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SUPREME COURT
STATE OF WASHINGTON
Apr 26, 2011, 10:46 am
BY RONALD R. CARPENTER
CLERK

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
and) No. 85665-6
)
MATHEW H. RICHARDSON,)
)
Respondents,) STATE'S ANSWER TO
) MOTION FOR DIRECT AND
) DISCRETIONARY REVIEW
vs.)
)
MIKE SIEGEL,)
)
Intervenor / Appellant,)
_____)

1. IDENTITY OF MOVING PARTY

Respondent, the State of Washington seeks the relief designated in part 2.

2. STATEMENT OF RELIEF SOUGHT

This Court should grant direct discretionary review of the trial court's order refusing to unseal records.

STATE'S RESPONSE TO
MOTION FOR DIRECT
AND DISCRETIONARY REVIEW

ORIGINAL

3. FACTS RELEVANT TO MOTION

Because the records pertaining to this case are currently unavailable, the State has relied on Mr. Seigel's statement of facts and the supporting documents attached to his motion for discretionary review in drafting this response. Those facts, to the extent known, may be summarized as follows.

Mr. Matthew Richardson was convicted in 1993 of the gross misdemeanor of communication with a minor for immoral purposes. Richardson was an adult when the case was prosecuted but was a juvenile when the criminal acts occurred. He received a deferred sentence. He subsequently petitioned the court to dismiss the case after some period of deferral. That petition was granted and the conviction was dismissed. Richardson went on to become a certified teacher and a city council member.

In 2002, Richardson petitioned the court to vacate the conviction and seal the court file. An order was signed by the Honorable Brian Gain that sealed the entire criminal file. Appendix A. The order does not appear to comply with the constitution or

with GR 15, as it contains no findings of fact or conclusions of law and no discussion of the relevant balancing of defendant's interests versus the interest in transparency in the courts. It is also unclear whether all the procedures of GR 15 were followed before the court's order was entered.

Mr. Richardson subsequently became a candidate for the state legislature. Mr. Mike Seigel is a radio talk-show host who covered the campaign. He sought to intervene in this concluded criminal case for the sole purpose of unsealing the file. The superior court allowed Mr. Seigel to intervene for that purpose. The Honorable Brian Gain subsequently denied Siegel's motion to unseal the court file. Appendix B.

Mr. Seigel filed a notice of appeal under RAP 2.2(a) but the deputy clerk of this Court elected to treat Mr. Seigel's notice of appeal as a motion for direct and discretionary review under RAPs 2.3(b) and 4.2. The deputy clerk noted that Seigel could still litigate whether review was appropriate under RAP 2.2(a).

information about an applicant's past. These interests are defeated if court files are sealed. Courts frequently seal the file, as was done here.

These cases are seldom successfully appealed because the RAP 2.3(b)(1) and (2) standards – probable or obvious error – are difficult to meet given that the decision to seal is reviewed for an abuse of discretion.

Also, appellate courts seldom find that a sealing order renders "further proceedings useless," RAP 2.3(b)(1), because no further proceedings are contemplated in a concluded case. And, the appellate courts seem unpersuaded that the rights of the parties are substantially harmed by the order, especially as to the State's asserted interest – the general interest in openness – which the appellate courts seem to consider a more theoretical or inchoate interest that must yield to a defendant's more concrete interest, at least in regard to the RAP 2.3(b)(2) analysis. Appellate courts likewise do not usually treat the orders as appealable as a matter of right. RAP 2.2.

Granting direct discretionary review in this case would give this Court the opportunity to provide guidance to the trial courts on how to handle motions to seal a concluded criminal case.

Reviewing this case would also give this Court an opportunity to explore the standard for granting discretionary review of orders sealing documents. For these reasons, the State respectfully recommends that this Court grant Seigel's motion for discretionary review.

As for the three questions raised above, the State makes the following observations.

First, the original sealing order in this case did not cite or apply the Ishikawa¹. This plainly violates GR 15 and numerous appellate court decisions. Dreiling v. Jain, 151 Wn.2d 900, 93 P.3d 861 (2004); Rufer v. Abbot Labs, 154 Wn.2d 530, 114 P.3 1182 (2005); State v. Mendez, 157 Wn. App. 565, 238 P.3d 517 (2010); State v. Coleman, 151 Wn. App. 614, 214 P.3d 158 (2009); State v. Waldon, 148 Wn. App. 952, 202 P.3d 325 (2009). Moreover, the

¹ Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982).

original order says that "reasonable attempts hav[e] been made to notify the victims of the offense of this hearing." Since only "attempts" at contact are noted, it is reasonable to conclude that the victims were not *actually* notified. The victims' views on the matter were recently made known, however, in declarations they filed in 2010 in a related civil case that was adjudicated in King County Superior Court.² In short, the victims support opening the files and oppose sealing. Siegel has shown obvious error shown in the Court's original sealing order.

Second, the State would urge this Court to hold that "proof of compelling circumstances" to unseal under GR 15(e)(2) is shown where the original order never complied with constitutional and rule-based mandates. Such an order should be presumed void. For purposes of RAP 2.3(b), Siegel has shown probable error as to the trial court's refusal to revisit the flawed sealing order.

² Because the entire superior court file in this criminal matter is sealed it is impossible to determine whether these declarations were submitted to Judge Gain in conjunction with Siegel's motion to unseal records. The declarations are available in the King County Superior Court's electronic court records (ECR) file under cause number 92-2-28941-5 SEA, sub numbers 23 & 24, filed 10/26/10. The declarations are attached to this response as Appendix C.

Third, the State respectfully asks this Court to clarify when and how a party may obtain appellate review of an order sealing a case file. Such orders do not fall neatly into any category of subsections (a) or (b) of RAP 2.2. Thus, review is available only by discretionary review. RAP 2.3(b).

But, does the current discretionary review standard adequately protect the public's rights under article I, section 10? When a trial court *denies* a motion to seal, the court's order protects rather than threatens constitutional interests in openness, so the usual standard for granting discretionary review under RAP 2.3(b) appears sufficient. However, when a court *grants* a motion to seal, access to the court file is effectively terminated, and citizens or the press cannot know what occurred, or how it occurred. Thus, the act of sealing infringes on the public's right to open justice. The RAP 2.3(b) standard should perhaps be modified with those important constitutional considerations in mind. This Court should consider whether these interests require a more liberal standard for granting discretionary review of an order to seal.

Finally, whether and when to seal a superior court file in a closed criminal case involves fundamental and urgent issues of broad public import which requires prompt and ultimate determination by this Court. RAP 4.2(a)(4). An underlying critical issue in these types of cases is whether statutes for vacating criminal convictions are at odds with the State Constitution and the court rules. The statutes suggest that defendants may withhold information about prior convictions from employers. Yet, the State Constitution and GR 15 guarantee citizens the right to know how justice was administered, and presume that information in court files will remain open. Thus, no matter what the statutes say, the Constitution may limit a defendant's ability to completely erase any trace of his past conduct. This case presents a good vehicle to explore the tension that exists between these competing statutory, constitutional, and rule-based interests.

5. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to grant direct discretionary review of Mr. Seigel's challenge to the trial court's order refusing to unseal this criminal case file.

Submitted this 26th day of April, 2011.

DANIEL T. SATTERBERG
Prosecuting Attorney


JAMES M. WHISMAN, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

W554 King County Courthouse
Seattle, WA 98104
Telephone: 206-296-9660

- 10 -

STATE'S RESPONSE TO
MOTION FOR DIRECT
AND DISCRETIONARY REVIEW

APPENDIX A

FILED
JAN 22 AM 3:59
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED
CJ

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

MATTHEW H. RICHARDSON,

Defendant.

No. 93-1-02331-2 SEA

ORDER VACATING RECORD OF
CONVICTION AND ORDER TO
SEAL COURT FILE

(KCPD No. 92347486)

THIS MATTER having come on regularly for hearing before the undersigned upon
motion of the Defendant, Matthew H. Richardson, for an order vacating the record of
conviction herein and sealing the court file herein, the Court finding that all of the statements
contained in the Certification filed with the Motion herein are true and correct, that compelling
circumstances exist to support the sealing of the court file, that proper notice under GR
has been given, and that the Defendant qualifies for the requested relief, and the Court
otherwise being fully advised in the premises, now, therefore, it is hereby

ORDERED that the conviction record under this cause number is hereby vacated
(and now constitutes nonconviction data) and shall not be included in criminal history for
purposes of determining a sentence in any subsequent conviction; that the Defendant shall

ORDER VACATING RECORD OF CONVICTION
AND SEALING COURT FILE - Page 1

ORIGINAL

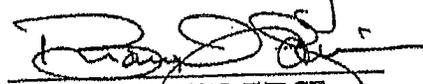
JUDITH S. DUBESTER
Attorney at Law
710 33rd Avenue
Seattle, Washington 98122
(206) 324-9457

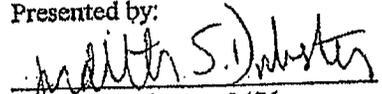
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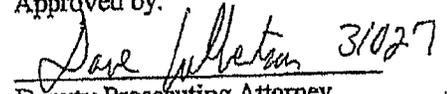
be released from all penalties and disabilities resulting from this matter, including the right to own and possess firearms, and that for all purposes, including responding to questions related to employment, the Defendant may truthfully state that he has never been convicted of an offense in the above-entitled matter, and it is further

~~ORDERED that the court file herein shall be sealed.~~

DONE IN OPEN COURT this 22nd day of January, 2002.


BRIAN GAIN, JUDGE

Presented by:

Judith S. Dubester 2476
Attorney for Defendant

Approved by:
 3/02/07
Deputy Prosecuting Attorney

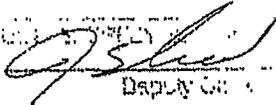
ORDER VACATING RECORD OF CONVICTION
AND SEALING COURT FILE - Page 2

JUDITH S. DUBESTER
Attorney at Law
710 33rd Avenue
Seattle, Washington 98122
(206) 324-9457

STATE OF WASHINGTON } ss.
County of King

I, PAUL L. SPERFEY, Clerk of the Superior Court
of the State of Washington, for the County of King, do hereby certify
that I have compared the foregoing copy with the original instrument as
the same appears on file in my office and the same is a true and correct
copy of the original instrument as the same appears on file in my office.
IN TESTIMONY WHEREOF, I have hereunto set my hand and the Seal of the
Court at the City of Seattle, Washington, this _____
day of _____

JAN 22 2002

by  Deputy Clerk

J. SHAULIS

APPENDIX B

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JAN 28 2011

Sumner Law Center

Hon. BRIAN GAIN
Hearing Date: 1/21/2011
W/o Oral Argument

ORIGINAL COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

<p>STATE OF WASHINGTON, Plaintiff</p>	<p>No. 93-1-02331-2</p>
<p>v.</p>	<p>ORDER ON INTERVENOR'S MOTION TO UNSEAL RECORD AND VACATE PRIOR SEALING ORDERS AND CONFIRMING PERMANENT ORDER SEALING RECORD</p>
<p>MATTHEW H. RICHARDSON, Defendant,</p>	<p>(Proposed)</p>
<p>MIKE SIEGEL, Intervenor</p>	<p>[Clerk's Action Required]</p>

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THIS MATTER having come on regularly before the court upon the motion of the Intervenor, Mike Siegel, for an Order unsealing the record herein and vacating all prior sealing Orders, and the court having considered the Intervenor's Motion, Declaration and Memorandum in support thereof, having considered the Defendant, Matthew H. Richardson's Declarations filed herein and in the companion civil case (see notes below), as well as the Defendant's Memorandum of Authorities in Opposition in the present criminal case and the below referenced civil case, Matthew Richardson v Kent School District, Cause No. 92-2-28941-5, the Response of the Kent School District to Intervenor's Motion to Unseal court file from the civil case, and the records and files herein, as reviewed by this court, the records and files in the

**ORDER ON INTERVENOR'S MOTION TO UNSEAL
RECORD AND VACATE PRIOR SEALING ORDERS &
CONFIRMING PERMANENT ORDER SEALING RECORD**

SNYDER LAW FIRM, LLC
920 ALDER AVENUE, SUITE 201
SUMNER WA 98390-1406
(253) 863-ATTY - FAX: (253) 868-1489

APPENDIX C

Case # 92-2-28941-5
Sub # 23

FILED

10 OCT 26 AM 11:56

KING COUNTY
SUPERIOR COURT CLERK

DATE OF HEARING: _____ E-FILED
TIME OF HEARING: _____
CALENDAR/DEPT: Unassigned/State CASE NUMBER: 92-2-28941-5 SEA

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**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

MATTHEW H. RICHARDSON,)
)
 Plaintiff,)
)
 v.)
)
 KENT SCHOOL DISTRICT,)
)
 Defendant.)

Case No. 92-2-28941-5 SEA
DECLARATION OF SARI THOMPSON IN
SUPPORT OF MOTION TO UNSEAL

I, Sari Thompson, hereby declare as follows:

1. That I am over the age of 21 and competent to testify to the facts alleged herein.
2. That I was a victim of Matt Richardson's abuse.
3. That I have been informed that a third-party intervenor is requesting the file in the above-referenced matter be unsealed.
4. That I have no objections to the file being unsealed. Furthermore I am in full agreement with the motion to unseal the file in its entirety.

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

DECLARATION OF SARI THOMPSON IN
SUPPORT OF MOTION TO UNSEAL -1-

STEPHEN W. PIDGEON
Attorney at Law, PS
3002 Colby Avenue, Suite 306
Everett, WA 98201
Ph. (425) 605-4774
Fax (425) 818-5271

1 EXECUTED on this ^{October 31} 25 day of September 2010 at

2 Westport, CT
(City, State)

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DECLARATION OF SARI THOMPSON IN
SUPPORT OF MOTION TO UNSEAL -2-

STEPHEN W. PIDGEON
Attorney at Law, PS
3002 Colby Avenue, Suite 306
Everett, WA 98201
Ph. (425) 605-4774
Fax (425) 818-5271

Case # 92-2-28941-5
Sub # 24

FILED

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DATE OF HEARING: _____ KING COUNTY
TIME OF HEARING: _____ SUPERIOR COURT CLERK
CALENDAR/DEPT: Unassigned/Chief Civil FILED

CASE NUMBER: 92-2-28941-5 SEA

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MATTHEW H. RICHARDSON,

Plaintiff,

v.

KENT SCHOOL DISTRICT,

Defendant.

)
) Case No. 92-2-28941-5 SEA
)

) DECLARATION OF SHELLY THOMPSON
) IN SUPPORT OF MOTION TO UNSEAL
)

I, Shelly Thompson, hereby declare as follows:

1. That I am over the age of 21 and competent to testify to the facts alleged herein.

2. That I was a victim of Matt Richardson's abuse.

3. That I have been informed that a third-party intervenor is requesting the file in the above-referenced matter be unsealed.

4. That I have no objections to the file being unsealed. Furthermore I am in full agreement with the motion to unseal the file in its entirety.

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

DECLARATION OF SHELLY THOMPSON IN
SUPPORT OF MOTION TO UNSEAL -1-

STEPHEN W. FIDGON
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3002 Colby Avenue, Suite 308
Everett, WA 98201
PH. (425) 665-4774
Fax (425) 618-5271

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for petitioner **Mike Siegel**, Michele Earl-Hubbard @ Michele@alliedlawgroup.com, Christopher Roslaniec @ chris@alliedlawgroup.com and jean@alliedlawgroup.com and to the attorneys for petitioner **Matthew Richardson**, Klaus Snyder @ Klaus.Snyder@sumnerlawcenter.com, Kelly Faust Sovar @ Kelly.Faust@sumnerlawcenter.com and Denise.Manning@sumnerlawcenter.com , containing a copy of the State's Answer to Motion for Direct and Discretionary Review, in **STATE V. MATHEW H. RICHARD AND MIKE SIEGEL**, Cause No. **85665-6**, in the Supreme Court, for the State of Washington.

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



Name
Done in Seattle, Washington

4/20/11
Date

OFFICE RECEPTIONIST, CLERK

To: Whisman, Jim
Cc: 'Michele@alliedlawgroup.com'; 'chris@alliedlawgroup.com'; 'jean@alliedlawgroup.com'; 'Klaus.Snyder@sumnerlawcenter.com'; 'Kelly.Faust@sumnerlawcenter.com'; 'Denise.Manning@sumnerlawcenter.com'
Subject: RE: State v. Richardson, No. 85665-6

Rec'd 4/26/2011

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Whisman, Jim [<mailto:Jim.Whisman@kingcounty.gov>]
Sent: Tuesday, April 26, 2011 10:46 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'Michele@alliedlawgroup.com'; 'chris@alliedlawgroup.com'; 'jean@alliedlawgroup.com'; 'Klaus.Snyder@sumnerlawcenter.com'; 'Kelly.Faust@sumnerlawcenter.com'; 'Denise.Manning@sumnerlawcenter.com'
Subject: State v. Richardson, No. 85665-6

Dear Supreme Court Clerk,

Attached is the State's Answer to Motion for Direct and Discretionary Review filed by Intervenor/Appellant Mike Siegel. All counsel have been electronically served with this Answer.

Please contact me if there are difficulties with this electronic filing.

James M. Whisman
Senior Deputy Prosecuting Attorney
Appellate Unit
King County Prosecuting Attorney's Office
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
206-296-9660