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Case # 71252-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, *Respondent,*

v.

KURTIS WILLIAM BRISKEY, *Appellant.*

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I. INTRODUCTION

In 2013, Briskey filed a motion to seal his juvenile record of two counts of Malicious Mischief in the First Degree, from 1995. The trial court denied his motion because he has not paid full restitution, a requirement for sealing juvenile records, even though the restitution order expired in 2005, and no one filed a motion to extend the restitution order before it expired. In 2000, Washington State passed legislation that differentiates between pre- and post-July 1, 2000, offense restitution orders: pre-July 1, 2000, offense restitution orders expire and become void after 10 years if not renewed; post-July 1, 2000 offense restitution orders last for the lifetime of the offender until paid. Adult offenders can obtain a certificate of discharge once their restitution order expires for offenses committed prior to July 1, 2000. A certificate of discharge is required to get an adult conviction vacated. Vacating an adult conviction is analogous to sealing juvenile records. Juveniles should be able to seal their juvenile records under the same circumstances as adults, i.e., when their restitution orders expire.

Briskey now asks this Court to reverse the trial court's decision, and remand this case with directions to seal his juvenile records.

II. ASSIGNMENT OF ERROR

The trial court erred when it denied Briskey's motion to seal his juvenile records based on Briskey's failure to pay restitution, because at the time of his motion the restitution order was unenforceable.

Issues Pertaining to Assignment of Error

Whether the trial court failed to properly interpret and apply current law regarding an expired restitution order as a condition of sealing juvenile records.

Whether the trial court failed to grant Briskey equal protection to that of an adult offender.

III. STATEMENT OF THE CASE

On January 17, 1995, Briskey pled guilty to two counts of Malicious Mischief in the First Degree, in King County Juvenile Court. CP 9. His sentence included $7,617.32 of restitution to be paid. CP 10. Briskey paid a total of $956.62 of restitution. CP 12.

The restitution order expired in 2005. CP 4. No one filed a motion to extend the restitution order for another 10 years prior to its expiration.

All other requirements to seal Briskey's juvenile records have been fulfilled.

On August 22, 2013, Briskey filed a motion to seal his juvenile records. CP 1-2. The trial court denied his motion since full restitution was not paid, even though the restitution order had expired. CP 20-21.

IV. SUMMARY OF ARGUMENT

Expired restitution orders are void and not enforceable, and should not be used as a requirement for sealing juvenile records. Adult offenders can receive a certificate of discharge with unpaid, expired restitution orders. Juvenile offenders should receive the same result as adults in the same circumstance.

V. ARGUMENT

This appeal presents questions of law regarding the interpretation and application of statutory requirements under RCW 13.40.192, RCW 13.50.050(12)(b), and RCW 6.17.020(4). Such questions of law are reviewed *de novo*. *Philippides v. Bernard*, 151 Wn.2d 376, 383, 88 P.3d 939 (2004). The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose. *In re Parentage of J.M.K.*, 155 Wn.2d 374, 387, 119 P.3d 840 (2005).

> "This is done by considering the statute as a whole, giving effect to all that the legislature has said, and *using related statutes to help identify the legislative intent* embodied in the provision in question."

Id. (*emphasis added*).

A. Washington State Legislature differentiates restitution order terms for pre- and post-July 1, 2000, offenses: Pre-July 1, 2000 offense restitution orders are void after 10 years unless renewed for an additional 10 years, whereas post-July 2000 offense restitution orders are valid for the life of the offender.

In 2000, the Washington State Legislature addressed the issue of the tolling of restitution orders when someone is absent from supervision or confined for any reason. Laws of 2000, ch. 226, § 4(4). An adult offender with restitution orders from two counties was incarcerated on an unrelated charge, and filed for relief of collection of the restitution since the 10-year period had lapsed without renewal. *In re Brandt E. Sappenfield*, 138 Wn.2d 588, 980 P.2d 1271 (1999). The court held that once the restitution order lapses, it becomes void, and cannot be tolled even if the defendant is confined and under the supervision of the Department of Corrections. *Id.* at 594.

In order to prevent what happened in *Sappenfield* from occurring again, the legislature changed the law to make restitution orders permanent until paid off for offenses committed *after* July 1, 2000. Restitution orders *prior* to July 1, 2000, retained their 10-year limitation, with a possible 10-year renewal if it was filed before the order expired.

> "For offenses committed after July 1, 2000, the court retains jurisdiction over the offender for purposes of the payment of legal financial obligations for the life of the offender, regardless of the statutory maximum sentence."

Final Bill Rep. on SSB 6336, 56th Leg., Reg. Sess. (Wash. 2000).

This change in the law, distinguishing between pre- and post-July 1, 2000, offense restitution orders, was discussed in *State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525 (2008). An adult was convicted of four felonies and ordered to pay restitution in 1992. Gossage satisfied all of his sentence requirements except for paying full restitution. *Id.* at 4. In 2003, he petitioned for a certificate of discharge. The court addressed the concern of holding offenders responsible for paying restitution, when it reviewed the legislative history:

> ¶20 The legislature has grappled with the very issue the Court of Appeals pointed out in its opinion: *that the limitations period might discourage payment and defeat the punitive and restorative purposes of the obligation.* H.B. Rep. on Substitute S.B. 6336, 56th Leg., Reg. Sess. (Wash. 2000) (summarizing testimony in favor of bill as: "It is very important to the rights of crime victims that offenders continue to be held accountable for the results of their actions. Offenders should be required to pay for whatever length of time it takes them to pay it off."). The legislature then corrected that problem by extending the court's jurisdiction for the lifetime of the offender or until all LFOs are satisfied. However, *it chose to do so for offenses committed only from July 1, 2000, forward. See* Laws of 2000, ch. 226, §§ 3, 4. As a corollary, the legislature left the limitation period for offenses committed before July 1, 2000, unchanged. *See id.*

165 Wn.2d 8-9 (*emphasis added*).

After reviewing the legislative history, the court concluded that because the 10-year period had expired without renewal of the LFO, it no longer existed:

> "*...LFOs for pre-July 2000 offenses expire and become void* after 10 years unless the superior court extends them for another 10 years prior to the expiration of the first period. Gossage committed his offense before July 2000, and the court did not extend the limitation period. Thus, *Gossage no longer has any LFOs*.
>
> Under the discharge statute, the superior court is required to issue a certificate of discharge if an offender satisfies all sentencing requirements and LFOs. RCW 9.94A.637. It is undisputed that Gossage satisfied his sentencing requirements, *and we conclude that he has no remaining LFOs*. The superior court *must* issue Gossage a certificate of discharge."

165 Wn.2d 9-10 (*emphasis added*).

Since Gossage's offenses were committed before 2000, and the superior court did not extend the judgment, the court held that Gossage's LFOs had expired and he was entitled to a certificate of discharge. *Id.* at 11.

The court in *Gossage* used the word "void" to describe the expired LFO. "Void" is defined as "of no legal effect; null." Black's Law Dictionary (7th Ed. 2000). Since Gossage's unpaid restitution order was for a pre-July 1, 2000, offense, it became void once 10 years had lapsed without a renewal, and could no longer be a factor in granting or denying Gossage a certificate of discharge.

RCW 9.94A.637 states the requirements for an adult offender receiving a certificate of discharge, which include paying all LFOs, including restitution, but this statute must be read in conjunction with RCW 9.94A.760(4), which describes pre-and post-July 1, 2000, offense restitution enforcement:

> ...legal financial obligations for an offense committed *prior to July 1, 2000*, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. *For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime....*

RCW 9.94A.760(4) (*emphasis added*).

B. Full restitution paid as a requirement for sealing juvenile records mirrors the language for a pre-July 1, 2000, adult offense restitution order.

RCW 13.50.050(12) lists the requirements for sealing juvenile records:

> (b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and

> misdemeanor offenses and diversions made under subsection (11) of this section unless:
>
> ...
>
> (v) Full restitution has been paid.
>
> ....

RCW 13.50.050(12)(b)(v).

Statues that address Legal Financial Obligations (LFOs) in juvenile cases mirror the statutory language for pre-July 1, 2000, adult offenses. LFOs, including restitution, are determined at sentencing and remain in effect for 10 years, at which time they expire unless they are renewed prior to the 10-year expiration date. This is codified in RCW 13.40.192 and 6.17.020(4):

> If a juvenile is ordered to pay legal financial obligations, including ...restitution, the money judgment remains enforceable for a period of ten years. When the juvenile reaches the age of eighteen years or at the conclusion of juvenile court jurisdiction, whichever occurs later, the superior court clerk must docket the remaining balance of the juvenile's legal financial obligations in the same manner as other judgments for the payment of money. *The judgment remains valid and enforceable until ten years from the date of its imposition.* The clerk of the superior court may seek extension of the judgment for legal financial obligations,..., in the same manner as RCW 6.17.020 for purposes of collection as allowed under RCW 36.18.109.

RCW 13.40.192 (*emphasis added*).

> A party who obtains a judgment or order for restitution... pursuant to a criminal judgment and sentence...may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to

> the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter 9.94A RCW. *The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection* as allowed under RCW 36.18.190, provided that no filing fee shall be required.

RCW 6.17.020(4) (*emphasis added*).

RCW 13.50.050(12)(b)(v) states that full restitution paid is a requirement for sealing juvenile records, *but this statute cannot be read alone*. It must be read in conjunction with RCW 13.40.192 and 6.17.020(4), and as interpreted in current case law. Once restitution orders expire, they are no longer enforceable, and therefore, are no longer a condition to be satisfied in order to seal juvenile records.

A juvenile was found guilty of one charge in 1995, and two charges in 1996, and ordered to pay restitution in both cases. *In re Andrew Evan Brady*, 154 Wn. App. 189, 224 P.3d 842 (2010). More than 10 years after the last restitution order was imposed, the county prosecutor filed an order to extend the jurisdiction for collection of the LFOs. *Id.* at 191. The court held that since the application for extension to enforce the LFO was made after the 10-year expiration of the original disposition order, the judgments were unenforceable. *Id.* at 198.

The court in *Brady* held the expired restitution order unenforceable, as did the court in *Gossage*. Whether described as

"expired," "unenforceable," or "void," an expired restitution order has no legal effect. Just as Gossage's expired unpaid restitution order was not a factor in granting or denying him a certificate of discharge, an expired juvenile restitution order should not be a factor in sealing juvenile records.

C. Juveniles should receive the same relief as adult offenders regarding expired restitution orders.

An adult certificate of discharge is a necessary predicate to getting an adult conviction vacated. Vacating an adult conviction is comparable to sealing a juvenile's records, but vacating an adult conviction *cannot occur* until there is a certificate of discharge issued. The certificate of discharge is the only part of vacating an adult conviction that specifically addresses restitution. All other statutory requirements for vacating an adult conviction occur after the certificate of discharge has been issued. The legislature combined the adult requirements for (1) a certificate of discharge and (2) vacating a conviction into one statute for sealing a juvenile's records:

Criteria	**Adult Vacating**	**Juvenile Sealing**
No new convictions	9.94A.640(2)(d)	13.50.050(12)(b)(i)
No pending charges	9.94A.640(2)(a)	13.50.050(12)(b)(ii)
No pending diversion	N/A	13.50.050(12)(b)(iii)
Not register as sex offender	N/A	13.50.050(12)(b)(iv)
Full restitution paid	Receive a certificate of discharge pursuant to 9.94A.637(1)(b)(ii)	13.50.050(12)(b)(v)

There is not one type of certificate of discharge for someone who has paid all of their restitution, and another type of certificate of discharge for someone who has not paid all of their restitution. There is only one type of certificate of discharge. Once it is granted, the defendant may get his record vacated if he meets the criteria in RCW 9.94A.640(2). None of those criteria include complete payment of restitution.

A certificate of discharge is the required predecessor to vacating an adult felony, and vacating an adult felony is comparable to sealing a juvenile's records. A juvenile offender record sealing order and an adult certificate of discharge both address restitution. It follows from *Gossage*, that if a juvenile LFO is unenforceable, and therefore, void, and all other requirements for sealing the juvenile's records have been met, the court shall order the juvenile's records be sealed.

The equal protection clause requires that similarly situated individuals receive like treatment under the law. *In re Todd Tapley*, 72 Wn. App. 440, 451 (1994). If an adult is entitled to obtain a certificate of discharge after his LFO has expired, a juvenile should be entitled to seal his juvenile records after his LFO has expired. Briskey, the appellant in the instant case, completed all sentencing requirements except for paying full restitution. The adult in *Gossage* completed all sentencing requirements except for paying full restitution. Gossage received a

certificate of discharge. Briskey should receive the same benefit under the law and have his juvenile records sealed.

By denying Briskey's motion to seal his juvenile records because of an unpaid expired restitution order, the trial court erred and denied a juvenile offender the relief granted to adult offenders who fail to pay expired restitution orders for offenses committed before July 1, 2000. Briskey's case also occurred before July 1, 2000.

VI. CONCLUSION

The trial court erred in denying Briskey's motion to seal his juvenile records, because it treated his restitution order as permanent.

More than 10 years have passed since Briskey pled guilty to two counts of Malicious Mischief in the First Degree. Briskey has complied with all requirements for sealing his juvenile records, except for paying full restitution. Briskey's restitution order expired in 2005, and no extension of the judgment for the restitution was filed. As held in *Brady*, the LFO is not enforceable, is void, and of no legal effect. Following the holdings in *Brady* and *Gossage*, the restitution order no longer exists, and therefore is no longer a requirement, as listed in RCW 13.50.050(12)(b)(v), for Briskey to get his juvenile records sealed.

Briskey requests this Court reverse the trial court's ruling that denied his motion to seal his juvenile records, and remand with directions to seal Briskey's juvenile records without requiring full restitution be paid.

RESPECTFULLY SUBMITTED this 28th day of February, 2014.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date written below, a true and correct copy of this document was served on each of the parties below as follows:

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