Supreme Court No. I03068-I
Court of Appeals No. 85870-0-I

IN THE WASHINGTON STATE SUPREME COURT

Darren L. Arends
Petitioner,

vs.

State of Washington
Respondent.

Petition for Review

Vitaliy Kertchen #45183
Attorney for Petitioner
917 S 10th St
Tacoma, WA 98405
253-905-8415
vitaliy@kertchenlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

IDENTITY OF PETITIONER

Darren L. Arends, appellant below and petitioner here, asks this Court to accept review of the decision of the Court of Appeals designated below.

DECISION BELOW

Division I of the Court of Appeals issued the decision below on March 25, 2024, case number 85870-0-I. In an unpublished opinion, Division I held that Mr. Arends does not have a vested right to the restoration of his firearm rights under former RCW 9.41.040(4). In doing so, the panel disregarded the correct framework and gutted the entire concept of a vested right. The court granted a motion to publish and a motion for reconsideration on May 13, 2024. Appendix (App'x) at 1. The purpose of reconsideration was to remove superfluous language from the opinion; the ultimate outcome did not change.

ISSUE PRESENTED FOR REVIEW

Does Mr. Arends have a vested right to the restoration of his firearm rights under former RCW 9.41.040(4)?

STATEMENT OF THE CASE

The right to petition for the restoration of firearm rights was first enacted in 1995. Laws of 1995, ch. 129, § 16. At that time, the eligibility requirements were: no sex offense or a class A felony, five consecutive years in the community without any convictions, no pending charges, and no felony points counted as part of the offender score. *Id.* In 1996, the legislature lowered the waiting period for those convicted of a misdemeanor to three years, but imposed an additional requirement that all conditions of sentence be completed. Laws of 1996, ch. 295, § 2. All other requirements remained the same. *Id.* In 2011, the legislature added a venue provision, specifying that a petition could only be brought at the court of record that ordered the prohibition or at the superior court in the county of residence.

Laws of 2011, ch. 193, § 1. Again, all other requirements remained the same. *Id.*

On July 23, 2023, Substitute House Bill 1562 (SHB 1562) took effect. Laws of 2023, ch. 295. The bill repealed RCW 9.41.040(4) and replaced it with RCW 9.41.041. *Id.* § 3-4. While the bill made several changes to the restoration of firearm rights, the operative change at issue here regards venue. SHB 1562 removed the option to file in the county of residence: "The person must file a petition in a superior court in a county that entered any prohibition." RCW 9.41.041(3)(a).

//

//

//

//

//

//

//

Mr. Arends's disabling conviction is a grand theft from South Dakota in 1988. Clerk's Papers (CP) at 122-23. He has no criminal history in Washington state. His prohibition does not stem from any county in Washington state, but rather from the comparability of his conviction to a Washington state felony.[1] Under RCW 9.41.041, he cannot file his firearm rights petition anywhere. But he can petition in the county of his residence if he has a vested right to do so under former RCW 9.41.040(4).

Mr. Arends did just that on August 15, 2023 in Snohomish County Superior Court under case number 23-2-05892-31. CP at 122-23. The State objected, arguing that he did not have a vested right to proceed under former RCW

[1] RCW 9.41.010(17) defines "felony" as "any felony offense under the laws of this state *or any federal or out-of-state offense comparable to a felony offense under the laws of this state*." (emphasis added). Mr. Arends's firearm rights in South Dakota have already been restored automatically by operation of law. SDCL § 24-5-2 (restoring full rights of citizenship upon discharge).

9.41.040(4) and that he had no ability to file in Snohomish County under RCW 9.41.041. CP at 66. The superior court agreed with the State and denied the petition on October 5, 2023. CP at 9.

Mr. Arends filed a timely notice of appeal. CP at 1. Division I heard oral argument on January 19, 2024 and issued an unpublished opinion on March 25. The panel affirmed the trial court, finding that the right to restoration of firearm rights under former RCW 9.41.040(4) does not vest. The court granted a motion to publish and a motion for reconsideration on May 13, 2024. App'x at 1. The purpose of reconsideration was to remove superfluous language from the opinion; the ultimate outcome did not change.

Mr. Arends files this timely petition for review.

ARGUMENT

RAP 13.4(b) lays out four criteria for accepting review: (1) the Court of Appeals decision is in conflict with a decision

of this Court; (2) the Court of Appeals decision is in conflict with another Court of Appeals decision; (3) a significant question of constitutional law is presented; or (4) the petition involves an issue of substantial public interest.

The Court should grant review under (1) and (4).

First, the Court of Appeals decision conflicts with this Court's vested rights jurisprudence, especially *State v. T.K.*, 139 Wn.2d 320, 987 P.2d 63 (1999). In *T.K.*, this Court held that juvenile record sealing is subject to vested rights because the statute imposed specific requirements and a nondiscretionary duty to seal the record once those requirements were satisfied. *Id.* Likewise, former RCW 9.41.040(4) imposed specific requirements and a nondiscretionary duty to restore firearm rights once those requirements were satisfied. Even though the statutes operate identically, the Court of Appeals reached a different result when it disregarded the vested rights framework this Court recognized 25 years ago.

Second, the question of whether a vested right exists under former RCW 9.41.040(4) is of substantial public interest. Beyond just the venue issue presented in this appeal, SHB 1562 made several other significant changes, such as extending the waiting period and requiring that all restitution be paid prior to restoration. The cumulative effect of these changes impacts tens of thousands of Washingtonians. Given the full scope of the ramifications, it is imperative that this Court grant review.

A. The Court of Appeals decision conflicts with this Court's vested rights jurisprudence.

The Court of Appeals disregarded this Court's vested rights framework in favor of a "legislative intent" approach. In doing so, Division I gave the legislature *carte blanche* to do whatever it pleases under the guise of public safety, something this Court already rejected in *T.K.* This approach wholly guts the concept of vested rights, which stands as a bulwark against

legislative overreach. The Court of Appeals decision is a gross deviation from vested rights jurisprudence.

1. *State v. T.K.* dictates that a vested right exists under former RCW 9.41.040(4).

State v. T.K. is dispositive. 139 Wn.2d 320. In 1997, the legislature made significant changes to the rules for sealing juvenile records. *Id.* at 323-24. Three individuals brought motions to seal their juvenile records after the changes became effective, but sought sealing under the former version of the statute because they had met the terms of the former statute before the amendments took effect. *Id.* at 323-25.

To start, this Court noted that "[t]here are many cases . . . in which a preamendment version of a statute will continue to govern in cases arising prior to the amendment, particularly where vested rights or contractual obligations are affected." *Id.* at 327. Next, the Court turned to prospective versus retroactive application of statutes, finding that "[a] statute is presumed to

operate prospectively," and that "[a] statute operates prospectively when the precipitating event for its application occurs after the effective date of the statute." *Id.* at 329. Determining the precipitating event giving rise to application of a statute requires a court to look at the subject matter regulated by the statute. *Id.* at 330.

The State argued that the precipitating event was the filing of a motion to seal, so if the motion is filed after the effective date of the amendments, the motion must be governed by the current version of the statute. *Id.* at 330-31. The *T.K.* Court rejected this notion:

> As the defendants point out, RCW 13.50.050(10) and (11) define the conditions under which a juvenile offender may have his disposition vacated and his records sealed. The completion of those conditions is within the subject matter regulated by the statute. Further, the statute both before and after the 1997 amendments says the court "shall" grant a motion to seal, imposing a mandatory obligation to seal if a juvenile meets the statutory conditions. Accordingly, once the conditions of the statute are met, the defendant has a right to relief and a court has the nondiscretionary obligation to seal records regardless of when the motion is made.

Id. at 331. The Court also analogized the case to one in which the legislature extended a criminal statute of limitations, focusing particularly on the inalienable right to a defense: "[U]ntil the statute [of limitations] has run[,] it is a mere regulation of the remedy . . . subject to legislative control. Afterwards[,] it is a defense, not of grace, but of right, not contingent, but absolute and vested, . . . not to be taken away by legislative enactment." *Id.* at 332. Building on this concept, the Court concluded:

> Although RCW 13.50.050(10) and (11) are not statutes of limitations, the analysis is similar. Just as the passage of a specified period of time triggers application of a statute of limitations, completing the conditions of the sealing statute triggers its application. Thus, just as dismissal is required when the specified time period has passed without a change in the statute of limitations, expungement is required if conditions for expungement were satisfied before those conditions were changed.

Id.

Finally, the State argued that the amendments were remedial, "because they are designed to protect the public by

maintaining records of serious offenders and by extending the time spent in the community by juveniles convicted of lesser offenses to demonstrate rehabilitation." *Id.* at 333. The Court disagreed, remarking that even if the 1997 amendments were remedial, "a statute will not be applied retroactively if it affects a substantive or vested right." *Id.* Rather, the defendants' "statutory right to have records sealed had accrued prior to the amendment and no later-enacted statute could divest them of the right." *Id.*

In summary, this Court found a vested right to seal a juvenile record because: (1) the statute explicitly defined eligibility requirements; (2) the statute required the record to be sealed if those explicitly defined requirements were met; and (3) the movants completed their explicitly defined eligibility requirements before the 1997 amendments went into effect.

The requirements for restoration under former RCW 9.41.040(4) are: no sex offense or class A felony; for a felony disabling conviction, five consecutive years without any

conviction and no points counted as part of the offender score; and for a misdemeanor disabling conviction, three consecutive years without any conviction, no points counted as part of the offender score, and completion of sentence conditions. Former RCW 9.41.040(4)(a)(ii)(A), (B).

"*Expressio unius est exclusio alterius* commands that RCW 9.41.040(4) imposes no burden beyond the three enumerated [therein]." *State v. Manuel*, 14 Wn. App. 2d 455, 466, 471 P.3d 265 (2020). If these requirements are met, restoration is required. *State v. Dennis*, 191 Wn.2d 169, 172, 421 P.3d 944 (2018). "[Since] a court's role in the restoration process is purely ministerial, the precipitating event for eligibility for restoration is when the statutory requirements are met, not when the petition is filed. The only discretion the restoration provision contemplates is the petitioner's discretion to decide when to petition." *Id.* at 177.

To recap: (1) former RCW 9.41.040(4) has explicitly defined eligibility requirements; (2) firearm rights must be

restored if those explicitly defined eligibility requirements are met and there can be no other requirements beyond those stated therein; and (3) Mr. Arends completed those explicitly defined eligibility requirements before SHB 1562 took effect.

Former RCW 9.41.040(4) precisely fits *T.K.*'s elements for a vested right and this Court has previously acknowledged that the precipitating event for restoration of firearm rights is the completion of statutory requirements. Yet, the Court of Appeals disregarded this framework entirely.

2. The Court of Appeals rejected this Court's jurisprudence and substituted its own reality.

The Court of Appeals erred by: (a) eschewing the vested rights framework in favor of legislative intent; (b) misinterpreting the subject matter of the statute; and (c) concluding that the statutes at issue in *T.K.* and the present case are "markedly different."

a. The Court of Appeals used the wrong framework.

A vested rights analysis asks: (1) whether the statute applies retroactively or prospectively; (2) what the precipitating event is; and (3) whether the statute imparts "an immediate, fixed right of present or future enjoyment and an immediate right of present enjoyment, or a present fixed right of future enjoyment." *In re Carrier*, 173 Wn.2d 791, 809-11, 272 P.3d 209 (2012). "A vested right is a right that has become a title, legal or equitable, to the present or future enjoyment of property. A mere expectation based upon an anticipated continuance of the existing law is insufficient to vest a legal right." *State v. Shultz*, 138 Wn.2d 638, 646, 980 P.2d 1265 (1999).

Given the identical nature of how the juvenile sealing and firearm restoration statutes operate, and this Court's acknowledgment in *Dennis* that the precipitating event in a firearm restoration case is the completion of statutory

conditions, the Court of Appeals could not have reached its result without first recrafting the issue. So, the panel immediately and purposefully veered off course:

> We disagree with both parties. The relevant inquiry here is not whether the new statute operates prospectively or retroactively or what constitutes a precipitating event, but whether the subject matter and language of former RCW 9.41.040 indicate that Arends possessed a "vested right" to petition for restoration once he met the statutory requirements for restoration of his purported right to possess a firearm under the former statute.

App'x at 5. The opinion ultimately concludes that "the legislature did not intend to create a vested right to petition for firearm restoration," app'x at 2, "[b]ecause the legislature intended firearm restoration procedures to further public safety." App'x at 5.

In support of this conclusion, Division I undertook a statutory interpretation analysis. The analysis starts with the contention that "the subject matter of the statute and the legislature's intent are determinative of whether a vested right exists upon completion of the statutory requirements." Appx's

at 8. It then goes on to say that "[a]t the heart of the statute is public safety, clearly evidenced by the legislature's repeated amending of the statute to add more stringent requirements for restoration," *id.*, and that the legislature's action "also evidence an intent to protect the public." *Id.* at 9.

The reference to "repeated amending" of the statute is nonsensical since the legislature did not change the substance of the firearm restoration statute at all between 1996 and 2023. But more importantly, the Court of Appeals analysis fails because it begins with a faulty premise - that vested rights depend on the subject matter of the statute and legislative intent. *Id.* at 8.

First, this Court does not look to the subject matter of the statute to determine the existence of a vested right. Instead, "the court looks to the subject matter regulated by the statute *to determine the precipitating event*." *T.K.*, 139 Wn.2d at 331 (emphasis added); *see also Carrier*, 172 Wn.2d at 809 ("To

determine what event precipitates or triggers application of the statute, we look to the subject matter regulated by the statute.").

Using the subject matter to determine the precipitating event is a far cry from determining the ultimate question of whether a vested right exists. Determining the precipitating event is only one aspect of the vested rights analysis. Since the subject matter is relevant only to the determination of the precipitating event, this Court's conclusion in *Dennis* about the precipitating event in firearm restorations forecloses the Division I's reliance on the subject matter of the statute. 191 Wn.2d at 177. The panel even acknowledged this in footnote 2. App'x at 5.

Second, this Court does not rely on legislative intent to determine whether a vested right exists. This seems odd at first glance, since "[t]he purpose of statutory interpretation is to determine and give effect to the intent of the legislature." *Id.* at 172. While legislative intent does have its place in the vested rights analysis, that role is limited to deciding whether the

legislature intended a new statute to apply prospectively or retroactively. *T.K.*, 139 Wn.2d at 329 ("A statute is presumed to operate prospectively unless the Legislature indicates that it is to operate retroactively.").

No case has ever analyzed a vested rights argument in any context by asking if the legislature intended to create a vested right. The legislature does not decide whether to create a vested right; courts decide whether a vested right exists based on the circumstances of the case. The entire point of vested rights is as a judicial bulwark against legislative power:

> A statute may not be applied retroactively to infringe a vested right. . . . While due process generally does not prevent new laws from going into effect, it does prohibit changes to the law that retroactively affect rights which vested under the prior law. We have said that
>
> > [a] vested right, entitled to protection from legislation, must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another.

Carrier, 173 Wn.2d at 811 (quoting *Godfrey v. State*, 84 Wn.2d 959, 963, 530 P.2d 630 (1975)). If legislative intent drove vested rights, then the outcome in *T.K.* would have been different.

In *T.K.*, this Court allowed juvenile sex offenders to have the records of their adjudications sealed even though the legislature made it explicitly clear that it wanted to forbid this very relief. At no point did this Court ask whether sealing the records of sex offenses is good or bad policy. It did not concern itself with the propriety of the legislature's wishes or ask whether the amendments were prudent. It did not weigh the equities of the legislature's actions or scrutinize the legislature's stated goals. It did not pause to consider if the outcome is contrary to legislative intent. In fact, this Court purposefully did *the opposite* of what the legislature intended.

In *Carrier*, this Court reversed the life sentence of a repeat sex offender because Carrier had a vested right to the

exclusion of a dismissed offense from his criminal history. 173 Wn.2d 791.

> This case more closely resembles *T.K.* We found a vested right in *T.K.* because the defendant had met all the statutory conditions for obtaining relief prior to the change in the law. Satisfaction of the preamendment version of the statute required the court to seal T.K.'s juvenile records. Similarly, Carrier met all the conditions for vacating his conviction under the preamendment version of former RCW 9.95.240. The vacated status of his conviction was not contingent on any future occurrence, and there were no conditions otherwise left unfulfilled. Prior to the 2003 amendment to former RCW 9.95.240, a court would have had no discretion but to consider Carrier's indecent liberties conviction vacated and excluded from his criminal history.

*Id.*at 812. Again, this Court did not stop to ponder if the result would be at odds with the legislature's intent of imposing a life sentence on a repeat offender.

In *State v. D.S.*, the Court of Appeals considered a 2001 legislative amendment that explicitly attempted to overrule *T.K.*, and concluded that "If the 1997 amendment could not operate to divest T.K. of his right to expungement, then

similarly, the 2001 amendment could not operate to divest D.S. of the same right." 128 Wn. App. 569, 578, 115 P.3d 1047 (2005). It is telling that legislative intent did not determine the outcome in *D.S.*, yet - according to Division I - is dispositive of the outcome here.

Asking whether the legislature intended to create a vested right - as the Court of Appeals did here, app'x at 2 - is counterproductive and a dereliction of duty. Legislative intent does not dictate vested rights.

b. The Court of Appeals misinterpreted the subject matter of the statute.

Division I interpreted SHB 1562's subject matter as the regulation of public safety and gun control, but that is not the case. App'x at 8-9. Again, *T.K.* is instructive. There, the State argued that the subject matter of the sealing statute is the keeping and release of records by juvenile justice or care

agencies. *T.K.*, 139 Wn.2d at 331. This Court rejected that argument, instead finding that the statute

> define[s] the conditions under which a juvenile offender may have his disposition vacated and his records sealed. *The completion of those conditions is within the subject matter regulated by the statute*. Further, the statute both before and after the 1997 amendments says the court "shall" grant a motion to seal, imposing a mandatory obligation to seal if a juvenile meets the statutory conditions. Accordingly, once the conditions of the statute are met, the defendant has a right to relief and a court has the nondiscretionary obligation to seal records regardless of when the motion is made.

Id. (emphasis added).

Similarly, the subject matter regulated in SHB 1562 is the completion of conditions under which a petitioner is entitled to a restoration of firearm rights. Laws of 2023, ch. 295, § 4. And, similarly, the statute both before and after the 2023 amendments says the court shall grant a petition to restore firearm rights.

Division I's heavy emphasis on deferring to the legislature's ability to regulate public safety and gun violence is

an error that stems from misinterpreting "subject matter regulated" as if to mean that the court should make decisions on what is "good" and what is "bad," or if something is "worthy" of receiving vested rights protection. In this case, the court decided that sealing juvenile records is laudable and restoring firearm rights is not. App'x at 12-13.

But that is not and cannot be what "subject matter regulated" means because that would convert the judicial branch from courts of law to courts of popular opinion. The vested rights concept cannot be predicated on a flimsy, ad-hoc, "this is good/this is bad" analysis, at the whim of every judge and his or her personal opinions, biases, and prejudices. If the courts are hesitant to pronounce the existence of a vested right even when every hallmark of a vested right exists just because the context may be politically or socially sensitive, then the concept of a vested right ceases to exist entirely.

In *T.K.*, the State attempted to use the guise of public safety to no avail: "Here the State asserts the statute and its

amendments are remedial because they are designed to protect the public by maintaining records of serious offenders and by extending the time spent in the community by juveniles convicted of lesser offenses to demonstrate rehabilitation." *T.K.*, 139 Wn.2d at 333. This Court rejected the argument swiftly and conclusively: "Even if the 1997 amendments at issue here are remedial, a statute will not be applied retroactively if it affects a substantive or vested right." *Id.* Despite this Court's rejection of the public safety argument, the Court of Appeals used that basis to deny relief here. The directive from *T.K.* is that if a vested right exists, *nothing* will divest that right, not even nebulous and untethered references to public safety.

The legislature decided to create a procedure for restoring firearm rights, it decided to set explicit requirements for that relief, and it decided to make that relief nondiscretionary once those requirements are met. It also decided to leave this scheme in place without any substantive

changes for nearly 30 years. Mr. Arends is not asking the Court to fashion him an extraordinary remedy by judicial fiat or to treat him specially, he's just asking that the legislature not be allowed to pull the rug out from under him after his right to restoration vested under the former statute.

c. The firearm restoration and juvenile sealing statutes are not "markedly different."

The panel ends its opinion by finding that "[t]he statutes at issue in T.K. II and the present case are markedly different" because "their vast difference in subject matter and legislative intent sets them apart." App'x at 13. Again, the Court of Appeals misconstrues what "subject matter" means in the context of a vested rights analysis and places itself in the position of selectively picking and choosing what deserves to be a vested right.

Viewing the matter objectively and without prejudice, it becomes plain that the two statutes are near identical. In *T.K.*,

the subject matter was not the keeping and maintaining of juvenile records but rather the requirements for sealing. 139 Wn.2d at 331. The subject matter here is the requirements for restoration of firearm rights, and the approach of both statutes is identical: the statutes explicitly define the requirements and once those requirements are met, relief is mandatory. While the two statutes offer different remedies, they regulate the same thing - eligibility requirements - and do so in the same manner.

The panel notes that "since T.K. II, courts have not extended vested rights analysis outside the arena of sealing or vacation," and then it cites to several cases. App'x at 12. This is not correct. Every cited case has extended the vested rights *analysis* to the context at issue there, even if the court ultimately did not find the existence of a vested right in that context. This is an important distinction because the Court of Appeals did not even extend the correct vested rights analysis to this case.

Furthermore, although the finding of a vested right has been fairly limited since *T.K.*, vested rights are not inherently limited only to the arena of sealing and vacation. *See, e.g., In re Burns*, 131 Wn.2d 104, 928 P.2d 1094 (1997) (finding a vested right in the context of Medicaid payments). Instead, the reason that vested rights have not been found in more contexts has to do with the facts at issue in each case. In *State v. Webb*, the statute at issue "contain[ed] no express conditions which, when satisfied, give rise to specific statutory rights." 112 Wn. App. 618, 621-22, 50 P.3d 654 (2002). In *State v. Sell*, the court found no vested right to deferred prosecution because the precipitating event - a new DUI charge - did not occur until after the deferred prosecution statute was amended. 110 Wn. App. 741, 747-48, 43 P.3d 1246 (2002). Likewise, in *State v. Varga*, this Court found no vested right to the washing of an offender score because the precipitating event - a new criminal charge - did not occur until after the scoring statute was amended. 151 Wn.2d 179, 195, 86 P.3d 139 (2004). In none of

these cases was a vested right rejected because it didn't align with the legislature's intent.

There is no hard rule that vested rights can only be found in specific contexts. The reality is simply that some issues qualify as a vested right and some don't based on the circumstances of the case. In this case, former RCW 9.41.040(4)'s scheme is directly on point with *T.K.* The reason courts have not yet found a vested right to the restoration of firearm rights is that former RCW 9.41.040(4) remained substantively unchanged between 1996 and 2023, rendering litigation of that issue unnecessary. Additionally, even if the concept of a vested right was limited to the "arena of sealing or vacation" as Division I claims, app'x at 12, the overall context can be accurately described as post-conviction relief, into which restoration of firearm rights squarely fits.

This Court should accept review because the Court of Appeals decision applied the wrong framework, misconstrued the subject matter of the statute, disregarded the near direct

application of *T.K.* to former RCW 9.41.040(4), and is otherwise in direct conflict with this Court's vested rights holdings.

B. This case presents an issue of substantial public interest.

Besides changes to venue, SHB 1562 made several other significant changes to the restoration of firearm rights. Chief among these is: (1) increasing the waiting period for restoration after a domestic violence misdemeanor conviction from three years to five years, RCW 9.41.041(2)(a)(i); and (2) requiring the payment of restitution as a prerequisite to the restoration of firearm rights, something former RCW 9.41.040(4) did not require for a felony predicate. RCW 9.41.041(2)(b)(ii).

These are concrete and substantive changes that affect tens of thousands of Washingtonians. A person convicted of a domestic violence misdemeanor on July 22, 2020 went from being eligible on July 22, 2023 to becoming ineligible until July 22, 2025 simply because July 22, 2023 was a Saturday and the

superior court wouldn't open until July 24, after SHB 1562 took effect on July 23. An indigent person proscribed to a life sentence of restitution became ineligible for the restoration of a core, constitutional right for no reason other than poverty despite otherwise being eligible in every respect before July 23.

In short, the question of whether a vested right exists under former RCW 9.41.040(4) has far reaching implications beyond just the facts presented in this case. *See, e.g., State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) ("The Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where a DOSA sentence was or is at issue."). Therefore, receiving an answer to this important question from the state's highest court is of vital public interest.

//

//

//

CONCLUSION

Based on the foregoing, this Court should grant the petition for review.

This document contains 4,950 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted,

Vitaliy Kertchen #45183
Date: 5/14/24

DECLARATION OF SERVICE

I, Vitaliy Kertchen, being of sound age and mind, declare that on 5/14/24, I served this document on the Snohomish County Prosecutor by uploading it using the Court's e-filing application and emailing a copy of the document using that process to all registered users.

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

Respectfully submitted,

Vitaliy Kertchen #45183
Date: 5/14/24
Place: Tacoma, WA

APPENDIX

FILED
5/13/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

DARREN L. ARENDS, Appellant, v. STATE OF WASHINGTON, Respondent.	No. 85870-0-I ORDER GRANTING MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH AND WITHDRAWING OPINION AND SUBSTITUTING OPINION

Appellant Darren Arends moved for reconsideration of the opinion filed on March 25, 2024. Respondent State of Washington filed an answer. Additionally, appellant and respondent jointly moved for publication of the opinion.

The court has determined that appellant's motion for reconsideration should be granted and it has reconsidered its prior determination not to publish the opinion, finding it is of precedential value and should be published.

Now, therefore, it is hereby

ORDERED that the appellant's motion for reconsideration and the parties joint motion to publish are granted; and it is further

ORDERED that the unpublished opinion filed on March 25, 2024 is withdrawn; and it is further

ORDERED that a substitute published opinion be filed.

FOR THE COURT:

Smith, C.J.
Judge

FILED
5/13/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DARREN L. ARENDS, Appellant, v. STATE OF WASHINGTON, Respondent.	No. 85870-0-I DIVISION ONE PUBLISHED OPINION

SMITH, C.J. — Under former RCW 9.41.040, individuals could petition to restore their firearm rights in their county of residence or in the court that entered the relevant prohibition on firearm possession. In early 2023, the legislature restricted the appropriate venue for firearm restoration petitions to the county that entered the prohibition on firearm possession.

A month after the new statute took effect, Darren Arends petitioned to restore his firearm rights in Snohomish County Superior Court, his county of residence. The superior court denied his petition, citing improper venue. On appeal, Arends claims that the former firearm restoration statute applies to him because his right to petition for restoration "vested" before the new statute took effect. Therefore, he maintains, he can file his petition in his current county of residence rather than in Davison County, South Dakota, the county that entered the prohibition on Arends's right to possess a firearm. Because the legislature did not intend to create a vested right to petition for firearm restoration, we disagree and affirm.

FACTS

Legislative Background

Before July 2023, former RCW 9.41.040 governed the process of restoring an individual's right to possess a firearm. Under that statute, there were two appropriate venues in which to file a restoration petition: (1) the court of record that ordered the petitioner's prohibition on possessing a firearm; or (2) the superior court in the county in which the petitioner currently resided. Former RCW 9.41.040(4) (2005).

In early 2023, the legislature amended RCW 9.41.040 and added a new section to chapter 9.41 RCW. LAWS OF 2023, ch. 295. Under the new section, RCW 9.41.041, firearm restoration petitions can only be filed in the superior court of the county that entered a prohibition on possession. LAWS OF 2023, ch. 295, § 4(3)(a). In its findings related to the amendments, the legislature noted that its updates to the laws governing the unlawful possession of firearms and the restoration of firearm rights aimed to "reduc[e] the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence." LAWS OF 2023, ch. 295. The legislature also found that easy access to firearms is a risk factor that increases the likelihood of individuals engaging in future violence and presenting further risk to public safety. LAWS OF 2023, ch. 295, §1(4).

On July 23, 2023, Substitute House Bill 1562 took effect, repealing former RCW 9.41.040(4) and enacting RCW 9.41.041. LAWS OF 2023, ch. 295.

Present Case

In August 2023, Darren Arends petitioned the Snohomish County Superior Court to restore his firearm rights. His right had been restricted due to his conviction for grand theft in Davison County, South Dakota. Although Arends petitioned the court after RCW 9.41.041 took effect, Arends claimed that former RCW 9.41.040(4) applied to him because he had completed the former statute's requirements before the new statute took effect. Arends contended that once he completed the former statute's requirements, his right to petition for restoration "vested," thereby allowing him to proceed under the former statute.

The State opposed Arends's petition, arguing that Snohomish County Superior Court was not the proper venue because the prohibition had not been entered there. The State also contended that Arends had not yet completed his sentencing conditions. The court denied Arends's petition and adopted the State's position in full.[1]

Arends appeals.

ANALYSIS

Vested Right to Petition Under Former RCW 9.41.040

Both parties contend that whether RCW 9.41.041 operates prospectively or retroactively is determinative of whether a right vested under former RCW 9.41.040. Arends maintains that because the precipitating event that triggers application of former RCW 9.41.040 is completion of the statutory

[1] In support of its order, the court attached the State's response to Arends's petition rather than explain its reasoning.

requirements, and because he completed the requirements before RCW 9.41.041 took effect, his right to petition for restoration of his right to possess a firearm "vested" and his claim under the former statute is preserved. The State counters that completion of the statutory requirements does not result in a "vested" right because filing of the restoration petition is the precipitating event, not completion of the statutory requirements.[2] The State therefore maintains that Arends is subject to the new statute because he filed his petition after it took effect.

We disagree with both parties. The relevant inquiry here is not whether the new statute operates prospectively or retroactively or what constitutes a precipitating event, but, rather, whether the subject matter and language of former RCW 9.41.040 indicate that Arends possessed a "vested right" to petition for restoration once he met the statutory requirements for restoration of his purported right to possess a firearm under the former statute. Because the legislature intended firearm restoration procedures to further public safety, we conclude that Arends's right to petition for restoration did not "vest" when he completed the statutory requirements of former RCW 9.41.040.

The term "vested right" is not easily defined, but "has been commonly held to connote 'an immediate, fixed right of present or future enjoyment.' " Adams v. Ernst, 1 Wn.2d 254, 264-65, 95 P.2d 799 (1939) (quoting Pearsall v. Great N.

[2] Our Supreme Court previously determined, in dicta, that the precipitating event for eligibility of restoration is when the statutory requirements are met, not when the petition is filed. State v. Dennis, 191 Wn.2d 169, 177, 421 P.3d 944 (2018).

Ry. Co., 161 U.S. 646, 673, 16 S. Ct. 705, 40 L. Ed. 838 (1896)). A "vested right, entitled to protection from legislation, must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another." Godfrey v. State, 84 Wn.2d 959, 963, 530 P.2d 630 (1975) (emphasis omitted). "[A] vested right must be definite, as opposed to an assumed expectation that one will be able to exercise a certain privilege in the future." Wash. State Ass'n of Counties v. State, 199 Wn.2d 1, 19, 502 P.3d 825 (2022). " '[A] mere expectation based upon an anticipated continuance of the existing law' is insufficient to vest a legal right." State v. Shultz, 138 Wn.2d 638, 646, 980 P.2d 1265 (1999) (emphasis omitted) (quoting State v. Hennings, 129 Wn.2d 512, 528, 919 P.2d 580 (1996)).

A right may vest in a number of ways, such as by final judgment or contract. Wash. State Ass'n of Counties, 199 Wn.2d at 19; see, e.g., Bailey v. Sch. Dist. No. 49, 108 Wash. 612, 614, 185 P. 810 (1919) (final judgment); Scott Paper Co. v. City of Anacortes, 90 Wn.2d 19, 32, 578 P.2d 1292 (1978) (contracts). Rights may also vest upon completion of statutory conditions in certain limited circumstances. State v. T.K., 139 Wn.2d 320, 334, 987 P.2d 63 (1999) (T.K. II).[3]

[3] Because we cite to both the Court of Appeals' and Washington State Supreme Court's decision in State v. T.K., we refer to the Supreme Court's decision as T.K. II and the Court of Appeals' decision as T.K. I.

The subject matter of the statute and the statutory language guide our analysis of whether completion of the statutory conditions results in a vested right. See T.K. II, 139 Wn.2d at 331-32, 335. This inquiry implicates statutory interpretation, a question of law that we review de novo. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). When interpreting a statute, our purpose is to determine and give effect to the legislature's intent, and we begin with the plain language of the statute. Campbell & Gwinn, 146 Wn.2d at 9-10. "We derive the legislative intent of a statute solely from the plain language by considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole." State v. Dennis, 191 Wn.2d 169, 172-73, 421 P.3d 944 (2018). When interpreting a criminal statute, "we give it a literal and strict interpretation." State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

1. Statutory Interpretation

The statute at issue, former RCW 9.41.040, designates the requirements that an individual must meet before petitioning the court:

> An individual may petition a court of record to have his or her right to possess a firearm restored . . .
>
> [i]f the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525.

Former RCW 9.41.040(4)(b), (a)(ii)(A).

After these requirements are met, an individual "may" petition the court for relief. Former RCW 9.41.040(4)(b). Once the superior court determines that the statute's enumerated requirements are met, the court's role is purely ministerial; it must grant the petition. State v. Swanson, 116 Wn. App. 67, 78, 65 P.3d 343 (2003). However, the process of restoration is one of legislative grace; there is no Second Amendment right to firearm right restoration. See, e.g., ch. 9.41 RCW (restoration of firearm rights exclusively governed by statute); see also District of Columbia v. Heller, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) ("Like most rights, the right secured by the Second Amendment is not unlimited.").

Here, the subject matter of the statute and the legislature's intent are determinative of whether a vested right exists upon completion of the statutory requirements. The statute creates a court-supervised procedure for firearm right restoration to further public safety by reducing gun violence. At the heart of the statute is public safety, clearly evidenced by the legislature's repeated amending of the statute to add more stringent requirements for restoration. See, e.g., H.B. REP. ON H.B. 3095, 60th Leg., Reg. Sess. (Wash. 2008) (additional notice required when person who was prohibited from possessing firearm due to involuntary commitment has right to possess restored); FINAL B. REP. ON H.B. 1498, 61st Leg., Reg. Sess. (Wash. 2009) (imposing burden of proof for persons who have been involuntarily committed); FINAL B. REP. ON H.B. 1455, 62nd Leg., Reg. Sess. (Wash. 2011) (restricting venue where petition to restore rights may be filed); FINAL B. REP. ON S.B. 5205, 66th Leg., Reg. Sess. (Wash.

2019) (persons found incompetent to stand trial and who have history of violent acts must prove each restoration requirement by preponderance of evidence); FINAL B. REP. ON S.H.B. 1562, 68th Leg., Reg. Sess. (Wash. 2023) (restricting venue where petition to restore rights may be filed).

The legislature's actions also evidence an intent to protect the public. For example, in the wake of our Supreme Court's Dennis decision, which interpreted the statutory requirement that a petitioner be crime-free for five years before petitioning for firearm restoration to mean *any* crime-free period following felony conviction, the legislature amended the firearm restoration statute to clarify that the five-year period must immediately precede filing of a restoration petition. S.H.B. 1562, 68th Reg. Sess. (Wash. 2023) ("The legislature also finds it would be helpful to refine statutory language that was at issue in the Washington state supreme court's decision in State v. Dennis, 191 Wn.2d 169 (2018)."); RCW 9.41.041(2)(a)(i).

Moreover, when the legislature most recently updated the restoration procedures, it noted that the stricter venue provisions were intended to "reduc[e] the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence." LAWS OF 2023, ch. 295. The legislature also found that easy access to firearms presents a risk to public safety. LAWS OF 2023, ch. 295, §1(4). To conclude that satisfaction of the statutory requirements results in an absolute right to petition for restoration of one's firearm rights runs contrary to the legislature's intent. The legislature has repeatedly evidenced that

gun violence is an important issue of public safety and has taken steps to make restoration of firearm rights increasingly difficult.

We conclude that Arends had an expectation that he could petition the court to restore his firearm rights once he complied with the statute, but not an absolute, vested right regarding restoration of those rights. At any point before he petitioned to restore his firearm rights, the legislature could have amended the law to prevent him from doing so. Settled law dictates that the expectation of being able to exercise a certain privilege in the future is insufficient to vest a legal right.

2. State v. T.K

Still, Arends contends that T.K. II is dispositive of whether completion of statutory requirements results in a vested right. We disagree.

In T.K. II, the defendant pleaded guilty to first degree child molestation. 139 Wn.2d at 323. After T.K. completed the requirements of the disposition order, he petitioned the juvenile court to vacate his duty to register under the sex offender registration statute. State v. T.K., 94 Wn. App. 286, 288-89, 971 P.2d 121 (1999) (T.K. I).[4] The court found that T.K. had been "fully rehabilitated" and entered an order ending his registration requirement. T.K. I, 94 Wn. App. at 289. At the time the court entered its order, T.K. was not eligible to request vacation or sealing of his conviction records under RCW 13.50.050 because two years had not yet passed from the date he was discharged from supervision. T.K. I, 94 Wn.

[4] The facts of T.K. II are drawn from the Court of Appeals decision because it includes more detail.

App. at 289. Before T.K. could petition to have his juvenile records sealed, the legislature changed the statutory requirements for sealing, increasing the requisite waiting period. T.K. II, 139 Wn.2d at 323-24. After the statute was amended, T.K. moved to expunge his juvenile record. T.K. I, 94 Wn. App. at 290. The juvenile court denied the motion, concluding that the updated statute applied. T.K. I, 94 Wn. App. at 290.

On appeal, this court reversed, determining that T.K.'s right to have his record expunged under the former statute "matured"[5] when he satisfied the conditions of expungement. T.K. I, 94 Wn. App. at 291. Our Supreme Court later affirmed, explaining that T.K.'s "right to sealing became absolute [i.e., vested] upon completion of the statutory conditions" after the two-year waiting period had expired. T.K. II, 139 Wn.2d at 334. The court compared the waiting period to a statute of limitations, noting that " '[u]ntil the statute has run it is a mere regulation of the remedy . . . subject to legislative control,' " but afterwards it is " 'a defense, not of grace, but of right . . . absolute and vested, . . . not to be taken away by legislative enactment.' " T.K. II, 139 Wn.2d at 332 (some alterations in original) (quoting State v. Hodgson, 108 Wn.2d 662, 668, 740 P.2d 848 (1987)). The court also considered the subject matter addressed by the statute and the mandatory language of the statute. Because T.K.'s right vested before the change in the law, our Supreme Court reasoned that the new law

[5] We briefly note that "matured" and "vested" are used interchangeably in vested rights analysis and possess substantially similar meanings. Compare T.K. I, 94 Wn. App. at 290 (referring to a right as "matured") with T.K. II, 139 Wn.2d at 332 (referring to a right as "vested").

could not retroactively require T.K. to meet stricter conditions for sealing his juvenile records. T.K. II, 139 Wn.2d at 334-35.

But T.K. does not stand for the proposition that completion of statutory requirements *always* resulted in a vested right. The Supreme Court in T.K. II considered the subject matter of the statute and the language of the statute when it concluded that T.K. possessed a vested right to have their convictions sealed. 139 Wn.2d at 331-32. Furthermore, since T.K. II, courts have not extended vested rights analysis outside the arena of sealing or vacation. Compare State v. D.S., 128 Wn. App. 569, 115 P.3d 1047 (2005) (vested right to have juvenile records sealed) and In re Pers. Restraint of Carrier, 173 Wn.2d 791, 272 P.3d 209 (2012) (vested right in vacated status of former conviction) with State v. Webb, 112 Wn. App. 618, 50 P.3d 654 (2002) (no vested right under former offender scoring statute); State v. Sell, 110 Wn. App. 741, 43 P.3d 1246 (2002) (no vested right to deferred DUI prosecution); State v. Varga, 151 Wn.2d 179, 86 P.3d 139 (2004) (no vested right in "washed out" status of prior convictions); In re Pers. Restraint of Martin, 129 Wn. App. 135, 118 P.3d 387 (2005) (no vested right to delay paying LFOs until after release); In re Pers. Restraint of Flint, 174 Wn.2d 539, 277 P.3d 657 (2012) (no vested right to remain in community custody).

Arends's assertion that there is "no conceptual difference between the juvenile sealing scheme and the firearm restoration scheme" is unpersuasive. The statutes at issue in T.K. II and the present case are markedly different. The juvenile sealing scheme aims to "limit public access to juvenile court records in

recognition of the unique purpose of juvenile courts to rehabilitate and reintegrate youth into society." State v. S.J.C., 183 Wn.2d 408, 419, 352 P.3d 749 (2015). The legislature has repeatedly recognized that " '[c]hildren are different' " from adults and that " 'our criminal justice system [must] address this difference when punishing children.' " State v. Anderson, 200 Wn.2d 266, 285, 516 P.3d 1213 (2022) (second alteration in original) (quoting In re Pers. Restraint of Ali, 196 Wn.2d 220, 225, 474 P.3d 507 (2020). Rather than restoring a right, the act of sealing *gives* juveniles new rights to protect their futures.

In contrast, the firearm restoration scheme is carefully structured to further public safety and prevent gun violence. Firearm restoration returns a right that was purposefully taken away to protect the public. Although the two statutes share some similarities, their vast difference in subject matter and legislative intent sets them apart. T.K. II is readily distinguishable from the case at hand.

Because we conclude that Arends did not possess a vested right to proceed under former RCW 9.41.040, we conclude that the court did not err in denying Arends's restoration petition.

We affirm.

Smith, C.J.

WE CONCUR:

Feldman, J.

Bronson, J.

Rev. Code Wash. (ARCW) § 9.41.040

Washington Code Archive

Annotated Revised Code of Washington > Title 9 Crimes and Punishments > Chapter 9.41 Firearms and Dangerous Weapons

Notice

. This section has more than one version with varying effective dates.

9.41.040. Unlawful possession of firearms — Ownership, possession by certain persons — Restoration of right to possess — Penalties. (Effective until July 23, 2023)

(1)

(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)

(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another or by one intimate partner against another, as those terms are defined by the statutes in effect at the time of the commission of the crime, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 10.99.040or any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

(ii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of harassment when committed by one family or household member against another or by one intimate partner against another, committed on or after June 7, 2018;

(iii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of a violation of the provisions of a protection order under chapter 7.105 RCW restraining the person or excluding the person from a residence, when committed by one family or

household member against another or by one intimate partner against another, committed on or after July 1, 2022;

(iv) During any period of time that the person is subject to a court order issued under chapter 7.105, 9A.46, 10.99, 26.09, 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92, 10.14, and 26.50 RCWthat:

(A) Was issued after a hearing for which the person received actual notice, and at which the person had an opportunity to participate, whether the court then issues a full order or reissues a temporary order. If the court enters an agreed order by the parties without a hearing, such an order meets the requirements of this subsection;

(B) Restrains the person from harassing, stalking, or threatening the person protected under the order or child of the person or protected person, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child; and

(C)

(I) Includes a finding that the person represents a credible threat to the physical safety of the protected person or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child that would reasonably be expected to cause bodily injury; or

(II) Includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms;

(v) After having previously been involuntarily committed based on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(vi) After dismissal of criminal charges based on incompetency to stand trial under RCW 10.77.088 when the court has made a finding indicating that the defendant has a history of one or more violent acts, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(vii) If the person is under 18 years of age, except as provided in RCW 9.41.042; and/or

(viii) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted," whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension, or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. 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. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)

(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least 20 years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)

(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of 18 years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within 24 hours and the person's privilege to drive shall be revoked under RCW 46.20.265, unless the offense is the juvenile's first offense in violation of this section and has not committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

History

2022 c 268, § 28, effective July 1, 2022; 2021 c 215, § 72, effective July 1, 2022; 2020 c 29, § 4, effective March 18, 2020; 2019 c 248, § 2, effective July 28, 2019; 2019 c 245, § 3, effective July 28, 2019; 2019 c 46, § 5003, effective July 28, 2019; 2018 c 234, § 1, effective June 7, 2018; 2017 c 233, § 4, effective July 23, 2017; 2016 c 136, § 7, effective June 9, 2016; 2014 c 111, § 1, effective June 12, 2014; 2011 c 193 § 1; 2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.

End of Document