

NO. 86603-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

KENNETH LAMB

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
CLALLAM COUNTY, STATE OF WASHINGTON  
Superior Court No. 91-8-00025-0 & 09-1-00143-9

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SUPPLEMENTAL BRIEF OF RESPONDENT

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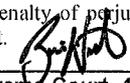
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**I. COUNTER STATEMENT OF THE ISSUES.**

1. Did the Court of Appeals correctly reinstate the defendant's 1991 juvenile guilty plea and resulting disposition for second-degree burglary?
2. Did the Court of Appeals properly order the trial court to grant the State leave to amend the charges and identify a different predicate for unlawful possession of a firearm?
3. Did the Court of Appeals correctly reinstate the several charges for unlawful possession of a firearm that the trial court dismissed with prejudice?

**II. STATEMENT OF THE CASE.<sup>1</sup>**

When Kenneth Lamb was a juvenile, he pleaded guilty to two felonies. In 1986, with the assistance of counsel, he pleaded guilty to Indecent Liberties.<sup>2</sup> 1CP 88-90. In 1991, with the assistance of counsel, he pleaded guilty to Second-Degree Burglary.<sup>3</sup> 1CP 58-61; 1RP at 17. In both cases, the juvenile court never advised Lamb that his adjudications might someday result in a firearm disability because the unlawful possession of a firearm (UPF) statute – RCW 9.41.040 (1983) – did not apply to juvenile offenders or the two crimes he previously committed. Laws of 1983, ch. 232, § 2. *See also* 1CP 87-90, 92-95, 97-101.

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<sup>1</sup> The State cites the designated clerk's papers as follows: 1CP for COA 39849-4-II; 2CP for COA 40379-0-II. Additionally, the State cites the record of proceedings as follows: 1RP for 9/23/2009; 2RP for 9/30/2009; 3RP for 11/19/2009; 4RP for 12/30/2009; and 5RP for 2/12/2010.

<sup>2</sup> Clallam County Superior Court cause number 1920. 1CP 87.

<sup>3</sup> Clallam County Superior Court cause number 91-8-00025-0. 1CP 58.

In 1992, the Legislature amended RCW 9.41.040, expanding the UPF statute to include juvenile felony adjudications that involved “crimes of violence” or the use/display of a firearm. *See* Laws of 1992, ch. 205, § 118. In 1994, the Legislature amended the gun prohibition to preclude any adult or juvenile that committed a “serious offense” from possessing a firearm. Laws of 1994, 1st Sp. Sess. ch. 7, § 402. It also enacted RCW 9.41.047, which required trial courts to inform qualifying offenders of their inability to possess or own a firearm. Laws of 1994, 1st Sp. Sess. ch. 7, § 404. In 1996, the Legislature expanded the firearm prohibition to prevent *any* felon (adult or juvenile) from possessing a firearm. Laws of 1996, ch. 295, § 2. Lamb never received notice that he had lost his firearm rights because these amendments/enactments occurred after his juvenile adjudications became final. 1CP 87-90, 92-95, 97-101.

On June 16, 2009, the State charged Lamb with three counts of theft of a firearm, and ten counts of second-degree unlawful possession of a firearm.<sup>4</sup> 1CP 117-22. The State identified Lamb’s 1991 burglary adjudication as the predicate felony for the UPF charges. 1CP 118-22.

On July 31, 2009, Lamb filed a motion to (1) withdraw his 18-year-old guilty plea for second-degree burglary, and (2) vacate the corresponding disposition, citing generally to JuCR 1.4, CrR 4.2, and CrR

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<sup>4</sup> Clallam County Superior Court cause number 09-1-00143-9. 1CP 117.

7.8. 1CP 29.

On September 23, 2009, Lamb argued he did not knowingly, intelligently, and voluntarily plead guilty to second-degree burglary because he was not informed the resulting adjudication would deprive him of his firearm rights. 1CP 29-33, 43-44; 1RP at 31-37. He asserted, without authority, that the deprivation of his firearm rights was a direct consequence of his guilty plea, and the State had an affirmative obligation to advise him of this consequence. 1CP 16-20, 30-31; 1RP at 35. Thus, Lamb claimed his plea was improvident and created a manifest injustice. 1CP 16-20, 30-31, 43-44; 1RP at 35-37.

The State responded Lamb could not establish a manifest injustice to withdraw his 18-year-old plea. First, the UPF statute did not apply to juveniles at the time he pleaded guilty. 1RP at 40. Second, the lack of notice pertaining to the firearm prohibition did not render the disposition constitutionally invalid because the disability was a collateral consequence of his plea. 1CP 23-27; 1RP at 37-41. Finally, ignorance of the law was no defense. 1RP at 39. The State, also, argued the motion was untimely under CrR 7.8. 1RP at 39.

The Superior Court granted Lamb's motion. 1CP 13; 1RP at 52-53. The trial judge recognized the law in 1991 "did not treat a juvenile felony conviction as a conviction that invoked the felony firearm restriction," and

that “ignorance of the law is no excuse.” 1RP at 49. However, he believed it would be “fundamentally unfair” to deny the motion. 1RP 52. In support of his ruling, the trial judge explained: (1) Lamb did not know his 1991 plea would terminate his firearm rights; (2) Lamb was not a “casual gun user” because his family had a tradition of keeping and bearing arms; (3) Lamb was from a rural community where the “majority of households have guns” for hunting and recreational use, in contrast to urban areas where guns are for “protection”; (4) Lamb’s rural upbringing made the gun prohibition more serious than if he was from an urban center; and (5) Lamb would have moved to restore his gun rights if he had known of the resulting disability because he had no subsequent felony history.<sup>5</sup> 1RP 49-52. *See also* 2RP at 11-13. As such, the trial judge found it manifestly unjust to subject Lamb to ten UPF counts based upon a plea he made as a juvenile. 1RP 53.

When Lamb presented proposed findings of facts and conclusions of law, the Superior Court clarified its ruling. 2RP at 11-13. *See* CP 10-13. The trial judge explained that he believed a firearm disability constituted punishment and was a direct consequence of a guilty plea. 2RP at 11-12.

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<sup>5</sup> Between 1992 and 2000, Lamb committed a series of misdemeanor offenses, including driving without a driver’s license (1992), negligent driving (1993), failing to transfer a vehicle title (1993), and driving while license suspended (2000). 1CP 103-15.

Additionally, the trial judge found that relief was necessary under CrR 4.2(f) “to correct a manifest injustice.” 2RP at 13. The Court then entered a formal order (1) permitting Lamb to withdraw his plea to second-degree burglary, and (2) vacating the corresponding disposition. 1CP 10-13. The State appealed. 1CP 04.

On October 26, 2009, the State asked the Superior Court to reconsider its ruling. 1CP 76-84, 130-33. The State highlighted: (1) Lamb’s criminal history prohibited the restoration of his firearm rights, and (2) Lamb’s motion under CrR 7.8 was a collateral attack that was time barred under RCW 10.73.090. 1CP 79-84.

On November 19, 2009, the Court denied the State’s motion. 1CP 67-70. The trial court reasoned the State should have presented the criminal history at the initial hearing.<sup>6</sup> 1CP 68. The trial judge also reiterated his belief that ten UPF charges based on an 18-year-old adjudication was unjust. 1CP 68-69. The trial court declined to address the time bar argument. *See* 1CP 67-70.

The State subsequently moved to amend the charging document to name Lamb’s 1987 adjudication for indecent liberties as the predicate for five UPF charges. 3RP at 8. Lamb opposed the motion and moved to

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<sup>6</sup> The State did not introduce evidence that Lamb’s criminal history prohibited the restoration of his firearm rights because the sole issue at the first hearing was whether Lamb knowingly, intelligently, and voluntarily pleaded guilty to second-degree burglary. *See* 1CP 21-27, 29-52; 1RP at 31-41.

dismiss all ten UPF counts. 3RP at 10, 12.

On December 28, 2010, the Superior Court granted Lamb's motion to dismiss the charges. 2CP 11-12. The trial court explained the "same considerations" that supported its previous ruling applied to its dismissal order. 2CP 11. The State appealed. 2CP 04. The Court of Appeals consolidated the two cases.

On September 13, 2011, the Court of Appeals reversed all of the trial court's rulings. *See* Opinion at 1-2. First, it held the trial judge erred by incorporating the manifest injustice standard from CrR 4.2(f) into CrR 7.8. *See* Opinion at 9, 11. Second, the appellate court held the absence of notice regarding the firearm prohibition did not render the two juvenile pleas constitutionally invalid.<sup>7</sup> *See* Opinion at 12-13. Finally, the appellate court held the trial court erred when (1) it refused to permit the State to amend the charging document prior to trial, and (2) summarily dismissed the UPF charges. *See* Opinion at 14-18. Throughout its opinion the Court of Appeals faulted the trial court for making a decision solely based upon its "subjective belief" that allowing the UPF charges to proceed was manifestly unjust. *See* Opinion at 1-2, 15-16. Lamb petitioned for review.

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<sup>7</sup> The Court of Appeals declined to address fully whether the resulting firearm disability was a direct or collateral consequence to the two guilty pleas. However, in a footnote, the appellate court recognized case law holds the prohibition is a collateral consequence. *See* Opinion at 13 n.12.

### III. ARGUMENT.<sup>8</sup>

#### A. THE 18-YEAR-OLD JUVENILE DISPOSITION AND GUILTY PLEA MUST BE REINSTATED.

The Court of Appeals properly held the trial court abused its discretion when it vacated an 18-year-old disposition and permitted the defendant to withdraw his corresponding guilty plea. The trial judge based his decision entirely on his personal belief that it was unfair to subject the defendant to ten UPF counts based upon juvenile adjudications. Because the trial court refused to (1) apply the correct court rule to the defendant's motion, and (2) recognize the juvenile dispositions were constitutionally valid, the intermediate court correctly determined the trial court's ruling was erroneous. This Court should affirm.

1. The judge committed an error of law, and consequently abused his discretion, when he applied the incorrect legal standard to the post-judgment motion.

The Court of Appeals correctly recognized CrR 7.8 applied to the post-judgment motion, and that the trial court "committed an error of law by incorrectly applying CrR 4.2 legal theories to a motion governed by CrR 7.8." *See* Opinion at 9.

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<sup>8</sup> In this supplemental brief, the State of Washington will not repeat every argument it set forth in its briefing to the Court of Appeals. The State incorporates these arguments by reference. This brief deals only with specific matters Lamb raised in his petition and that most urgently need correction. The State's decision not to address certain arguments made by Lamb in his previous briefs and petition should not be considered as an acknowledgment of the validity of his analysis.

This Court reviews a trial court’s decision to permit a defendant to withdraw a guilty plea for an abuse of discretion. *State v. Marshall*, 144 Wn.2d 266, 280, 27 P.3d 192 (2001). A trial court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds or for untenable reasons. *State v. Dixon*, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)). “An abuse of discretion is found if the trial court relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law.” *State v. Lord*, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007).

Whether CrR 4.2(f) or CrR 7.8(b) governs a post-judgment motion is a choice of law that this Court reviews de novo. *See In re Talley*, 172 Wn.2d 642, 649, 260 P.3d 868 (2011) (“Interpretation of court rules ... are issues of law, subject to de novo review.”); *State v. Whelchel*, 97 Wn. App. 813, 817, 988 P.2d 20 (1999), *review denied*, 140 Wn.2d 1024, 10 P.3d 405 (2000) (“The choice of law applicable to facts, its interpretation, and its application to facts are matters of law reviewed de novo.”)

(a) *CrR 7.8 is the court rule that governed Lamb’s motion.*

CrR 7.8 applies to *post-judgment* motions for relief. CrR 4.2 applies only to *pre-judgment* motions to withdraw a guilty plea. CrR 4.2(f)

(“If the motion for withdrawal is made after judgment, it *shall* be governed by CrR 7.8.”) (emphasis added). Here, CrR 7.8 applied to Lamb’s motion to withdraw his guilty plea and vacate the related disposition. Because the request was obviously a post-judgment motion (filed 18 years after the fact), the trial court erred when it applied the legal standard from CrR 4.2.

(b) CrR 7.8 did not authorize the trial judge to vacate the burglary disposition or permit the defendant to withdraw his guilty plea.

CrR 7.8 permits a trial court to grant relief from a final judgment *only* for one of five enumerated reasons, including “[a]ny other reason justifying relief from the operation of the judgment.” CrR 7.8(b)(5). However, notably absent in CrR 7.8(b) is any reference to “manifest injustice”<sup>9</sup> as understood in CrR 4.2(f).

Washington’s appellate courts have limited the scope of CrR 7.8(b)(5) to “extraordinary circumstances” that are “fundamental, substantial irregularities in the court’s proceedings or to irregularities extraneous to the court’s action.” *State v. Olivera-Avila*, 89 Wn. App. 313, 319, 949 P.2d 824 (1997). *Accord State v. Aguirre*, 73 Wn. App. 682, 688,

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<sup>9</sup> In the context of a guilty plea, a “manifest injustice” only results where (1) there was ineffective assistance of counsel, (2) the plea was involuntary, (3) the prosecution did not honor the plea agreement, or (4) the defendant did not ratify the plea. *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699 (1974).

871 P.2d 616, *review denied*, 124 Wn.2d 1028 (1994). Under CrR 7.8(b), this Court has said a conviction should be vacated only in those limited circumstances, “where the interests of justice most urgently require.” *State v. Shove*, 113 Wn.2d 83, 88, 776 P.2d 132 (1989).

Here, there was no fundamental or substantial irregularity in the proceeding because the juvenile court was not required to inform Lamb that his guilty pleas might someday deprive him of his right to possess or own firearms. *See* Laws of 1983, ch. 232, § 2; Laws of 1994, 1st Sp. Sess. ch. 7, §§ 402, 404; Laws of 1996, ch. 295, § 2. CrR 7.8(b)(5) does not support the trial judge’s decision to vacate the 1991 disposition and authorize the defendant to withdraw his guilty plea. The intermediate court correctly held CrR 7.8(b)(5) does not authorize relief in the present case. This Court should affirm on the same basis.

(c) *The intermediate court’s analysis is consistent with established precedent.*

In his petition, Lamb claims the Court of Appeal’s decision is contrary to established case law. *See* Petition at 9-10, 16. Without explanation, he asserts the intermediate court departed from (1) this Court’s decisions in *State v. Shove*<sup>10</sup> and *State v. Hensley*,<sup>11</sup> and (2)

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<sup>10</sup> 113 Wn.2d 83, 776 P.2d 132 (1989).

<sup>11</sup> 20 Wn.2d 95, 145 P.2d 1014 (1944). Lamb only cites *Hensley* for the proposition that a trial court discretion should “be exercised liberally in favor of life and liberty[.]” 20

Division 3's decisions in *State v. Zavala-Reynoso*<sup>12</sup> and *State v. Cortez*.<sup>13</sup> See Petition at 9-10, 16. However, these cases are consistent with the result reached by the Court of Appeals.

In *Shove*, this Court addressed the trial courts' authority to modify felony sentences under the Sentencing Reform Act (SRA) of 1981. 113 Wn.2d at 84-85. There, the defendant was sentenced to 12 months partial confinement at a work release facility and ordered to pay \$84,000 in restitution. *Id.* at 85. After five months, the trial court ordered the defendant's release and imposed a 10-year suspended term. *Id.* at 85. The court reasoned she would not be able to make restitution payments if her business collapsed. *Id.* at 85.

This Court reversed the modification, holding final judgments "may be modified only if they meet the requirements of the SRA provisions relating directly to the modification of sentences." *Shove*, 113 Wn.2d at 89. The Court explained that final judgments "may be vacated or altered only in those circumstances where the interests of justice most urgently require." *Id.* at 88. The Court further clarified a "[m]odification

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Wn.2d at 101. However, this standard has been superseded by the "more stringent" standard in CrR 4.2. See *State v. A.N.J.*, 168 Wn.2d 91, 106-07, 225 P.3d 956 (2010).

<sup>12</sup> 127 Wn. App. 119, 110 P.3d 827 (2005).

<sup>13</sup> 73 Wn. App. 838, 871 P.2d 660 (1994).

of a judgment is not appropriate merely because it appears, wholly in retrospect, that a different decision might have been preferable.” *Id.* at 88.

*Shove* does not support Lamb’s argument that the intermediate court’s holding is contrary to law. First, *Shove* did not apply a “manifest injustice” standard, nor did it designate CrR 4.2 as one of the court rules that permit trial courts to vacate a final judgment “where the interests of justice most urgently require.” *See Shove*, 113 Wn.2d at 88. Second, like *Shove*, where the circumstances did not meet the strict requirements for relief under the SRA, the *Lamb* trial court erroneously vacated the 1991 adjudication when the facts did not meet one of the five enumerated reasons under CrR 7.8(b). Finally, like *Shove*, where the trial judge erred when it modified the judgment simply because hindsight showed the sentence had unintended consequences, the *Lamb* trial court erred when it based its decision on the fact the 1991 plea carried a harsh result only after the Legislature amended the UPF statute. *Shove* is consistent with the intermediate court’s resolution in the present case.

In *Zavala-Reynoso*, the defendant pleaded guilty to delivering a controlled substance, but was sentenced to a term exceeding the statutory maximum. 127 Wn. App. at 121-22. Two years later, the defendant moved to vacate his plea pursuant to CrR 7.8(b)(4) and (5). *Id.* at 122. The trial court denied the motion. *Id.* at 122. The Court of Appeals reversed, but

emphasized the defendant's arguments did not fall under CrR 7.8(b)(5). *Id.* at 123. Instead, the appellate court vacated the judgment under CrR 7.8(b)(4) because the sentence exceeded the statutory maximum term and was void on its face. *Id.* at 127.

*Zavala-Reynoso* does not apply in the present case. *Zavala-Reynoso* applied a court rule that is not at issue. This Court should reject Lamb's argument that *Zavala-Reynoso* somehow dictates a different result.

In *Cortez*, the defendant pleaded guilty to possession of a controlled substance after signing a plea statement advising him that he may be subject to deportation proceedings. 73 Wn. App. at 839-40. Two years later, the defendant moved to vacate his plea and conviction because the federal government sought to remove him from the country. *Id.* at 839-40. The trial court granted the motion, reasoning deportation was "too harsh" a consequence for the defendant's felony conviction. *Id.* at 840.

The Court of Appeals reversed, reasoning CrR 7.8(b)(5) is limited to "extraordinary circumstances" and that no such circumstances were present because there was no defect in the original judgment or proceeding. *Cortez*, 73 Wn. App. at 840-41. Additionally, the Court of Appeals reasoned "[t]here is no reason in law or policy which suggests that a conviction should be vacated for circumstances existing at the time

the judgment is entered.” *Id.* at 842. Thus, where a plea agreement is entered/accepted in accordance with the law in effect at the time, the interests of justice do not urgently require that it be vacated when harsh, collateral consequences subsequently follow. *See Id.* at 842.

In the present case, the trial judge erred in the same manner as the court in *Cortez*. Post-conviction relief based solely on unforeseen, collateral consequences – no matter how severe – is an inappropriate basis to set aside a valid conviction/adjudication. Moreover, there was no legal defect in the original judgment or proceeding because Lamb’s guilty plea was entered/accepted in accordance with the law in 1987 and 1991. The result the Court of Appeals reached is consistent with the aforementioned precedent. This Court should hold there is no error.

2. The juvenile dispositions are constitutionally valid and may serve as a predicate felony for unlawful possession of a firearm.

Even if this Court assumes CrR 7.8(b) silently incorporates CrR 4.2’s “manifest injustice” standard, the result is the same.<sup>14</sup> This Court should still affirm the result reached by the Court of Appeals.

CrR 4.2(f) allows a defendant to withdraw a guilty plea “whenever

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<sup>14</sup> The State recognizes this Court recently affirmed its preference to apply a single “manifest injustice” standard to applications to withdraw a guilty plea regardless of the timing of the motion. *State v. Robertson*, 172 Wn.2d 783, 791-92, 263 P.3d 1233 (2011); *A.N.J.*, 168 Wn.2d at 106-07.

it appears that the withdrawal is necessary to correct a manifest injustice.” The defendant bears the burden of proving a manifest injustice, which is defined as “obvious, directly observable, overt, not obscure.” *State v. Ross*, 129 Wn.2d 279, 283-84, 916 P.2d 405 (1996). This is a demanding standard. *In re Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993) (citing *State v. Saas*, 118 Wn.2d 37, 41, 820 P.2d 505 (1991)), *review denied*, 123 Wn.2d 1009, 869 P.2d 1085 (1994). Under a CrR 4.2 analysis, an involuntary plea creates a manifest injustice and allows for a withdrawal of the plea. *In re Isadore*, 151 Wn.2d 294, 298, 88 P.3d 390 (2004); *Ross*, 129 Wn.2d at 284. However, a plea’s unforeseen collateral consequences – which were “nonexistent” at the time of the plea – do not create a manifest injustice.

(a) *A firearm disability is a collateral consequence of a guilty plea.*

Lamb argues his guilty plea was involuntary because he was never advised that his juvenile adjudication would result in a firearm prohibition. *See* Petition at 10-12. Thus, the question is whether the resulting firearm disability was a “direct” or “collateral” consequence of his guilty plea for second-degree burglary.

Washington’s appellate courts have repeatedly held that the loss of an individual’s right to possess firearms is a *collateral* consequence of

pleading guilty. *See e.g. State v. Schmidt*, 143 Wn.2d 658, 677, 23 P.3d 462 (2001); *State v. Watkins*, 76 Wn. App. 726, 732, 887 P.2d 492 (1995); *Ness*, 70 Wn. App. at 823-24 (citing *Saadiq v. State*, 387 N.W.2d 315, 325 (Iowa), *appeal dismissed*, 479 U.S. 878, 107 S.Ct. 265, 93 L.Ed.2d 242 (1986)).

Even though Lamb did not know his juvenile adjudications would someday deprive him of the right to own/possess firearms, these facts do not create a manifest injustice. This is evident by the holdings of this Court and the intermediate appellate courts cited above. Any subsequent prosecution, where the defendant's status as a felon in unlawful possession will be determined with all concomitants of due process, is collateral to Lamb's previous guilty pleas. Based upon the law as it existed when Lamb was a juvenile, he knowingly, intelligently, and voluntarily pleaded guilty to the crime of second-degree burglary.

(b) *Recent case law does not contradict the analysis that a firearm disability is a collateral consequence.*

Lamb suggests *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), and *McDonald v. Chicago*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), require this Court to revisit the limitations on a felon's ability to possess firearms. See Petition at 12. Additionally, he cites this Court's decision in *State v. Sieyes*, 168 Wn.2d

276, 225 P.3d 995 (2010), for the same proposition. *See* Petition at 12.

However, these cases refused to question the propriety of gun regulations with respect to convicted felons. *See McDonald*, 130 S.Ct. 3047; *Heller*, 128 S.Ct. at 2816-17.

Moreover, the three decisions did not address whether a felon's firearm disqualification is a direct or collateral consequence of his or her conviction/adjudication. *McDonald*, 130 S.Ct. at 3068; *Heller*, 128 S.Ct. at 2788; *Sieyes*, 168 Wn.2d at 279, 281.

Finally, in *Sieyes*, this Court refused to consider argument whether restrictions on child gun possession violates an individual's right to bear arms because the petitioner provided neither compelling citations nor argument. 168 Wn.2d at 294-96. This is true in the present case, where Lamb simply refers to each decision without showing why they should apply.

(c) *The guilty pleas do not violate equal protection guarantees.*

The Court of Appeals affirmed the constitutional validity of the second-degree burglary adjudication on the basis that the State had no obligation to notify pre-1994 offenders that their offenses imposed a firearm disability following amendments to the UPF statute. *See* Opinion

at 12-13 (citing *State v. Reed*, 84 Wn. App. 379, 386-87, 928 P.2d 469 (1997)). This Court should affirm.

Lamb's motion and subsequent petition is also a challenge to the constitutionality of his 1991 burglary disposition. *State v. Chervenell*, 99 Wn.2d 309, 312, 662 P.2d 836 (1983). As previously stated, the extension of the UPF statute to juvenile felony dispositions did not occur until *after* Lamb's 1987 and 1991 dispositions. Laws of 1992, ch. 205, § 118; Laws of 1994, 1st Sp. Sess. ch. 7, § 402; Laws of 1996, ch. 295 § 2. Moreover, the trial court's duty to inform adult and juvenile defendant's of the loss of their firearm rights during guilty plea proceedings did not take effect until 1994. Laws of 1994, 1st Sp. Sess., ch. 7, § 404 (enacting RCW 9.41.047).

The failure to provide notification to offenders of lost firearm rights due to post-1994 convictions, but not pre-1994 convictions, does not violate equal protection guarantees. *Reed*, 84 Wn. App. at 386-87. In *Reed*, the appellate court noted that providing "as many as possible" pre-1994 convictees notice of their revoked rights "is a worthwhile goal" but not constitutionally required. *Id.* at 386. Thus, Lamb's juvenile guilty pleas are constitutionally sound. This Court should affirm the Court of Appeals.

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(d) *There is no ex-post facto violation.*

RCW 9.41.040 did not increase the punishment Lamb received for his juvenile dispositions, even though he was not originally subject to the firearm disqualification. This Court's own precedent is resoundingly clear, amendments to the UPF statute "do not amount to punishment for a prior conviction, nor do they 'alter the standard of punishment' applicable to those crimes. *Schmidt*, 143 Wn.2d at 676-78. Thus, the amendments to RCW 9.41.040 do not violate *ex post facto* prohibitions.

#### IV. CONCLUSION.

The trial judge erred when it applied the incorrect court rule to a motion to withdraw an 18-year-old guilty plea. More importantly, the two juvenile guilty pleas at issue did not create a manifest justice because (1) Lamb entered his pleas in accordance with the law as it existed at that time, (2) Lamb's firearm disability, which occurred after legislative amendments to the UPF statute, were a collateral consequence of his guilty plea, (3) Lamb's juvenile pleas did not violate equal protection guarantees, and (4) Lamb's resulting firearm disability does not contravene *ex post facto* prohibitions.

Based on the arguments above, and previously submitted to the Court of Appeals, the State respectfully asks this Court to affirm the intermediate appellate court. The present matter should be remanded to the

trial court with the following instructions: (1) reinstate the 1991 guilty plea, (2) reinstate the 1991 disposition, (3) reinstate the dismissed 2009 charges, and (4) permit the State to amend the 2009 information.

Upon remand, the State will not re-file the ten UPF charges because an affirmative defense is likely available to the charges. *See State v. Breitung*, 173 Wn.2d 393, 403, 267 P.3d 1012 (2011); *State v. Minor*, 162 Wn.2d 796, 804, 174 P.3d 1162 (2008). More importantly, the State shares the intermediate court's concern regarding the decision "to prosecute without first notifying Lamb that it was unlawful for him to possess firearms." *See* Opinion at 13 n. 13.

DATED this 5<sup>th</sup> day of APRIL, 2012.

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