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No. 96072-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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JERRY L BARR, III

Respondent,

v.

SNOHOMISH COUNTY SHERIFF,

Petitioner.

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PETITIONER'S ANSWER TO BRIEF OF AMICUS WACDL

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## I. INTRODUCTION

In 1992, Jerry L. Barr III was convicted of two class A felonies as a juvenile. The issue in this case is whether, as a result of those convictions, Jerry Barr is ineligible to possess a firearm, regardless of whether those convictions subsequently have been sealed.

The primary argument of Amicus, Washington Association of Criminal Defense Lawyers (“WACDL”), is that the only way to preserve the confidentiality of sealed juvenile convictions is to exempt them from the statutory process for judicial restoration of firearm rights set forth in RCW 9.41.040(4). In WACDL’s view, requiring compliance with RCW 9.41.040 is absurd because it would require an individual to choose between confidentiality and access to firearms. WACDL’s argument lacks merit.

WACDL’s arguments do not apply to an individual, like Jerry Barr, who has been convicted of a class A felony or sex offense, because such an individual is not eligible for restoration pursuant to RCW 9.41.040(4). Thus, WACDL’s argument only applies to an individual who has sealed a juvenile non sex offense class B or C felony.

Moreover, WACDL’s argument ignores existing court procedures that protect confidentiality. To preserve confidentiality, an individual may

request to redact information, seal information, or request to file an action using a pseudonym pursuant to GR 15 and *Ishikawa*. These mechanisms allow the individual to benefit from the confidentiality of a sealed juvenile court record, while also complying with the Legislature's requirement that RCW 9.41.040 apply to juvenile convictions. This process balances the juvenile courts' rehabilitative purpose while maintaining the public accountability and safety goals of RCW 9.41.040.

## II. ARGUMENT

### A. The Constitutionality of SCLCR 3(a) Is Beyond The Scope Of This Appeal.

WACDL argues that Snohomish County Local Court Rule 3(a), which requires a petition for restoration of firearm rights pursuant to RCW 9.41.040(4) to be filed as a civil cause of action, is unconstitutional. *See* Amicus Brief of WACDL ("Amicus"), at 11-13. This argument is new, raised only by WACDL, and is unsupported by the facts of this case. Jerry Barr filed a petition to seal his juvenile class A felony convictions in King County, and never filed a petition for restoration pursuant to RCW 9.41.040. Thus, Snohomish County Local Rules have never been at issue in this case. This Court should decline to consider this new issue. *See State v. Shale*, 182 Wn.2d 882, 895, 345 P.3d 776 (2015) citing *State v. Evans*, 154 Wn.2d 438, 457, 114 P.3d 627 (2005); *State v.*

*Gonzalez*, 110 Wn.2d 738, 752 n. 2, 757 P.2d 925 (1988)(courts need not reach issues raised only by amici).

**B. An Individual With A Sealed Conviction May Request To Redact Information, Seal Information, Or Request To File An Action Using A Pseudonym.**

WACDL argues that if an individual is required to disclose a sealed juvenile conviction in the context of a firearm restoration petition, it is tantamount to a “Hobson’s choice.” Amicus at 4. WACDL devotes six pages to describing cases where a court found a “Hobson’s choice” existed. These cases are not helpful or relevant here.<sup>1</sup>

Court records are presumptively open to public scrutiny, but Washington Courts provide mechanisms to protect certain information in otherwise publically available court records, such as using a pseudonym, redacting, or sealing. By using these mechanisms, an individual may simultaneously provide the court with necessary criminal history information to determine whether RCW 9.41.040 is satisfied and protect the confidentiality of a sealed juvenile conviction. Thus, contrary to

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<sup>1</sup> Additionally, WACDL’s use of this figure of speech is in error. A “Hobson’s choice” is not a difficult decision nor a dilemma in which the choice of either alternative is bad. A “Hobson’s choice” is: No choice at all. *See State v. Brown*, 113 Wn.2d 520, 553-554, 761 P.2d 588 (1988).

WACDL's argument, an individual is fully capable of complying with RCW 9.41.040, without sacrificing any privacy interest.

*1. An Individual May Petition To Seal or Redact Reference to A Juvenile Conviction Pursuant to GR 15.*

GR 15(c)(2)(A) and (F) permit the court to redact or seal files and records when permitted by statute or under compelling circumstances. RCW 13.50.260 treats sealed juvenile convictions as confidential records. An individual, who has been convicted of a juvenile felony, and also has an adult prohibiting conviction, may petition to redact or seal reference to the juvenile conviction in his or her petition for restoration of firearm rights. Consistent with the policy expressed in RCW 13.50.260, allowing an individual to redact or seal references to his or her sealed juvenile conviction is an appropriate step to maintain the confidentiality of the juvenile offense.

*2. An Individual May Petition To Proceed Under A Pseudonym Based On GR 15 and Ishikawa.*

Another option is to file a civil action under a pseudonym, based on a review of the factors set for the in GR 15 and *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). See *John Doe G. v. Dep't of Corr.*, 190 Wn. 2d 185, 200, 410 P.3d 1156 (2018)(quoting *Ishikawa*, 97 Wn.2d at 37, 640 P.2d 716 ("If closure and/or sealing is sought to further any right or interest besides the defendant's right to a fair trial, a 'serious

and imminent threat to some other important interest' must be shown.'"))).

Pseudonymous litigation has been allowed when there is a showing that confidentiality is necessary.

To determine whether to grant a request to proceed under a pseudonym, the court analyzes GR 15 and *Ishikawa*. As discussed above, GR 15(c)(2)(A) permits sealing or redaction of court files and records when permitted by statute. GR 15(c)(2)(F) also allows a court to seal a record if it “ ‘enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record.’ ” *Hundtofte v. Encarnación*, 181 Wn.2d 1, 7, 330 P.3d 168 (2014) (plurality opinion) (quoting GR 15(c)(2)). Under the *Ishikawa* test, an individual may proceed under a pseudonym if: (1) the proponent of sealing shows a need for sealing; (2) opponents of sealing are given an opportunity to object; (3) sealing is the least restrictive means available to protect the interests at stake and will be effective; (4) the court weighs the competing interests, considers alternative methods, and makes findings; and (5) the order is no broader in application or duration than necessary. *Ishikawa*, 97 Wn.2d at 37-39.

In *John Doe G*, this Court held that in order to proceed under a pseudonym, convicted sex offenders were required to establish that their

request complied with GR 15 and the *Ishikawa* factors. *John Doe G*, 190 Wn.2d at 201. In that case, this Court found the trial court's order allowing pseudonymity did not comply. The Court's decision was influenced by the fact that the *John Doe G*. plaintiffs' crimes were available to the public and the individual's association to their respective crimes was already a matter of public record. *John Doe G.*, 190 Wn. 2d at 200.

GR 15 and *Ishikawa* support allowing a individual with no subsequent adult felony or domestic violence convictions to petition for restoration of firearm rights under a pseudonym. With respect to the first *Ishikawa* factor, RCW 13.50.260 demonstrates the legislature's intent that the public record associating the individual with the juvenile conviction should not be available to the public. A motion to proceed by pseudonym provides an opportunity for any interested person to file a response in objection, and therefore satisfies the second factor. Third, a pseudonym is an effective means to break the link between the individual and the juvenile conviction, thereby protecting confidential information from the public. And in the case of an individual with no adult convictions, it is the least restrictive means available to maintain confidentiality. As to the fourth factor, the balance of interests weighs in favor of sealing the records. By statute, sealed juvenile convictions are deemed confidential,

reflecting the legislative acknowledgement that the public does not have an interest in knowing the details of the individual's juvenile criminal history.

Washington court rule and case law allow a juvenile with a sealed conviction to file a petition for restoration of firearms right under a pseudonym. Because there is an available mechanism for an individual to maintain the confidentiality of a sealed juvenile conviction and comply with RCW 9.41.040, he or she should be required to do so.

Whether to file using a pseudonym or seal/redact the offense in a court filing would likely be dictated by whether the individual has adult convictions that also result in the loss of firearm rights. For example, if an individual with a sealed juvenile conviction is also convicted of an adult felony or certain domestic violence misdemeanors, a petition for restoration pursuant to RCW 9.41.040(4) is required to restore rights. Any sealed juvenile offense can be included in the petition but redacted or sealed pursuant to GR 15. In that instance, including the individual's name in the caption does not implicate a privacy right because the filing is necessary for the adult conviction(s), which are available to the public and a part of the public record anyway. An individual with juvenile conviction(s), and no adult prohibiting conviction(s), may petition for restoration under a pseudonym so that the new case filing would not

directly link the individual with the crime. Regardless of which choice an individual makes, WACDL's claim that he or she only has a "Hobson's choice" is factually and legally incorrect.

**C. The Policy Issues Raised by Amicus Are Best Directed to the Legislature.**

Washington Courts have recognized mechanisms to provide additional confidentiality to records. But "the legislature is in the unique and best position to publicly weigh the competing policy interests," particularly as it pertains to the openness of juvenile court records. *State v. S.J.C.*, 183 Wn. 2d 408, 422, 352 P.3d 749, 756 (2015). To the extent that additional mechanisms could be implemented to provide for security of juvenile records in civil filings, those policy mechanisms should be left to the Washington State Legislature.

**III. CONCLUSION**

WACDL's argument that the policy considerations for treating sealed juvenile convictions as confidential will be eviscerated if an individual is required to comply with RCW 9.41.040 ignores the mechanisms currently available to maintain the confidentiality of sealed juvenile conviction records. By petitioning under a pseudonym, sealing, or redacting references, as allowed by GR 15 and *Ishikawa*, an individual can

simultaneously maintain confidentiality and address the public health and safety problems caused by felons with access to firearms.

This Court should reverse the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED on December 28, 2018.

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DECLARATION OF DOCUMENT  
FILING AND E-SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and not a party to this action. The undersigned certifies that on the 28<sup>th</sup> day of December, 2018, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the Petitioner's Answer to Brief of Amicus WADCL upon the parties listed below:

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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28th day of December, 2018, at Everett, WA.



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