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No.
COA No. 60552-6-I

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

R. P. H.
Petitioner.

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STATE OF WASHINGTON

On Appeal from King County Superior Court
The Honorable Carol Schapira, Presiding
The Honorable Julie Spector, Presiding

PETITION FOR REVIEW

NEIL M. FOX, No. 15277
Attorney for Petitioner
1008 Western Ave. Suite 302
Seattle WA 98104

Phone: 206-624-9694
Fax: 206-624-9691
e-mail: nmf@cohen-iarra.com

ORIGINAL

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A. IDENTITY OF PETITIONER

Ryan Hunter, petitioner herein, asks this Court to accept review of the Court of Appeals' decision terminating review set out in Part B.

B. COURT OF APPEALS' DECISION

Mr. Hunter seeks review of the Court of Appeals' decision in State of Washington v. Ryan Patrick Hunter, No. 60552-6-I, a published opinion issued on October 20, 2008. A copy of the slip opinion is attached in Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Does the Second Amendment to the United States Constitution apply to the states?
2. What is the proper standard of scrutiny for determining whether a state regulation of the right to bear arms violates the Second Amendment?
3. Does a lifetime ban on firearm possession for an adult who was convicted of a juvenile offense as a 13-year-old child pass constitutional muster under the Second Amendment?
4. When the judge at disposition ruled that Mr. Hunter could some day receive his firearm rights back, was this ruling binding on a later court?

5. Do Washington courts have the power to recognize a Washington procedure as an equivalent to a “certificate of rehabilitation” such that firearm rights are restored under RCW 9.41.040(3)?

6. Was the decision to terminate Mr. Hunter’s obligation to register as a sex offender equivalent to a certificate of rehabilitation, such that he was not barred from possessing a firearm under RCW 9.41.040(3)?

7. Should RCW 9.41.040(4) be construed so as to impose a life ban of firearm possession for children convicted of sex offenses?

D. 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 Ryan Patrick 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 two other children. CP 1-2. On December 14, 2000, Ryan pled guilty to one count of rape of a child in the first degree, 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. Judge Spector stated “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, read:

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.

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. The State did not object to these rulings.

Mr. Hunter successfully completed the treatment program and all of the other conditions of the sentence. Six and half years later, he 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. Mr. Kahn 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. The State, though, conceded that Mr. Hunter was statutorily eligible for firearms' restoration. 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, for the first time, 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. Mr. Hunter appealed to Division One of the Court of Appeals, raising several issues including: (1) whether RCW 9.41.040 should be construed so as to prohibit him from ever possessing a firearm; (2) whether such a ban was constitutional under the Second Amendment; (3) whether Mr. Hunter had received the equivalent to a certificate of rehabilitation when Judge Schapira granted the motion to terminate the obligation to register as a sex offender; (4) whether Judge Spector's rulings at the time of disposition were binding; and (5) whether Judge Schapira erred when she denied firearm restoration based upon the fact that Mr. Hunter had some traffic tickets.

On October 20, 2008, Division One affirmed, holding that: (1) RCW 9.41.040(4) does not give discretion to a court to deny a petition for firearm restoration if the defendant is otherwise eligible; (2) RCW 9.41.040(4) bars those convicted of sex offenses from ever obtaining their firearm rights back; (3) Judge Spector's statements at the time of disposition were not rulings but were "mistaken musings," and thus not binding; (4) there is no procedure in Washington that is an equivalent to a "certificate of rehabilitation; (5) the ruling that relieved Mr. Hunter of his obligation to register as a sex offender did not operate so as to restore his rights under RCW 9.41.040(3); (6) the Second Amendment does not apply to the states and thus has no effect on this case; and (7) even if the Second Amendment did apply, a lifetime ban on firearm ownership for children convicted of sex offenses survives strict scrutiny. App. A.

Mr. Hunter now seeks review in this Court.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Summary of Argument

This Court should accept review of this case under RAP 13.4(b)(1) (3) & (4), based upon the federal constitutional issues, issues of substantial public importance and a conflict with past decisions of this Court. This case

raises substantial constitutional issues related to the Second Amendment. This case also raises issues related to the “equivalent” of a “certificate of rehabilitation” under RCW 9.41.040(3), previously addressed, but not decisively resolved, by this Court in State v. Radan, 143 Wn.2d 323, 21 P.3d 255 (2001). The issues about statutory interpretation of RCW 9.41.040(4) also are issues of public importance. Finally, review should also be granted based upon issues of fundamental fairness and due process under U.S. Const. amend. 14. A superior court judge promised a 13-year-old child that he could some day possess firearms. The child complied with all court orders and was rehabilitated. The judge’s promise should now be enforced.

2. The Second Amendment Issues Call for Review

In June 2008, for the first time, the United States Supreme Court held that the Second Amendment confers an individual right to possess firearms. District of Columbia v. Heller, 554 U.S. ___, 128 S. Ct. 2783, 171 L.Ed.2d 637 (2008). The Supreme Court was conscious of the fact that many issues connected to the Second Amendment would not be resolved in Heller and had to await further cases:

[S]ince this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field And there will be time enough to expound upon the historical justifications for the

exceptions we have mentioned if and when those exceptions come before us.

Heller, 128 S. Ct. at 2821. Therefore, the Court left unresolved issues about whether the Second Amendment applied to the states, see 128 S. Ct. at 2813 n. 23, and what the proper standard of review was. 128 S. Ct. at 2817-18 & n. 27.

This case is a good vehicle to address some of the issues left unresolved by Heller. Rather than being a criminal prosecution of a defendant who actually possessed a firearm, in violation of the statute, but then claims the law is unconstitutional, the challenge here arises in the context of a former juvenile respondent's own petition to obtain a judicial ruling as to the extent of his rights. The Court can then address pure issues of law, without the distraction of issues related to law enforcement and prosecution of criminal behavior.

Mr. Hunter argued in the Court of Appeals (and continues to argue) that the Second Amendment applies to the actions of the states either through the Due Process Clause of the Fourteenth Amendment or through the Privileges or Immunities Clause of the Fourteenth Amendment. As explained in Mr. Hunter's Supplemental Reply Brief at 1-8, filed in the Court of Appeals, no prior case from the United States Supreme Court has ever held

that the Second Amendment did not apply to the states, Division One's erroneous citations to Presser v. Illinois, 116 U.S. 252 (1886), and Miller v. Texas, 153 U.S. 535 (1894), notwithstanding. Slip Op. at 13. The Supreme Court's reliance on the history of the Fourteenth Amendment (with a desire to secure for newly freed slaves the constitutional rights enshrined in the Bill of Rights, including the right to bear arms), Heller, 128 S. Ct. at 2808-12, and the Supreme Court's explicit recognition that the rights protected by the Second Amendment are no less entitled to protection than those protected by the First Amendment, Heller, 128 S. Ct. at 2821, leaves little doubt that the rights protected by the Second Amendment are among "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," Duncan v. Louisiana, 391 U.S. 145, 148-49 (1968), and thus apply to the states through the Fourteenth Amendment.

The decision in Mr. Hunter's case is the first published decision in Washington to address Heller. This decision will therefore be cited as authority that the Second Amendment does not apply to actions of the states, a conclusion that is incorrect (as explained thoroughly in the Supplemental Reply Brief of Appellant). This Court should therefore accept review under RAP 13.4(b)(3) to address the constitutional issues. Moreover, whether the

Second Amendment applies to the states is an issue of substantial public importance and review should be granted under RAP 13.4(b)(4).¹

The Court of Appeals also held that, even if one assumed that the Second Amendment was incorporated into the Fourteenth Amendment, a lifetime ban on firearm possession for a child convicted of a sex offense would survive even “strict scrutiny.” Slip Op. at 14-15. To be sure, the Heller decision stated: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” Heller, 128 S. Ct. 2816-17.² The Court of Appeals then concluded that RCW 9.41.040's

¹ Division Two recently certified a case to this Court which raises the issue of whether RCW 9.41.040(2)(a)(iii)'s restrictions on juvenile firearm possession violates the Second Amendment. State v. Christopher William Sieves, No. 82154-2. This case has not yet been set for oral argument. The issues in the instant case, while not the same (since Mr. Hunter is an adult who was barred from firearm possession because of a juvenile disposition), do overlap and the Court should accept review in Mr. Hunter's case at the same time it decides Sieves.

² After making this statement, the Supreme Court also stated “JUSTICE BREYER chides us for leaving so many applications of the right to keep and bear arms in doubt, and for not providing extensive historical justification for those regulations of the right that we describe as permissible . . . there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” Heller, 128 S. Ct. 2821. The Supreme Court therefore intentionally left open the door to future litigation on such issues, and did not flatly rule
(continued...)

restrictions on firearm possession advanced the narrowly tailored goal of restricting the most dangerous class of felons from owning firearms. Slip Op. at 14.

The problem with this conclusion is that it ignores the fact that Mr. Hunter was only *13 years old* when he was convicted of having sex with another child, and proof was submitted, already accepted as credible by the trial court, that he has been rehabilitated. Mr. Hunter does not fit into the category of the most dangerous of the dangerous. The Court of Appeals cited to no compelling circumstances (or narrowly tailored means) to justify a lifetime ban on firearm ownership for an adult who was convicted as a child of a sex offense and who then was unquestionably rehabilitated.³ Rather, the Court of Appeals' decision merely cites to three state codes that prohibit firearm possession by persons convicted of felonies as juveniles. Slip Op. at 15. Yet, citation to the contemporary practices of three other states does not evidence the type of searching constitutional analysis now required by Heller.

² (...continued)

out challenges to how such exceptions were applied in particular cases.

³ As noted below, at the time of the adoption of the Second Amendment, a young child like Mr. Hunter could not have been convicted of a felony for having sex with another child, children under the age of 14 not having the capacity to commit such crimes. See Commonwealth v. A Juvenile, 399 Mass. 451, 452, 504 N.E.2d 1049 (1987). Thus, Mr. Hunter would not fit into the category of persons who could have been barred from gun ownership at the time of the adoption of the Second Amendment.

Applying strict scrutiny, at the same high standard used in First Amendment cases, a lifetime ban on firearms' possession by an adult who had a juvenile sex offense at age 13, but who has been rehabilitated, is not narrowly tailored to a compelling governmental interest and violates U.S. Const. amend. 2, as incorporated into U.S. Const. amend. 14. Compare State v. Spiers, 119 Wn. App. 85, 93-94, 79 P.3d 30 (2003) (striking down portion of RCW 9.41.040 prohibiting ownership of firearms while out on bond under Wash. Const. art. 1, § 24). Accordingly, this Court should accept review under RAP 13.4(b)(3) & (4)

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

The trial court denied Mr. Hunter's request to obtain his firearm rights back at the same time it entered an order terminating his obligation to register as a sex offender. Mr. Hunter argued below that the termination order constituted the equivalent of a "certificate of rehabilitation" under RCW 9.41.040(3).

Division One rejected this argument, citing to its own prior decision in State v. Masangkay, 121 Wn. App. 904, 91 P.3d 140 (2004), *review granted*, 153 Wn.2d 1017 (2005), which concluded that Washington has no procedure equivalent to a "certificate of rehabilitation" and thus a court

cannot restore firearm rights based on a determination that the person has been “rehabilitated.” Slip Op. at 10-11. This Court accepted review in Masangkay, although ultimately review was dismissed when the case became moot.⁴ The same reasons for granting review in Masangkay apply here and the issue as to whether a court has the power to restore firearm rights under RCW 9.41.040(3) continues to be disputed amongst the various judges on the Court of Appeals. See Smith v. State, 118 Wn. App. 464, 470-71, 76 P.3d 769 (2003) (Sweeney, J, concurring) (suggesting that superior courts have the constitutional power to restore firearm rights unless otherwise prohibited). See also RCW 9.41.047 & CP 5 & 15 (assigning the task of restoring firearm rights to a court of record). Review should be granted under RAP 13.4(b)(4).

Additionally, the Court of Appeals failed properly to apply this Court’s decision in State v. Radan, *supra*, a case which held that a Montana procedure granting a felon an early discharge from supervision was the equivalent of certificate of rehabilitation. The Court of Appeals attempted to distinguish Radan on two grounds, both of which are incorrect.

⁴ 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 early after three years so that he could join the Marines.)

First, the Court of Appeals held “[Mr.] Radan was not a sex offender, and the supervision from which he was relieved was not sex offender registration.” Slip Op. at 11 n.3. With all due respect to the Court of Appeals, this argument is besides the point. The fact that Mr. Radan was not a sex offender has no bearing on anything. Indeed, one can easily say that Mr. Radan was less “rehabilitated” than Mr. Hunter. Mr. Radan was an *adult* who committed the felony of first degree theft and thus should be held more accountable for committing a crime of dishonesty than Mr. Hunter who was a child when charged, as a juvenile, with his offense. Mr. Radan was merely terminated from supervision early because “(1) Radan had no new arrests; (2) he had paid his restitution; and (3) he did not wish to return to Montana.” 143 Wn.2d at 335. Mr. Hunter, though, not only successfully completed a treatment and rehabilitation-based sentence, but there was actual proof provided to the court that he was no longer a danger to society. Merely labeling Mr. Hunter a “sex offender” does not sufficiently distinguish his case from Mr. Radan’s.

Secondly, the Court of Appeals distinguished Radan by noting that Montana’s early discharge procedure automatically restored all of Mr. Radan’s civil rights, including the right to bear arms, in Montana. Slip Op.

at 11 n.3, *citing Radan*, 143 Wn.2d at 326. Whatever the effect of the early discharge was on Mr. Radan's right to bear arms in Montana, in fact, this Court specifically held that the "Montana's automatic restoration of civil rights provision does not exempt Radan from charges under RCW 9.41.040." 143 Wn.2d at 336. Rather, this Court looked at the substance of what the early discharge procedure in Montana was based upon to conclude that it constituted an equivalent of a certificate of rehabilitation under RCW 9.41.040(3). 143 Wn.2d at 334-35. As argued thoroughly below, if an early discharge from supervision, based on payment of restitution, no new offenses and a desire to live out of state, was sufficient in *Radan*, the order terminating Mr. Hunter's obligation to register as a sex offender under RCW 9A.44.140(4)(b) should certainly qualify, it being based upon actual evidence of rehabilitation.⁵

Accordingly, Division One's decision in the instant case conflicts with *Radan* and review should be granted under RAP 13.4(b)(1).

⁵ Division One also noted that the trial court declined to grant firearms restoration based upon the fact Mr. Hunter had traffic tickets, suggesting that the trial court's order relieving Mr. Hunter of sex offender registration should not be viewed as an equivalent of a certificate of rehabilitation. Slip Op. at 11-12. However, if there is any ambiguity about what the trial court did or meant to do, the matter should be remanded for a new hearing, once this Court sets out what the law is and what the trial court's powers are.

4. **The Trial Court's Rulings at Time of Disposition Are Binding**

Mr. Hunter was a child at the time he was “sentenced.” He took the judge seriously and followed through on the requirements of the disposition order, successfully completing treatment and becoming a responsible adult. At the time of disposition, both Mr. Hunter and his father had questions about whether he would be able to possess firearms later in his life. The issue was specifically raised and the judge specifically stated that Mr. Hunter would be able to obtain his firearm rights back. RP 8-10. These rulings, not objected to by the State and not appealed by the State, are binding on both the State and Mr. Hunter, and Mr. Hunter had a legitimate expectation that subsequent judges would follow the law of the case. See State v. Ng, 110 Wn.2d 32, 39, 750 P.2d 632 (1988) (where State made no challenge to trial court’s instruction, it becomes law of the case even if the instruction was wrong). Basic principles of *res judicata*, collateral estoppel and issue preclusion prevent the re-litigation of the same claim, where there was a prior decision in a proceeding involving the same claim and the same parties. Carlton v. Black, 153 Wn.2d 152, 170, 102 P.3d 796 (2004); State v. Harrison, 148 Wn.2d 550, 560-62, 61 P.3d 1104 (2003).

The Court of Appeals discounted the trial court's statements on this issue as "mistaken musings" and "utterances" which were "not rulings. Slip Op. at 9. However, these "musings" were uttered by a judge, sitting on the bench in Mr. Hunter's case, and could not but be taken seriously by the child who was being sentenced. Fundamental fairness and due process under the 14th Amendment require that these "musings" be given effect. As the Ninth Circuit once stated:

To say to these appellants, "The joke is on you. You shouldn't have trusted us," is hardly worthy of our great government.

Brandt v. Hickel, 427 F.2d 53, 57 (9th Cir. 1970). See also Moser v. United States, 341 U.S. 41, 46-47 (1951) (fundamental fairness required granting petition for American citizenship where foreign national was given wrong advice by the highest authority to which he could turn).

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. Review should be granted under RAP 13.4(b)(3).

5. Mr. Hunter is Statutorily Eligible for Firearm Restoration

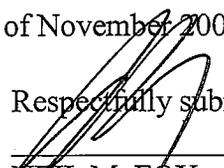
Below, Mr. Hunter argued that a plain reading of RCW 9.41.040(4) does not bar him from firearm restoration since he did not have a prior conviction for a sex offense (i.e. a conviction prior to the disqualifying offense). While the Court of Appeals has rejected Mr. Hunter's arguments in this case, and in other cases, Slip Op. at 7, this Court has not yet ruled on the issue. Because of the widespread importance of this issue, review should be granted under RAP 13.4(b)(4).

F. CONCLUSION

For the foregoing reasons, this Court should accept review and order that Mr. Hunter's right to possess firearms be restored.

DATED this 17 day of November 2008.

Respectfully submitted,



NEIL M. FOX
WSBA NO. 15277
Attorney for Petitioner

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	DIVISION ONE
)	
Respondent,)	No. 60552-6-I
)	
v.)	PUBLISHED OPINION
)	
RYAN PATRICK HUNTER,)	
)	
Appellant.)	FILED: October 20, 2008
_____)	

DWYER, A.C.J. — Ryan Hunter was prohibited from possessing firearms after, as a juvenile, he pleaded guilty to having repeated forced sexual contact with his two younger sisters. Now an adult, Hunter appeals from the superior court's denial of his petition to restore his right to possess firearms. Hunter contends both that the trial court was required to grant his petition and that, if it was not, the statute mandating this result is unconstitutional. However, because Hunter is both a class A felon and a sex offender, the trial court had no authority to grant his petition. The statute imposing this prohibition is constitutional. Accordingly, we affirm.

At age 13, Hunter pleaded guilty to raping his two younger sisters. The juvenile department of the King County Superior Court entered an order of disposition on the charge, finding Hunter guilty of one count of rape of a child in the first degree, and sentencing him to a Special Sexual Offender Disposition Alternative. Because rape of a child in the first degree is a class A felony sex offense, the court's disposition required that Hunter register as a sex offender. The disposition also included a suspended term of commitment, 12 months of community supervision, sexual deviance counseling and treatment, and various conditions.

The terms of the disposition rendered Hunter ineligible to possess any kind of weapon during his course of treatment. Moreover, because rape of a child in the first degree is a class A felony, a "serious offense" as defined by RCW 9.41.010(12), the disposition also included a notification stating:

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.

During the disposition hearing, Hunter's parents voiced concern about the weapons and firearm prohibitions, informing the court that their family had a long tradition of hunting, and inquiring whether Hunter would be able to use a bow and arrow to participate in that activity. The court informed Hunter's parents that, during treatment, Hunter would be "under a prohibition of no weapons whatsoever, and a bow and arrow or an archery set is definitely within the contemplation of the statute." With respect to archery, the court went on: "As long as he's successful [with treatment], there can be an exception made after

he's done and the case is, you know, dismissed, we hope." Reaching the issue of firearms, the court continued:

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. You had a question.

RYAN HUNTER: Yes, uhm, so as long—so, after I complete my treatment, I would be able to restore those rights?

THE COURT: Yeah. But there's a two-step process. Your dad's talking about archery.

RYAN HUNTER: Yeah.

THE COURT: I don't have any problems 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.

Hunter successfully completed his treatment program and, approximately six and a half years later, filed a petition in superior court seeking termination of the requirement that he register as a sex offender, which the court granted.

Hunter also petitioned the superior court to restore his right to possess firearms. Hunter argued that, because he had fulfilled all of the conditions listed in RCW 9.41.040(4), restoration of his firearm rights was mandatory. The State opposed the restoration of Hunter's firearm rights, initially conceding that Hunter had "technically met the requirements of RCW 9.41.040(4)(b)(i)," but contending that the court should nonetheless decline to restore Hunter's right to bear arms due to the fact that Hunter had committed five traffic infractions since obtaining his driver's license.

The court accepted this argument, ruling that Hunter was “not an appropriate candidate for restoration of firearms at this time due to numerous traffic infractions,” and denied his petition.

Hunter moved for reconsideration. In response, the State changed its original position, stating that it

now recognizes that it incorrectly argued [in response to Hunter’s original petition] that the respondent was statutorily eligible to have his firearm rights restored. He is not. Because the underlying offense for which the respondent’s firearms rights were terminated was a Class A sex offense, he is forever precluded from having his firearm rights restored. Consequently, the question regarding this court’s discretion is moot and the court should deny the respondent’s motion.

The court denied Hunter’s motion for reconsideration.

II

Ascertaining the meaning of the provisions of RCW 9.41.040 “presents an issue of statutory interpretation. This court’s review is therefore de novo.”

Nakatani v. State, 109 Wn. App. 622, 625, 36 P.3d 1116 (2001). Likewise, the “constitutionality of a statute is a question of law which is reviewed de novo.”

State v. Shultz, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999).

III

Hunter first contends that the trial court erred by failing to grant his petition to have his firearm rights restored because (1) the trial court erroneously based its decision on discretionary, non-statutory factors, and (2) pursuant to our decision in State v. Swanson, 116 Wn. App. 67, 65 P.3d 343 (2003), restoration of firearm rights is a ministerial, non-discretionary function of the courts if all of the requirements for firearm restoration set forth in RCW 9.41.040(4) have been

met by the petitioner. While Hunter correctly states the holding in Swanson, his argument ignores the settled law in Washington.

RCW 9.41.040(4) expressly disallows the restoration of firearm rights to persons convicted of either sex offenses or class A felonies:

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 . . . 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 . . . 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.

RCW 9.41.040(4). Thus, a person who has been precluded from possessing a firearm pursuant to RCW 9.41.040 may petition the court for restoration of firearm rights after five crime-free years in the community and “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.” RCW 9.41.040(4)(b)(i). The petition may only be granted, however, if the petitioner “has not previously been convicted . . . of a sex offense prohibiting firearm ownership . . . and/or any felony defined under any law as a class A felony.” RCW 9.41.040(4).

Hunter contends that, contrary to this reading of the statute, the phrases “previously been convicted” and “no prior felony convictions” refer to convictions

entered *before* the conviction for which the petitioner's firearm rights were ultimately revoked.¹ Thus, according to Hunter, because he was convicted only of the offense for which his firearm rights were revoked, restoration of his firearm rights is mandatory. He bases this contention on language in Swanson, in which we stated that the restoring court serves only "a ministerial function—i.e., granting the petition—once the petitioner has satisfied the enumerated requirements." Swanson, 116 Wn. App. at 69.

Hunter correctly states our holding in Swanson, in which we concluded that "the only discretion that the statute contemplates belongs to the petitioning individual, and that discretion concerns his decision to petition the court in the first place." Swanson, 116 Wn. App. at 75. Accordingly, RCW 9.41.040(4) gives the petitioned court no "discretion to grant or deny the petition on grounds other than noncompliance with the enumerated threshold requirements." Swanson, 116 Wn. App. at 75. As such, Hunter correctly notes that the superior court erred by denying his petition based on his accumulation of traffic infractions. Thus, Hunter is entitled to appellate relief if his petition established that his request met the enumerated requirements of RCW 9.41.040.

However, Hunter has not met those requirements. Indeed, Hunter is not eligible for restoration of his firearm rights pursuant to RCW 9.41.040(4). We have, in numerous cases, specifically rejected the contention advanced by Hunter—i.e., that his firearm rights may be restored pursuant to RCW

¹ The State contends that Hunter is barred from making this argument by the fact that he did not appeal the firearm restriction imposed as part of his original juvenile disposition. This argument is specious. Hunter is challenging the denial of his petition to have his firearm rights restored, not the original imposition of the firearm restriction.

9.41.040(4) as long as he was not “convicted . . . of a sex offense prohibiting firearm . . . [or a] class A felony” *before* being convicted of the offense for which his firearm rights were revoked.

Those cases conclude that the phrase “previously been convicted” refers to convictions entered before the *petition* for firearm restoration is filed, and does *not* refer solely to convictions entered before the conviction for which the petitioner’s firearm rights were revoked. A convicted child rapist made an argument identical to Hunter’s in Graham v. State, 116 Wn. App. 185, 64 P.3d 684 (2003). In rejecting the argument, we held that “the statutory language, coupled with the legislature’s express intent, leads us to conclude 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.” Graham, 116 Wn. App. at 190. This is the uniform interpretation of the statute. See, e.g., In re Rivard, No. 25923-4-III, 2008 WL 4472949, at *2 (Wash. Ct. App. Oct. 7, 2008) (“And he is not entitled to have his right restored because he has been convicted of a crime which is classified as a class A felony.”); Smith v. State, 118 Wn. App. 464, 470, 76 P.3d 769 (2003) (“Because Mr. Smith was convicted of a sex offense, he cannot have his firearm rights restored. RCW 9.41.040(4).”); Nakatani, 109 Wn. App. at 627 (“RCW 9.41.040(4) . . . did not authorize the court to reinstate firearm possession rights for anyone convicted of a crime with a maximum sentence of 20 years or longer.”); see also 13B SETH A. FINE & DOUGLAS J. ENDE, WASHINGTON PRACTICE: CRIMINAL LAW § 2810, at Supp. 110 (2007) (“A person

who has been convicted of a sex offense or a class A felony can never have his or her firearm rights restored by a court.”).

Hunter contends that these prior decisions “should not be followed,” but points to neither an intervening change in the law nor any other plausible basis for this contention. We decline Hunter’s invitation to overrule the established interpretation of RCW 9.41.040(4). Because Hunter was convicted of a class A felony sex offense, he is ineligible to have his firearm rights restored pursuant to RCW 9.41.040(4).

IV

Hunter next contends that the superior court had no authority to deny his petition because its previous “rulings” prospectively guaranteed the restoration of his firearm rights, notwithstanding the legislature’s enactment of RCW 9.41.040(4). Hunter premises this contention on: (1) the juvenile court judge’s statements at the disposition hearing indicating that Hunter could later have his firearm rights restored, and (2) the phrasing of the mandatory firearm restriction notification set forth in Hunter’s written juvenile disposition order. Hunter’s argument is meritless.

Contrary to Hunter’s characterization, the standard-form firearm notification was not a “ruling” by the juvenile court judge. The warning is expressly entitled, both in its caption and in its footer, “*NOTIFICATION OF INELIGIBILITY TO POSSESS FIREARMS.*” (Emphasis added.) The notification did not purport to independently affect Hunter’s right to possess a firearm. Further, nothing in the notification purported to guarantee that Hunter’s firearm rights would, at some point subsequent to the entry of the juvenile court

disposition, be restored to him. The notification is explicitly conditional, stating that Hunter was barred from firearm possession “unless” his firearm rights were restored by a court of record. Nothing in this statement can be read as a guarantee that a court of record *would* restore Hunter’s rights, or even that a court of record would necessarily have the authority to do so.

The juvenile court judge’s mistaken musings during the disposition hearing, in contrast, do evidence a belief on the part of the court that Hunter could, at some point, be eligible for restoration of his firearm rights. But the court’s utterances were not rulings. Indeed, they were unrelated to any petition—or other request for relief—from Hunter. Not all words uttered by judges in courtrooms constitute rulings. Hunter’s argument to the contrary is unavailing.²

V

Hunter next contends that, notwithstanding both his ineligibility for firearm restoration pursuant to RCW 9.41.040(4) and the trial court’s ruling on his petition, the trial court’s order granting him relief from continued sex offender registration effectively constituted a “certificate of rehabilitation” under RCW 9.41.040(3), and that, accordingly, as a matter of law, the court authorized restoration of Hunter’s firearm rights in spite of its express denial of his request that it do so. We disagree.

RCW 9.41.030(3) provides:

² Hunter’s characterization of the State’s opposition to his petition as an attempt to obtain “post-conviction relief” is as misguided as the State’s belief that Hunter’s petition is barred by Hunter’s failure to appeal his juvenile disposition. Again, the ruling now at issue is the denial of Hunter’s petition, not the conviction and resulting juvenile disposition that caused Hunter’s right to possess firearms to be restricted.

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.

According to Hunter, the reference to a “certificate of rehabilitation” or “equivalent procedure” in this statute requires us to conclude that, when the trial court entered the order relieving Hunter of his duty to register as a sex offender, as a matter of law, it necessarily also made an implicit “finding of rehabilitation” such that, notwithstanding its denial of Hunter’s petition, it inadvertently restored Hunter’s firearm rights.

This is wrong for several reasons. First, contrary to Hunter’s contention, there is no recognized procedure by which Washington courts may issue a certificate of rehabilitation—we have held that the “certificate of rehabilitation” language in RCW 9.41.040(3) only applies to acknowledged procedures in other states whereby courts may find an offender to be rehabilitated. State v. Masangkay, 121 Wn. App. 904, 908-909, 91 P.3d 140 (2004). Washington has no such acknowledged procedure. Accordingly, “RCW 9.41.040(3), which contains the ‘certificate of rehabilitation’ language . . . cannot be reasonably interpreted as authorization for Washington courts to issue certificates of rehabilitation.” Masangkay, 121 Wn. App. at 906. “[T]he creation of a certificate of rehabilitation procedure is a matter for the legislature to perform—not the courts.” Masangkay, 121 Wn. App. at 913. Hunter does not contend that any such legislatively-created procedure exists. Moreover, although Hunter contends

that Masangkay was wrongly decided, he does not point to either new developments in the law or to any legal issue left unexamined in Masangkay in support of that contention.

Second, regardless of Masangkay's continuing viability, we have expressly rejected the argument that a trial court ruling, only tangentially (if at all) related to a finding of rehabilitation, constitutes the "equivalent procedure" necessary to satisfy the requirements of the statute. "The statute requires that such 'equivalent procedure' must be based on a 'finding' of either innocence or rehabilitation." Nakatani, 109 Wn. App. at 625-26 (citing State v. Radan, 143 Wn.2d 323, 330, 21 P.3d 255 (2001)). No such finding was made here.³ Rather, the trial court's finding was simply that requiring Hunter to register as a sex offender no longer served the purposes of the sex offender registration statute—not that Hunter was "rehabilitated" for purposes of firearm ownership.

Finally, even if there were both a colorable argument that relief from sex offender registration constituted a finding of rehabilitation *and* a colorable argument that such a judicial finding might serve to restore firearm rights pursuant to RCW 9.41.040(3),⁴ in this case the trial court *expressly declined* to find that restoration of Hunter's firearm rights was justified by the facts pertinent to Hunter's application. Furthermore, while restoration of firearm rights is a

³ Hunter contends that the trial court's action in relieving him of the requirement that he register as a sex offender is indistinguishable from the Montana procedure found to be an "equivalent procedure" of a certificate of rehabilitation in State v. Radan, 143 Wn.2d 323, 21 P.3d 255 (2001). This assertion is factually and legally inaccurate. First, Radan was not a sex offender, and the supervision from which he was relieved was not sex offender registration. Radan, 143 Wn.2d at 326. Second, *all* of Radan's civil rights—specifically including the right to own firearms—were restored under the Montana early discharge procedure. Radan, 143 Wn.2d at 326.

⁴ To repeat, there is neither.

ministerial judicial function when the requirements of RCW 9.41.040(4) are met, the use of the term “finding” in RCW 9.41.040(3) implies that, if a judicial certificate of rehabilitation procedure actually existed, it would be discretionary in nature. Here, the superior court considered restoring, and declined to restore, Hunter’s firearm rights based on its incorrect belief that it had the discretion to do so. It did this *simultaneously* with considering Hunter’s request for relief from sex offender registration. It strains credulity to suppose that, under these circumstances, the superior court’s ruling actually constituted a discretionary finding that Hunter was rehabilitated within the meaning of RCW 9.41.040(3).

VI

Hunter’s final contention is that, if RCW 9.41.040(4) renders him ineligible to possess firearms based on his juvenile conviction, that statute violates the Second Amendment of the United States Constitution and article I, section 24 of the Washington State Constitution.⁵ This argument is without merit.

Permanent restrictions on felons’ rights to possess firearms constitute acceptable regulation of the right to bear arms under both the federal and state constitutions. United States v. Emerson, 270 F.3d 203, 261 (5th Cir. 2001) (“it is clear that felons, infants and those of unsound mind may be prohibited from possessing firearms”) (applying individual rights theory of the Second Amendment); State v. Krzeszowski, 106 Wn. App. 638, 641, 24 P.3d 485 (2001). According to Hunter, the recent United States Supreme Court decision District of

⁵ The State’s contention that Hunter is barred from raising the constitutionality of RCW 9.41.040 on appeal is, like its contention that Hunter may not challenge the trial court’s denial of his petition, based on its erroneous belief that Hunter is collaterally attacking his original juvenile disposition. As such, it is equally baseless. “[A] claim of error may be raised for the first time on appeal if it is a ‘manifest error affecting a constitutional right.’” State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (citing RAP 2.5(a)(3)).

Columbia v. Heller, 554 U.S. ___, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), changed this. The opposite is true. “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” Heller, 128 S. Ct. at 2816-17.

According to Hunter, notwithstanding this clear statement in Heller, that case’s Second Amendment *analysis* mandates reexamination and abandonment of the long-standing recognition that the prohibition on the possession of firearms by felons (specifically, persons convicted of felonies as juveniles) does not violate the Second Amendment.⁶ We disagree.

Hunter’s argument assumes that Heller overruled the significant body of case law holding that the Second Amendment does not apply to the states. E.g., Miller v. Texas, 153 U.S. 535, 538, 14 S. Ct. 874, 38 L. Ed. 812 (1894); Presser v. Illinois, 116 U.S. 252, 265, 6 S. Ct. 580, 29 L. Ed. 615 (1886); Quilici v. Village of Morton Grove, 695 F.2d 261, 270-71 (7th Cir. 1982). But Heller addressed the firearms regulations of a federal territory, the District of Columbia. Indeed, the incorporation of the Second Amendment into the Fourteenth Amendment, and thus the Second Amendment’s applicability to the states was, in fact, a question expressly left unaddressed in Heller. Heller, 128 S. Ct. at 2813 n.23.

⁶ Heller does not, and cannot, purport to affect whether RCW 9.41.040(4) violates article I, section 24 of the Washington State Constitution. Because Hunter does not contend that the right to bear arms described in our state constitution operates differently with respect to his case than does the Second Amendment, we decline to consider that argument. See State v. Brown, 132 Wn.2d 529, 594-95, 940 P.2d 546 (1997) (“This Court will address a state constitutional claim only if the claimant sufficiently briefs the Gunwall factors.”) (citing State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)). In any event, we have specifically rejected the argument that those cases noting the textual differences between the state and federal constitutional provisions require different approaches to felon firearm prohibitions. State v. Krzeszowski, 106 Wn. App. 638, 641 n.1, 24 P.3d 485 (2001) (distinguishing State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984)).

Even were we to assume, though, that—notwithstanding its statement to the contrary—the Court in Heller impliedly overruled its own precedents concerning the incorporation of the Second Amendment, Hunter’s contentions concerning the applicability of the Heller majority’s rationale to his case are baseless. It is true that, pursuant to Heller, a restriction on the right to bear arms must meet a stricter standard of judicial review than “rational-basis scrutiny,” (although exactly what standard must be met remains unclear). Heller, 128 S. Ct. at 2818 n.27. However, the law here at issue withstands review even under the hypothetical Second Amendment “strict scrutiny” standard that Justice Breyer criticizes in his dissent in Heller—i.e., the law being “narrowly tailored to achieve a compelling governmental interest.” Heller, 128 S. Ct. at 2851-52 (Breyer, J., dissenting) (quoting Abrams v. Johnson, 521 U.S. 74, 82, 117 S. Ct. 1925, 138 L. Ed. 2d 285 (1997)). That is, RCW 9.41.040 is narrowly tailored to achieving its goals—among other things, addressing the “increasing and major threat to public safety” posed by “[a]rmed criminals,” Laws of 1995, ch. 129, § 1, because it imposes permanent firearm restrictions only on that class of criminals that the legislature has deemed to be the most dangerous: sex offenders, offenders who have committed class A felonies, and felons whose crimes subject them to over 20 years imprisonment. Thus, the statutory scheme addresses a legitimate governmental interest (protecting the public by precluding felons from possessing firearms) and is narrowly tailored (the lifetime ban applies only to the most dangerous of those felons, as defined by the legislature). This meets the “strict scrutiny” test.

Hunter finally contends that we should draw a special distinction with respect to the constitutionality of RCW 9.41.040 as it applies to persons disabled as a result of juvenile felony convictions. However, “[a] statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving its unconstitutionality beyond a reasonable doubt.” State v. Abrams, 163 Wn.2d 277, 282, 178 P.3d 1021 (2008) (quoting State v. Thorne, 129 Wn.2d 736, 769-70, 921 P.2d 514 (1996)). Here, none of the cases to which Hunter cites support his contention that those persons convicted as juveniles of felony offenses enjoy greater protections under the Second Amendment than do persons convicted as adults.⁷ In contrast, the State cites a multiplicity of state codes which prohibit firearm possession by persons convicted of felonies as juveniles. E.g., KY. REV. STAT. ANN. § 527.040(3); OHIO REV. CODE ANN. § 2923.13(2); CONN. GEN. STAT. ANN. § 53a-217(2). There is nothing whatsoever in

⁷ Hunter primarily relies upon Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), in support of this argument. But whether a state may *execute* a juvenile felon (the issue in Roper) and whether a state may restrict a juvenile felon’s right to bear arms are not identical questions; and require different analyses. One question (that of the constitutionality of the death penalty for juvenile felons) deals with the propriety of a *punishment* imposed on the juvenile offender. The other (the constitutionality of lifetime firearm restrictions imposed on juvenile felons) deals with the proper scope of a regulation with the express purpose of protecting the public.

Thus, the competing governmental interests at stake are not qualitatively similar and, as such, when balanced against the likewise divergent rights of the offenders at issue (the right to exist versus the right to be armed), lead to different scopes of constitutional protection. Here, Hunter’s right to bear arms does not override the legislature’s reasoned decision that certain armed felons pose an unacceptable danger to the public. The fact that Hunter was convicted as a juvenile does nothing to undermine this conclusion.

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Heller indicating that it rendered any or all of these laws constitutionally invalid.

Hunter has failed to demonstrate that RCW 9.41.040(4) is unconstitutional.

Affirmed.

Dwyer, A.C.J.

WE CONCUR:

Appelwick, J.

Elliott, J.

APPENDIX B

STATUTORY APPENDIX

RAP 13.4(b) provides:

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RCW 9A.10.040 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.41.040(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. 1 provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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.

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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

Supreme Court NO. _____

COA NO. 60552-6-I

CERTIFICATE OF SERVICE

I, Breana Caldwell, certify and declare that on the 17th day of November 2008, I deposited into the United States mail with proper first class postage attached a copy of the "Petitioner for Review" addressed to:

Dan Satterburg
King County Prosecutor
Dennis McCurdy, Deputy
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.

11/17/08 Seattle, WA
DATE AND PLACE


Breana Caldwell

ORIGINAL