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## **I. ASSIGNMENTS OF ERROR**

- A. THE TRIAL COURT ERRED IN MAKING FINDING OF FACT #4, AS THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THIS FINDING.**
- B. THE TRIAL COURT ERRED IN MAKING EACH OF ITS CONCLUSIONS OF LAW.**
- C. THE TRIAL COURT ERRED WHEN IT GRANTED COUGHLIN'S MOTION TO DISMISS.**

## **II. ISSUE PRESENTED**

- A. IS THERE A DUE PROCESS RIGHT TO INDIVIDUAL NOTIFICATION OF THE ILLEGALITY OF POSSESSING A FIREARM?**
- B. DID THE LEGISLATURE INTEND TO CODIFY ANY DUE PROCESS RIGHTS WHEN IT ENACTED RCW 9.41.047?**
- C. DOES A SENTENCING COURT'S FAILURE TO FOLLOW RCW 9.41.047 ALONE REQUIRE DISMISSAL OF A SUBSEQUENT UNLAWFUL POSSESSION OF A FIREARM CHARGE, ABSENT PREJUDICE TO THE DEFENDANT?**
- D. DO THE FACTS OF COUGHLIN'S CASE REVEAL PREJUDICE?**

## **III. STATEMENT OF THE CASE**

On November 29, 2004, the respondent, Nathan Daniel Coughlin, was arrested for driving under the influence of intoxicants in Cowlitz County. CP 27. A search of his vehicle incident to that arrest revealed a

pistol in the console between the two front seats of Coughlin's vehicle.

*Id.* The arresting officer checked Coughlin's criminal history and discovered that Coughlin had been adjudicated guilty as a juvenile on November 29, 1994, in Pierce County Superior Court on a charge of unlawful imprisonment, a felony. *Id.*; RCW 9A.40.040(2). Coughlin was later charged with unlawful possession of a firearm in the second degree<sup>1</sup> (with the unlawful imprisonment conviction serving as the underlying conviction to that charge) and driving under the influence of intoxicants in Cowlitz County Superior Court cause #03-1-01706-7. CP 5.

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<sup>1</sup> RCW 9.41.040 reads in pertinent part as follows:

**Unlawful possession of firearms....** (2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section....

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals....

On March 9, 2005, Coughlin filed a *Knapstad* motion<sup>2</sup> in the firearm case. CP 22. That motion was argued on March 24, 2005. RP 3-15. In support of his motion, Coughlin presented evidence consisting of the disposition order from his 1994 juvenile adjudication and a copy of his statement on plea of guilty to that charge. CP 22 (Exhibits B and C), CP 27.

The statute at issue in this case, RCW 9.41.047<sup>3</sup>, went into effect on July 1, 1994. When a defendant convicted of an offense making him ineligible to possess a firearm is sentenced, this statute requires the sentencing court to inform the defendant orally and in writing that he may

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<sup>2</sup> *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986) (trial court has inherent power to dismiss a criminal charge prior to trial when the uncontroverted facts as alleged by the State, if true, would not prove the charge, and the only issue is an isolated and determinative issue of law).

The State believes that a *Knapstad* motion was not the proper avenue to address these issues at the trial court level. The State believes the motion should have been brought under CrR 8.3(b) as was done in *State v. Leavitt, supra*. However, the State is not challenging this tactic (or the fact that the court proceeded with argument on the *Knapstad* motion) on appeal. While the State clearly would have been successful in a challenge by a proper *Knapstad* motion, it is the position of the State that the desired effect of the motion, whatever its title, was dismissal of the charges based upon a claim of violation of due process rights. It appears that the trial court treated the motion as a CrR 3.8(b) motion as it dismissed the charge without concluding that the State could not make a *prima facie* case against Coughlin.

<sup>3</sup> RCW 9.41.047 reads in pertinent part as follows:

- (1) At the time a person is convicted of an offense making the person ineligible to possess a firearm ... the [convicting court] shall notify the person, orally and in writing that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.

not possess a firearm unless the court restores that right. RCW 9.41.047(1). In Coughlin's case, neither the disposition order from his juvenile adjudication nor his statement on plea of guilty contains written notice of Coughlin's loss of right to possess a firearm as required by RCW 9.41.047. CP 27, RP 7-8. Furthermore, the sentencing court did not orally inform Coughlin of the same restriction. CP 24, CP 27, RP 7-8.

Coughlin also presented as evidence at the *Knapstad* hearing a form that Coughlin filled out and signed when he had considered purchasing a firearm prior to the DUI arrest. CP 22 (Exhibit D). On May 18, 2000, Coughlin submitted the form as an application for the purchase of a firearm at Bob's Merchandise Store in Longview. CP 24 (Exhibit D), CP 27. The paperwork reflects that the application was reviewed and checked by "NICS or the appropriate state agency," which, according to the form, informed the store that it could proceed with the sale of the firearm to Coughlin. CP 22 (Exhibit D). Coughlin was given a copy of that form at the time. CP 27.

Finally, in his own affidavit in support of the motion, Coughlin claimed that, due to the representation of Bob's Merchandise Store and the fact that the sentencing court did not notify him of his loss of rights, he believed he was legally entitled to possess a firearm. CP 24. The form also reflects that, in section 9b, Coughlin was asked whether he had ever

been convicted of a crime for which the judge could have sentenced him to more than one year imprisonment. CP 22 (Exhibit D). The form also shows Coughlin answered “no” to that question, under penalty of perjury, with knowledge that a “yes” answer would disqualify him from the purchase of a firearm. *Id.*

At the hearing on the motion, the State argued that the statute at issue and subsequent case law do not require dismissal of an unlawful possession of a firearm charge merely because the sentencing court on the underlying conviction fails to comply with the statute. RP 7-10. The State also argued that Coughlin could not claim prejudice where he provided inaccurate information. RP 9-10. The defense argued that the facts in Coughlin’s case were analogous to those in *State v. Leavitt, infra*. RP 3-7. In Coughlin’s case, the court ruled in favor of the defense and granted the motion to dismiss. RP 13-14. On April 7, 2005, the court entered findings of fact and conclusions of law regarding the *Knapstad* hearing. CP 27. Coughlin pled guilty to the DUI charge. CP 29. An order of dismissal of the firearm charge was included in both the findings and conclusions regarding the *Knapstad* hearing and in the judgment and sentence for the DUI conviction entered on April 14, 2005. CP 27, CP 29. The State filed a timely notice of appeal. RP 32.

#### IV. ARGUMENT

##### A. THE TRIAL COURT ERRED IN MAKING ITS FINDING OF FACT #4 AS THERE WAS NO SUBSTANTIAL EVIDENCE TO SUPPORT THIS FINDING.

A court's finding of fact must be supported by substantial evidence. *State v. Stevenson*, -- Wn.App. – 114 P.3d 699, 706 (2005). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. *Id.* In Coughlin's case, finding of fact #4 reads as follows:

The defendant also presented evidence in the form of documentation attached to the pleadings, which reflected that when he turned eighteen years of age, he submitted an application for the purchase of a firearm at Bob's Merchandise Store in Longview Washington [sic], and **the paperwork reflects that the application was reviewed and checked by a local police agency**, which informed the store that they could proceed with the sale of a firearm to the defendant. According to the defendant's affidavit, he was aware of this information, even though he decided not to proceed with the purchase.

CP 27 (emphasis added). The only evidence that Coughlin's application may have been reviewed and checked by a local police agency were two portions of the form filled out at Bob's Merchandise Store. CP 27 (Exhibit D). The first pertinent part of the form shows that the buyer's, Coughlin's, "identifying information ... was transmitted to NICS or the appropriate state agency on 5/18/00." CP 27 (Exhibit D) (uppercase omitted). The form then shows that "the response initially provided by

NICS or the appropriate state agency was... proceed". CP 27 (Exhibit D) (uppercase omitted).

There was no evidence that either NICS or "the appropriate state agency" was "a local police agency." In fact, there was no evidence of what NICS actually is. Therefore, there was not substantial evidence to support this finding of fact, and it was made in error.

**B. THE TRIAL COURT ERRED IN MAKING EACH OF ITS CONCLUSIONS OF LAW.**

- (1) Due process does not require that a defendant be notified that a prior felony offense results in the loss of his right to bear firearms as a necessary condition precedent to a criminal prosecution for unlawfully possessing a firearm.**

Conclusion of law #1 reads as follows:

The defendant's right to due process of law under both the state and federal constitutions require [sic] that the defendant be notified that the prior felony offense did result in the loss of his right to bear firearms as a necessary condition precedent to the state subsequently prosecuting him on the charge of unlawful possession of a firearm.

CP 27. It is the State's position that this conclusion was made in error.

Due process requires that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888, 890 (1939). However, in unlawful possession of a firearm cases,

knowledge that the possession is unlawful is not an element of the crime. *State v. Reed*, 84 Wn.App. 379, 383, 928 P.2d 469 (1997); *State v. Semakula*, 88 Wn.App. 719, 724, 946 P.2d 795 (1997), *review denied*, 134 Wn.2d 1022, 958 P.2d 317 (1998); *State v. Krzeszowski*, 106 Wn.App. 638, 642-643, 24 P.3d 485 (2001).

In an unlawful possession of a firearm case, the State need only prove that the defendant knew he possessed the firearm, not that he understood that such possession was illegal. *Reed*, 84 Wn.App. at 383, 928 P.2d 469. In other words, ignorance of the law is no excuse. Notice issues typically center on whether a law explains with sufficient clarity the conduct it purports to criminalize. *United States v. Meade*, 175 F.3d 215, 225 (1st Cir.1999). There are some limited instances in which the sentencing court's failure to inform the defendant of his loss of the right to possess a firearm is a factor considered in cases where a court misleads a defendant into believing that his conduct was not prohibited and the defendant demonstrates prejudice. Such cases are discussed *infra*. However, due process does not require the State to show that the sentencing court complied with RCW 9.41.047(1) before the State can prosecute a defendant for unlawfully possessing a firearm. Therefore, this conclusion of law was made in error. This due process issue is discussed in further detail in the following section.

**(2) The Washington State Legislature did not incorporate this claimed due process right when it enacted RCW 9.41.047.**

Conclusion of law #2 reads as follows:

The Washington State Legislature has incorporated this constitutional notice requirement in RCW 9.41.047, which states: “At the time a person is convicted of an offense making the person ineligible to possess a firearm, ... the convicting ... court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.”

CP 27 (ellipses in the original). Coughlin essentially claims that the legislature intended to codify what he claims is his due process right to notice of the illegality of his acts.

The statutory notification requirement of RCW 9.41.047 augments the sentencing procedure in an attempt to inform and to deter criminalized behavior – unlawful possession of a firearm. See *Reed*, 84 Wn.App. at 386, 928 P.2d 469. RCW 9.41.047 requires courts: (1) to notify specified defendants at sentencing, orally and in writing, that they must immediately surrender any concealed weapon permits and may no longer possess firearms; and (2) to forward the information to the Department of Licensing. The Department of Licensing is then required to determine whether the defendant has a weapon permit that should be revoked and to notify other license-issuing authorities. RCW 9.41.047(2). It is readily

apparent that this notification procedure was enacted to advance the probability of compliance and enforcement, rather than to enhance a defendant's due process rights.

It is the statute itself, rather than inherent due process rights, which requires the court to notify a defendant of the prohibition against firearms possession. The prohibition against a felon's firearm possession is a collateral effect of conviction for the predicate crime. It neither alters nor increases punishment for the predicate crime, but rather creates a new substantive offense by virtue of a defendant's new status: If in the future the defendant possesses a firearm, he will be committing another crime. *State v. Watkins*, 76 Wn.App. 726, 732, 887 P.2d 492 (1995).

Constitutional due process does not require the State to notify individuals that once convicted of certain crimes, the individual can no longer possess a firearm. The only notice constitutionally required is constructively provided by the unlawful possession of a firearm statute itself in the same way that persons are constructively on notice of all crimes, regardless of the level of individual awareness. People are presumed to know the law; ignorance of the law does not excuse noncompliance. *State v. Patterson*, 37 Wn.App. 275, 282, 679 P.2d 416, review denied, 103 Wn.2d 1005 (1984).

Furthermore, in its statement of intent behind the enactment of RCW 9.41.047, the legislature does not mention due process or in any way indicate that it intended to legislate a greater due process right than is afforded by the state and federal constitutions.<sup>4</sup> Laws 1994, 1st Sp.Sess., ch. 7, §101. Rather, the statement of intent reflects that the legislature believed that one of the ways it could reduce violence was by enacting legislation that would reduce the unlawful use of and access to firearms.

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<sup>4</sup> Laws 1994, 1st Sp.Sess., ch. 7, §101, reads as follows:

The legislature finds that the increasing violence in our society causes great concern for the immediate health and safety of our citizens and our social institutions. Youth violence is increasing at an alarming rate and young people between the ages of fifteen and twenty-four are at the highest risk of being perpetrators and victims of violence. Additionally, random violence, including homicide and the use of firearms, has dramatically increased over the last decade.

The legislature finds that violence is abhorrent to the aims of a free society and that it cannot be tolerated. State efforts at reducing violence must include changes in criminal penalties, reducing the unlawful use of and access to firearms, increasing educational efforts to encourage nonviolent means for resolving conflicts, and allowing communities to design their prevention efforts.

The legislature finds that the problem of violence can be addressed with many of the same approaches that public health programs have used to control other problems such as infectious disease, tobacco use and traffic fatalities.

Addressing the problem of violence requires the concerted effort of all communities and all parts of state and local governments. It is the immediate purpose of chapter ..., Laws of 1994 (this act) to: (1) Prevent acts of violence by encouraging change on social norms and individual behaviors that have been shown to increase the risk of violence; (2) reduce the rate of at-risk children and youth, as defined in RCW 70.190.010; (3) increase the severity and certainty of punishment for youth and adults who commit violent acts; (4) reduce the severity of harm to individuals when violence occurs; (5) empower communities to focus their concerns and allow them to control the funds dedicated to empirically supported preventive efforts in their region; and (6) reduce the fiscal and social impact of violence on our society.

*Id.* To that end, it is apparent that the notification procedure in RCW 9.41.047 was indeed enacted to advance the probability of compliance with and enforcement of the firearm possession laws, rather than to enhance a defendant's due process rights. Therefore, in Coughlin's case, the trial court erred in entering its second conclusion of law.

**(3) A sentencing court's failure to inform a defendant of the loss of his right to possess a firearm does not require the dismissal of a subsequent charge of unlawful possession of a firearm.**

Conclusion of law #3 reads as follows: "The failure of the state to demonstrate compliance with this constitutional notice requirement incorporated in RCW 9.41.047 requires the dismissal of the pending charge of unlawful possession of a firearm in the second degree." CP 27. Again, the State challenges the court's conclusion that RCW 9.41.047 is constitutionally required. See Section (IV)(B)(2), *supra*.

Furthermore, the State challenges the court's conclusion that a sentencing court's failure to comply with the notice requirement of RCW 9.41.047 -- in and of itself -- makes dismissal of a subsequent unlawful possession of a firearm charge mandatory. Where the sentencing court for the underlying conviction has failed to comply with RCW 9.41.047, Washington courts have considered dismissal in some highly fact-specific cases, such as *State v. Leavitt*, 107 Wn.App. 361, 27 P.3d 622 (2001), a

case out of this division of the Court of Appeals, and, more recently, in *State v. Carter*, -- Wn.App. --, 112 P.3d 561 (2005), a case out of Division Three. These two cases are discussed in detail in the following sections.

(a) *State v. Leavitt*

In *Leavitt*, this court reversed a conviction for unlawful possession of a firearm based upon the predicate-conviction sentencing court's failure to comply with RCW 9.41.047 together with other circumstances, finding that the combination of the circumstances prejudiced Leavitt. *Leavitt*, 107 Wn.App. 361, 27 P.3d 622. In 1998, Leavitt was convicted of violation of a protection order, a crime that rendered him unable to lawfully possess a firearm under RCW 9.41.040. His Statement on Plea of Guilty stated that his maximum sentence was one year and that, as part of his sentence, the prosecutor would ask the court to require "law abiding behavior and no possession of firearms." The court imposed a one-year sentence suspended on several conditions including "no possession of firearms (forfeit guns)..." The Conditions on Suspended Sentence provided, "Termination is to be 1 year(s) after date of sentence." *Leavitt*, 107 Wn.App. at 362-63, 27 P.3d 622.

Contrary to RCW 9.41.047, the sentencing court in *Leavitt* did not require Leavitt to relinquish his concealed weapons permit and did not inform him that it was illegal for him to possess a firearm, even beyond

his one-year probationary period. Finally, the Conditions, Requirements and Instructions that the Department of Corrections (DOC) furnished to Leavitt left blank a box next to a paragraph explaining RCW 9.41.047's firearm prohibition, thereby suggesting that this condition did not apply to him. *Leavitt*, 107 Wn.App. at 363, 27 P.3d 622.

Leavitt retained his concealed weapons permit but gave his firearms to his brother who lived out of state. A year later, Leavitt received a letter notifying him that his probation had ended. Believing he once again could legally possess a firearm, he retrieved his firearms from his brother. In 1999, after his probationary period had ended, Leavitt was found by police to be in possession of firearms (while the police were investigating a domestic violence complaint, Leavitt denied having any firearms in his home but volunteered he had firearms in his vehicle). He was charged with several counts of unlawful possession of a firearm. He moved to dismiss the charges under CrR 8.3(b), arguing that his due process rights had been violated. The trial court denied the motion, and Leavitt later was found guilty of the charges. *Leavitt*, 107 Wn.App. at 363-65, 27 P.3d 622.

This court noted that it did not need to nor was it addressing “whether failure to follow RCW 9.41.047 alone, absent prejudice to the defendant,” would require dismissal of an unlawful possession of a

firearm charge. *Leavitt*, 107 Wn.App. at 373, fn. 19, 27 P.3d 622. In *Leavitt*'s case, however, in addition to the sentencing court's failure to follow the RCW 9.41.047 mandate, the sentencing court's "words and actions inadvertently misled *Leavitt* into believing that any restriction on firearm possession was limited to his one-year probationary period." *Id.* at 367. This court found convincing the combination of the following facts: (1) the sentencing court did not require *Leavitt* to turn over his concealed weapons permit to the court, (2) the probation instructions seemed to include the firearms prohibition in its list of one-year probationary convictions, and (3) the fact that the box on DOC's written list of probation conditions that described the statutory firearms prohibition was left unmarked. *Id.*

This court also found it significant that *Leavitt*'s action following his underlying conviction and leading up to his arrest for unlawfully possessing firearms underscored that *Leavitt* relied on those misleading representations. Based on the combination of these factors along with the failure of the sentencing court to inform him of the firearm prohibition, this court found in *Leavitt* that the sentencing court's noncompliance with RCW 9.41.047 "clearly and substantially prejudiced" *Leavitt*. *Leavitt*, 107 Wn.App. at 367-68, 27 P.3d 622.

This court reemphasized that knowledge of the illegality of firearm possession is not an element of the crime of unlawful possession of a firearm. However, it then conducted a due process analysis based upon “the unusual facts” of Leavitt’s case. *Id.* at 368-373. This court examined at length a Virginia appellate court case in which the defendant, a convicted felon, wrongfully believed he could possess a specific type of firearm. See *Miller v. Commonwealth*, 25 Va.App. 727, 492 S.E.2d 482 (1997). This court agreed with the *Miller* court that the “ignorance of the law” axiom “should not automatically apply to *malum prohibitum*, such as unlawful firearm possession, in those instances where the predicate sentencing court has failed to follow the law requiring it to advise the defendant that he may no longer possess firearms.” *Leavitt*, 107 Wn.App. at 371, 27 P.3d 622.

In its due process analysis, the *Leavitt* court agreed that “the criminal statute under which the defendant is being prosecuted cannot constitutionally be applied to the defendant without violating due process of law, where government officials have misled the defendant into believing that his conduct was not prohibited.” *Id.* at 371-72. Again, however, this court specifically did not address whether a sentencing court’s failure to comply with RCW 9.41.047 alone, absent prejudice to

the defendant, would warrant dismissal of such a charge (or reversal of such a conviction on appeal).

(b) State v. Carter

In *Carter*, another unlawful possession of a firearm case, Division Three of the Washington Court of Appeals considered whether Carter's due process rights were violated where the juvenile convicting court failed to advise him that he could not possess firearms. *Carter*, -- Wn.App. --, 112 P.3d at 563-66. Carter was convicted in juvenile court in 1996 of residential burglary, triggering his loss of right to possess a firearm. The disposition order for the residential burglary conviction did not contain the written information required by RCW 9.41.047. On appeal, there was nothing else in the record to indicate that Carter was notified in compliance with that statute. In 2003, Carter was found passed out in the front yard of a residence. He was taken to the hospital and was found to have a blood alcohol level of .25 and amphetamines in his system. Hospital security found a firearm on Carter's person. Carter was subsequently charged with unlawful possession of a firearm. Carter's attorney made a motion to dismiss at the conclusion of the State's case. The court withheld ruling on the matter, addressing the motion after the guilty verdict and treating it as a post-trial motion for relief from judgment, arguing his due process rights were violated.

The reviewing court acknowledged the holding in *Leavitt, supra*. However, it distinguished the facts in Carter's case from Leavitt's. In Carter's case, "while the predicate offense court apparently failed to inform Mr. Carter according to the statute, he was not affirmatively misled." *Carter*, -- Wn.App. --, 112 P.3d at 565.<sup>5</sup> As such, the court found, Carter could not establish prejudice. *Id.* Based on this finding, the court held that the trial court's denial of Carter's motion was proper. *Id.*

It is the State's position that the evolving case law on this issue reflects that a sentencing court's failure to comply with RCW 9.41.047 alone does not require dismissal of subsequent unlawful possession of a firearm charges. If this is the case, the trial court's entry of its third conclusion of law in Coughlin's case was in error.

**C. THE TRIAL COURT ERRED WHEN IT GRANTED COUGHLIN'S MOTION TO DISMISS.**

As argued in the last section, it is the State's position that dismissal based upon a sentencing court's failure to comply with RCW 9.41.047 alone is not mandatory. It is also the State's position that, absent a showing of prejudice, dismissal based on the sentencing court's failure to comply with RCW 9.41.047 alone is improper. Again, it is the State's

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<sup>5</sup> The court also noted that Carter had been convicted of another felony in 2002 and was notified at that time that he was disqualified from possessing firearms. *Carter*, --

position that the notification procedure in RCW 9.41.047 was enacted to advance the probability of compliance with and enforcement of the firearm possession laws, rather than to enhance a defendant's due process rights. Absent a showing of prejudice, mandatory dismissal would be improper. The trial court in Coughlin's case did not make a finding of prejudice and specifically dismissed the unlawful possession of a firearm charge because it believed dismissal was required. CP 27.

The question remains: do the facts in Coughlin's case establish prejudice despite the trial court's lack of conclusion of law regarding that issue? The State believes they do not. Coughlin's case is distinguishable from the facts of *Leavitt, supra*. Although the record does not reflect that Coughlin was ever informed orally or in writing that he no longer had the right to possess a firearm, there is no showing that Coughlin was affirmatively misled by the court or any other state agency.

Coughlin's statement on plea of guilty does not mention firearms. CP 22 (Exhibit B). It does state that he was aware he might be placed on probation or community supervision for up to one year. *Id.* The disposition order states that he was subject to six months probation with several conditions including no violations of the law and "no possession of weapons of any type." CP 22 (Exhibit C). Although those facts are

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Wn.App. --, 112 P.3d at 565.

similar to those in *Leavitt*, there are two key differences. First, in *Leavitt*, the Requirements and Instructions that DOC furnished to Leavitt left blank a box next to the paragraph explaining RCW 9.41.047's firearm prohibition, thereby suggesting that this condition did not apply to Leavitt. The record in Coughlin's case does not reflect any such affirmative misrepresentation by an arm of the State.

Coughlin may argue that the information he received from Bob's Merchandise Store when he "considered" purchasing a firearm was an affirmative misrepresentation by a state agency. The State argues that it was not for several reasons. First, the information he received was actually from Bob's Merchandise Store, which is certainly not a state agency. Coughlin would have had to believe Bob's representations regarding what it learned from "NICS or the appropriate state agency." This misplaced reliance – even if actual -- should not be equated to Leavitt's reliance on instructions from DOC. Second, the record does not reflect what "NICS" is. The form indicates that the response to "proceed" with the sale was from either a state agency or NICS, whatever that is. There is no evidence to show Coughlin justifiably believed NICS was a state agency or that it in fact is a state agency. Finally, Coughlin provided misinformation to Bob's when completing the form. In section 9b, he was asked, "Have you ever been convicted in any court of a crime for

which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence?” Coughlin’s response was “no.” Further down on the form, where Coughlin certified that “the above answers are true and correct,” he also acknowledged that he understood “that a person who answers ‘yes’ to question 9b is prohibited from purchasing a firearm.” *Id.* (uppercase omitted). Coughlin failed to reveal that he was convicted of unlawful imprisonment, a crime for which the juvenile judge could have imposed imprisonment up to 5 years, as his statement on plea of guilty reflected. CP 22 (Exhibits B and C)

In addition to the lack of affirmative misinformation from the sentencing court or any state agency, in Coughlin’s case, he also had unclean hands regarding the incorrect information he received back from Bob’s. As such, he cannot claim that he was prejudiced by the sentencing court or the information from Bob’s. As such, the trial court in Coughlin’s case erred in granting his motion to dismiss and in entering an order of dismissal of the unlawful possession of a firearm charge.

## V. CONCLUSION

In addition to erring when it entered one of the findings of fact and each of the conclusions of law, the trial court erred in granting Coughlin’s motion to dismiss and in entering an order of dismissal of Coughlin’s

unlawful possession of a firearm charge. As such, the State asks this court to remand the case for vacation of the dismissal order and trial setting.

Respectfully submitted this 1<sup>st</sup> day of September, 2005.

SUSAN I. BAUR  
Prosecuting Attorney

By:

A handwritten signature in black ink, appearing to read "Michelle L. Shaffer", written over a horizontal line.

MICHELLE L. SHAFFER  
WSBA # 29869  
Deputy Prosecuting Attorney  
Representing Respondent

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J. GILLIAM

BY \_\_\_\_\_  
GILLIAM

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
v.	)	NO. 33178-1
	)	03-1-01706-7
NATHAN DANIEL COUGHLIN,	)	AFFIDAVIT OF MAILING
	)	
Respondent.	)	

AUDREY J. GILLIAM, being first duly sworn, on oath deposes and says: That on September 1, 2005, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the following

JAMES K. MORGAN  
ATTORNEY AT LAW  
1555 3RD AVE, STE A  
LONGVIEW, WA 98632

CLERK, COURT OF APPEALS  
950 BROADWAY, SUITE 300  
TACOMA, WA 98402

each envelope containing a copy of the following documents:

1. BRIEF OF APPELLANT
2. Affidavit of Mailing.

*Audrey Gilliam*  
\_\_\_\_\_

SUBSCRIBED AND SWORN to before me this September 1, 2005.

*Nedricka Moore*  
\_\_\_\_\_  
Notary Public in and for the State  
of Washington residing in Cowlitz  
Co. My commission expires: 020906