

FILED
SUPREME COURT
STATE OF WASHINGTON
6/5/2024 11:04 AM
BY ERIN L. LENNON
CLERK

No. 1030681

IN THE WASHINGTON STATE SUPREME COURT

Darren L. Arends
Petitioner,

vs.

State of Washington
Respondent.

Motion for Accelerated Review

Vitaliy Kertchen #45183
Attorney for Petitioner
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I. IDENTITY OF MOVING PARTY

Darren L. Arends, petitioner, asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Accelerated review under RAP 18.12 of the pending petition for review, filed on May 14.

III. FACTS RELEVANT TO MOTION

On July 23, 2023, Senate House Bill 1562 (SHB 1562) took effect. Laws of 2023, ch. 295. Section 4 of SHB 1562 significantly changed the procedure and substantive rules for the restoration of firearm rights by repealing former RCW 9.41.040(4) in its entirety and creating a new section, currently codified as RCW 9.41.041. Relevant to this appeal is the venue provision in RCW 9.41.041(3)(a). The current venue provision requires firearm restoration paperwork to be filed in any county “that entered any prohibition.” Former RCW 9.41.040(4), on

the other hand, allowed restoration in any county that entered any prohibition or the county of the petitioner's residence.

Mr. Arends cannot file a petition under RCW 9.41.041 because his predicate conviction did not occur in Washington and RCW 9.41.041 makes no provision for restoration when there are no in-state predicates. His only option for restoration is in his county of residence under former RCW 9.41.040(4).

On August 15, 2023, Mr. Arends filed a petition for restoration of firearm rights in his county of residence, Snohomish County. On the petition, Mr. Arends listed a sole predicate conviction, which occurred in 1988 in South Dakota. The petition was filed under former RCW 9.41.040(4) and *State v. TK*, 139 Wn.2d 320, 987 P.2d 63 (1999). Mr. Arends argued that *State v. TK* granted him a vested right to proceed under former RCW 9.41.040(4) because he would have been entitled to restoration under that statute prior to July 23, 2023, even though he filed his petition after July 23, 2023. The State objected to the application of former RCW 9.41.040(4) and to

venue under RCW 9.41.041. The trial court agreed with the State and denied the petition.

Mr. Arends appealed to Division I. Commissioner Koh granted his motion for accelerated review. Appendix at 1. In a decision directly contrary to decades of this Court's precedent, the Court of Appeals ruled that former RCW 9.41.040(4) is not subject to vested rights. Mr. Arends filed a timely petition for review on May 14 and now files this motion for accelerated review under RAP 18.12 of the petition for review. Division I's ruling is a gross deviation from this Court's vested rights jurisprudence that requires expedited review and correction by this Court.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 18.12 allows the Court to set any review for accelerated disposition on the motion of any party. Here, Mr. Arends ask the Court for accelerated review of his petition for review of the Court of Appeals decision.

The issue presented in this matter has far-reaching consequences. The new firearm restoration rules in RCW 9.41.041 are more restrictive in other ways besides just venue. RCW 9.41.041 now requires a five-year waiting period after a conviction for a domestic violence misdemeanor, whereas former RCW 9.41.040(4) only required a three-year waiting period. RCW 9.41.041 also requires payment of restitution as a prerequisite to restoration, whereas former RCW 9.41.040(4) did not require payment of restitution for felony predicates.

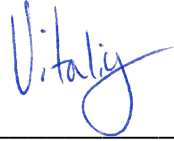
These are just a highlight of the amendments incorporated in RCW 9.41.041, but they represent concrete and substantive changes that affect tens of thousands of Washingtonians. A person convicted of a domestic violence misdemeanor on July 22, 2020 went from being eligible on July 22, 2023 to becoming 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. Therefore, the question of whether *T.K.*'s recognition of a "vested right" applies to former RCW 9.41.040(4) is of paramount importance.

The people of the State of Washington and all participants in the criminal justice system deserve a swift and authoritative decision on this issue from the court of last resort. Further delay in correcting the Court of Appeals results in a continued injustice.

This document contains 712 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted,



Vitaliy Kertchen #45183

Date: 6/5/24

DECLARATION OF SERVICE

I, Vitaliy Kertchen, being of sound age and mind, declare that on 6/5/2024, 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: 6/5/24

Place: Lakewood, WA

APPENDIX

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
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November 17, 2023

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Case #: 858700
Darren Lee Arends, Appellant v. State of Washington, Respondent
Snohomish County Superior Court No. 23-2-05892-3

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on November 17, 2023:

Appellant Darren Arends has filed a motion for accelerated review of his appeal of a superior court order denying his request for restoration of firearm rights. Arends contends that his appeal raises important legal questions about the proper interpretation and application of relevant statutory and case authority and recent statutory revisions.

Washington Association of Criminal Defense Lawyers has filed a motion for permission to file an amicus curiae brief in support of the motion for accelerated review, along with the proposed brief. As no party has objected, permission is granted, the brief is accepted for filing, and I have considered the brief along with the motion for accelerated review. WACDL points out that promptly providing clarity for individuals seeking to restore their firearms rights under former RCW 9.41.040(4) and current RCW 9.41.041 will (1) allow attorneys to give accurate advice to their clients; (2) prevent inconsistent and conflicting decisions by trial courts, thereby

discouraging forum shopping; and (3) alleviate sincere confusion as to eligibility for firearm possession in Washington.

The State has filed a response to the motion for accelerated review agreeing that "expedited guidance from this Court on the matters raised in the underlying appeal will streamline future litigation on the issues."

As the parties and WACDL point out, this case presents an opportunity to address disputed questions of law as to the proper interpretation and application of statutory revisions that became effective in July 2023. The parties have not delayed this appeal. A review of this Court's file at present reveals that Arends filed his notice of appeal On October 12, 2023, no verbatim report of proceedings is expected, the 123 pages of clerk's papers designated by Arends have been filed, and Arends has filed an opening brief of approximately 3,000 words. Based on the submissions of the parties and the amicus curiae and the status of the case file, I agree that accelerated review is appropriate in this case.

The State is requested to file its brief by or before November 27, 2023. Arends should file his reply within 3 days of service of the State's brief. Any application for permission to file an amicus brief for the panel should be filed by or before December 4, 2023. Court Administrator/Clerk Lea Ennis is hereby requested to set this case for oral argument on the January 2024 calendar or the next available calendar.

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis", written in a cursive style.

Lea Ennis
Court Administrator/Clerk

law

KERTCHEN LAW, PLLC

June 05, 2024 - 11:04 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,068-1
Appellate Court Case Title: Darren Lee Arends v. State of Washington
Superior Court Case Number: 23-2-05892-3

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Motion 1 - Accelerate Review
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