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STATE OF WASHINGTON
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No. 95012-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WAYLON JAMES HUBBARD,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

In 2004, Mr. Hubbard, then 24, entered a guilty plea for a class C felony. He completed his sentence requirements and satisfied his legal financial obligations (LFOs) on February 25, 2013. He petitioned for a certificate and order of discharge in Pacific County on April 6, 2016. The trial court granted the petition setting the effective date as February 25, 2013. The State appealed, and the Court of Appeals remanded to the case to have the effective date changed to some date on or after April 6, 2016.

If the trial court's decision that the effective date for the certificate and order of discharge is February 25, 2013 is upheld, Mr. Hubbard became eligible to vacate his conviction in February 2018. In contrast, the Court of Appeals' decision will require Mr. Hubbard to wait until 2021.

Mr. Hubbard, now 38, still lives in rural Pacific County where unemployment was 8.4% in March 2018—nearly twice that of Washington State at 4.8%. Mr. Hubbard, and others similarly situated,¹ paid his debt to

¹ In just the past year, NJP's rural Aberdeen field office had two similarly situated clients:

Client A, age 54 (class B felony 1988 conviction at age 24): She completed her sentence requirements and LFOs in 1998. No certificate and order of discharge was issued to start the ten-years to vacate. She has no other convictions and would have been eligible to vacate the conviction in 2008. Currently, based on this conviction, DSHS/CPS has barred her from seeing her grandchildren while it has the children in its custody.

Client B, age 31 (class B and C felony 2006 convictions at age 20): He completed his sentence requirements and LFOs in 2007. No certificate and order of discharge was issued to start the ten-years to vacate. He had no new crimes after 2006 and was eligible to vacate these convictions in 2017, which were employment barriers. With no objection by another county's prosecutor, the client's certificate and order of discharge was dated effective 2007 and his convictions have been vacated.

society. Requiring Mr. Hubbard to wait until 2021 unnecessarily imposes upon him disqualifications from employment, housing, and other infirmities that interfere with his ability to reintegrate into society. This court should uphold the trial court's interpretation and application of the statutory scheme of RCW 9.9A.637 that the effective date is when Mr. Hubbard completed his sentence requirements on February 25, 2013.

II. ASSIGNMENT OF ERROR

The Court of Appeals erred in its statutory interpretation of RCW 9.94A.637(1)(c) that the effective date for Mr. Hubbard's certificate and order of discharge is the date the trial court receives notice from the county clerk and adequate verification all conditions of a sentence have been met. In Mr. Hubbard's case, this would be some date on or after April 6, 2016—the date he filed his Petition for Certificate and Order of Discharge.

III. STATEMENT OF THE CASE

On October 29, 2004, Mr. Hubbard entered a guilty plea for possession of stolen property (second degree), a class C felony. (CP 8). On December 15, 2004, the Judgment and Sentence (CP 8-20) was amended to omit Section 4.6 (12 months of community custody) and all conditions previously set forth in its Appendix H. (CP 21). As a result, on or about February 24, 2005 (filed March 9, 2005), Department of Corrections (DOC) terminated Mr. Hubbard's community supervision. (CP 3-5).

On April 6, 2016, Mr. Hubbard filed a Petition for Certificate and Order of Discharge, requesting an effective date of February 25, 2013—the date he completed his sentence requirements. (CP 1-2). At a hearing on the merits on April 29, 2016, Pacific County Superior Court granted the discharge and ruled Mr. Hubbard completed the terms of his Judgment and Sentence on February 25, 2013. (CP 30:23; CP 31:15). The trial court took the petition under advisement to reread cases cited regarding the issue of the effective date. On May 4, 2016, the trial court entered the Certificate and Order of Discharge, effective February 25, 2013. (CP 26-27). On July 13, 2016, the trial court entered Findings of Fact and Conclusions of Law of Defendant’s Petition for Certificate and Order of Discharge Entered on May 4, 2016. (CP 29-32).

The Court of Appeals affirmed the trial court’s findings of fact as supported by substantial evidence. *State v. Hubbard*, 200 Wn. App. 246, 251; 402 P.3d 362 (2017). It similarly agreed these facts support the trial court’s conclusions of law that Mr. Hubbard is entitled to a certificate and order of discharge. *Id.* The Court of Appeals also held the Certificate and Order of Discharge, dated February 25, 2013, is not a *nunc pro tunc* order. *Id.* at 252, i.e., there was no prior judicial act to be added to the record; nor a clerical or ministerial error to be corrected. *Id.*

The Court of Appeals remanded the case to the trial court to enter a certificate and order of discharge with an effective date reflecting the date the court received notice from the county clerk and adequate verification Mr. Hubbard satisfied all conditions of his sentence. *Id.* Mr. Hubbard's Petition for Review of the remand was granted on March 8, 2018.

IV. ARGUMENT

A. The standard of review is *de novo*

The issue in this case concerns the statutory construction, interpretation and application of RCW 9.94A.637, as it relates to the effective date of a certificate and order of discharge. *See* Appendix A. The standard of review is *de novo* for questions of law. *Stuckey v. Dep't of Labor & Indus.*, 129 Wn.2d 289, 295, 916 P.2d 399 (1996); *Clausen v. Dep't of Labor & Indus.*, 130 Wn.2d 580, 583, 925 P.2d 624 (1996).

RCW 9.94A.637(1)(c) applies to Mr. Hubbard's case, because he was released from DOC's supervision in 2005, prior to satisfying his sentence requirements in 2013. However, this subsection must not be read in isolation; rather, it must be analyzed as part of the statutory scheme of RCW 9.94A.637 as a whole.

B. The RCW 9.94A.637(1) subsections are ambiguous and must be read together to avoid inconsistent outcomes and to advance coherent long-standing re-entry public policy

Because the statute is silent as to the authority of the trial court to determine the effective date of a discharge, the court must look to statutory interpretation and legislative intent to find its meaning. “If a statute is unambiguous, it is not subject to judicial construction and its meaning is to be derived from the language of the statute alone.” *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). “As a rule of statutory interpretation, courts construe statutes to avoid ‘absurd or strained consequences’.” Moreover, courts should read the statute as a whole, considering all provisions in relation to each other and giving effect to each provision.” *Wright v. Engum*, 124 Wn.2d 343, 351, 878 P.2d 1198 (1994), citing *In re Eaton*, 110 Wn.2d 892, 901, 757 P.2d 96/1 (1988) and *Nisqually Delta Ass'n v. DuPont*, 103 Wn.2d 720, 730, 696 P.2d 1222 (1985), respectively.

1. The interpretation and application of the subsections of RCW 9.94A.637(1) must be read together to avoid ambiguity and contrary outcomes for the justice-involved individuals these provisions are intended to help re-enter society

Both *Hubbard* and *Johnson* conclude the plain language of subsections (c) and (a), respectively, is unambiguous. However, if the plain language was truly unambiguous, then it stands to reason neither court need interpret the statute to clarify its meaning. The courts’ analyses demonstrate that reading these subsections in isolation, and out of context to each other and RCW 9.94A.637(1) as a whole, fails to answer what is an appropriate

effective date for the population this provision is intended to benefit. The statute is silent and the analyses create problematic outcomes.

The Court of Appeals, Division II, concluded there is no conflict or ambiguity in the reading of the subsections of RCW 9.94A.637(1). *Hubbard*, 200 Wn. App. at 257. Specifically, the court reasoned the certificate and order of discharge in all subsections must be issued at the time the court receives notice from the county clerk and adequate verification a defendant has completed his or her sentence requirements. *Id.* The only difference is whose responsibility it is to provide this notice—DOC under subsection (a) or the defendant under subsection (c). *Id.*

The Court of Appeals, Division I, interpreted RCW 9.94A.637(1)(a) and stated (1)(a) “mandates that a court issue a certificate of discharge when it receives notice that the offender has completed all of the requirements of his or her sentence.” *State v. Johnson*, 148 Wn. App. 33, 38, 197 P.3d 1221 (2008), *rev. denied*, 166 Wn.2d 1017 (2009). However, the court’s interpretation and judicial construction of the statute is not the plain language of the statute.

Further, incongruous to its own holding, the court acknowledges “[t]he statute does not state the date on which the certificate is to be effective.” *Johnson*, at 39. It further posits, “[t]he court might not consider

the notice or make factual findings on the day on which it received the notice, and might not issue a certificate until a later date.” *Id.*

This further demonstrates the arbitrariness of the court’s interpretation that a certificate and order of discharge be dated some date on or after a defendant under (1)(c) or DOC under (1)(a) provides notice. For example, if the decision below is upheld, the effective date remains open to debate: Is the effective date the date Mr. Hubbard provided notice to the court by filing his Petition for Certificate and Order of Discharge (April 6, 2016); the date of the hearing on the merits (April 29, 2016); the date the Certificate and Order of Discharge was signed (May 4, 2016); or, the date the Findings of Fact and Conclusions of law were entered (July 13, 2016)? The clear and unambiguous date is the date when Mr. Hubbard completed his sentence requirements on February 25, 2013.

To affirm the Court of Appeals creates an arbitrary system where serious offenders under DOC supervision have access to what is for the most part an automated issuance of a certificate and order of discharge under subsection (1)(a); and in stark contrast, under subsection (1)(c), the less serious offender is left to navigate the process on his or her own, resulting in potentially absurd and unintended outcomes.

To avoid absurd outcomes, courts should “read the statute as a whole, considering all provisions in relation to each other and giving effect

to each provision.” *Wright at 351*. That is, for any eligible individual who petitions for a certificate and order of discharge pursuant to 9.94A.637(1), the effective date should be based on the date all conditions of his or her sentence were satisfied. To do otherwise is contrary to public policy and longstanding legislative intent.

2. Legislative history clearly articulates public policy that justice-involved individuals be provided with meaningful opportunities to re-enter society

“The interpretation that is adopted should be the one that best advances the legislative purpose.” *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 E2d 24 (1991). Subsection (1)(c) was proposed, and then amended, during the 2004 legislative session. Laws of 2004, ch. 121, § 2. Subsection (1)(c) transferred LFO collections to the county clerks, and in the subsequent amendment, the Legislature eliminated DOC supervision of the two lowest risk categories of offenders. *Id.*

Subsection (1)(c) was merely added to provide unsupervised individuals, like Mr. Hubbard, the same access to a certificate and order of discharge as the (1)(a) higher risk offenders receive under DOC supervision. There is nothing in the legislative history demonstrating any intent to make the process different or more cumbersome for these (1)(c) unsupervised individuals.

To the contrary, the trial court's interpretation is consistent with the legislative intent consistently expressed and reiterated by the Legislature regarding the importance of re-entry issues and removing barriers to successful re-entry. For example, in 2002, discussing reinstating voting rights, the Legislature recognized:

. . . an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge.

Laws of 2002, ch. 16, § 1.

Similarly, in 2009, *State v. Miniken* was superseded by statute when the Legislature amended RCW 9.94A.637(2)(a) to clarify that a no-contact order is not part of an offender's sentence. 100 Wn. App. 925, 999 P.2d 1289 (2000). The Legislature found,

[R]estoration of the right to vote and serve on a jury, for individuals who have satisfied every other obligation of their sentence, best serves to reintegrate them into society, even if a no-contact order exists. Therefore, the legislature further finds clarification of the existing statute is desirable to provide clarity to the courts that a certificate of discharge shall be issued, while the no-contact order remains in effect, once other obligations are completed.

Laws of 2009, ch. 288, § 1.

Since the first promulgation of discharge and vacate legislation in 1981 (now under RCW 9.94A.637 and RCW 9.94A.640 respectively), the legislative intent has not wavered:

NEW SECTION. Sec. 22. When an offender has completed the requirements of the offender's sentence, the sentencing court shall discharge the offender and provide the offender with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. . . .

SECTION. Sec. 23. (1) Every offender who has been discharged under section 22 of this act may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

Laws of 1981, ch. 137 (emphasis added).

The Court of Appeals ignored Mr. Hubbard's argument that a plain language reading of subsection (1)(c) in isolation of the entire section leads to "absurd" results, as defined in *Wright*, stating such an interpretation is "directly contrary to the plain language of the RCW 9.94A.637(1)(c)." *Hubbard*, 200 Wn. App. 246, 257.

However, respectfully, the Court of Appeals' plain language interpretation infers the Legislature intended RCW 9.94A.637(1) to be

applied in a manner that undermines its long-standing re-entry public policies. To interpret the provision in this manner is inconsistent with *Wright*—one must “read the statute as a whole, considering all provisions in relation to each other and giving effect to each provision.” 124 Wn.2d at 351. The court’s interpretation results in different outcomes solely based on whose responsibility it is to provide notice to the courts. Furthermore, if the Court of Appeals is affirmed, as compared to (1)(a) higher-risk offenders, (1)(c) lower-risk offenders will now have more burdensome barriers to vacate their convictions to improve their opportunities for employment, credit, or housing.

C. Current authority does not support remand in Mr. Hubbard’s case

1. *State v. Johnson* is distinguishable—although based on the record the result is reasonable, the analysis is flawed

The record indicated Johnson had not completed his sentence requirements as of May 29, 2002, the effective date he requested for his certificate and order of discharge. While it was reasonable for the Court of Appeals, Division I, to uphold the trial court denying his request based on the record before it, the overarching analysis is flawed.

Johnson entered a guilty plea to one count of manufacturing marijuana. *Johnson*, 148 Wn. App. at 35. On November 17, 2007, Johnson

filed for a certificate and order of discharge and requested the effective date of May 29, 2002. *Id.* at 37.

The trial court denied Johnson's requested effective date, stating Johnson had not completed his sentence requirements as of May 29, 2002. Specifically, in November 2001, DOC recommended termination of supervision, stating Johnson had completed most of the court ordered requirements, *except he had "failed to pay his DOC supervision fees."* *Id.* at 36 (emphasis added). The trial court terminated supervision on May 29, 2002 (filed June 26, 2002), stating, "'the defendant *has not complied with the conditions and requirements of the sentence imposed* herein, but that the overall costs of enforcing compliance or imposing further punitive measures are not justified in the above-entitled cause....' The court did not issue a certificate of discharge." *Id.* at 36-7 (emphasis added).

The Court of Appeals noted the parties disagreed as to whether or not Johnson paid the DOC supervisory fees in 2002, or sometime thereafter. *Id.* at 39. As of May 29, 2002, the date Johnson requested as an effective date for his certificate and order of discharge, the record indicates he had not paid the DOC supervision fees. The court remanded the case for a factual determination of the date the court received notice and to enter a certificate of discharge as of that date; stating in Footnote 2, it "assume[d] based on the trial court's discharge that somewhere between May 29, 2002,

and November 17, 2007, the sentencing court received notice of actual completion of the terms of [Johnson's] sentence." *Id* at 37.

This analysis further demonstrates the arbitrariness of using an effective date other than the actual date a defendant satisfies his or her sentence requirements. In Johnson's situation, and others similarly situated under DOC supervision pursuant to subsection (1)(a), he was beholden to DOC giving the notice to the court. On remand, hypothetically, what if Johnson had in fact paid the DOC supervision fees on or soon after May 29, 2002, the effective date he requested, but DOC failed to timely and properly notify the sentencing court thereafter? What is his remedy? Johnson pays the price, because under the court's holding, his certificate and order of discharge would still be required to be dated some date on or after he filed his petition and gave notice to the court, i.e., on or after November 17, 2007.

While the decision in *Johnson* appears reasonable based on the record, Mr. Hubbard's case is factually distinguishable. The trial court held, and the Court of Appeals affirmed, Mr. Hubbard completed his sentence requirements February 25, 2013—the date he asks this Court to uphold as the effective date his Certificate and Order of Discharge.

2. By remanding the case to change the effective date from 2014 to 2008, *State v. Porter* shows setting an effective date when sentence conditions are completed is authorized by statute

State v. Porter, cursorily adopted the holding in *Johnson*, without substantive analysis of the specific issue presently before this Court. 188 Wn. App 735, 738, 356 P.3d 207 (2015), *citing Johnson*, 148 Wn. App. at 39 (“The effective date of discharge is the date the trial court receives notice that all sentence requirements have been satisfied.”).

Porter is distinguishable in that the court was analyzing a separate issue as to what effect Porter’s no contact order, which expired January 2012, should have on the effective date for Porter’s certificate and order of discharge. *Id.*

In December 2006, Porter was sentenced to six-month confinement, 12-month community custody, ordered to pay LFOs, and a five-year no contact order was entered. *Id.* at 737. In March 2008, DOC notified the trial court Porter had completed community custody. *Id.* On December 18, 2008, the county clerk notified the trial court that Porter had paid his LFOs. *Id.*

In 2014, Porter filed his petition for a certificate and order of discharge and requested the effective date of December 18, 2008. *Id.* The parties agreed the discharge was proper, but the State argued, and the trial court agreed, the effective date should be when the no contact order expired, i.e., January 2012. *Id.*

As noted, *State v. Miniken* was superseded by statute when RCW 9.94A.637(2)(a) was amended in 2009 making no contact orders not a

requirement of an offender's sentence (but remain in place separately for the safety of the victim). *Porter*, at 738.

The Court of Appeals, Division I, ruled in Porter's favor reversing the trial court's ruling and held it was appropriate to change the effective date from 2014 to December 18, 2008. *Id.* at 743. However, *Porter* is not dispositive because December 18, 2008, is the *same* date that Porter satisfied his judgment and sentence requirements *and* when the court received notice from the county clerk confirming the same.

In Mr. Hubbard's case, these two triggers occurred on *different* dates. Mr. Hubbard satisfied his sentence requirements on February 25, 2013 and subsequently filed his petition (gave notice) on April 6, 2016.

3. *State v. Swanson* analogized provisions to restore firearm rights to RCW 9.94A.637 and held both statutes are triggered once the offender completes his sentence requirements

The Court of Appeals, Division II, reversed the trial court's denial of Swanson's petition to restore his firearm rights once he met the requirements enumerated in RCW 9.41.040(4). *State v. Swanson*, 116 Wn. App. 67, 78, 65 P.3d 343 (2003), *rev. denied*, 150 Wn.2d 1006 (2003). As part of the analysis as to whether or not a court has discretion or not to restore Swanson's firearm rights, the court compared various statutes to RCW 9.41.040(4) for guidance. *Id.* at 72-5. In reviewing RCW 9.94A.637, the statute at issue in Mr. Hubbard's case, the court found it the most

analogous to RCW 9.41.040(4). *Id.* The court held there is no discretion in either statute once an offender meets the statutory requirements. *Id.* Discussing RCW 9.94A.637, the court stated in *Swanson*, “restoration is automatic *once the offender completes his sentence requirements.*” *Id.* at 74 (emphasis added).

4. *State v. T.K.* is an analogous analysis of the statute to vacate and seal juvenile records and held it is triggered by the completion of the statutory conditions, not the filing of a motion to seal

Another compelling analogous example is *State v. T.K.*, in which three cases were heard on appeal regarding vacating and sealing juvenile criminal records. 139 Wn.2d 320, 323, 987 P.2d 63 (1999). In these cases, the issue was whether subsequent amendments relating to vacating and sealing juvenile records applied to defendants who became eligible *prior* to the amendments, but who filed petitions to seal and vacate *after* the amendments went into effect. *Id.*

“Once the conditions of the statute are met, the defendant has a right to relief and a court has the nondiscretionary obligation to seal *regardless of when the motion is made.*” *Id.* at 331 (emphasis added) (citing *State v. Webster*, 69 Wn. App. 376, 378-9, 848 P.2d 1300 (1993) (“There being no contrary interpretation apparent from the plain reading of the statute, the superior court was obliged to seal the records *once the requirements of RCW 13.50.050(11) were met.*” (emphasis added))). This Court, in *T.K.*,

ruled in favor of all three defendants, holding, “we conclude that completion of the statutory conditions, *not the filing of a motion to seal*, is the event that triggers application of the statute.” *Id.* at 332 (emphasis added).

V. CONCLUSION

For the reasons discussed herein, pursuant to RCW 9.94A.637, Mr. Hubbard satisfied the conditions of his sentence on February 25, 2013. The Court of Appeals erred in its decision remanding the case to the trial court to enter some date on or after the trial court received notice and adequate verification Mr. Hubbard completed his sentence requirements. Mr. Hubbard respectfully requests this Court reverse that portion of the Court of Appeals’ decision and uphold the trial court’s decision in its entirety.

RESPECTFULLY SUBMITTED this 9th day of May 2018.

NORTHWEST JUSTICE PROJECT



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VI. APPENDIX

RCW 9.94A.637(1) states:

(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence. (ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

NORTHWEST JUSTICE PROJECT- ABERDEEN

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