No._____

96072-1

SUPREME COURT OF THE STATE OF WASHINGTON

JERRY BARR,

Respondent,

v.

SNOHOMISH COUNTY SHERIFF,

Petitioner

SNOHOMISH COUNTY SHERIFF'S PETITION FOR REVIEW

State of Washington Court of Appeals Division II No. 50623-8

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I. INTRODUCTION

The Court of Appeals decision holds that RCW 13.50.260 allows an individual with a Class A juvenile felony conviction to seal his/her criminal history and treat the conviction as "if it never occurred." *Barr*, 419 P.3d 867, 874 (2018). As reasoned by the Court of Appeals, if the conviction never occurred, any restriction resulting from the conviction, including loss of firearm rights separately regulated under chapter 9.41 RCW, is removed. This decision is in direct conflict with the express language of RCW 9.41.040.

The Washington Legislature has determined that public safety is best served by prohibiting Class A felons from possessing firearms. *See* RCW 9.41.040. The Court of Appeals decision in this case renders that legislative determination meaningless. The Court of Appeals is required to interpret statutes to effectuate the Legislature's intent. Instead, the Court of Appeals prioritized one phrase in RCW 13.50.260 and completely disregarded RCW 9.41.040 when it held that a Class A felon convicted as a juvenile may seal the underlying conviction and automatically restore his/her

firearm right, even though the plain language of RCW 9.41.040 prohibits such a result.

This case is not just about one concealed pistol license. The Court of Appeals erroneous interpretation of RCW 13.50.260 and RCW 9.41.040 affects all other cases involving juveniles convicted of Class A felonies, and potentially cases involving juvenile sex offenders. The scope and impact of the court's decision make this case a matter of substantial public interest, warranting review under RAP 13.4(b)(4).

II. IDENTITY OF PETITIONER

The Snohomish County Sheriff ("Sheriff") Defendant and Respondent, is the Petitioner.

III. COURT OF APPEALS DECISION

The Thurston County Superior Court denied the Petition for Writ of Mandamus filed by Plaintiff, Appellant, and Respondent Jerry Barr. Mr. Barr appealed the decision to the Court of Appeals, Division II. On June 12, 2018, a three judge panel reversed the trial court's order in a published decision, *Barr v. Snohomish County Sheriff's* Office, 419 P.3d 867, 50623-8, 2018 WL 2945553 (June 12, 2018). A copy of the Appellate Court's decision is attached as Appendix 1 at pages 1 through 14.

IV. ISSUES PRESENTED FOR REVIEW

This case involves the process for restoring a juvenile Class A felon's firearm right. The Sheriff respectfully requests that that this Court review the following issues:

1. May an individual convicted of a Class A felony as a juvenile use RCW 13.50.260 as an alternative mechanism to judicially restore his/her firearm rights, thereby avoiding the restoration prohibition stated in RCW 9.41.040?

2. Does RCW 9.41.070 require a law enforcement agency to issue a Concealed Pistol License to an individual with a Class A felony that has been sealed pursuant to RCW 13.50.260?

V. STATEMENT OF THE CASE

A. Relevant Facts.

Jerry Barr ("Barr") was convicted in King County Juvenile Court of a Class A felony on March 23, 1992.[1] CP 25. On October 22, 1992, Barr was again convicted in King County Juvenile Court of a Class A felony[2]. CP 28. It is not disputed that as a consequence

[1] The nature of Barr's Class A felonies are not in dispute, and are sealed, thus the Sheriff will not name the specific Class A felonies. To the extent the Court believes this information is necessary for review, the offenses are listed in the trial court record.

[2] Barr was also convicted in 1992 in Snohomish County Juvenile Court of a Class C felony. This case is also sealed. Based on its status as a class C felony, it is

of being convicted of the Class A felonies, Barr lost his firearm rights and it became unlawful for Barr to possess a firearm. *See* RCW 9.41.040(1)(a), RCW 9.41.010(4), RCW 9.41.010(24).

Barr also lost his right to possess a firearm because of several adult criminal convictions, including Burglary in the Second Degree and two cases of Assault in the Fourth Degree, Domestic Violence. *See* CP 20-21. Barr successfully restored his firearm rights for these adult convictions pursuant to RCW 9.41.040. These offenses are not at issue in this case.

In October 2016, Barr moved to seal the Class A felony convictions pursuant to RCW 13.50.260, which provides for the sealing of juvenile court records in certain circumstances. CP 25-27; 28. The King County Juvenile Court granted the motions to seal. CP 55-56.

On November 15, 2016, Barr filed an application for a Concealed Pistol License ("CPL") with the Snohomish County Sheriff's Office ("Sheriff's Office"). CP 57. The Sheriff's Office conducted a records check through the Department of Licensing and the national instant criminal background check system. *Id.; See* RCW 9.41.070(2). The purpose of the records check was to

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eligible for judicial restoration pursuant to RCW 9.41.040. As a result, the Sheriff's Office based it's denial of Barr's CPL application on this Class C felony conviction.

determine whether Barr was prohibited from possessing a firearm under Washington State law or under federal law — and therefore ineligible to be issued a CPL. RCW 9.41.070(2).

Based on Barr's application and fingerprint submission the Sheriff's Office also requested and received criminal history from the Washington State Patrol ("WSP"). Pursuant to RCW 13.50.260(8), in addition to other conviction data, the WSP database includes information on sealed juvenile convictions. The criminal history from the WSP database revealed that, in addition his adult convictions, Barr had been convicted of two Class A felonies as a juvenile. The criminal history showed that the Class A felonies were sealed. CP 57.

Notwithstanding the fact that the Class A convictions were sealed, on November 23, 2016, pursuant to RCW 9.41.070(2)(b), the Sheriff's Office denied Petitioner's CPL application because he had previously been convicted of two Class A felonies. *Id.*

B. Procedure.

Barr filed a Petition for Writ of Mandamus in Thurston County Superior Court seeking a judicial order directing the Sheriff to issue him a CPL. The trial court denied Barr's petition, ruling that Barr's two Class A felony convictions render him ineligible to possess firearms or obtain a CPL. CP 80-81. The trial court also denied Barr's request for attorney's fees. *Id.*

The Court of Appeals, Division II, reversed the trial court. The Court of Appeals held that "[b]ecause under the juvenile sealing statute sealed adjudications are to be "treated as if they never occurred," Barr is not prohibited from obtaining a CPL and the superior court erroneously denied Barr's writ of mandamus." *Barr*, 419 P.3d 867, 869 (2018). The Court of Appels also determined that Barr was entitled to an award of attorney's fees pursuant to RCW 9.41.0975.

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case presents a matter of substantial public interest because it concerns a significant public safety issue — namely, whether a Class A felon convicted as a juvenile may restore his/her firearm rights pursuant to RCW 13.50.260. Because this case has far reaching consequences for the Sheriff, other law enforcement agencies, and the public, this Court should accept review under RAP 13.4(b)(4).

A. The Court of Appeals Erred by Holding That RCW 9.41.040 Does Not Apply Here.

The Court of Appeals decision is contrary to the Legislature's express language in chapter 9.41 RCW setting forth the procedure for restoration of firearm rights and prohibiting Class A felons from regaining their firearm rights. The Court of Appeals

decision impermissibly creates a new process for restoration and expands the class of criminals eligible for firearm right restoration.

1. RCW 9.41.040 prohibits judicial restoration of firearm rights to Class A felons.

RCW 9.41.040(1) makes it a felony, specifically "unlawful possession of a firearm in the first degree," for a person who has been convicted of a "serious offense" to possess a firearm. A Class A felony is a "serious offense." RCW 9.41.010(3), (23). Washington applies the statutory prohibition to persons with both adult convictions and juvenile adjudications, without exception, and applies regardless of subsequent action in the underlying criminal offense. RCW 9.41.040(3).

Chapter 9.41 RCW is not ambiguous. It states unequivocally that:

> No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. § 925(c), or RCW 9.41.040 (3) or (4) applies.
>
> RCW 9.41.070(1)(g).

RCW 9.41.040(3) allows a person who's conviction has "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 . . . ." to possess a firearm. Sealing a juvenile conviction is not a certificate of rehabilitation nor

does it include any finding of rehabilitation. RCW 9.41.040(3) does not apply.

RCW 9.41.040(4)(a) explicitly prohibits judicial restoration of firearm rights to persons convicted of either sex offenses or a Class A felony. RCW 9.41.040(4)(a) provides in relevant part:

> 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:
>
> (emphasis added.)

This language controls here.

The Court of Appeals wrongly reasons that RCW 9.41.040(4) restoration provisions are not implicated because a juvenile's rights are not "restored" via sealing. *Barr*, 419 P.3d 867, 874 (2018). This reasoning is flawed because it fails to explain how if not "restored," a lost firearm rights is reinstated. The Court of Appeals result defies logic and common sense.

It is undisputed that an individual loses his/her firearm right pursuant to a conviction for a Class A felony. In order for that right to be re-attained, it must be restored. Despite the Court's refusal to label it as such, restoration is precisely what Court of Appeals

describes as occurring as a result of sealing pursuant to RCW 13.50.260. This is impermissible under RCW 9.41.040. RCW 9.41.040 governs restoration of firearms rights and its provisions, not RCW 13.50.260, and must control here.

2. *RCW 13.50.260 is not an alternative mechanism to judicially restore firearm rights.*

The Court of Appeals decision errors by finding that as a consequence of sealing pursuant to RCW 13.50.260 a restoration of firearm rights occurs, and as such there is no need for an individual to seek formal restoration pursuant to RCW 9.41.040. *Barr*, 419 P.3d 867, 878 (2018).

RCW 13.50.260 contains no mention or provision explicitly stating that sealing a conviction impacts firearm rights. The statute contains no requirement that a court notify the individual that his/her firearm rights are being restored pursuant to sealing. Nor does the statute require a warning to the individual that if his/her record is ever unsealed it is unlawful to be in possession a firearm. In short, RCW 13.50.260 contains no language to support the conclusion that its impact is to restore firearm rights.

B. The Court of Appeals Analysis Of RCW 13.50.260 Fails To Give Effect To The Statue As A Whole.

The Court of Appeals erroneously concluded that RCW 13.50.260 requires the conviction to be "treated as if it never occurred" for all purposes. Contrary to the Court's decision, not

even the statue itself takes such a broad view of the impact of sealing.

"Statutory construction begins by reading the text of the statute." *State v. Roggenkamp,* 153 Wn.2d 614, 621, 106 P.3d 196 (2005); *see W. Telepage, Inc. v. City of Tacoma Dep't of Fin.,* 140 Wn.2d 599, 609, 998 P.2d 884 (2000). "When we read a statute, we must read it as a whole and give effect to all language used." *In re Pers. Restraint of Skylstad,* 160 Wn.2d 944, 948, 162 P.3d 413 (2007). "We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute." *C.J.C. v. Corp. of Catholic Bishop,* 138 Wn.2d 699, 708, 985 P.2d 262 (1999).

RCW 13.50.260(3) and (4) allow an individual convicted of a juvenile Class A felony to seal his/her juvenile record if specific criteria are met. RCW 13.50.260(4)(a). If the court enters an order sealing the juvenile court record, "the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed." RCW 13.50.260(6)(a).

Once sealed, the official juvenile court record, the social file, and other records relating to the case are "protected from examination by the public." *See* GR 15(4). Sealed files are not destroyed, obliterated or made permanently irretrievable. The court

and juvenile justice agencies retain their files, and future inspection is allowed with permission of the court. RCW 13.50.260(7).

While the files and records related to the conviction are obscured from public view, criminal justice agencies are still able to access and review sealed juvenile information. The Administrative Office of the Court ensures that the Superior Court Judicial Information System provides prosecutors access to information on the existence of sealed juvenile records. RCW 13.50.260(8)(c). The Washington State Patrol provide criminal justice agencies access to sealed juvenile records information, including the nature and type of conviction that has been sealed. RCW 13.50.260(8)(d). Agencies may communicate with the individual regarding the conviction. RCW 13.50.260(11). And County clerks may communicate the individual, the individual's parents, and any holders of potential assets or wages of the individual when collecting legal financial obligations. RCW 13.50.260 (10).

In addition, any subsequent adjudication of a juvenile offense, or charging of an adult felony offense automatically nullifies the sealing order. RCW 13.50.260(8)(a). Since the juvenile conviction is automatically unsealed by the charging of a new felony, should the individual be convicted of the new offense, the juvenile conviction would be included in the defendant's offender score. RCW 9.94A.525(2)(a) and (g).

The Court of Appeals decision fails to read RCW 13.50.260 as a whole, or assign meaning to all of its provisions. Instead the Court reads in isolation the direction to treat the convictions "as if they never occurred," to the exclusion of all other provisions. While the language directing that sealed juvenile records be "treated as if they never occurred" allows an individual to respond in the negative regarding his or her criminal history, and prevents state agencies from giving out information on sealed juvenile records, the records nonetheless remain intact should they become unsealed pursuant to a subsequent juvenile conviction or felony charge. RCW 13.50.260(8)(a), (b). Furthermore, even sealed, the individual's criminal history is still available to the courts, clerks, prosecutors and law enforcement. See RCW 13.50.260(8).

The Court of Appeals decision misinterprets RCW 13.50.260(8) by concluding that agencies can access, but not use, sealed records. *Barr*, 419 P.3d 867, 876 (2018). RCW 13.50.260(8)(d). This conclusion is contrary to the definition of access, which means: "the ability or permission to approach, enter, speak with, or *use*;". (emphasis added.) *Webster's Encyclopedia Unabridged Dictionary,* 1989 edition. Thus, by definition, by allowing agencies to access sealed juvenile records, the Legislature authorized those agencies to use the information obtained from that access.

Furthermore, by ruling that agencies may "access" but not "use" the juvenile records, the Court of Appeals decision ignores RCW 13.50.260(10) and (11), which further describes agencies ability to "obtain," "communicate," "interact," and "correspond" about the sealed juvenile records information.

Certainly the Court of Appeals narrow reading of RCW 13.50.260(6)(a), without considering of the rest of RCW 13.50.260, is in error.

C. The Court Of Appeals Erred By Relying On *Nelson v. State*, 120 Wn. App. 470, 85 P.3d 912 (2003).

The Court of Appeals cites to *Nelson v. State,* 120 Wn. App. 470, 85 P.3d 912 (2003) as controlling the outcome of this case. *Barr,* 419 P.3d 867, 874 (2018). Contrary to the Court of Appeals decision, *Nelson* does not control. *Nelson* was decided before the Legislature enacted relevant and significant statutory amendments to RCW 13.50.260 (formerly RCW 13.50.050). Because of the changes to the law, *Nelson's* analysis is not helpful and its holding does not apply.

State v. Nelson examined the process for expunging juvenile convictions as the process existed in 1996. *Nelson*, 120 Wn. App. 470, 473 (2003) n.3. The Legislature has amended RCW 13.50.260 (former RCW 13.50.050) thirteen times since 1996. *See* Laws of 2015, ch. 265 § 3; Laws of 2014, ch. 175 § 3; Laws of 2012, ch. 177

§ 2. Laws of 2011, ch. 338 § 4; Laws of 2011, ch. 333 § 4; Laws of 2010, ch. 150 § 2; Laws of 2008, ch. 221 § 1; Laws of 2004, ch. 42 § 1; Lawks of 2001, ch. 175 § 1; Laws of 2001, ch. 174 § 1; Laws of 2001, ch. 49 § 2; Laws of 1999, ch. 198 § 4; Laws of 1997, ch. 338 § 40.

Significantly, in 1997 the Legislature enacted legislation that eliminated the "expungement" process and restricted eligibility for sealing. Specifically, the 1997 Legislature eliminated an individual's ability to destroy juvenile records.[3] Laws of 1997, ch. 338, § 40. In other words, after 1997, an individual could no longer "expunge" his/her conviction.

As discussed above, in 2014 and 2015, the Legislature significantly expanded retention, access and ability to converse about sealed juvenile convictions[4]. *See* Laws of 2014, Ch. 175, §4;

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[3]The 1997 legislative amendment deleted section 16 from RCW 13.50.050, which allowed an individual to vacate and destroy juvenile conviction records. Section 16 read as follows:

> (16) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person who is the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (24) of this section, order the destruction of the official juvenile court file, the social file, and records of the court and of any other agency in the case.
>
> RCW 13.50.050(1996).

[4] RCW 13.50.260(8)-(11) read:

RCW 13.50.260(8)(c); Law of 2015, Ch. 265, §3; RCW 13.50.260(8)(d); RCW 13.50.260(10), (11).

While the language that convictions shall be "treated as if they never occurred" did not change, the Court of Appeals erred by failing to read that language in the context of the thirteen statutory amendments that collectively remove the ability to "expunge" a

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(8)(a) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying a sealing order; however, the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria under this section and the court record has not previously been resealed.
(b) Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order.
(c) The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.
(d) The Washington state patrol shall ensure that the Washington state identification system provides criminal justice agencies access to sealed juvenile records information.

(9) If the juvenile court record has been sealed pursuant to this section, the record of an employee is not admissible in an action for liability against the employer based on the former juvenile offender's conduct to show that the employer knew or should have known of the juvenile record of the employee. The record may be admissible, however, if a background check conducted or authorized by the employer contained the information in the sealed record.

(10) County clerks may interact or correspond with the respondent, his or her parents, and any holders of potential assets or wages of the respondent for the purposes of collecting an outstanding legal financial obligation after juvenile court records have been sealed pursuant to this section.

(11) Persons and agencies that obtain sealed juvenile records information pursuant to this section may communicate about this information with the respondent, but may not disseminate or be compelled to release the information to any person or agency not specifically granted access to sealed juvenile records in this section.

juvenile conviction and expand access to sealed juvenile convictions. RCW 13.50.260(6)(a). If the Court had properly read RCW 13.50.260(6)(a) in context of the statute as a whole, it would have concluded that *Nelson* no longer applies.

D. The Court Of Appeals Decision Conflicts with Principles of Statutory Construction

1. The Court improperly analyzed the general-specific rule

According to the rules of statutory construction, when there is a conflict between the language of statutes, the court should give preference to the more specific statute. See, e.g., *In re Estate of Kerr*, 134 Wn.2d 328, 335, 949 P.2d 810 (1998) (specific statute will prevail over a general statute -- "the general-specific rule").

The Court of Appels found that there was no conflict between RCW 9.41.040 and RCW 13.50.260. When properly harmonized, these statutes are not in conflict. The Court of Appeals reading of these statute, however, creates a direct conflict.

RCW 13.50.260 is a general statute for sealing juvenile records. RCW 9.41.040 is a specific statute that defines the circumstances under which the right to possess a firearm may be lost and regained. The general-specific rule of construction favors the more specific statute (here, RCW 9.41.040) over the more general one. Thus, RCW 13.50.260 should not be read to provide an alternative statutory basis for restoring firearm possession rights.

2. The Court fails to give effect to the legislative intent.

A Class A felony conviction, regardless of whether committed as a juvenile or an adult, renders an individual ineligible to possess a firearm or have his/her firearm rights judicially restored pursuant to RCW 9.41.040(4). This permanent firearm restriction applies to 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. These restrictions were put in place to—among other things—address the "major threat to public safety" posed by "[a]rmed criminals,". Laws of 1995, ch. 129, § 1. The goal of chapter 9.41 RCW is to protect the public by precluding felons from possessing firearms.

Under the Court of Appels analysis, RCW 9.41.040's prohibitions are meaningless because a juvenile Class A felon can simply use the sealing process in RCW 13.50.260 to achieve what he/she otherwise cannot under RCW 9.41.040.

By the Court of Appeals logic a juvenile sex offender may achieve the same result. *See* RCW 13.50.260. This Court already had occasion to address the issue of a juvenile sex offender's right to firearms in *State v. R.P.H.*, 173 Wn. 2d 199, 265 P.3d 890 (2011). There, the court concluded that a trial court's order relieving a

juvenile of the requirement to register as a sex offender, when based on a finding of rehabilitation, was subject to a procedure equivalent to a "certificate of rehabilitation" issued pursuant to RCW 9.41.040(3). *R.P.H.*, 173 Wn. 2d 199, 200 (2011)

The Legislature responded to *R.P.H* by clarifying that relief from the duty to register was not a "certificate of rehabilitation." *See* RCW 9A.44.140(7); Laws of 2015, Ch. 261, § 9(6). The Court of Appeals decision in this case erroneously creates a new basis for a juvenile sex offender to restore his/her firearm right. The Court did not analyze this impact of its holding. Its reasoning cannot be reconciled with the Legislature's clear intent to extinguish means for sex offenders to restore firearm rights.

E. The Court Of Appeals Decision Undercuts The Statutory Requirements For Issuance Of A CPL.

The Sheriff's Office statutory obligation and legal authority to issue a CPL is contained in RCW 9.41.070. Pursuant to RCW 9.41.070, a person is ineligible to possess a firearm, and thereby ineligible to be issued a CPL, "unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies." RCW 9.41.070(1). Thus, RCW 9.41.070 directs the Sheriff's Office to review an individual's criminal history and determine whether there is any

conviction prohibiting firearm possession, that has not been relieved pursuant to 18 U.S.C. § 925(c), or RCW 9.41.040 (3) or (4).

The Court of Appeals decision directs a result that is contrary to RCW 9.41.070 by requiring the Sheriff's Office to issue a CPL to an individual who has not been granted relief pursuant to 18 U.S.C. § 925(c), or RCW 9.41.040. The Court of Appeals ignores the plain language of the statute when it directs otherwise, and this Court should take review to overturn the decision.

VII. CONCLUSION

The Snohomish County Sheriff respectfully requests that review be granted because the Court of Appeals decision is contrary to RCW 9.41.040 which prohibits Class A felons from possessing firearms. The Court of Appeal's decision will cause CPL's to be issued, not just to Barr, but potentially to many other Class A felons and sex offenders. By allowing these individuals to bypass RCW 9.41.040, the Court of Appeals decision affects a multitude cases in direct contradiction to the Legislature's public safety goals. The scope of the court's decision presents a matter of substantial public interest under RAP 13.4(b)(4). This Court's review will ensure that the legislative intent of RCW 9.41.040 is applied and the legislative intent achieved.

Respectfully submitted on July 12, 2018.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

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Attorney for the Snohomish County Sheriff's Office

DECLARATION OF SERVICE

I, Kathy Murray, hereby certify that on July 12, 2018, I served a true and correct copy of the foregoing Petition for Review upon the person/persons listed herein by the following means:

Vitaliy Kertchen Kertchen Law, PLLC 711 Court A, Suite 104 Tacoma, WA 98402	[X] Electronic Filing/Eservice vitaliy@kertchenlaw.com

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 12th day of July, 2018.

Print: Kathy Murray
Legal Assistant

APPENDIX A

419 P.3d 867
Court of Appeals of Washington,
Division 2.

Jerry L. BARR III, Appellant,
v.
SNOHOMISH COUNTY SHERIFF, Respondent.

No. 50623-8-II
|
Filed June 12, 2018

Synopsis
Background: Applicant for concealed pistol license (CPL), who was adjudicated of two felonies as a juvenile, which were later sealed, petitioned the Superior Court, Thurston County, John C. Skinder, J., for a writ of mandamus to compel the sheriff to issue him a license. The superior court denied the petition, and applicant appealed.

Holdings: The Court of Appeals, Worswick, J., held that:

[1] applicant was not precluded from obtaining a CPL;

[2] amendment to statute did not permit the denial of application;

[3] statutes governing the possession of firearms by persons convicted of certain crimes and sealing of juvenile records, did not prohibit applicant from having firearm rights restored;

[4] opinion by attorney general was not controlling on Court of Appeals;

[5] statute governing the restoration of firearm rights was not the exclusive mechanism for to gain CPL; and

[6] applicant was not precluded by federal law from obtaining CPL.

Reversed and remanded.

West Headnotes (19)

[1] **Mandamus**
Nature and scope of remedy in general

An applicant must satisfy three elements before a writ of mandamus will issue: (1) the party subject to the writ is under a clear duty to act; (2) the applicant has no plain, speedy and adequate remedy in the ordinary course of law; and (3) the applicant is beneficially interested.

Cases that cite this headnote

[2] **Mandamus**
Determination of issues and questions

The determination of whether a statute specifies a duty that a person must perform is a question of law in a mandamus proceeding. Wash. Rev. Code Ann. § 7.16.160.

Cases that cite this headnote

[3] **Appeal and Error**
De novo review

Questions of law are reviewed de novo.

Cases that cite this headnote

[4] **Infants**
Adjudication or conviction

Weapons
Permits to carry guns

Applicant for concealed pistol license (CPL) was not precluded from possessing a firearm or obtaining a CPL by adjudication of two felonies committed when applicant was a juvenile, and which were later sealed; applicant met all statutory conditions to seal his felony adjudications, and sealing orders stated that applicant's juvenile proceeding was to be treated as if it never occurred. Wash. Rev. Code Ann. §§ 9.41.040, 13.50.260(4).

Cases that cite this headnote

[5] **Statutes**
Legislative Construction

The legislature is presumed to be aware of judicial interpretation of its enactments, and so, absent a legislative change, the Court of Appeals presumes that the legislature approves of the courts' interpretation.

Cases that cite this headnote

[6] **Infants**
Adjudication or conviction

Weapons
Permits to carry guns

Amendment to statute, which allowed criminal justice agencies expanded access to sealed juvenile information, did not permit the denial of application for concealed pistol license (CPL) by applicant who was adjudicated of two felonies committed when he was a juvenile, which were later sealed; although statute provided some agencies and law enforcement access to sealed juveniles records, it did not specifically allow those agencies to use records to prohibit a person from obtaining a firearm, and did not change law that, once sealed, juvenile proceedings were to be treated as if they never occurred. Wash. Rev. Code Ann. § 13.50.260(8).

Cases that cite this headnote

[7] **Infants**
Adjudication or conviction

Weapons
Permits to carry guns

Statutes governing the possession of firearms by persons convicted of certain crimes and sealing of juvenile records did not prohibit applicant for concealed pistol license (CPL), who was adjudicated of two felonies as a juvenile, which were later sealed, from having his firearm rights restored; under the sealing statute, once the court sealed a juvenile record containing a class A felony adjudication, the adjudication was treated as if it never occurred, and under the firearm statutes, CPL applicant with sealed adjudications had no convictions preventing firearm possession. Wash. Rev. Code Ann. §§ 9.41.040, 13.50.260.

Cases that cite this headnote

[8] **Appeal and Error**
Statutory or legislative law

The interpretation of a statute is a question of law reviewed de novo.

Cases that cite this headnote

[9] **Statutes**
Plain Language;Plain, Ordinary, or Common Meaning

In interpreting a statute, the court first looks to the plain language of the statute.

Cases that cite this headnote

[10] **Statutes**
Plain Language;Plain, Ordinary, or Common Meaning

To determine the plain meaning of a statute, the court looks at the context of the statute, related provisions, and the statutory scheme as a whole.

Cases that cite this headnote

[11] **Statutes**
Undefined terms

Statutes
Dictionaries

The court may determine the plain meaning of an undefined term of a statute from a standard English dictionary.

Cases that cite this headnote

[12] **Statutes**
Construing together;harmony

The Court of Appeals harmonizes statutes whenever possible.

Cases that cite this headnote

[13] **Statutes**
General and specific statutes

The general-specific rule of statutory interpretation provides that a specific statute prevails over a general statute.

Cases that cite this headnote

[14] **Statutes**
General and specific statutes

When a general statute, standing alone, includes the same subject as the special statute and then conflicts with it, the court deems the special statute to be an exception to, or qualification of, the general statute.

Cases that cite this headnote

[15] **Courts**
Previous Decisions as Controlling or as Precedents

Opinion by attorney general was not controlling on Court of Appeals in determining that applicant for concealed pistol license (CPL), who was adjudicated of two felonies as a juvenile which were later sealed, was permitted to receive a CPL; attorney general's opinion was not controlling on court, and attorney general's opinion about convicted persons and firearm possession was prior to a case which was directly on point in addressing the issue.

Cases that cite this headnote

[16] **Courts**
Previous Decisions as Controlling or as Precedents

Statutes
Attorney General

Opinions of the attorney general are entitled to considerable weight, but they are not binding on the Court of Appeals, and the Court gives them less deference when they involve issues of statutory construction.

Cases that cite this headnote

[17] **Statutes**
Unintended or unreasonable results; absurdity

In interpreting statutes, the court avoids reading statutes in a manner that produces absurd results.

Cases that cite this headnote

[18] **Infants**
Adjudication or conviction

Weapons
Permits to carry guns

Statute governing the restoration of firearm rights was not the exclusive mechanism for applicant for concealed pistol license (CPL), who was adjudicated of two felonies as a juvenile which were later sealed, from gaining a CPL; applicant received orders sealing his juvenile adjudications and, therefore, had no conviction that prohibited him from possessing a firearm under restoration statute. Wash. Rev. Code Ann. § 9.41.040.

Cases that cite this headnote

[19] **Infants**
Adjudication or conviction

Weapons
Permits to carry guns

Applicant for concealed pistol license (CPL) was not precluded by federal law from obtaining a CPL due to adjudication of two felonies committed when applicant was a juvenile, and which were later sealed; applicant's sealed adjudications were treated as if they never occurred and applicant, and thus applicant was not prohibited from possessing a firearm under state law and therefore did not have any prohibitory convictions under federal law. 18 U.S.C.A. § 922(g)(1).

Cases that cite this headnote

*869 Appeal from Thurston Superior Court, No. 17-2-02519-1, Honorable John C Skinder, Judge.

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PUBLISHED OPINION

Worswick, J.

¶1 In 1992, a juvenile court adjudicated Jerry L. Barr guilty of two class A felonies. Over 25 years later, in 2016, the juvenile court entered an order sealing Barr's juvenile records of the two felony adjudications. Barr then applied for a concealed pistol license (CPL) through the Snohomish County Sheriff's Office (Sheriff). The Sheriff denied Barr's application based on these felony adjudications. Barr petitioned the superior court for a writ of mandamus to compel the Sheriff to issue him a CPL, and the superior court denied his petition. Because under the juvenile sealing statute sealed adjudications are to be "treated as if they never occurred," Barr is not prohibited from obtaining a CPL and the superior court erroneously denied Barr's writ of mandamus. We, therefore, reverse and remand with instructions to the superior court to issue the writ. We also grant Barr's request for attorney fees.

FACTS

I. BACKGROUND

¶2 This case requires us to analyze the juvenile sealing statute. In the 19th century, Washington established a separate court division dedicated to juvenile issues with the intention of protecting the interests of juveniles, rather than prosecuting juveniles in the same manner as adult defendants. *See* LAWS OF 1905, ch. 18, § 3. [1] Throughout the years, the legislature has expanded the juvenile court system reflecting national changes regarding the treatment of juvenile offenders. *See State v. S.J.C.*, 183 Wash.2d 408, 422-23, 352 P.3d 749 (2015).

¶3 In 1977, the legislature overhauled the juvenile justice statutes and specified substantive *870 and procedural guidelines for juvenile courts by enacting the Juvenile Justice Act of 1977 (JJA). LAWS OF 1977, 1st Ex. Sess., ch. 291, § 55. [2] With the JJA, the legislature "changed the philosophy and methodology of addressing the personal and societal problems of juvenile offenders." *State v. Lawley*, 91 Wash.2d 654, 659, 591 P.2d 772 (1979).

¶4 With the 1977 amendments, the legislature also addressed how juvenile proceeding records and official juvenile court files were to be treated. Though the JJA affirmed that juvenile proceeding records and court files were public records, the legislature also created a mechanism for juvenile offenders to have their records sealed or destroyed. *State v. J.C.*, 192 Wash. App. 122, 128, 366 P.3d 455 (2016). The JJA allowed a juvenile to have his or her records sealed two years after the end of a proceeding and destroyed when the juvenile reached 23 years of age. LAWS OF 1979, 1st Ex. Sess., ch. 155, § 9(11); (16). [3] By establishing a method to seal juvenile records, the legislature reiterated its desire to treat juvenile records more confidentially than other court records. *See S.J.C.*, 183 Wash.2d at 422, 352 P.3d 749.

¶5 The juvenile sealing and destruction provisions underwent more changes in 1997. At that time, the legislature amended the sealing and destruction statutes and made the sealing and expungement process more difficult by imposing additional requirements and conditions. *State v. Diaz-Cardona*, 123 Wash. App. 477, 485, 98 P.3d 136 (2004). However, although the legislature made it more difficult to seal and destroy juvenile records, the legislature did not eradicate the sealing process. *See State v. J.H.*, 96 Wash. App. 167, 176, 978 P.2d 1121 (1999).

¶6 Then in 2014, the legislature again amended the JJA's juvenile court record sealing provisions. LAWS OF 2014, ch. 175, §§ 3-5. [4] The legislature mandated that the juvenile courts, instead of juveniles, must initiate the sealing of juvenile court records after a certain amount of time and after the juvenile offender met certain conditions. LAWS OF 2014, ch. 175, § 4. The legislature also clearly stated its intent regarding the protection of juvenile records:

> 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.

LAWS OF 2014, ch. 175, § 1. The legislature further explained that the mechanism for sealing juvenile records existed so that juveniles can overcome prejudice and reintegrate into society. LAWS OF 2014, ch. 175, § 1.

¶7 More recently, the Supreme Court commented on the court's role in applying the juvenile sealing statutes:

> The legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records[,] and [Washington] court[s] ha[ve] always given effect to the legislature's judgment in the unique setting of juvenile court records.

S.J.C., 183 Wash.2d at 417, 352 P.3d 749.

II. BARR'S RECORD SEALING

¶8 In 1992, the King County Juvenile Court adjudicated Barr guilty of two class A felonies.[5] In 2016, Barr petitioned the juvenile court to seal his two juvenile class A felony adjudications. Barr had not committed a crime during the 16 years prior to requesting his records be sealed, and he had maintained law abiding behavior.

¶9 Determining that Barr met all the statutory prerequisites, the juvenile court granted his petition and entered orders sealing Barr's adjudications under RCW 13.50.260, the juvenile records sealing statute. The orders sealed Barr's official juvenile court record, social file, and related agency records. ***871** The orders cited RCW 13.50.260 which stated that "the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, the records of which are sealed." The orders also notified Barr that any charging of an adult felony would nullify the sealing order.

¶10 Soon after it entered Barr's orders sealing his records, the court entered an order stating that under RCW 9.41.040(4)(a)(ii), Barr qualified for the restoration of his firearm rights because Barr complied with the terms of his sentences, spent five years in the community without being convicted of a crime, and because Barr "had no prior felony convictions." Clerk's Papers (CP) at 9.

¶11 In 2017, Barr applied for a CPL through the Snohomish County Sheriff's Office. The Sheriff denied Barr's application listing his two juvenile class A felony adjudications as the basis for the denial.

¶12 Barr then filed a petition in Thurston County Superior Court seeking a writ of mandamus under RCW 9.41.0975.[6] Barr requested the court to grant his writ and to direct the Sheriff to issue him a CPL. Barr argued that the Sheriff had an affirmative duty to issue a CPL to every applicant unless the applicant was ineligible to possess a firearm under state law or federal law. Specifically, Barr argued that his sealed juvenile adjudications did not exist because under RCW 13.50.260(6)(a), sealed adjudications "shall be treated as if they never occurred," and, therefore, he was not prohibited from possession of a firearm under RCW 9.41.040(4), Washington's possession of a firearm statute.

¶13 Barr further argued that he was likewise not prohibited from possessing a firearm under federal law. He asserted that under 18 U.S.C. § 921(a)((20), the federal firearm statute, federal law looks to the jurisdiction of conviction to determine whether an offense is a "conviction" for purposes of federal firearm law. CP at 33. Barr claimed that because his Washington adjudications were sealed, he did not have a prohibitory conviction under federal law.

¶14 The superior court denied Barr's petition for a writ of mandamus. Barr appeals.

ANALYSIS

I. WRIT OF MANDAMUS IMPROPERLY DENIED

¶15 Barr argues that the superior court improperly denied his petition for a writ of mandamus. Barr claims that the

Sheriff breached its duty to issue him a CPL because his sealed adjudications are treated as if they never occurred under the juvenile sealing statute and do not prohibit him from possessing a firearm. The Sheriff argues that sealing does not "restore" Barr's firearm rights because he is ineligible to possess a firearm under RCW 9.41.040 and that state and federal cases to the contrary are mistaken. We agree with Barr.

A. *Legal Principles: Writs of Mandamus, Juvenile Records, CPLs*

1. *Writs of Mandamus*

¶16 A court may issue a writ of mandamus, "to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." RCW 7.16.160. Additionally, RCW 9.41.0975(2)(a) specifically authorizes a petition for a writ of mandamus requesting that the court direct "an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused."

[1] ¶17 An applicant must satisfy three elements before a writ will issue: (1) the party subject to the writ is under a clear duty to act; (2) the applicant has no plain, speedy and adequate remedy in the ordinary course of law; and (3) the applicant is beneficially interested. *Eugster v. City of Spokane*, 118 Wash. App. 383, 402, 76 P.3d 741 (2003). This dispute involves only the first element—***872** whether the Sheriff had a clear duty to issue Barr a CPL. To determine whether the Sheriff had a clear duty to act, we must look to the statutes governing sealing juvenile records and issuance of CPLs.

2. *Sealing Juvenile Records*

¶18 The juvenile record sealing statute provides that once a convicted person meets certain criteria,[7] a person can petition the court to "order the sealing of the official juvenile court record, the social file, and records of the court and of any other agency in the case." RCW 13.50.260(3). Once a person receives a court order sealing their juvenile court records,

> [t]hereafter, the proceedings in the case shall be *treated as if they never occurred*, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

RCW 13.50.260(6)(a) (emphasis added). After receiving an order sealing their juvenile records and adjudications, the juvenile offender is treated as not having "previously been convicted" under RCW 9.41.040(3) for firearm possession purposes. *Nelson v. State*, 120 Wash. App. 470, 480, 85 P.3d 912 (2003).

3. *Issuing CPLs*

¶19 RCW 9.41.070 governs the issuance of CPL in Washington. RCW 9.41.070(1)(a) states that the sheriff of a county shall issue a CPL to an applicant and provides that an applicant will not be issued a CPL where

> [h]e or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 ... or is prohibited from possessing a firearm under federal law.

Therefore, whether a person can obtain a CPL depends on whether they are eligible to possess a firearm under state and federal law.

¶20 RCW 9.41.040(1)(a) provides:

> ***873** 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 ... of any serious offense as defined in this chapter.

It is undisputed that Barr's juvenile class A felonies constitute "serious offenses." Br. of App. at 2; Br. of Resp't at 5.

¶21 Additionally, RCW 9.41.040(3) provides:

> Notwithstanding RCW 9.41.047 [8] 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-fact-finding motions, and appeals. ... 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.

RCW 9.41.040(3) (emphasis added).

4. *Prior Cases Analyzing the Effect of a Sealed Juvenile Record on Firearm Rights*

¶22 In *Nelson*, Nelson committed certain "serious offenses" as a juvenile. 120 Wash. App. at 472, 85 P.3d 912. Nelson later received an order "sealing and expunging his juvenile record under former RCW 13.50.050(11) (2000) (later recodified as RCW 13.50.260(6)(a)). *Nelson*, 120 Wash. App. at 473, 85 P.3d 912. Nelson then filed a petition to restore his firearm rights, which the superior court denied. *Nelson*, 120 Wash. App. at 474, 85 P.3d 912.

¶23 On appeal, the court determined that the issue was whether Nelson's sealed juvenile adjudications prohibited him from possessing a firearm. *Nelson*, 120 Wash. App. at 476, 85 P.3d 912. The State argued that Nelson could not possess a firearm until his adjudications were "nullified by pardon or other equivalent procedure" as listed in the firearm statute. *Nelson*, 120 Wash. App. at 477, 85 P.3d 912. However, the court disagreed and held that the language of the sealing statute was plain and that after receiving a sealing order, a defendant's juvenile adjudications are "treated as if they never occurred." *Nelson*, 120 Wash. App. at 479, 85 P.3d 912. The court further held that

> [i]f the proceedings never occurred, logically the end result—a conviction—never occurred either. The plain language of the expungement statute entitles [a person] to act and be treated as if he has not previously been convicted. If he has not previously been convicted, he may legally possess firearms.

Nelson, at 479-80, 85 P.3d 912.

¶24 In *Siperek v. United States*, 270 F.Supp.3d 1242, 1251 (W.D. Wash. 2017), the District Court for the Western District of Washington recently came to the same conclusion as *Nelson*. The court noted that the federal law at issue dictated that what constitutes a conviction under federal law is determined in accordance with Washington law. *Siperek*, 270 F.Supp.3d at 1249. The court then relied on *Nelson* to determine that Washington's juvenile sealing statute treated a person's sealed convictions as not having occurred and therefore a person was not prevented from possessing a firearm under 18 U.S.C. § 921(a)(20) if their juvenile record was sealed. *Siperek*, 270 F.Supp.3d at 1249.

5. *Standard of Review*

[2] [3] ¶25 We review writs of mandamus under two separate standards of review, depending on the question reviewed. *874 *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wash.2d 635, 648-49, 310 P.3d 804, 812 (2013). A writ of mandamus "may be issued by any court ... to compel the performance of an act which the law especially enjoins as a duty ...." RCW 7.16.160. "The determination of whether a statute specifies a duty that the person must perform is a question of law." *River Park Square, LLC v. Miggins*, 143 Wash.2d 68, 76, 17 P.3d

1178 (2001). We review questions of law de novo. *City of Bonney Lake v. Kanany*, 185 Wash. App. 309, 314, 340 P.3d 965 (2014). Because we review questions of law de novo, we review de novo whether a statute imposes a duty upon the Sheriff to issue Barr a CPL.

B. *Sealed Juvenile Record Not a Conviction*

[4] ¶26 Barr argues that *Nelson* controls here and that his adjudications do not prohibit him from possessing a firearm or obtaining a CPL. We agree.

¶27 Barr's criminal record includes two juvenile class A felony adjudications. The juvenile court issued two sealing orders under RCW 13.50.260. These orders mandated the sealing of Barr's entire juvenile record, including his two class A felony adjudications. The sealing orders stated that Barr's juvenile proceeding were to be treated as if they never occurred and also stated that Barr could reply to any inquiry about the juvenile proceedings by stating that they never occurred.

¶28 Applying the rule established in *Nelson* to Barr's case, we hold that the Sheriff had a legal duty to issue Barr a CPL. Barr has met all the statutory conditions to receive the sealing of his class A felony adjudications, including remaining conviction free for 16 years, well over the five year period required by the sealing statute. RCW 13.50.260(4). Because of his law abiding behavior and fulfilment of other conditions, the juvenile court properly sealed Barr's records. Because of this valid sealing, Barr's juvenile proceedings are treated as if they "never occurred," and Barr is therefore entitled to "act and be treated as if he has not previously been convicted." *Nelson*, 120 Wash. App. at 479-80, 85 P.3d 912. Because Barr is treated as not having been previously adjudicated of the juvenile offenses, he is neither prohibited from possessing a firearm under RCW 9.41.040 nor prevented from receiving a CPL. *Nelson*, 120 Wash. App. at 479-80, 85 P.3d 912.

¶29 Accordingly, the reasoning of *Nelson* and the applicable statutes show that Barr is not precluded from possessing a firearm and that the Sheriff breached its clear legal duty by denying Barr a CPL.

C. *Sheriff's Arguments*

¶30 The Sheriff makes several arguments in support of the superior court's denial of Barr's writ of mandamus. The Sheriff argues that (1) *Nelson* does not apply and is no longer good law, (2) Barr's reading of the statutes conflicts with principles of statutory construction, (3) Barr's interpretation conflicts with a State Attorney General's opinion, (4) adopting Barr's interpretation would lead to practical difficulties and absurd results, and (5) RCW 9.41.040 provides the exclusive mechanism for restoring firearm rights. We disagree.

1. *Nelson Applies*

¶31 The Sheriff attempts to distinguish *Nelson*, by arguing that Barr's adjudications are class A felony convictions whereas it is unclear whether Nelson's adjudication was a class A felony. This is a distinction without a difference. The *Nelson* decision did not turn on the felony class, and the sealing statute does not differentiate between felony classes. The dispositive component of the sealing statute here is the phrase "the proceedings in the case shall be treated as if they never occurred." The court in *Nelson* based its decision on this language and explained, "If the proceedings never occurred, logically the end result—a conviction—never occurred either." *Nelson*, 120 Wash. App. at 479, 85 P.3d 912.

¶32 The Sheriff also argues that *Nelson* is no longer good law because the legislature has significantly amended the sealing statute since *Nelson*, allowing greater access to sealed records. The Sheriff claims that these subsequent amendments show the legislature did not intend the sealing of juvenile records to affect the right to possess a firearm and ***875** did not intend for sealed adjudications to be treated as "non-existent" for all purposes. Br. of Resp't at 10. We disagree.

[5] ¶33 The legislature is presumed to be aware of judicial interpretation of its enactments, and so, absent a legislative change, we presume that the legislature approves of the courts' interpretation. *Riehl v. Foodmaker, Inc.*, 152 Wash.2d 138, 147, 94 P.3d 930 (2004). The Sheriff is correct that the legislature has amended the sealing statute since *Nelson*. In fact, the legislature has amended theRCW 13.50.260 eight times since *Nelson*.[9] It is also true that some of the amendments allow greater access to the sealed information by law enforcement, juvenile justice agencies, and the courts. *See* LAWS OF 2014, ch. 175, § 3; RCW 13.50.260(8)(c); *see also* LAWS OF 2015 ch. 265, § 3; RCW 13.50.260(8)(d). However, despite its numerous amendments, the legislature has never altered

the provision stating that sealed adjudications are "treated as if they never occurred." RCW 13.50.260(6)(a).

¶34 It is abundantly clear that the legislature knows how to and certainly could have amended the sealing statute if it so wished after the *Nelson* decision. For example, the legislature took action after *State v. R.P.H.*, 173 Wash.2d 199, 265 P.3d 890 (2011). The court in *R.P.H.* held that, the termination of a juvenile offender's obligation to register as a sex offender entitled him to receive a certificate of rehabilitation, which allowed the offender to have his firearm rights restored. *R.P.H.*, 173 Wash.2d at 200, 265 P.3d 890. In response to the court's decision, the legislature explicitly added a provision to the juvenile sex offender statute stating that "[i]f a person is relieved of the duty to register [...] the relief of registration does not constitute a certificate of rehabilitation, or the equivalent of a certificate of rehabilitation, for the purposes of restoration of firearm possession under RCW 9.41.040." LAWS OF 2015 ch. 261, § 9(6).

¶35 Unlike *R.P.H.*, there has been no legislative amendment after *Nelson* regarding the treatment of a prior juvenile's sealed felony adjudications for purposes of firearm possession. The amendments allowing greater access to sealed records do not evince an intent to modify the language of *Nelson*. Instead, the legislature has clearly acquiesced to the court's interpretation of the sealing statute's mandate that sealed felony adjudications are "treated as if they never occurred" and are not prohibitions to possessing a firearm. [10]

[6] ¶36 The Sheriff asserts that in 2014 and 2015, the legislature amended former RCW 13.50.260(8) (2011) to allow criminal justice agencies expanded access to sealed juvenile information. The Sheriff further claims that because the sealed records appear in a Washington State Patrol database, the records cannot be treated as if they never occurred. The Sheriff asserts that this expanded access therefore means that sealed convictions are nonexistent for certain purposes but not all. We disagree.

¶37 Although the legislature amended RCW 13.50.260(8) to provide some agencies and law enforcement access to sealed juveniles records, the amended statute does not specifically allow those agencies to use the records to prohibit a person from obtaining a firearm. The relevant portions of RCW 13.50.260(8) state:

> (8)(a) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying a sealing order; however, the court may order the juvenile court record resealed upon disposition of the subsequent matter if the case meets the sealing criteria under this section and ***876** the court record has not previously been resealed.
>
> (b) Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order.
>
> (c) The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.
>
> (d) The Washington state patrol shall ensure that the Washington state identification system provides criminal justice agencies access to sealed juvenile records information.

¶38 The Washington State Patrol must guarantee access to sealed records to criminal justice agencies, and the courts must ensure prosecutors have access to the information. However, these statutes do not authorize criminal justice agencies to treat these adjudications in a manner contrary to 13.50.260(6)(a), which requires them to treat the adjudications "as if they never occurred." The Sheriff does not cite to any authority showing that the Sheriff or other agencies can do anything more with the records besides access them. It does not follow that simply having access to records allows an agency to use those records to deny a CPL application.

¶39 The Sheriff essentially argues that because it has access to the sealed records, RCW 13.50.260 allows sealed records to be treated as if they never occurred for *certain* purposes, but not all purposes, such as for seeking a CPL. However, the statute simply states that once sealed, the proceedings shall be treated as if they never occurred. The Sheriff's reading impermissibly adds words and concepts to the statute that simply are not there. Because of the legislature's acquiescence and without clear indication from the legislature demanding otherwise, we will continue to follow *Nelson* and the language of the sealing statute. Accordingly, sealed juvenile records shall be treated as if they never occurred, regardless of any agency access.

2. *Our Interpretation Does Not Conflict with Statutory Language or Construction Tenets*

[7] ¶40 The Sheriff argues that the plain language of RCW 9.41.040 and RCW 13.50.260 compels the conclusion that Barr is unable to restore his firearm rights. The Sheriff also argues that Barr's reading of the statutes violates the "general-specific rule" of statutory construction. We disagree.

[8] [9] [10] [11] [12] ¶41 The plain language of RCW 9.41.040 and RCW 13.50.260 does not prohibit Barr from restoring his firearm rights because he does not have any prohibitory convictions. The interpretation of a statute is a question of law we review de novo. *State v. Gonzalez*, 168 Wash.2d 256, 263, 226 P.3d 131 (2010). The primary goal of statutory interpretation is to discern and implement the legislature's intent. *State v. Armendariz*, 160 Wash.2d 106, 110, 156 P.3d 201 (2007). In interpreting a statute, we first look to the plain language of the statute. *Armendariz*, 160 Wash.2d at 110, 156 P.3d 201. To determine the plain meaning of a statute, we look at the context of the statute, related provisions, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). We may also determine the plain meaning of an undefined term from a standard English dictionary. *State v. Barnes*, 189 Wash.2d 492, 496, 403 P.3d 72 (2017). We harmonize statutes whenever possible. *Harmon v. Dep't of Social & Health Services*, 134 Wash.2d 523, 542, 951 P.2d 770 (1998) (citing *Leson v. State*, 72 Wash. App. 558, 563, 864 P.2d 384 (1993).

¶42 Division One of this court rejected similar arguments in the *Nelson* case. It held that determining whether sealing the record was akin to a pardon or other equivalent procedure was "putting the cart before the horse," because the plain language of the juvenile record sealing statute entitled Nelson to be treated as if he had not previously been convicted, there was no conviction to be examined under RCW 9.41.040. *Nelson*, 120 Wash. App. at 478-81, 85 P.3d 912. The plain language of the sealing statute supports the interpretation that after receiving an order sealing juvenile records and convictions, the juvenile offender is treated as not having "previously been convicted." *Nelson*, 120 Wash. App. at 480, 85 P.3d 912. Therefore, ***877** under the plain language of RCW 9.41.040, Barr does not have a "conviction" preventing him from firearm possession. *See* RCW 9.41.040(3).

[13] [14] ¶43 The general-specific rule of statutory interpretation provides that a specific statute prevails over a general statute. *State v. Flores*, 194 Wash. App. 29, 36, 374 P.3d 222 (2016). Therefore, "when a general statute, standing alone, includes the same subject as the special statute and then conflicts with it, the court deems the special statute to be an exception to, or qualification of, the general statute." *Flores*, 194 Wash. App. at 37, 374 P.3d 222.

¶44 Here, the sealing statute and the firearm statutes do not conflict. Rather, the statutes can be easily harmonized. Under RCW 13.50.260, once a court seals a juvenile record containing a class A felony adjudication, the adjudication is treated as if it never occurred. Next, under the firearm statutes, a CPL applicant with sealed adjudications has no convictions preventing firearm possession. Accordingly, the statutes do not conflict and are easily reconciled.

3. *Attorney General Opinion Is Not Controlling*

[15] ¶45 The Sheriff also asserts that Barr's interpretation of the sealing statute conflicts with an attorney general's opinion. The Sheriff asserts that the attorney general has previously concluded that under Washington law, other than by receiving a pardon, a person with a class A felony offense could not receive restoration of their firearm rights. We disagree.

¶46 In 2002, the attorney general issued an opinion on the availability of persons convicted of Class A felonies to restore their firearm rights. Op. Att'y Gen. 2002 No. 4.[11] The attorney general was asked if there was any statutory procedure for restoring firearm possession right to a person convicted of a class A felony. Op. Att'y Gen. 2002 No. 4. In response, the attorney general opined that the only way to restore firearm rights to persons convicted of class A felonies was through a pardon by the governor containing a specific finding of rehabilitation or innocence. Op. Att'y Gen. 2002 No. 4.

[16] ¶47 The Sheriff's reliance on the attorney general opinion about convicted persons and firearm possession, is misplaced. Although we give opinions of the attorney general considerable weight, they are not controlling on this court. *Skagit Cty. Pub. Hosp. Dist. No. 304 v. Skagit Cty. Pub. Hosp. Dist. No. 1*, 177 Wash.2d 718, 725, 305 P.3d 1079 (2013). Further, we give less deference to

attorney general opinions when they involve issues of statutory interpretation. *Skagit Cty. Pub. Hosp. Dist.*, 177 Wash.2d at 725, 305 P.3d 1079.

¶48 More importantly, the attorney general published its opinion on firearm rights restoration in 2002, a year before the *Nelson* case was decided. Because of this, the attorney general did not have the benefit of case law directly on point when drafting its opinion. Accordingly, the attorney general's opinion is not useful and is ultimately not binding on this court.

4. *No Absurd Results*

¶49 The Sheriff next argues that adopting Barr's interpretation would lead to practical difficulties and absurd results. We disagree.

[17] ¶50 In interpreting statutes, we avoid reading statutes in a manner that produces absurd results. *State v. Eaton*, 168 Wash.2d 476, 480, 229 P.3d 704 (2010). Here, the Sheriff correctly points out that if an individual who has a sealed juvenile adjudication is ever adjudicated as a juvenile or charged with a new felony, the sealed file is automatically unsealed under RCW 13.50.260(8). The Sheriff argues that this requirement complicates the process of revoking and restoring firearm rights and creates a problem of who must provide notice of revocation of firearm rights to people whose adjudications become unsealed. However, RCW 9.41.047(1)(a) requires that a defendant be notified of his or her ineligibility to possess ***878** a firearm only upon certain conditions, none of which are present here. Barr has already been notified of his ineligibility to possess firearms based on the adjudications that were sealed. Moreover, the order sealing his juvenile records notified him that the order would be nullified if he were charged with a felony. It would not be absurd or unfair if the unsealing of these adjudications again rendered him ineligible to possess a firearm or a CPL.

5. *RCW 9.41.040's Restoration Provision Does Not Control*

[18] ¶51 The Sheriff argues that sealing does not restore firearm rights because RCW 9.41.040 provides the exclusive mechanism for restoring firearm rights. We disagree.

¶52 As similarly discussed in *Nelson*, the Sheriff's argument puts the cart before the horse. *Nelson*, 120 Wash. App. at 478, 85 P.3d 912. Barr received orders sealing his class A juvenile adjudications and, therefore, has no conviction that prohibits him from possessing a firearm under RCW 9.41.040. He is likewise not prohibited from receiving a CPL under state law. Because we consider Barr as having no conviction, his rights are not "restored" nor do they need restoring. Accordingly, RCW 9.41.040's restoration provision does not control here.

¶53 For the above reasons, the Sheriff's arguments in support of the court's denial of Barr's writ of mandamus and the Sheriff's ultimate denial of Barr's CPL license fail.

D. *Possession allowed under Federal law*

[19] ¶54 Finally, Barr argues that because he is not prohibited from possessing a firearm under Washington law, he is also not prohibited from possessing a firearm under federal law. The Sheriff argues that the sealing statute does not remove all effects of the adjudication and that sealing does not qualify as "expunged or set aside" as required for firearm possession under federal law. Br. of Resp't at 24. We agree with Barr.

¶55 The federal gun control act makes it unlawful for any person convicted of a crime to own or possess a firearm. 18 U.S.C. § 922(g)(1). However, under the act:

> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(20). Therefore, whether or not the Sheriff breached its duty to issue Barr a CPL depends

on how Washington law treats Barr's class A felony adjudications in light of their sealing.

¶56 As discussed above, under RCW 13.50.260(6)(a), sealed juvenile adjudications in Washington jurisdictions are to be treated as if they never occurred, and therefore, the adjudications do not exist to prohibit firearm possession. *Nelson*, 120 Wash. App. at 479-80, 85 P.3d 912. As a result, Barr does not have any prohibitory convictions under 18 U.S.C. § 921(a)(20).

¶57 The District Court for the Western District of Washington recently came to the same conclusion in *Siperek*, 270 F.Supp.3d at 1242. Relying on *Nelson*, the court determined that a person's sealed juvenile class A felony adjudication in Washington was treated as having never occurred. *Siperek*, 270 F.Supp.3d at 1249. The court held that because under Washington law, the jurisdiction in which Siperek's criminal proceedings took place, Siperek's sealed juvenile offense should be treated as having never occurred, Siperek had no limitation on legally possessing firearms under 18 U.S.C. § 921(a)(20). *Siperek*, 270 F.Supp.3d at 1249-50.

¶58 Similar to the plaintiff in *Siperek*, because Barr's adjudications are sealed and treated as having never occurred under Washington law, Barr is not prohibited from possessing a firearm under 18 U.S.C. § 921(a)(20). Although the Sheriff argues that sealing does not constitute a "set aside" or an "expungement" under 18 U.S.C. § 921, the sealing statute does allow Barr to treat ***879** his adjudications as having never occurred. It would be unnecessary in this case to address whether sealing in Washington equates to a set aside or expungement. The question here is whether Barr has a prohibitory conviction, not whether the sealing process equates to a set aside or expungement. Because, under Washington law Barr has no conviction that would prevent him from obtaining a firearm he is also not federally precluded from possessing a firearm.

¶59 The Sheriff asserts that *Siperek* was not properly decided, and argues that it is in conflict with other federal cases dealing with state and federal firearm laws. The Sheriff cites to *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1246 (10th Cir. 2008) and *Jennings v. Mukasey*, 511 F.3d 894, 900 (9th Cir. 2007). But a careful review of these cases reveals that the courts analyzed each on a case-by-case basis, examining how the law of each state affects federal firearm rights. Moreover, both of these cases are distinguishable because they involve plaintiffs who sought firearm rights after being convicted of misdemeanor domestic violence convictions and because the rights of individuals who were previously convicted of domestic violence convictions are examined under a different statute than the one examined in *Siperek*.

¶60 Furthermore, the *Jennings* court held that a state law purporting to expunge a person's conviction did not remove all effects of the conviction and therefore the person could not obtain a firearm under federal law. *Jennings*, 511 F.3d at 899. In analyzing the applicable state statute, the *Jennings* court agreed with the state court that held the state law at issue did not relieve the ex-offender of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for licensure by any state or local agency. *Jennings*, 511 F.3d at 898-99. Because of this affirmative disclosure obligation, the court held that the state statute did not expunge or eliminate the conviction, and therefore, the convicted person was prohibited from possessing firearms under 18 U.S.C. § 922(g)(9). *Jennings*, 511 F.3d at 899, 901.

¶61 Here, even under *Jennings*, the Washington sealing statute would allow Barr access to firearms under federal law. RCW 13.50.260(6)(a) states that after sealing, "proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to *any inquiry* about the events, records of which are sealed." (Emphasis added.) Unlike the state statute at issue in *Jennings*, the sealing statute here relieves the person receiving the sealing order from the obligation to disclose the adjudication in response to "any inquiry." Unlike the statute at issue in *Jennings*, Washington's sealing statute treats the adjudication as not existing, and therefore, no affirmative duty to disclose the adjudication in response to a question exists. Therefore, the Sheriff's argument that the cited federal court cases apply to ban Barr's ability to possess a firearm under federal law, fails.

¶62 Because Barr received orders sealing his class A felony juvenile adjudications under Washington law and because Washington law requires that his adjudications be treated as if they never occurred, Barr is not prohibited from possessing firearms under federal law.

E. *Conclusion*

¶63 As noted above, the only writ of mandamus element at issue here is whether the Sheriff had a clear duty to act. Because Barr's adjudications, after being sealed, were to be treated as if they never occurred, Barr had no prohibition on his ability to possess a firearm under either state or federal law. It is clear the Sheriff had a duty under RCW 9.41.070(1) to issue Barr a CPL and failed to do so.

¶64 Accordingly, we reverse and remand the superior court's order denying Barr's writ of mandamus. We remand with instructions to issue Barr's writ of mandamus, requiring the Sheriff to issue Barr a CPL.

ATTORNEY FEES

¶65 Barr requests attorney fees and costs pursuant to RAP 18.1(a) and RCW 9.41.0975. We grant Barr's request.

¶66 Under RAP 18.1(a), if applicable law grants a party the right to recover reasonable ***880** attorney fees or expenses on review before the Court of Appeals, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the superior court. The statute addressing the writ of mandamus at issue here provides:

> (2) An application may be made to a court of competent jurisdiction for a writ of mandamus:
>
> (a) Directing an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused;
>
> ....
>
> (d) ... A person granted a writ of mandamus under this subsection (2) shall be awarded reasonable attorneys' fees and costs.

RCW 9.41.0975(2)(d).

¶67 Because we reverse the superior court's denial of Barr's writ of mandamus, in effect granting Barr a writ of mandamus, and because RCW 9.41.0975(2)(d) grants a party the right to recover reasonable costs and fees and does not specify that request for fees must be made to the superior court, we hold that Barr is entitled to an award of reasonable attorney fees and costs.

We concur:

Bjorgen, J.

Sutton, J.

All Citations

419 P.3d 867

Footnotes

1 Available at: http://leg.wa.gov/CodeReviser/documents/sessionlaw/1905c18.pdf

2 Available at: http://leg.wa.gov/CodeReviser/documents/sessionlaw/1977ex1c291.pdf

3 Available at: http://leg.wa.gov/CodeReviser/documents/sessionlaw/1979c155.pdf

4 Available at : http://lawfilesext.leg.wa.gov/biennium/2013-14/Pdf/Bills/Session% 20Laws/House/1651-S2.sl.pdf

5 Barr requests us to refrain from naming these offenses because they have been sealed. We honor Barr's request.

6 RCW 9.41.0975 provides in relevant part:

> (2) An application may be made to a court of competent jurisdiction for a writ of mandamus:
>
> (a) Directing an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused.

7 RCW 13.50.260(4)(a) through (c) describe the criteria that must be met for sealing to occur and provide:

> (a) The court shall grant any motion to seal records for class A offenses made pursuant to subsection (3) of this section if:
>
> (i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;
>
> (ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;
>
> (iii) No proceeding is pending seeking the formation of a diversion agreement with that person;
>
> (iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

(vi) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any insurance provider authorized under Title 48 RCW.

(b) The court shall grant any motion to seal records for class B, class C, gross misdemeanor, and misdemeanor offenses and diversions made under subsection (3) of this section if:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and

(v) The person has paid the full amount of restitution owing to the individual victim named in the restitution order, excluding restitution owed to any insurance provider authorized under Title 48 RCW.

(c) Notwithstanding the requirements in (a) or (b) of this subsection, the court shall grant any motion to seal records of any deferred disposition vacated under RCW 13.40.127(9) prior to June 7, 2012, if restitution has been paid and the person is eighteen years of age or older at the time of the motion.

8 RCW 9.41.047 governs restoration of firearm possession rights.

9 *See* LAWS OF 2015, ch. 265, § 3; LAWS OF 2014 ch. 175, § 3; LAWS OF 2012 ch. 177, § 2; LAWS OF 2011 ch. 338, § 4; LAWS OF 2011 ch. 333, § 4; LAWS OF 2010 ch. 150, § 2; LAWS OF 2008 ch. 221, § 1; LAWS OF 2004 ch. 42, § 1.

10 As a corollary to its argument that the legislative amendments affect Barr's rights, the Sheriff argues that because the statute has been amended to expand access to the sealed records, Barr cannot take advantage of RCW 9.41.040(3)'s rebuttable presumption that his adjudications did not occur. But, Barr does not need to avail himself of a rebuttable presumption based on an inability to find a court record. The sealing statute is clear that by having his records sealed, Barr's adjudications are treated as if they never occurred.

11 Opinion available at http://www.atg.wa.gov/ago-opinions/when-convicted-persons-are-entitled-restoration-firearm-possession-rights.

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July 12, 2018 - 3:08 PM

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Appellate Court Case Title:	Jerry L. Barr, Appellant v. Snohomish County Sheriff, Respondent
Superior Court Case Number:	17-2-02519-1

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