FILED
SUPREME COURT
STATE OF WASHINGTON
6/28/2024 3:13 PM
BY ERIN L. LENNON
CLERK

No. 103068-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DARREN LEE ARENDS,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

MEMORANDUM OF *AMICUS CURIAE* WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONER

MARK B. MIDDAUGH
WSBA #51425
600 University Street
Suite 3020
Seattle, WA 98101
(206) 919-4269
mark@middaughlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

State Statutes

I. IDENTITY OF MOVING PARTY

The Washington Association of Criminal Defense Lawyers (WACDL) moves for the relief specified in part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

WACDL asks this court to grant the Petition for Review and Motion to Expedite Review filed by Darren Lee Arends on May 14, 2024.

III. GROUNDS FOR RELIEF AND ARGUMENT

The question of whether Mr. Arends and many other individuals like him have a vested right in the restoration of their firearm rights in Washington state is a matter of substantial public interest. RAP 13.4(b)(4). What is more, the Court of Appeals opinion denying the existence of Mr. Arends' vested right to file for restoration of his firearm rights is inconsistent with this Court's precedent. RAP 13.4(b)(1). This Court should grant review and clarify that Mr. Arends—and other individuals like him—have a right to file a petition to restore their firearm rights when those rights vested under former RCW 9.41.040(4).

A. This Issue is of Substantial Public Interest

Darren Arends was convicted of a crime that disqualifies him from possessing a firearm. He served his sentence and spent many years in the community without committing another crime. It is not disputed that under RCW 9.41.040(4), he was entitled as a matter of right to obtain a court order restoring his firearm rights.

Mr. Arends did not, however, move to restore his firearm rights in Washington state prior to the 2023 passage of the new firearms restoration statute, RCW 9.41.041. When the new firearms restoration statute was passed by the legislature, it effectively stripped him of his ability to invoke the jurisdiction of Washington state courts to restore his firearm rights because it did not contain a provision permitting an individual to file a petition for the restoration of firearm rights in their county of residence. *See* RCW 9.41.041(3)(a). Instead, all petitions must be filed in the county where the conviction occurred. *Id.* Because Mr. Arends' conviction occurred in South Dakota, the statute does not provide that any Washington state court would be an appropriate venue for him to petition for the restoration of his firearm rights.

Amicus curiae WACDL wishes to emphasize the importance of this issue to its current and future clients. WACDL members are frequently called upon to advise individuals who have been convicted of a crime and are seeking to understand what steps they need to take to restore all of their civil rights. Due to financial restraints, lack of awareness of legislative developments, or many other reasons, individuals may not be able to move promptly to restore their civil rights. WACDL members thus help their clients obtain certificates of discharge, vacate records of convictions, and restore firearm rights many years after the individual was eligible for each of these forms of relief. In the context of firearm rights, WACDL members are often asked to assist with firearm rights when someone is denied the ability to purchase a firearm based on some disqualifying matter that the individual either did not know about or had been assured was not an issue.

WACDL also wishes to emphasize that clarity in this area of the law is essential. Individuals seeking to restore their civil rights often do not have substantial resources to litigate complex motions or pursue appellate remedies. To the extent public defender's offices provide certain post-conviction services, having very clear

guidelines for practice will ensure that these tasks can be performed quickly and efficiently.

In sum, the petition filed by Darren Arends is not an outlier, but instead presents an issue that is likely to recur frequently in our courts. This issue raised is thus of "substantial public interest" to WACDL membership and its current and future clients. RAP 13.4(b)(4).

B. The Court of Appeals' Opinion Conflicts With This Court's Precedents

In *State v. T.K.*, this Court stated that "a statute will not be applied retroactively if it affects a substantive or vested right." 139 Wn.2d 320, 333, 987 P.2d 63 (1999), *as amended* (Oct. 28, 1999). In the same opinion, this Court clearly stated that "[a] statute operates prospectively when the precipitating event for its application occurs after the effective date of the statute." *Id.* at 329.[1]

[1] In *State v. Varga*, 151 Wn.2d 179, 86 P.3d 139 (2004), this Court emphasized that the operative date is when T.K. "could have moved the court" for relief. *Id.* at 197.

Just six years ago, in *State v. Dennis*, this Court further clarified that "a court's role in the [firearms] restoration process is purely ministerial," and therefore "the precipitating event for eligibility for restoration is when the statutory requirements are met, not when the petition is filed." 191 Wn.2d 169, 177, 421 P.3d 944 (2018).

T.K. and *Dennis* therefore created a simple syllogism: a statute cannot apply retroactively to strip an individual of a vested right; an individual right vests at the time of the "precipitating event"; and in the context of firearms restorations, the "precipitating event" occurs whenever the person becomes eligible for restoration rather than when the petition is filed. The Court of Appeals simply needed to fill in the last step of that syllogism by holding that the passage of RCW 9.41.041 did not strip Mr. Arends and other similarly-situated individuals of their vested right to restore firearm rights under RCW 9.41.040(4).

Unfortunately, the Court of Appeals declined to follow *T.K.* and *Dennis* to this legally sound conclusion. Instead, the Court of Appeals ruled that because the legislature amended the statute with the "intent to protect the public," including reducing "gender-based

violence," the statute did in fact operate to strip Mr. Arends of his right to restore his firearm rights. *Arends v. State*, 548 P.3d 553, 557 (Wash. Ct. App. 2024). This logic is untethered from this Court's rulings.

In *T.K.*, the defendant was convicted of sexual assault but was eligible to expunge his conviction. The legislature's decision to amend the expungement statute was surely driven by an intent to protect the public and prevent gender-based violence. *T.K.*, 139 Wn.2d at 333 (rejecting State's argument that legislature's intent to "protect the public" was relevant to vested rights analysis). This Court instead focused on the fact that *T.K.*'s right to seal had vested, meaning that it had "became absolute upon completion of the statutory conditions." *T.K.* at 334. As the petition for review persuasively argues, there is simply not a "public policy" exception that permits the legislature to strip vested rights that have already accrued. Petition for Review at 21-25.

The result of this case should have been foreclosed by *T.K.* and *Dennis*. The Court of Appeals' opinion offered no persuasive reason to deviate from the clear holdings of these cases. Review is therefore justified under RAP 13.4(b)(1).

IV. CONCLUSION

For the foregoing reasons, WACDL respectfully requests that this Court grant Mr. Arends' Petition for Review and Motion for Expedited Review.

Respectfully submitted this 28th day of June, 2024.

s/Mark B. Middaugh
WSBA #51425
Attorney for Amicus Curiae WACDL
E-mail: mark@middaughlaw.com

CERTIFICATION
I certify that this memorandum complies with the length limitation of RAP 18.17 and contains 1,113 words.

MIDDAUGH LAW, PLLC

June 28, 2024 - 3:13 PM

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

The following documents have been uploaded:

- 1030681_Briefs_20240628151222SC712821_9395.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was Memo in Support of PFR 6.28.24.pdf
- 1030681_Motion_20240628151222SC712821_5265.pdf
  This File Contains:
  Motion 1 - Amicus Curiae Brief
  The Original File Name was Motion to File in Supreme Court 6.28.24.pdf

A copy of the uploaded files will be sent to:

- Diane.Kremenich@co.snohomish.wa.us
- Jessica@kertchenlaw.com
- Kate.holding@snoco.org
- cryden@snoco.org
- diane.kremenich@snoco.org
- mark@middaughlaw.com
- nathan.sugg@snoco.org
- vitaliy@kertchenlaw.com

Comments:

Sender Name: Mark Middaugh - Email: mark@middaughlaw.com
Address:
600 UNIVERSITY ST STE 3020
SEATTLE, WA, 98101-4105
Phone: 206-919-4269

Note: The Filing Id is 20240628151222SC712821