsel for respondent Burke, parent(s), Other _____

I. FINDINGS

1.1 The respondent was present was not present presence waived.

1.2 A continuance is requested by _____ agreed upon by the parties.

Reason for current continuance request: _____

The new speedy trial expiration date is: _____. Respondent agrees to waive from _____ to _____

see attached

Number of witnesses: _____. Length of trial: _____

1.3 Case was called for trial: respondent did/did not appear witnesses failed to appear.

1.4 OTHER: Respondent has not requirements for relief from sex off. Reg. and
Registration. Respondent is not an appropriate candidate
restoration of firearms at this time due to numerous
traffic infractions.

II. ORDER

2.1 The court's order dated _____ is hereby amended as follows: _____

2.2 Matter may be rediverted upon agreement of all parties.

2.3 Respondent has been financially screened.

2.4 Matter is hereby dismissed as a completed diversion.

2.5 The hearing set for _____ is stricken.

2.6 The next court appearance is set for _____ at _____ am/pm in Court _____ for a hearing.

2.7 It is further ordered: ① Respondent's motion for relief from registration is granted. Respondent no longer has a duty to register ② Respondent's motion to reinstate his right to possess a firearm is denied due to traffic infractions

2.8 Case is dismissed with without prejudice. Prosecutor had probable cause to file.

Date 8/7/07

[Signature]
 Judge Commissioner SCHAPIRA CRS

Presented by: [Signature]
Attorney for Resp.

WSBA # 23138

JPC _____

[Signature]
Attorney for II

WSBA # 35783

Respondent _____

Appendix B

FILED
KING COUNTY WASHINGTON
SEP 04 2007
SUPERIOR COURT CLERK
BY LARRY D. FORD, SR.
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff

v.

PATRICK RYAN HUNTER,

DOB: 01-31-87

Respondent

) No. 00-8-05234-2 (SEA)

) ORDER DENYING RESPONDENT'S
) MOTION FOR RECONSIDERATION

THIS MATTER having come before the Court on Respondent's Motion for Reconsideration, the Court being fully informed of the pleadings in this case, and the Court having reviewed the Respondent's Motion, the State's Response and the Respondent's Reply, IT IS HEREBY ORDERED that the Respondent's Motion for Reconsideration is DENIED.

DATED this 31st Day of August, 2007.



THE HONORABLE CAROL A. SCHAPIRA

Appendix C

FILED
KING COUNTY, WASHINGTON

JAN 12 2001

SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
 Patrick Hunter)
)
 B.D. 1-31-87)
)
 Respondent.)

NO. 00-8-05234-2

NOTIFICATION OF INELIGIBILITY
TO POSSESS FIREARM

Pursuant to RCW 9.41.047, RCW 9.41.040, and RCW 9.41.010, you
are ineligible to possess a firearm unless your right to do so is
restored by a court of record.

1-12-01
DATE

[Signature]
JUDGE/COURT COMMISSIONER

COPY RECEIVED [Signature]
RESPONDENT

DATE: Jan. 12, 2001

NOTIFICATION OF INELIGIBILITY
TO POSSESS FIREARM - 1
NOT-IPF.BLK.102496

White - Court Pink - JPC
Green - Respondent Goldenrod - Defense
Canary - Prosecutor

ORIGINAL

STATUTORY APPENDIX

RCW 9.41.040 provides:

(1) (a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(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);

(ii) After having previously been involuntarily

committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b) (i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or

currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

RCW 9.41.047 provides:

(1) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person

ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

The convicting or committing court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the department of licensing, along with the date of conviction or commitment.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3) (a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition a court of record to have his or her right to possess a firearm restored. At the time of commitment, the court shall specifically state to the person that he or she is barred from possession of firearms.

(b) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the

restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that the person is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to himself or herself, others, or the public. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.

(c) A person petitioning the court under this subsection (3) shall bear the burden of proving by a preponderance of the evidence that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur. If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9A.140(4).

RCW 9A.44.140(4) provides:

(4) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty. The court shall consider the nature of the registrable offense committed, and the criminal and relevant noncriminal behavior of the petitioner both before and after adjudication, and may consider other factors.

(a) The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

(b) The court may relieve the petitioner of the duty to register for a sex offense or kidnapping offense that was committed while the petitioner was under the age of fifteen if the petitioner (i) has not been adjudicated of any additional sex offenses or kidnapping offenses during the twenty-four months following the adjudication for the offense giving rise to the duty to register, and (ii) proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.

This subsection shall not apply to juveniles prosecuted as adults.

U.S. Const. amend. 2 provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.

U.S. Const. amend. 14, § 1 provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. 1, § 24 provides:

The right of the individual citizen to bear arms in defense of himself, or the State, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Wash. Const. art. 1, § 29 provides:

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

Wash. Const. art. 1, § 32 provides:

A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

Wash. Const. art. 4, § 6 provides:

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction

in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

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

STATE OF WASHINGTON,
Respondent,
v.
PATRICK RYAN HUNTER,
Appellant.

COA NO. 60552-6-I
CERTIFICATE OF SERVICE

I, Breana Caldwell, certify and declare that on 28th day of March 2008, I deposited into the United States mail with proper first class postage attached a copy of the Opening Brief of the Appellant addressed to:

Dan Satterburg
King County Prosecutor
Appeals Division
516 Third Ave. W-554
Seattle WA 98104

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

3/28/08 Seattle, WA
DATE AND PLACE


Breana Caldwell