

69154-6

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No. 69154-6-I

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

STATE OF WASHINGTON,

Appellant,

v.

S.J.C.,

Respondent.

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

BRIEF OF RESPONDENT

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A. SUMMARY OF ARGUMENT

In *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982), the Court held that where Article I, section 10 applies, a court may not restrict public access without first considering specified criteria. In *Ishikawa*, the Court recognized and endorsed its earlier holding in *In re Lewis*, 51 Wn.2d 193, 316 P.2d 907 (1957), that Article I, section 10 does not apply to juvenile proceedings. Nonetheless, the State now contends the juvenile court erred when it concluded that Article I, section 10 and the *Ishikawa* analysis did not apply to the sealing of a juvenile court file pertaining to S.J.C.'s past misdemeanor adjudications.

The State's argument is controlled by Supreme Court precedent. Moreover, the State has not demonstrated that by experience and logic Article I, section 10 applies to the sealing of juvenile records of past adjudications. This Court should affirm the juveniles court's ruling.

B. STATEMENT OF THE CASE

In 2008 S.J.C. pleaded guilty to two gross misdemeanors committed the prior year when he was 13 years old. CP 26.

S.J.C. complied with numerous strict probationary conditions including the successful completion of treatment. CP 32, 38. S.J.C. did

not have any subsequent criminal offenses. CP 38. After he turned 18, S.J.C. made a motion under RCW 13.50.050 to vacate his adjudications and seal the records. CP 38. In his motion S.J.C. noted his prior adjudications frustrated his ability to obtain future employment. *Id.*

The State opposed the motion. CP 39-45. The State never challenged S.J.C.'s eligibility under RCW 13.50.050 for vacation of his convictions and sealing his records. Instead, the State argued that S.J.C. could not satisfy the criteria of *Ishikawa*. CP 42. The State argued further that even if those criteria were met the court should deny the motion.

The juvenile court concluded S.J.C. met the criteria of RCW 13.50.050. CP 65. The juvenile court concluded that *Ishikawa* did not apply. CP 65-66. The court granted S.J.C.'S motion.

The State has appealed.

C. ARGUMENT

Article I, section 10 is not implicated by the sealing of juvenile offenders after the juvenile has completed all conditions of the adjudication.

1. *Because the Supreme Court has twice determined that Article I, section 10 does not apply to juvenile proceedings, the trial court did not err in failing to apply the Ishikawa factors.*

The State's brief begins from the erroneous assumption that the question at issue here is an open one. The State contends Article I, section 10 is implicated here and thus the juvenile court was required to comply with the analysis of *Ishikawa*. Brief of Appellant at 3. But this is not an issue of first impression.

In *Lewis*, the Supreme Court held that Article I, section 10 does not apply to juvenile proceedings. 51 Wn.2d at 198. The Court said:

The purpose of excluding the public from proceedings such as these is, of course, to protect the child from notoriety and its ill effects. This court, along with by far the majority of other courts in the United States, early recognized that the purpose of statutes such as ours is not to punish the child, but to inquire into his welfare where reasonable cause exists, and to provide an environment which will enable him to grow into a useful and happy citizen, where his parents have failed in that regard.

Id. The Court explained:

The policy underlying this law is protection, not punishment. Its purpose is not to restrain criminals, to the end that society may be protected and the criminal perchance reformed; it is to prevent the making of

criminals.

Id. (quoting *In Re Lundy*, 82 Wash. 148, 151, 143 P. 885 (1914)).

The State's argument below, and on appeal, presupposes that Article I, section 10 and *Ishikawa* apply. RP 9; Brief of Appellant at 3. The Supreme Court has long held "once this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court." *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) (citing *Godefroy v. Reilly*, 146 Wash. 257, 262 P. 639 (1928)); *see also*, *In re the Personal Restraint of Heidari*, 174 Wn.2d 288, 293, 274 P.3d 366 (2012) (even if Court of Appeals believes analysis in Supreme Court's opinion is incorrect "it is not relieved from the requirement to adhere to it.") Thus it does not matter why the State believes *Lewis* to be wrong, this Court lacks authority to overrule it. *Gore*, 101 Wn.2d at 487.

Additionally, *Ishikawa* itself pointed to *Lewis* as an example of proceedings to which Article I section 10 **did not** apply. The Court observed "it is equally clear that the public's right of access is not absolute, and may be limited to protect other interests." *Ishikawa*, 97 Wn.2d at 36 (citing *inter alia*, *Lewis*, 51 Wn.2d at 198-200).

Article I, section 10 does not apply to juvenile proceedings. *Lewis*, 51 Wn.2d at 198. *Ishikawa* itself recognized its rule did not apply to

juvenile proceedings. Thus, the trial court did not err or otherwise abuse its discretion in vacating S.J.C.'s adjudications without first considering the *Ishikawa* factors.

2. *The State has not demonstrated that by experience and logic Article I, section 10 applies to the vacation of past juvenile adjudications where specific conditions are first satisfied.*

a. The State has the burden of establishing Article I, section 10 applies to the process in question.

The appellant bears the burden of establishing violation of Article I, section 10. *State v. Sublett*, 176 Wn.2d 58, 75, 292 P.3d 715 (2012); *State v. Rainey*, __ Wn. App. __, 319 P.3d 86, 90 (2014). “The threshold determination when addressing an alleged violation of the public trial right is whether the proceeding at issue even implicates the right.” *State v. Dunn*, __ Wn. App. __ (43855 -1 – II, April 8, 2014). That determination is made by asking whether by “experience and logic” the substance of the hearing should be open to the public.

Sublett, 176 Wn.2d at 73. The Court explained:

The first part of the test, the experience prong, asks whether the place and process have historically been open to the press and general public. The logic prong asks whether public access plays a significant positive role in the functioning of the particular process in question. If the answer to both is yes, the public trial right attaches and the *Bone-Club* factors must be

considered before the proceeding may be closed to the public.

Id. at 73 (internal quotations and citations omitted.)

The State, as appellant, not S.J.C., bears the burden of establishing Article I, section 10 has been violated. *Sublett*, 176 Wn.2d at 75; *Rainey*, 319 P.3d at 90. The State, not S.J.C., must establish that records of past juvenile delinquency cases have historically remained open to public access. The State must establish that maintaining such records open to public view plays a significant positive role in the process in question. It can do neither.

Importantly, the “process in question” is not juvenile proceedings generally. The question is not whether juvenile proceedings should be open to the public, they are. The question is not whether all juvenile files are to remain confidential, they are not. Instead, the only question here is whether vacating misdemeanor adjudications long after conviction and completion of all conditions of the disposition frustrates the “functioning of the particular process.” The State has not acknowledged its burden much less satisfied it.

The State asserts “the general course of history does not establish a clear rule that juvenile courts or records must be closed.” Brief of Appellant at 11. Again, the closing of juvenile proceedings is

not at issue in this case in any way. The proceedings in this case were open to the public. In any event, because the State as appellant bears the burden of showing Article I, section 10 is implicated by the procedure in question, the absence of a clear history defeats that State's efforts to meet its burden. Finally, the historical record is far clearer than the State allows.

b. Public access to juvenile offense records has historically been and continues to be limited.

The “experience prong . . . asks whether the place and process have historically been open to the press and general public.” *Sublett*, 176 Wn.2d at 73. With respect to juvenile records the answer is inarguably “no.”

Throughout most of the 20th Century juvenile files were not accessible to the general public. Under RCW 13.0.050 a large percentage of juvenile records are not publicly accessible today. For example all documents other than the official court file are confidential. RCW 13.50.050(3). But this is not a recent state of affairs. Beginning no later than 1913, significant limitations to public access to juvenile court proceedings and records have existed. Laws 1913, ch. 160, §10; Laws 1961, ch. 302, §5. For more than a century then, substantial limitations have existed on public access to juvenile records. As such

experience dictates that those records do not implicate Article I, section 10. *Sublett*, 176 Wn.2d at 73.

Lewis recognized that long standing practice. But the State dismisses *Lewis* as “a product of its time.” Brief of Appellant at 13. The State faults *Lewis* for “assuming the rehabilitative character of the juvenile proceeding made normal constitutional protections inapplicable.” Brief of Appellant at 13. The root of the State’s claim seems to be that because intervening decisions have extended other constitutional rights to juvenile proceedings the justification of *Lewis* has evaporated. Brief of Appellant at 13 (citing *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967)).

First, while *Gault* recognized basic standards of due process applied to juvenile proceedings, the Court specifically noted

there is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles.

Gault, 387 U.S. at 25. Thus, *Gault* does not mandate open records of past adjudications.

Moreover, as it did in *Lewis*, the Supreme Court continues to recognize the fundamental differences between adult criminal proceedings and juvenile offender proceedings.

The purposes and policies of the JJA are more complex than those of the adult criminal justice system, as expressed by the Sentencing Reform Act of 1981. The policies of the JJA are twofold: to establish a system of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders; and to hold juveniles accountable for their offenses. Nowhere in the adult criminal system is there a policy of responding to the needs of offenders or of rehabilitating them. Rather, punishment is the paramount purpose of the adult sentencing system

State v. Schaaf, 109 Wn.2d 1, 10, 743 P.2d 240, (1987) (Footnotes omitted). The Court has “consistently concluded that because of well-defined differences between Washington’s juvenile justice and adult criminal systems” juveniles do not enjoy the same constitutional protections as adults, most notably the right to a jury trial. *State v. Chavez*, 163 Wn.2d 262, 267-68, 180 P.3d 1250 (2008) (citing *State v. Weber*, 159 Wn.2d 252, 264–65, 149 P.3d 646 (2006); *Monroe v. Soliz*, 132 Wn.2d 414, 939 P.2d 205 (1997); *Schaaf*, 109 Wn.2d 1; *State v. Lawley*, 91 Wn.2d 654, 591 P.2d 772 (1979); *Estes v. Hopp*, 73 Wn.2d 263, 438 P.2d 205 (1968)).

The United States Supreme Court has described the “animating principle [of the right to a jury trial in criminal cases as] the preservation of the jury’s historic role as a bulwark between the State and the accused at the trial for an alleged offense.” *Oregon v. Ice*, 555

U.S. 160, 168, 129 S. Ct. 711, 172 L.Ed.2d 517 (2009). Yet this bulwark is not provided juvenile offenders due principally to the rehabilitative nature of juvenile proceedings. *Chavez*, 163 Wn.2d at 267-68.

Plainly *Lewis* did not “proceed[]from the fundamentally flawed premise that juvenile law operates outside of normal constitutional strictures.” *See* Brief of Appellant at 13. Washington has never afforded juveniles all “normal” constitutional protections. The denial of those protections stems entirely from the rehabilitative nature of juvenile proceedings which *Lewis* recognized. The rehabilitative nature of the juvenile process was not a “flawed premise” when *Lewis* was decided and remains a valid basis upon which to differentiate among the constitutional provisions which apply to those proceedings.

Further, a rehabilitative response to juvenile offenses is not merely a policy choice. Instead there is constitutional force to such a response. The Supreme Court has held that even when tried and convicted as adults, and regardless of the existence of mandatory penalties for adults, juveniles convicted of the most serious crimes must be afforded a meaningful opportunity to earn their release in their lifetime through rehabilitation. *Graham v. Florida*, 560 U.S. 48, 75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). These recent cases are based in part on scientific findings that only a small percentage of adolescents who engage in illegal activity

“develop entrenched patterns of problem behavior,” and that the juvenile brain is fundamentally and anatomically different from the adult brain, particularly regarding “behavior control.” *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455, 2464-65, 183 L.Ed.2d 407 (2012) (citations and internal quotation marks omitted). This means that the “moral culpability” of a juvenile is less than that of an adult, and also that there is much more likelihood that his “deficiencies will be reformed” as his “neurological development occurs.” *Id.*

[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.

Graham, 130 S. Ct. at 2026 (citing *Roper v. Simmons*, 543 U.S. 551, 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)). Judges cannot, “with sufficient accuracy, distinguish the few incorrigible juvenile offenders from the many that have the capacity for change.” *Graham*, 130 S. Ct. at 2032. The rehabilitative aim of Washington juvenile system is long-settled. While that process may have evolved from assumptions of the nature of youth and youthful offending, it is clear today that those assumptions have the support of science.

The Washington juvenile system has historically embraced rehabilitation. The system has long and properly understood that perpetual notoriety for juvenile offenses was inconsistent with those aims. *Lundy*, 82 Wash. at 151; *Lewis*, 51 Wn.2d at 198. The State has not and cannot show that by experience Article I, section 10 applies to juvenile records.

c. Logic does not dictate that limiting the vacation of past juvenile adjudications plays a significant positive role in the rehabilitative process.

Accepting, as one must, the rehabilitative aims of the juvenile justice system, the State must establish that perpetual openness of records of past adjudications, or substantial limitations on sealing, furthers those rehabilitative aims. *Sublett*, 176 Wn.2d at 72-73. Indeed, the rehabilitative aims of that process suggest the logic of permitting the vacation and sealing of juvenile files after the conditions of the adjudication are met.

More than 100 years ago *Lundy* described the rehabilitative goal as “prevent[ing] the making of criminals.” 82 Wash. at 151. “In short, its motive is to give to the weak and immature a fair fighting chance for the development of the elements of honesty, sobriety, and virtue

essential to good citizenship.” *Id.* Those historical rehabilitative aims remain at the core of juvenile proceedings.

Just recently, the Legislature found:

(1) The primary goal of the Washington state juvenile justice system is the rehabilitation and reintegration of former juvenile offenders. The public has a compelling interest in the rehabilitation of former juvenile offenders and their successful reintegration into society as active, law-abiding, and contributing members of their communities. When juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records.

(2) The legislature declares it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records. The legislature intends that juvenile court proceedings be openly administered but, except in limited circumstances, the records of these proceedings be closed when the juvenile has reached the age of eighteen and completed the terms of disposition.

Laws 2014, ch. 175, § 1. Thus, the Legislature has found the rehabilitative goals of the juvenile system are impeded by requiring records of all past adjudications to remain open.

The Legislature’s finding is consistent with the historical practice. Moreover, that finding has broad scholarly support.

Recent research confirms that there are in fact important differences between children, adolescents, and adults, just as early juvenile court advocates believed. The

studies specifically validate two of the key foundations of the early court: Children do tend to be more malleable and amenable to treatment than adults, and cognitive and psychosocial differences between children and adults do affect the choices and decisions they each make.

(Footnotes omitted.) Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U.L. Rev. 520, 539 (2004).

Although deterrence and public safety are essential to an ordered society, the fact remains that one dismissed delinquency charge in a juvenile's record (or even one delinquency adjudication) does not achieve any societal or law enforcement purpose, other than to stigmatize the child and throw away a chance at genuine rehabilitation.

Luz A. Carrion, *Rethinking Expungement of Juvenile Records in Massachusetts: The Case of Commonwealth v. Gavin G.*, 38 New Eng. L. Rev. 331, 364 (2004); *see also*, Leila Siddiky, Note, *Keep the Court Room Doors Closed So That the Doors of Opportunity can Remain Open: An Argument for Maintaining Privacy in the Juvenile Justice System*, 55 How.L.J. 205, 237 (2011) (Identifying the loss of educational and employment opportunities as consequences of open juvenile records and the corresponding frustration to reintegration).

If this rehabilitative remedy is removed juvenile courts move one step closer to becoming simply a second-rate criminal court. A system where juveniles are denied the full panoply of rights enjoyed by

adult defendants. Yet a system which seeks to impose on juveniles the same consequences of conviction, including the lifelong stigmatization and corollary inability to reintegrate into society.

Rather than address how open juvenile records play a positive role in the functioning of that rehabilitative process, the “process in question” for purposes of *Sublett*, the State offers that limiting sealing of past records aids in the ability to identify abuses by state actors. Brief of Appellant at 15-16. But it hardly seems logical, much less fair, to stigmatize youthful offenders as a hedge against official abuse. The State also asserts that open juvenile files of past adjudications are necessary to permit the media “to develop a story with real characters that will resonate with the public.” Brief of Appellant at 16. But the media’s ability to grab viewers or sell newspapers is not “the process in question.” The media’s ability to more easily write compelling stories does not play a positive role in the functioning of the juvenile process.

Moreover, the State’s argument brushes aside the fact juvenile offense proceedings themselves are open to the public. Brief of Appellant at 17. Again, the State claims that official abuse may not come to light many years later. *Id.* First, records remain open for many years following adjudications. The State’s argument ignores that the

vacation or sealing is only permissible if certain narrowing criteria are satisfied. Thus, the majority of juvenile adjudications will never be vacated under the current statute. Moreover, the child who was once victimized by such abuse should not be expected to suffer the lifetime of stigmatization on the hope that the official abuse will come to light.

Article I, section 10 requires “Justice in all cases shall be administered openly, and without unnecessary delay.” That occurred here. All proceedings in S.J.C.’s case were open to the public. The court file remained open to the public for nearly five years, throughout those proceedings, while S.J.C. completed the conditions of his sentence, up to the point the court granted his motion. And of course the motion itself was heard in open court.

D. CONCLUSION

This Court should affirm the juvenile court’s conclusion that Article I, section is not implicated by a motion to seal records of past juvenile adjudications..

Respectfully submitted this 28th day of April, 2014.



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STATE OF WASHINGTON,)	
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Appellant,)	
)	NO. 69154-6-I
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S.J.C.,)	
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Respondent.)	

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