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A. APPELLANT’S ASSIGNMENTS OF ERROR

1. The trial court erred by sealing Respondent’s juvenile record when the record contained convictions for three counts of a Class A sex offense.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

RCW 13.50.050 prohibits the trial court from sealing a juvenile record when the record contains convictions for Class A offenses or sex offenses.

C. STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), M.D.P. accepts recitation of the procedural and substantive facts set forth in the Appellant’s opening brief.

D. ARGUMENT

1. **TRIAL COURT JUDGE GODFREY’S ORDER SEALING THE RESPONDENT’S JUVENILE RECORD SHOULD BE AFFIRMED BY GRANTING EQUITABLE RELIEF.**

In 1998 M.D.P. was charged with three counts of first degree child molestation. Clerk’s Papers [CP] at 1-2. He subsequently entered guilty pleas to the offenses on July 22, 1999, in the Juvenile Division of the Grays Harbor County Superior Court. CP at 3-9. Disposition was entered July 22,

1999. CP at 3-9. M.D.P. successfully completed the Special Sex Offender Disposition Alternative [SSODA]. CP at 10-11. In addition to completing SSODA, M.D.P. abided by the terms of his juvenile court conviction and has remained crime free. CP at 10-11. M.D.P. filed a motion to seal his juvenile record pursuant to RCW 13.50.050 on September 27, 2005. CP at 10-11. Appendix A.

The motion was heard by Judge Gordon Godfrey on October 13, 2005. Judge Godfrey granted the motion to seal M.D.P.'s juvenile records, entered an order directing that the records be sealed and ordered that M.D.P. does not have to register as a sex offender. CP at 14. Appendix B.

RCW 13.50.050 pertains to the sealing of juvenile criminal records. Prior to 1997, former RCW 13.50.050(11) required the lower court to grant a respondent's motion to seal a juvenile record if he or she has met the following conditions: that two years had elapsed from either his discharge from supervision or the court's issuance of an order relating to the offense, whichever occurred last; and that no further criminal or diversion proceedings remained pending against the offender.

In July 1997, our Legislature amended RCW 13.50.050 to add a prohibition against sealing a juvenile record containing a felony sex offense.

State v. D.S., 128 Wn. App. 569, 115 P.3d 1047 (2005).

First degree child molestation, in addition to being a sex offense, is a Class A felony. RCW 13.50.050(12)(d) states that a motion to seal records shall not be granted if the respondent has been convicted of a Class A felony.

) The statute provides:

(12) The court shall not grant any motion to seal records made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless it finds that:

...

(d) The person has not been convicted of a class A or sex offense.

In 1999 our Supreme Court held that the triggering event was not the filing of a motion to seal the record but the time of the respondent's satisfaction of the requirement of the passage of time with no new offenses. *State v. T.K.*, 139 Wn.2d 320, 332, 987 P.2d 63 (1999). Following *T.K.*, the Legislature in 2001 amended RCW 13.50.050, providing that the 1997 amendments applied to any offender who had a prior sex offense and who had filed a motion to seal his juvenile record after July 1, 1997. This Court addressed the issue in *D.S.*, holding that the 2001 amendments to RCW 13.50.050 did not bar sealing and expungement of D.S.'s 1986 juvenile sex offense, who did not file his motion until 2004. This Court found that under

T.K., D.S. “earned his right to have his juvenile record sealed when he committed no additional crimes for two years, thus complying with former RCW 13.50.050’s requirement in 1989.” *D.S.*, 128 Wn. App. at ___, 115 P.3d at 1051. *D.S.*’ right to expungment and sealing vested when he went crime-free for two years after his release from confinement. *Id.*

M.D.P. was convicted of a Class A felony. He was convicted in 1999 and therefore falls within the statute. M.D.P. argues, however, that he entered his guilty pleas in 1999 upon the belief that he would be able to seal the records at a latter date. M.D.P. argues that it is equitable to permit M.D.P. to receive the benefit of permitting his records to be sealed—a benefit that M.D.P. thought would be granted upon completion of the terms of SSODA. His reliance on this belief that he would be eligible to have his records sealed is evidenced by his motion and affidavit to seal his records. Appendix A. The Respondent complied with all of the conditions imposed by the SSODA program and the law as he understood it when he pleaded guilty in 1999. The Respondent had no knowledge that the State would oppose the motion or that the law would preclude sealing his record.

This Court has held that equitable relief is available in certain circumstances. For instance, this Court held in *State v. Dalseg*, 132 Wn.

App. 854, 134 P.3d 261 (2006), that two appellants were granted day for day credit for time served in work release under the equitable doctrine of credit for time served, where the appellant served eleven months in a program that did not comply with the statutory requirements for work release. This Court, relying on an equitable doctrine of credit for time served at liberty pioneered in *In re Roach*, 150 Wn.2d 29, 74 P.3d 134 (2003). The Respondent in the case at bar acknowledges that his case does not involve time spent at liberty, but instead draws an analogy to the Court's language that our Supreme Court granted Roach equitable relief and agreed that "'fairness and equity' require the State to give a convicted person 'credit against his sentence for time spent at liberty due to the State's mistake.'" *Dalseg*, 132 Wn. App. at 864, quoting *Roach*, 140 Wn.2d at 37.

Under the facts of this case, the Court should affirm lower court's ruling sealing his record.

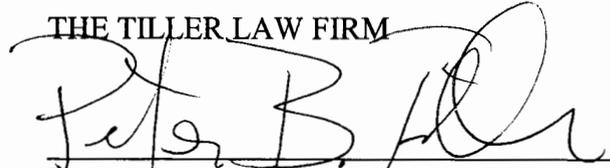
E. CONCLUSION

For the foregoing reasons, the Respondent respectfully asks this Court to affirm the trial court's ruling sealing M.D.P.'s juvenile court record.

DATED: August 30, 2006.

Respectfully submitted,

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "Peter B. Tiller", written over a horizontal line.

PETER B. TILLER-WSBA# 20835

Of Attorneys for Respondent

A

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2005 SEP 27 P. 4: 55

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COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,
Plaintiff,

vs.

DOB: 1/3/83
Mathew Patterson
Respondent.

NO. 98-8-465-5
MOTION AND AFFIDAVIT FOR
ORDER SEALING RECORDS

The undersigned requests the court to issue an order vacating its order and findings, and sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the above case pursuant to RCW 13.50.050(11). This motion is based on the affidavit below.

Mathew Patterson
JUVENILE

ATTORNEY FOR JUVENILE

AFFIDAVIT

STATE OF WASHINGTON)
GRAYS HARBOR COUNTY) ss.

The undersigned, being first duly sworn upon oath, deposes and says:

1. I am the above-named respondent. Since the last date of my release from confinement, including full-time residential treatment, if any, or entry of disposition in this

MOTION AND AFFIDAVIT
FOR ORDER EXPUNGING RECORDS

H. STEWARD MENEFFEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WASHINGTON 98583
(360) 240-3951 FAX 240-8004

1 case, and if the offense is a class B offense, I have spent ten (10) consecutive years in the
2 community without committing any offense or crime that subsequently resulted in conviction;
3 if the offense in this case is a class C offense, I have spent five (5) consecutive years in the
4 community without committing any offense or crime that subsequently resulted in conviction.

5 2. I have not been convicted of a class A or sex offense.

6 3. There are no proceedings currently pending against me seeking the conviction of a
7 juvenile offense or a criminal offense.

8 4. No proceeding is pending against me seeking the formation of a diversion
9 agreement.

10 5. I have paid full restitution ordered in this case.

11 6. I have given reasonable notice of this motion to the Prosecuting Attorney's Office
12 and to any person or agency whose files I wish to have sealed.

13 7. I wish to have the court seal all records relating to the offense(s) in the above case
14 number.

15 State of Washington *AK/bs*
16 County of Grays Harbor

[Signature]
17 JUVENILE/RESPONDENT

18 SUBSCRIBED AND SWORN: this 6th day of Sept., 2005 *AK/bs*

19 *[Signature]*
20 NOTARY PUBLIC IN AND
21 For Grays Harbor County
22 Residing in Aberdeen
23 Commission expires July 26, 2009

24 Notary Public
25 State of Washington
26 DON R MILLER
My Appointment Expires Jul 26, 2009

B

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10661

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OF COUNTY CLERK
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IN THE SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY
JUVENILE DIVISION

In Re the Matter of:)
Matthew Patterson)
DOB: 1/3/83)
Minor/Petitioner.)

NO. 98-8-415-5
CHERYL BROWN
COUNTY CLERK

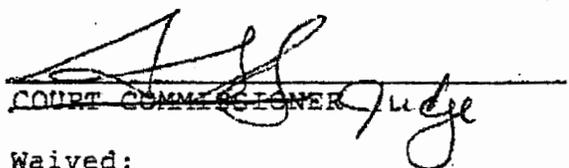
ORDER DIRECTING THAT
RECORDS BE SEALED

J050661

THIS MATTER having come on before the undersigned Judge of the Juvenile Division of the Grays Harbor County Superior Court upon a Petition by the above-named minor for an order directing that his juvenile court record be expunged, this court having before it the records and files of this cause, having reviewed the affidavit filed by the minor in support of his Petitioner, having concluded that good cause exists for sealing said records, Now, Therefore,

IT IS HEREBY ORDERED that the juvenile records including Washington State Patrol and Federal Bureau of Investigation records, shall be sealed and there shall be no visible reference to the proceeding brought in the above-entitled cause(s), and the clerk of the juvenile court is herewith directed to seal said records of any reference to this proceeding.

DATED this 13 day of Oct, 2005.


COURT COMMISSIONER

Presented by/Notice of Presentation Waived:

Deputy Prosecuting Attorney

ORDER DIRECTING THAT
RECORDS BE SEALED

H. STEWARD MENESEE
PROSECUTING ATTORNEY
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TELEPHONE 360-487-2001

GHR

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,
Plaintiff,

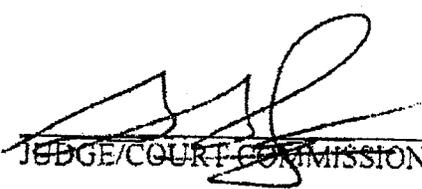
No.: *98-8-465-5* **J050660**
ORDER

v.
Mathew Patterson
DOB 1-3-83
Respondent.

On Motion of the ~~State~~ Respondent,
 By stipulation of the parties:

IT IS ORDERED *the respondent's requirement*
to register as a sex offender under
this case number is hereby lifted.

DATED: *Oct 13, 2005*



JUDGE/COURT COMMISSIONER

Presented by:

Approved:

Deputy Prosecuting Attorney
WSBA #

Attorney for Respondent

ORDER

H. STEWARD MENEFEE
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(360) 240-3951 FAX 244-6064

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STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Petitioner,

v.

M.D.P.,

Respondent.

COURT OF APPEALS NO.
34221-9-II

CERTIFICATE OF
MAILING

The undersigned attorney for the Respondent hereby certifies that one original and one copy of the Brief of Respondent were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to M.D.P., Respondent, and Katherine L. Svoboda, Deputy Prosecuting Attorney, by first class mail, postage pre-paid on August 30, 2006, at the Centralia, Washington post office addressed as follows:

CERTIFICATE OF
MAILING

1

THE TILLER LAW FIRM
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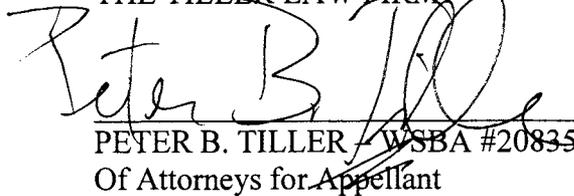
Ms. Katherin L. Svoboda
Deputy Prosecuting Attorney
Grays Harbor County Prosecutor's Office
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Mr. David Ponzoha
Clerk of the Court
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Mr. M.D.P.
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Tempe, AZ 85282

DATED: August 30, 2006.

THE TILLER LAW FIRM



PETER B. TILLER - WSBA #20835
Of Attorneys for Appellant

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