

**FILED**

MAR 11, 2013

Court of Appeals  
Division III  
State of Washington

No. 31109-1-III  
IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

HALL ROGER HARRISON,

Defendant/Appellant.

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Appellant's Brief

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A. ASSIGNMENT OF ERROR

The trial court erred in denying Mr. Harrison's motion to dismiss the charge of second degree unlawful possession of a firearm.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Should the charge of second degree unlawful possession of a firearm be reversed because Mr. Harrison's gun rights had been restored under RCW 9.41.040 (3) pursuant to the California certification of rehabilitation?

C. STATEMENT OF THE CASE

Hal Harrison was charged with second degree unlawful possession of a firearm. CP 1-4. Mr. Harrison had a prior felony conviction from California. RP 19. Prior to trial he moved to dismiss the charge based on his having received a certification of rehabilitation from the state of California under California Penal Code 48.52.016. RP 19. An amended certificate of rehabilitation was issued on July 30, 1993. It stated in part: ". . . [This Court does hereby order, adjudge and decree that petitioner has been rehabilitated and is fit to exercise all the civil and political rights of citizenship (except as provided in Penal Code Section 4852.15), . . . ." CP 52. Under California law, the certification of rehabilitation is a recommendation to the governor for a pardon to restore gun rights.

California Penal Code 48.52.017 requires a pardon from the governor to actually restore gun rights. RP 21.

Mr. Harrison was convicted by a jury of second degree unlawful possession of a firearm among other things. CP 235-38. This appeal followed. CP 262.

D. ARGUMENT

The charge of second degree unlawful possession of a firearm should be reversed because Mr. Harrison's gun rights had been restored under RCW 9.41.040 (3) pursuant to the California certification of rehabilitation.

RCW 9.41.040 (3) provides, in pertinent part:

. . . 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. . . .

Washington does not have a statutory provision for a Superior Court to issue a certificate of rehabilitation. See *State v. Masangkay*, 121 Wn.App. 904, 919-14, 91 P.3d 140 (2004). In *State v. Radan*, 143 Wn.2d 323, 329, 21 P.3d 255 (2001), the Supreme Court determined that the "certificate of rehabilitation, or other equivalent procedure" language of

RCW 9.41.040(3) could be satisfied by certain Montana procedures. In *Radan*, a Montana felon received an early discharge from supervision. His right to possess firearms was automatically restored by that certificate. No court action was required to obtain a certificate of rehabilitation. *Radan*, 143 Wn.2d at 325-26, 329, 21 P.3d 255. The Supreme Court held that while there was no actual "finding of rehabilitation," Radan's early discharge from supervision under Montana Criminal Code § 46-23-1011 and the letter of discharge, combined with Montana's automatic restoration provisions, constituted an "other equivalent procedure" based on a "finding of rehabilitation" under RCW 9.41.040(3). *Radan*, 143 Wn.2d at 335-36, 329, 21 P.3d 255.

The facts in the present case are slightly different than *Radan*. In Mr. Harrison's case the California Court issued a certificate of rehabilitation. Court proceedings were held to determine whether or not Mr. Harrison was eligible for a certificate of rehabilitation. An amended certificate of rehabilitation was issued on July 30, 1993. It states, in part: “. . . [This Court does hereby order, adjudge and decree that petitioner has been rehabilitated and is fit to exercise all the civil and political rights of citizenship (except as provided in Penal Code Section 4852.15), . . . .”

However, Mr. Harrison's were apparently not fully restored in California because California Penal Code 48.52.017 requires a pardon from the governor in addition to the certificate of rehabilitation to actually restore gun rights. The issue then is whether the certificate of rehabilitation by itself is sufficient to satisfy the requirements of RCW 9.41.040 (3), even though a governor's pardon was never issued in California.

The answer appears to be "yes" under the plain meaning of RCW 9.41.040 (3). In construing a statute, this Court's primary objective is to ascertain and give effect to the intent of the Legislature. *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). If a statute is unambiguous this Court is required to apply the statute as written and " 'assume that the legislature mean[t] exactly what it says.' " *In re Custody of Smith*, 137 Wn.2d 1, 9, 969 P.2d 21 (1998) (quoting *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)). The rule of lenity provides that if a criminal statute is ambiguous, it is to be interpreted in favor of the defendant. *State v. Lively*, 130 Wn.2d 1, 14, 921 P.2d 1035 (1996). If a statute is unambiguous, however, the rule of lenity is inapplicable. *State v. McGee*, 122 Wn.2d 783, 787, 864 P.2d 912 (1993);

*Chapman v. United States*, 500 U.S. 453, 463-64, 111 S.Ct. 1919, 114 L.Ed.2d 524 (1991).

The statute herein requires a "pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted" prior to an ex-felon being restored the right to bear arms. RCW 9.41.040(3). Under the plain meaning of the statute "other equivalent procedure" would be an alternative where a "pardon, annulment [or] certificate of rehabilitation" was not present, as was the case in *Radan*.

In the present case we clearly have a certificate of rehabilitation from the state of California. Therefore, "other equivalent procedure" does not apply and is irrelevant to this issue. In other words, it does not matter that California's procedure for full restoration of gun rights requires a governor's pardon in addition to the certificate of rehabilitation because the issuance of the certificate of rehabilitation alone satisfies Washington's requirements for restoration of gun rights under RCW 9.41.040 (3).

Assuming *arguendo* the statute is not clear in this regard and is ambiguous, the rule of lenity should favor Mr. Harrison's proffered construction. See *Lively*, 130 Wn.2d at 14, 921 P.2d 1035 ("[t]he rule of lenity provides that where an ambiguous statute has two possible

interpretations, the statute is to be strictly construed in favor of the defendant"). Therefore, since Mr. Harrison's gun rights had been restored under RCW 9.41.040 (3) pursuant to the certification of rehabilitation, the trial court should have granted his motion to dismiss the charge of second degree unlawful possession of a firearm.

D. CONCLUSION

For the reasons stated, the conviction for second degree unlawful possession of a firearm should be reversed.

Respectfully submitted March 11, 2013,

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s/David N. Gasch  
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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on March 11, 2013, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of the brief of appellant:

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