

Case # 71252-7-1

COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, *Respondent*,

v.

KURTIS WILLIAM BRISKEY, *Appellant*.

2014 JUL 30 PM 1:30  
COURT OF APPEALS  
STATE OF WASHINGTON

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. ARGUMENT.....1

1. JUVENILE AND ADULT OFFENDERS ARE SIMILARLY SITUATED.....1

2. RESTITUTION MUST BE PAID TO SEAL A JUVENILE RECORD *ONLY IF* THE RESTITUTION ORDER HAS NOT EXPIRED.....2

a. Juvenile Justice Act of 1997 (“JJA”) v. Sentencing Reform Act of 1981 (“SRA”).....2

b. Case law supports expired restitution orders as unenforceable and not a barrier to an adult certificate of discharge.....2

i. *State v. Bennett* and *In re Brady*.....2

ii. *State v. Gossage*.....4

B. CONCLUSION.....7

TABLE OF AUTHORITIES

CASES

*In re Andrew Evan Brady*, 154 Wn. App. 189, 224 P.3d 842 (2010)..2, 3, 4  
*State v. Bennett*, 92 Wn. App. 637, 963, P.2d 212 (1998).....2, 3  
*State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525 (2008)..... ..4, 5, 6, 7

STATUTES

RCW 9.94A.030(30).....4  
RCW 9.94A.750-777.....2  
RCW 13.40.192.....4

OTHER SOURCES

Juvenile Justice Act of 1977.....2  
Sentencing Reform Act of 1981.....2  
SSHB 1651, 63rd Leg., Reg. Sess. (Wash. 2014) (eff. 6/12/14).....5

## **A. ARGUMENT**

### **1. JUVENILE AND ADULT OFFENDERS ARE SIMILARLY SITUATED.**

The State argues that Briskey made no attempt to show how adult and juvenile offenders are similarly situated. Brief of Respondent (“BR”) at 3, fn. 3. On the contrary, the Brief of Appellant (“BA”) discussed the following similarities between juvenile and adult offenders:

- a. Restitution Orders are entered following convictions in both juvenile and adult prosecutions.
- b. Restitution Orders expire 10 years after the juvenile turns 18, and 10 years after they are entered for adults, unless someone renews them for another 10 years.
- c. Juveniles want to seal their juvenile offender records, and adults want to obtain a certificate of discharge so they may vacate their adult criminal records.

The State is elevating form over substance. Both the juvenile and the adult have criminal records that negatively affect their lives. It is wrong to give an adult the ability to vacate a conviction, but deny such relief to the respondent in a juvenile case.

**2. RESTITUTION MUST BE PAID TO SEAL A JUVENILE RECORD ONLY IF THE RESTITUTION ORDER HAS NOT EXPIRED.**

The State uses various arguments to support its contention that restitution must be paid in order to seal a juvenile record, whether the restitution order is valid or expired.

**a. Juvenile Justice Act of 1997 (“JJA”) v. Sentencing Reform Act of 1981 (“SRA”).**

The State claims that restitution received “special” attention because it was listed as one of the purposes of the JJA, but is not mentioned in the purpose of the SRA. BR at 5. Actually, “payment of restitution” received the same amount of attention as the other 11 purposes of the JJA, and as the State quotes, these are “*equally important purposes* of this chapter....” *Id.* The fact that the SRA, which governs adult sentencing, contains no mention of restitution in its statement of purpose is misleading. There are 25 sections of RCW 9.94A on Restitution alone (RCW 9.94A.750-777). These 25 statutes are a good indication that the legislature intended for adult restitution to be taken seriously.

**b. Case law supports expired restitution orders as unenforceable and not a barrier to an adult certificate of discharge.**

**i. *State v. Bennett* and *In re Andrew Evan Brady*.**

The State cites four cases dealing with juvenile restitution as evidence of its importance in juvenile cases. BR at 5-6. However, none of these four cases involved a requirement to pay restitution after the order had expired. The primary case cited, *State v. Bennett*, 92 Wn. App. 637, 963 P.2d 212 (1998), was addressed in *In re Andrew Evan Brady*, 154 Wn. App. 189, 224 P.3d 842 (2010), the key juvenile case cited by Briskey. BA at 9. At the time Bennett was sentenced, juvenile courts lost jurisdiction on an offender's 21<sup>st</sup> birthday. *Id.* at 194. Since Bennett had not paid any restitution by the time he turned 21, the court extended jurisdiction for another six years, subjecting Bennett to the "1994 amendments to RCW 13.40.190(1) and .300 that authorized a juvenile court to extend jurisdiction beyond age 21 for purposes of enforcing restitution obligations." *Id.* The court in Bennett went on to say that "the respondent shall remain under the court's jurisdiction for a *maximum term of 10 years after the respondent's eighteenth birthday.*" *Id.* (*emphasis added*). The legislature again amended RCW 13.40.190(1) in 1997, to allow the juvenile court to extend the judgment for the payment of restitution for an additional ten years. *Id.* at 195. This amendment was part of Engrossed House Bill (EHB) 1096, whose legislative intent was to clarify that provisions of RCW 6.17.020, allowing judgments to be extended for an additional 10 years from the date of imposition, would likewise apply to

juvenile legal financial obligations. *Id.* at 201. “Nothing in the legislative history for EHB 1096 suggests that juvenile disposition orders would remain valid for more than 10 years from the date of imposition without an extension during that period.” *Id.* at 196. Brady “concludes the only significant change in the law since *Bennett* is to permit a second extension, albeit not automatic and only if entered prior to the expiration of the original 10-year period.” *Id.* at 197. Nothing in the case law the State cites supports denying the sealing of a juvenile record because of unpaid restitution from an expired order. If an expired restitution order is no longer valid, the court should not be able to use the unpaid restitution of the expired order as a reason to deny sealing a juvenile’s record.

**ii. *State v. Gossage***

The State claims that reliance on *State v. Gossage*, 165 Wn.2d 1, 195 P.3d 525 (2008), is misplaced because of different language in the juvenile and adult statutes. Adults are required to pay “all legal financial obligations,” but juveniles are only required to pay “restitution.” BR at 8. Restitution is a component of legal financial obligations for both juveniles (RCW 13.40.192) and adults (RCW 9.94A.030(30)). If anything, the burden is greater on the adult to pay all legal financial obligations than it is on the juvenile to pay only restitution.

The State cites the recently enacted SSHB 1651 in a footnote, which provides for regular sealing hearings for juvenile offenders. BR at 4, fn. 4. In fact, the language of SSHB 1651 does use the same language as the adult statute:

- (c) A court shall enter a written order sealing an individual's juvenile court record pursuant to this subsection if:
  - (ii) The respondent has completed the terms and conditions of disposition, including affirmative conditions and *financial obligations*.

SSHB 1651, Sec. 4(1)(c)(ii) (*emphasis added*).

The State agrees with the court's decision in *Gossage* that he no longer had an obligation to pay his restitution, because his order had expired, and since his relevant statute allowed him to seek discharge once he had completed his "legal financial obligations," there was no impediment to such a certificate under the circumstances of his case. BR at 9. The State then argues that Briskey is in a different position because his statute requires him to pay restitution before he can get his juvenile records sealed, even though the State says Briskey "no longer has an independent obligation to pay restitution, he may not obtain the additional benefit of having his records sealed until he has paid it in full." *Id.* This is a distinction without a difference. Gossage obtained the additional benefit of receiving a certificate of discharge, even though he failed to pay a

portion of his legal financial obligations, specifically, restitution. Since Briskey's restitution order also expired, he no longer has an obligation to pay it, and therefore, it should not be an impediment to sealing his juvenile record.

The public policy concern the State identified in *Gossage* – granting a certificate of discharge even though Gossage had failed to complete his restitution payments – was addressed by the legislature when they amended both the adult and juvenile statutes in 2000, which made restitution orders imposed on offenses committed as of July 1, 2000, valid for the life of the offender. The legislature specifically did not make this retroactive to offenses committed prior to July 1, 2000. Briskey's offense occurred before July 1, 2000. The legislature drew a distinction between pre- and post-July 1, 2000, offenses and their accompanying restitution orders. If the State prevails, the impact to the sealing of a juvenile record will be the same for an expired restitution order as an unexpired restitution order. This would render the 2000 legislative change meaningless.

Without a renewal of the restitution order, it could no longer be a factor in granting or denying Gossage a certificate of discharge, and likewise, it should no longer be a factor in granting or denying Briskey the sealing of his juvenile record.

**B. CONCLUSION**

The trial court erred in denying Briskey's motion to seal his juvenile records, because it treated his expired restitution order as a roadblock to the relief Briskey seeks. Like Gossage, Briskey is no longer under any obligation to pay restitution, and the unpaid restitution of the expired order should no longer impede Briskey's request to have his juvenile record sealed.

Briskey requests this Court reverse the trial court's ruling that denied his motion to seal his juvenile records, and remand with directions to seal Briskey's juvenile records without requiring full restitution be paid.

RESPECTFULLY SUBMITTED this 30th day of July, 2014.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date written below, a true and correct copy of this document was served on each of the parties below as follows:

In person to:

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DATED this 30<sup>th</sup> day of July, 2014.

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