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COURT OF APPEALS

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STATE OF WASHINGTON

BY JH
COUNSEL

NO. 34913-2-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Petitioner,

v.

J.H.,

Respondent.

ON APPEAL FROM THE
SUPERIOR COURT OF GRAYS HARBOR COUNTY

Before the
Honorable Gordon Godfrey, Judge

BRIEF OF RESPONDENT

Peter B. Tiller, WSBA No. 20835
Attorney for Respondent

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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 a Class A felony and a felony sex offense.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does the record before this Court support the Appellant’s argument that Respondent J.H.’s rights to seal his record did not vest prior to the amendment of RCW 13.50.050 in July, 1997, which prohibits the trial court from sealing a juvenile record containing convictions for Class A offenses or sex offenses?

C. STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), J.H. accepts recitation of the procedural facts set forth in the Statement of the Case in the Brief of Appellant.

D. ARGUMENT

1. **THE RECORD IS INSUFFICIENT TO DETERMINE WHETHER THE TRIAL COURT JUDGE ERRED IN FINDING THAT J.H.’S RIGHTS UNDER RCW 13.34.050 VESTED PRIOR TO 1997.**

In 1991 J.H. was charged with first degree burglary and second degree rape. Clerk’s Papers [CP] at 1-2. He was subsequently convicted of the offenses and a disposition was entered November 21, 1991, in the Juvenile

Division of the Grays Harbor County Superior Court, Cause Number 91-8-281-7. CP at 3-5. He was sentenced to 193 weeks. CP at 3-5.

J.H. moved to seal his records on October 31, 2005, in the following Cause Numbers: 88-8-270-1, 91-8-281-7, 91-8-47-4, 91-8-218-3, and 91-8-208-6. CP at 6-7, (cause no. 91-8-281-7).

J.H.'s motion to seal his records was heard by Judge Gordon Godfrey on April 21, 2006. Judge Godfrey granted the motion to seal J.H.'s juvenile records, and entered an Order on Motion to Seal Records of Juvenile Offender Pursuant to RCW 13.50.050(11), entered May 4, 2006. CP at 18-19.

The order states:

I. BASIS

THIS MATTER came on before the court on respondent's motion to seal records of juvenile offender pursuant to RCW 13.50.050(11) and (12). The court heard argument of counsel and considered the pleading submitted on the matter.

II. FINDINGS

- 2.1 Adequate notice was was not given to the appropriate parties and agencies.
- 2.2 Respondent JASON L. HARNER has has not satisfied the requirements of RCW 13.50.050(11) and (12).

III. ORDER

Based on the above findings, it is hereby ordered:

- The motion to seal records is denied.
- The motion to seal records is granted and it is further ordered as follows:
 1. That the order and findings in the above-entitled matter are vacated;
 2. That the official juvenile court file, the social file and all other juvenile records as specified in RCW 13.50.050(11) in the above-entitled matter are hereby sealed pursuant to RCW 13.50.050.
 3. 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, record of which are sealed.
 4. That any agency in possession of such records sealed pursuant to this order that was given notice of the motion shall reply to any inquiry concerning such sealed records as follows:
 - (a) that any record or social file is confidential and that no information can be given about the existence or nonexistence of records concerning an individual.
 5. That inspection of any records sealed pursuant to this order shall only be permitted by further order of the court, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23).
 6. That any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying this

order. Any charges of an adult felony subsequent to the sealing, has the effect of nullifying the sealing order for the purposes of RCW 9.94A.

CP at 18-19 (cause no. 91-8-281-7). Appendix A.

The State filed a Notice of Appeal in each cause number on May 12, 2006. CP at 20.

RCW 13.50.050 pertains to the sealing of juvenile criminal records. *State v. D.S.*, 128 Wn. App. 569, 572, 115 P.3d 1047 (2005). At the time of J.H.'s conviction, 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. *D.S.*, 128 Wn.2d at 572.

In July 1997, our Legislature amended RCW 13.50.050 to add a prohibition against sealing a juvenile record containing a felony sex offense. *D.S.*, 128 Wn. App. at 572.

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). The Court in *T.K.*

considered the question of whether a trial court erred in denying a juvenile's motion to seal his record of a sex offense based on the 1997 amendments to the statute, ruling that the 1997 amendments were ambiguous whether they were retroactive and what event triggered the statute. *D.S.*, 128 Wn.2d at 573. The Court held that the 1997 amendments applied prospectively and that completion of the statutory requirements triggered the application of RCW 13.50.050 entitling a petitioner to having his or her juvenile records sealed. *T.K.*, 139 Wn.2d at 332. An offender, therefore, has to have fulfilled the requirements of RCW 13.34.050 before the statute was amended in July, 1997. *T.K.*, 139 Wn.2d at 335.

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. 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.

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 578. *D.S.*'s right to expungement and sealing vested when he went crime-free for two years after his release from confinement. *Id.*

J.H. was convicted of first degree burglary and second degree rape in November, 1991. *J.H.*'s 1991 conviction for second degree rape is a sex offense under RCW 9.94A.030(42); his first degree burglary is a Class A felony under RCW 9A.52.020.

J.H. submits that the record is insufficient for this Court to determine whether his rights were vested at the time of the amendment of RCW 13.34.050. A party seeking review bears the burden to perfect the record so that the reviewing court has before it all the evidence relevant to the issues raised on appeal. RAP 9.1-9.7; *State v. Vazquez*, 66 Wn.App. 573, 583, 832 P.2d 883 (1992); *State v. Badda*, 66 Wn.2d 314, 320, 402 P.2d 348 (1965).

Where the record is inadequate for review of an issue, a reviewing court will not reach the issue on direct appeal. *State v. Wheaton*, 121 Wn.2d

347, 365, 850 P.2d 507 (1993). Pursuant to the record before the trial court, this Court should affirm the lower court's ruling sealing J.H.'s record.

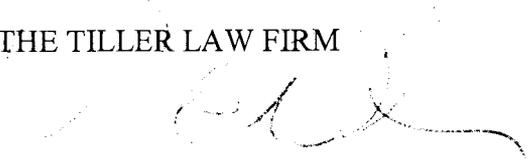
E. CONCLUSION

The lower court's orders should be affirmed.

DATED: December 15, 2006.

Respectfully submitted,

THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for Respondent

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COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR
JUVENILE COURT**

STATE OF WASHINGTON v.

NO: 91-8-00281-7

JASON L. HARNER

Respondent.

**ORDER ON MOTION TO SEAL
RECORDS OF JUVENILE OFFENDER
PURSUANT TO RCW 13.50.050(11)
(ORSF)**

D.O.B.: 5/29/77

I. BASIS

THIS MATTER came on before the court on respondent's motion to seal records of juvenile offender pursuant to RCW 13.50.050(11) and (12). The court heard argument of counsel and considered the pleading submitted on the matter.

II. FINDINGS

- 2.1 Adequate notice was was not given to the appropriate parties and agencies.
- 2.2 Respondent JASON L. HARNER has has not satisfied the requirements of RCW 13.50.050(11) and (12).

III. ORDER

Based on the above findings, it is hereby ordered:

- The motion to seal records is denied.
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1. That the order and findings in the above-entitled matter are vacated;
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3. 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, records of which are sealed.
4. That any agency in possession of such records sealed pursuant to this order that was given notice of the motion shall reply to any inquiry concerning such sealed records as follows:

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- (a) that any record or social file is confidential and that no information can be given about the existence or nonexistence of records concerning an individual.
5. That inspection of any records sealed pursuant to this order shall only be permitted by further order of the court, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23).
6. That any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying this order. Any charges of an adult felony subsequent to the sealing, has the effect of nullifying the sealing order for the purposes of RCW 9.94A.

Dated: _____

My 4, 2000

JUDGE/COMMISSIONER

[Signature]

Submitted by:

[Signature]
Thomas P. Keehan, WSBA #35567
Attorney for Respondent

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DIVISION II

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STATE OF WASHINGTON
BY JN
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

J.H.,

Appellant.

COURT OF APPEALS NO.
34913-2-II

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that the original and one copy of Brief of Respondent were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to J.H., Appellant, and Katherine Lee Svoboda, Deputy Prosecuting Attorney, by first class mail, postage pre-paid on December 15, 2006, at the Centralia, Washington post office addressed as follows:

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Grays Harbor County Prosecutor's Office
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Mr. David Ponzoha
Clerk of the Court
WA Court of Appeals
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

CERTIFICATE OF
MAILING

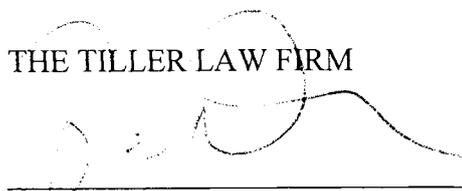
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Dated: December 15, 2006.

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