COURT OF APPEALS OF WASHINGTON – DIVISION II

Supreme Court of Washington, Case no. _____

Court of Appeals Division II, Case no. 57902-2-II

Clark County Superior Court Case no. 22-2-02958-06

MICHAEL DYLAN PEEDE,

Appellant,

v.

PROSECUTING ATTORNEY FOR CLARK COUNTY,

Respondent.

PETITION FOR REVIEW

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I. INTRODUCTION / IDENTITY OF PARTIES

Respondent is Michael Dylan Peede, who is represented by John C. Terry of Andrews Terry Jeffers LLP. Peede, through counsel, petitions this Court to grant discretionary review of the decision by the Court of Appeals of the State of Washington – Division II filed in *State of Washington v. Michael Dylan Peede*, case no. 57902-2-II, filed May 14, 2024.

II. ISSUES PRESENTED FOR REVIEW

The issue in this case is whether a sealed juvenile offense that is either a Class A felony or a sex offense still exists in determining a person's eligibility to restore their firearm rights under Washington law.

Further, because this is discretionary review, the issues presented in this document 'Petition for Review' will focus on whether review should be accepted pursuant to RAP 13.4(b). The relevant considerations herein are:

a) The Court of Appeals decision is in conflict with a Supreme Court case, to wit: *Barr v. Snohomish Cnty.*

Sheriff, 193 Wash.2d 330, 339, 440 P.3d 131 (Wash. 2019);

b) The Court of Appeals decision is in conflict with a published decision of the Court of Appeals, to wit: *Woodward v. State*, 423 P.3d 890 (Wash. App. 2018);

c) The issue presented herein involves an issue of substantial public interest that should be determined by the Supreme Court, to wit: whether, under State law, a sealed juvenile conviction for a sex offense or class A felony, is a "conviction" under RCW 9.41.041(1) / 9.41.010(6), or as formerly codified.[1]

Any and all of the above criteria are met and the Supreme Court should take review of this case.

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[1] It appears that during the pendency of this appeal, some of the firearm statue was recodified. Because the relevant aspects of such statutes do not appear to have substantially changed, the current statutes are cited herein, as such statutes appear to be applicable herein.

III. STATEMENT OF CASE

a. Factual Background

Peede was convicted as a juvenile of an offense that is classified as a class A felonies and / or a sex offense.[2] Clerk's Papers – Order Denying Firearm Restoration; VRP 3.

Peede had also been convicted as an adult of the crime of felony harassment, a class C felony. The conviction date was December 29, 2015. Clerk's Papers – Petition to Restore Firearm Rights, Pg 2.

b. Procedural Background

On or about November 30, 2022, Peede petitioned to restore his firearm rights. Id. at pg 1. At the time of his petition, the felony harassment conviction had been previously discharged pursuant to RCW 9.94A.637 and previously vacated pursuant to RCW 9.94A.640. Id. at pg 2. Further, at the time of Peede's petition for restoration of his firearm rights, the juvenile adjudication had been sealed. Clerk's Papers – Order Denying Firearm Restoration; VRP 3.

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[2] Because this was a juvenile offense, the specific offense is not listed. The trial court also did not list the specific offense, instead calling it "a conviction which disqualifies him from firearm possession". The nature of the offense is not relevant, but rather whether such an offense (a class A felony, a crime punishable by more than 20 years, and / or a sex offense prohibiting firearm ownership), when sealed, bars firearm ownership and / or a petition to restore firearm rights.

The State objected citing Peede's sealed juvenile adjudication. VRP 5-6.

The trial court denied the petition on the basis of Peede's sealed juvenile adjudication citing *Barr v. Snohomish Cnty. Sheriff*, 193 Wash.2d 330, 339, 440 P.3d 131 (Wash. 2019). Clerk's Papers – Order Denying Firearm Restoration.

Peede motioned for reconsideration, which was denied by the trial court. Clerk's Papers – Order Denying Motion to Reconsider.

Peede appealed such decision to the Court of Appeals – Div 2, who affirmed the trial court, again citing to *Barr*, and its own recently published decision in *McIntosh v. State*, ___ Wn. App. 2d ___, 544 P.3d 559 (2024), which also relied on *Barr*. See Appendix A – *Peede v. State*, Division 2 Docket No. 57902-2-II, the unpublished opinion this Petitioner for Review involves, and Appendix B – *McIntosh v. State*, cited above.

IV. ARGUMENT FOR REVIEW

a. The Court of Appeals decision conflicts with *Barr*

This Court in *Barr* ruled on only one issue, whether the Sheriff is required to issue Barr a CPL. *Barr* at 340. In that case, ["t]he Sheriff

declined to issue Barr a CPL after determining that federal law prohibited Barr from possessing firearms." *Barr* at 339. This Supreme Court clearly stated, [t]herefore we can and do decide this case based solely on the federal firearms statutes." *Id.*

The Supreme Court in *Barr* expressly declined to overrule *Nelson.* See *In re Firearm Rights of Nelson* , 120 Wash. App. 470, 85 P.3d 912 (2003), and *Barr* at 338. Yet the Court of Appeals in this case has used *Barr* to justify overruling *Nelson*, as similarly outlined in *McIntosh.* See *McIntosh* and *Peede. Barr* does not state that a sealed juvenile adjudication is a "conviction" under RCW 9.41.010(6) / RCW 9.41.041(1), it only states that a sealed juvenile adjudication is a "conviction" under federal firearms statutes. *Barr*, at 339-340.

If should be noted that if a federal analysis was applied in Peede's case, which is unnecessary for restoration of state firearm rights, Peede's firearm rights under Federal law are not affected. Under *United States v. McAdory*, 935 F.3d 838 (9th Cir. 2019), federal courts do not look to whether a crime is defined as a "felony" or a "misdemeanor", but rather whether the crime was punishable by imprisonment in excess of one year. *McAdory,* at 840. Further, federal law does not look to the maximum penalty in determining "punishable

by", but rather it looks at the sentence to which the defendant was actually exposed under Washington's mandatory sentencing scheme. *Id*. In other words, a crime that may be punishable by up to 5 years, but has a range of 0-60 days due to a defendant's lack of criminal record, such crime does not prohibit firearm possession under federal law.

In Peede's case, he was subject to local sanctions only because he was a juvenile with no prior adjudications with a "B" level offense. See juvenile sentencing grid, codified in RCW 13.40.0357. "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) $0-$500 fine." RCW 13.40.020(19). At no time was Peede convicted of a crime punishable to him by imprisonment in excess of one year. Thus, his firearm rights are not affected under federal law.

Regardless of federal law, the question herein is whether under State law, a sealed juvenile adjudication under RCW 13.50.260(6)(a) is a "conviction" under RCW 9.41.010(6) / RCW 9.41.041(1). Because *Barr* expressly stated that it made any ruling therein based solely on a federal analysis, the Court of Appeals decision, which used *Barr* for a state law analysis, therefore conflicts with this Court's ruling in *Barr*.

b) The Court of Appeals decision is conflicts with *Woodward*

But for Division 2 using *Barr* as to state law, when *Barr* was only applicable to a federal inquiry, *Nelson*, a division 2 case, would still be good law. *Nelson* is consistent with *Woodward*, a division 1 case. See *Woodward v. State*, 423 P.3d 890 (Wash. App. 2018). Together, such cases stood for the idea that juvenile sealing means the adjudication never occurred – for all intents and purposes.

Division 1 does not appear to have yet applied *Barr* to overrule *Woodward*. *Woodward* conflicts with *Peede* and *McIntosh*. This conflict should be resolved by this Supreme Court.

c) The issue presented herein involves an issue of substantial public interest

In the State of Washington, there are undoubtedly countless individuals in Peede's position and these people deserve to know whether RCW 13.50.260(6)(a) means what it says.

> If the court enters a written order sealing the juvenile court record pursuant to this section, it shall, subject to RCW 13.50.050(13), order sealed the official juvenile court record, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information

> can be given about the existence or nonexistence of records concerning an individual.

While such language is about as clear as it gets, there appears to be some misunderstanding in our courts and by some prosecutors as to what the legislature meant by "[t]hereafter, the proceedings in the case shall be treated as if they never occurred."

RCW 9.41.041(1), this State's restoration of firearm rights statute, reads in relevant part:

> A person who is prohibited from possession of a firearm under RCW 9.41.040 may not petition a court to have the person's right to possess a firearm restored if the person has been convicted or found not guilty by reason of insanity of: A felony sex offense; a class A felony; or a felony offense with a maximum sentence of at least 20 years.

"Conviction" (or convicted) is defined under RCW 9.41.010(6).

> (6) "Conviction" or "convicted" means, whether in an adult court or adjudicated in a juvenile court, that a plea of guilty has been accepted or a verdict of guilty has been filed, or a finding of guilt has been entered, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, posttrial 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.

It should be noted that the definition of "conviction" or "convicted" specifically includes juvenile adjudications, but does not

include ***sealed*** juvenile adjudications [emphasis added]. In fact, the statute specifically includes within the definition of "conviction" "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." "Conviction", does not include a juvenile sealing procedure. Of note, if the legislature intended to include sealed juvenile convictions, it would have included that in the list of procedures that are included within the definition of "conviction".

"Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expressio unius est exclusio alterius — specific inclusions exclude implication." *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999) (quoting *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969)). Here, "sealed juvenile adjudications" is not listed as what the legislature still considers a "conviction", therefore, a sealed juvenile conviction should be treated exactly as the legislature intended it be treated – ***as it if never occurred***.

While division 2 appears to believe that this Court has decided the above discrepancy in *Barr*, as outlined above, this Court expressly declined to decide anything other than whether under federal law, a sheriff can issue a CPL in such a scenario as this.

Firearm rights are a constitutional right, under both federal and state law. Firearm ownership is political issue. Further, whether juvenile adjudications should have lasting consequences well into adulthood is an issue of great public importance. This Court should take up the issue herein and decide this issue because it is of great public importance.

V. CONCLUSION

For the reasons stated herein, the Supreme Court should accept review of Peede's case and decide whether a sealed juvenile adjudication constitutes of a "conviction" under RCW 9.41.041(1) / RCW 9.41.010(6).

Signed at Vancouver, WA, this 29th day of May, 2024:

ANDREWS TERRY JEFFERS LLP

/s/ John C. Terry

JOHN C. TERRY, WSBA # 41337
Attorney for Appellant, Michael Peede

I hereby certify that this document contains 2,103 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Signed at Vancouver, WA, this 29th day of May, 2024:

/s/ John C. Terry

JOHN C. TERRY, WSBA # 41337
Attorney for Appellant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

May 14, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MICHAEL DYLAN PEEDE, Appellant, v. STATE OF WASHINGTON, Respondent.	No. 57902-2-II UNPUBLISHED OPINION

GLASGOW, J.—Michael D. Peede petitioned the trial court to restore his firearm rights. The trial court denied the petition, relying on at least one of Peede's sealed juvenile adjudications of guilt for a disqualifying felony. Peede appeals.

Peede argues that the trial court erred by misapplying *Barr v. Snohomish County Sheriff*[1] and that under RCW 13.50.260(6)(a), his sealed juvenile adjudications of guilt must be treated as though they never occurred. Following the Washington Supreme Court's reasoning in *Barr* II, we hold that the trial court properly considered Peede's sealed juvenile adjudications to determine Peede's eligibility to restore his firearm rights. Thus, the trial court properly denied Peede's petition. We affirm.

FACTS

Neither party disagrees with the trial court's finding that Peede was adjudicated guilty of

[1] 193 Wn.2d 330, 440 P.3d 131 (2019) (*Barr* II).

at least one offense that would disqualify him from restoration of his firearm rights.[2] The parties also agree that records of this juvenile offense have since been sealed.

After the relevant juvenile offense was sealed, Peede filed a petition to restore his firearm rights. The State objected to Peede's petition on the grounds that Peede's sealed juvenile adjudication for a sex offense or class A felony prohibited him from restoring his firearm rights under Washington law. Peede responded that because the records of his offense are sealed, the offense should be treated as if it never occurred and, thus, it should not bar restoration of his firearm rights. The trial court agreed with the State and denied Peede's petition. Peede appeals.

ANALYSIS

Peede argues that under RCW 13.50.260(6)(a), his juvenile offense should be treated as if it never occurred for purposes of restoring his firearm rights. The State responds that in *Barr* II, the Washington Supreme Court held that sealing under RCW 13.50.260(6)(a) merely hides Peede's adjudication from public view and therefore Peede's sealed juvenile offense still precludes him from petitioning to restore his firearm rights. We agree with the State and follow our recent opinion in *McIntosh v. State*, ___ Wn. App. 2d ___, 544 P.3d 559 (2024).

I. FIREARM RESTORATION

Former RCW 9.41.040(1)(a) (2022) prohibited a person convicted of any serious offense from possessing a firearm.[3] Under former RCW 9.41.010(33) (2022), serious offenses included

[2] It is not clear from our record whether Peede has more than one disqualifying juvenile offense. Below, we refer to a single disqualifying offense because it appears the parties agree there was at least one disqualifying offense.

[3] In 2023, the legislature recodified the provisions for restoration of firearm rights from former RCW 9.41.040(4) to RCW 9.41.041. LAWS OF 2023, ch. 295, § 4.

violent or sexually motivated felonies. While a person who has been convicted of a serious offense could petition to have their right to possess firearms restored under former RCW 9.41.040(4)(a), they were disqualified from doing so if that serious offense was a sex offense or a class A felony. *Id*. Further, a person could not petition to restore their firearm rights if a prior felony conviction would be counted as part of their offender score. Former RCW 9.41.040(4)(a)(ii)(A).

RCW 13.50.260 provides that juvenile records can be sealed. RCW 13.50.260(6)(a) states that once a juvenile conviction is sealed, "the proceedings in the case shall be treated as if they never occurred."

Whether the superior court properly applied former RCW 9.41.040(4) to the facts, is a question we review de novo. *McIntosh*, 544 P.3d at 561. We must also interpret the juvenile sealing statute, RCW 13.50.260. Questions of statutory interpretation are also reviewed de novo. *Id.*

II. SEALED JUVENILE CONVICTIONS AS DISQUALIFYING OFFENSES

The parties agree that Peede's juvenile offense is one that would ordinarily disqualify him from firearm right restoration. They dispute whether the sealing of his offense under RCW 13.50.260(6)(a) prohibited the trial court from considering the offense when determining whether to grant his petition to restore his firearm rights. We recently answered this question in *McIntosh*. In *McIntosh,* we relied on the Washington Supreme Court's reasoning in *Barr* II.

A. *Barr* II

In *Barr* II, the Snohomish County Sheriff denied Barr's application for a concealed pistol license based on Barr's two sealed juvenile adjudications for class A felonies. 193 Wn.2d at 333. Washington's concealed pistol license statute required that issuing authorities, like the sheriff, deny a concealed pistol license to "anyone who is found to be prohibited from possessing a firearm

under federal or state law." RCW 9.41.070(2)(b). The federal law at issue in *Barr* II prohibited firearm possession if a person had been convicted of a crime that was punishable by a prison term exceeding one year unless subsequent action, such as expungement, caused the conviction to no longer be "'considered a conviction.'" 193 Wn.2d at 335-36 (quoting 18 U.S.C § 921(a)(20)(B)). The prison terms for Barr's two adjudications exceeded one year. *Id.* at 336 n.4. Thus, if sealed adjudications were considered convictions under federal law, Washington's statute required the sheriff to deny Barr's license application. The sheriff concluded that Barr's offenses were considered convictions under federal law regardless of whether they were sealed. *Id.* at 333-34.

Barr challenged the denial of his license application. *Id.* at 334. The federal law at issue relied on the definition of "conviction" under state law, *id.* at 335, and Washington's sealing statute stated that after a juvenile adjudication is sealed, "the proceedings in the case shall be treated as if they never occurred." RCW 13.50.260(6)(a). Therefore, according to Barr, this language meant that his sealed adjudications were not "convictions" for purposes of the federal statute. *Barr* II, 193 Wn.2d at 336-37.

The Washington Supreme Court disagreed. It held that Washington's sealing statute did not determine whether Barr's sealed adjudications constituted "convictions" for purposes of the federal statute. *Id.* at 337. The court explained that under federal law, the mere existence of a conviction prohibited firearm possession, regardless of whether the adjudication or conviction was sealed. *Id.* Instead, the court considered only whether the adjudications existed, and whether a subsequent event like expungement had since rendered them "no longer 'considered a conviction.'" *Id.* (quoting 18 U.S.C § 921(a)(20)(B)).

Relevant here, the court explained that sealing orders only hide a record from public view—they do not cause a conviction or adjudication to cease to exist. *Id.* at 337. The court pointed to the fact that a sealing order will be nullified if a person is charged with an adult felony after their record has been sealed. *Id.*; *see also* RCW 13.50.260(8)(b). If an adjudication can be automatically unsealed and if it can then have consequences in future sentencings, then it must continue to exist despite the sealing. *Barr* II, 193 Wn.2d at 337.

The court went on to distinguish sealing from the other events that would render an adjudication no longer "'considered a conviction'" under federal law. *Id.* at 338 (quoting 18 U.S.C § 921(a)(20)(B)). The federal law at issue stated that "[a]ny conviction which has been expunged . . . shall not be considered a conviction for purposes of this chapter." 18 U.S.C. § 921(a)(20)(B). The *Barr* II court then rejected prior cases that stated or suggested that sealing was equivalent to expungement. 193 Wn.2d at 339. Unlike expungement, where records are destroyed, sealing "merely hides a record from view of the general public." *Id.* Thus, although they were hidden, there were still official records of Barr's juvenile adjudications. *Id.* Therefore, they were still considered convictions for the purposes of application of the concealed pistol license statutes. *Id.* at 339-40.

Throughout its opinion, the *Barr* II court limited its decision to only the application of federal firearm possession laws. It "express[ed] no opinion on Barr's right to possess firearms as a matter of state law," and emphasized that *Barr* II posed "a narrow question to which [the court] provide[d] a narrow answer. The sheriff was not required to issue Barr a [concealed pistol license] because . . . Barr's class A felony adjudications are predicate, disqualifying convictions for purposes of 18 U.S.C. § 922(g)." *Id.* at 340.

Nevertheless, the Supreme Court's analysis in *Barr* II is informative to the extent the court opined about issues that also arise under state law when a person asks a court to restore their firearm rights.

B. Caselaw Prior to *Barr* II

Despite the *Barr* II court's statements that its narrow holding impacted only federal firearm laws, the court's reasoning plainly undermined our previous holdings addressing how Washington's sealing statute interacts with Washington's firearm possession laws—especially how we applied the phrase "the proceedings in the case shall be treated as if they never occurred." RCW 13.50.260(6)(a).

Before *Barr* II, we relied primarily on that phrase to determine how we treated sealed juvenile adjudications under state law. For example, in *Nelson v State*, 120 Wn. App. 470, 85 P.3d 912 (2003), Division One held that juvenile adjudications that had been both sealed and expunged did not bar petitions to restore firearm rights. The fact that Nelson's juvenile adjudications had been expunged was a factor. *Id.* at 480-81. However, the *Nelson* court also explained that "even if the fact of Nelson's juvenile convictions is undisputed, legally the [trial] court could not conclude he had been 'convicted' for purposes of the firearm statute[,] because the court was obligated to treat the juvenile proceedings as if they never occurred."[4] *Id.* at 480.

This language was also fundamental to our later opinion in *Barr v. Snohomish County*, 4 Wn. App. 2d 85, 419 P.3d 867 (2018) (*Barr* I), *rev'd*, 193 Wn.2d 330. In *Barr* I, we held that sealed juvenile adjudications did not bar firearm possession under state law. *Id.* at 102-03. Notably, in

[4] *Nelson* interpreted former RCW 13.50.050(14) (2001)—a prior version of our state's sealing statute with nearly identical language to its modern counterpart.

contrast with *Nelson*, Barr's juvenile adjudications were not expunged—they were merely sealed. *Id*. at 91. This difference did not change our analysis of how Washington's sealing statute affected people's ability to possess firearms because "[t]he dispositive component of the sealing statute here is the phrase 'the proceedings in the case shall be treated as if they never occurred.'" *Id*. at 99.

Further, we rejected attempts to venture beyond the statute's plain language—such as arguments that criminal justice agencies' access to sealed convictions permitted consideration of the sealed adjudication in some contexts:

> The Washington State Patrol must guarantee access to sealed records to criminal justice agencies, and the courts must ensure prosecutors have access to the information. However, these statutes do not authorize criminal justice agencies to treat these adjudications in a manner contrary to RCW 13.50.260(6)(a), which requires them to treat the adjudications "as if they never occurred."

Id. at 102. Thus, before *Barr* II, we read Washington's sealing statute to mean that a person's sealed juvenile adjudications did not prohibit them from owning a firearm. We treated sealed juvenile adjudications "as if they never occurred."

C. *Barr* II's Impact on Our Previous State Law Analysis

Barr II did not explicitly overrule our conclusion in *Barr* I, that sealed adjudications did not bar firearm possession under state law. But *Barr* II's discussion of Washington's sealing statute diverged from the reasoning our conclusion depended on in multiple ways. As discussed above, the *Barr* II court explained that sealed adjudications do continue to exist for purposes of federal firearm possession statutes—they are just "invisible to most people." 193 Wn.2d at 337. And the court reasoned that when the legislature enacted the concealed pistol license statute, it intended that law enforcement would use sealed adjudications to determine whether to grant concealed

pistol license applications. *Id.* at 337-38. Specifically, the court pointed to RCW 9.41.070(2)(a), which required the sheriff to check "'the Washington state patrol electronic database'" and RCW 13.50.260(8)(d), which required that "the state patrol database must 'provide criminal justice agencies access to sealed juvenile records information.'" *Id.* at 337 (alteration omitted). The court reasoned that if the sheriff was required to search a database that contained sealed adjudications, "then the legislature must have intended that law enforcement use information about the sealed convictions in determining whether to issue a [concealed pistol license]." *Id.* at 337-38. Thus, according to the Supreme Court, the phrase "the proceedings shall be treated as if they never occurred," was not alone dispositive in circumstances where other statutes or provisions of RCW 13.50.260 suggested otherwise.

While this reasoning was part of the court's federal statutory analysis, the court's description of sealing's basic function undermined our conclusion that sealing essentially did remove adjudications from existence. *See Barr* I, 4 Wn. App. 2d at 103 ("sealed juvenile records shall be treated as if they never occurred, regardless of any agency access.").

The *Barr* II court also gave little weight to the plain language analysis in *Nelson.* Instead, the court pointed to the functional difference between expungement, where records are destroyed, and sealing, where records are "merely" hidden. 193 Wn.2d at 338-39. In fact, the court explicitly rejected the idea that sealing and expungement have the same effect on one's ability to possess firearms. *Id.* at 339. Due to the differences between sealing and expungement, the Supreme Court declined to apply *Nelson* in cases where adjudications are merely sealed but not expunged. *Id.* This emphasis on Nelson's expungement undermined our reasoning in *Barr* I, which relied on *Nelson* even though Barr's adjudications had not been expunged. 4 Wn. App. 2d at 98-103.

In sum, although the *Barr* II court limited its holding to an application of federal law related to concealed pistol licenses, the court's reasoning plainly undermined *Nelson* and *Barr* I's reliance on the language of the sealing statute alone to prohibit consideration of sealed adjudications. Instead, the *Barr* II court's reasoning established that sealed adjudications continue to exist under state law even after they are sealed.

D. Post-*Barr* II Case Law

We resolved the incompatibility between our previous cases and *Barr* II with our holding in *McIntosh*. In that case, the trial court denied McIntosh's petition to restore his firearm rights. *McIntosh*, 544 P.3d at 560. Prior to his petition, McIntosh was adjudicated guilty of multiple class A sex offenses in juvenile court. *Id.* The juvenile adjudications were sealed under RCW 13.50.260. *Id*. McIntosh argued that these adjudications should not bar his petition relying on our pre-*Barr* II caselaw that treated sealed adjudications "as if they never occurred." *Id*. at 560-61.

We disagreed with McIntosh and relied on *Barr* II to depart from *Nelson* and *Barr* I. We specifically abandoned *Nelson*'s reasoning. Like the Supreme Court, we distinguished *Nelson* on its facts, noting that the destruction of records via expungement is markedly different than sealing alone. *Id*. at 563. Once we departed from *Nelson*, we followed *Barr* II's approach and looked to other sections of RCW 13.50.260, as well as other state firearm statutes in context, to understand the effect of the phrase, "the proceedings shall be treated as if they never occurred." *Id*. at 563-64.

First, we reasoned that allowing sealed adjudications to have some remaining effect is "consistent with other provisions of the [sealing] statute [that] clearly contemplate the conviction remain accessible to certain agencies." *Id.* at 563. For instance, under state law, prosecutors and both in-state and out-of-state criminal justice agencies must have access to sealed juvenile records.

RCW 13.50.260(8)(c)-(e). This reasoning also mirrored that of the Supreme Court in *Barr* II: "If the legislature requires law enforcement to search a database that must contain information on sealed convictions, then the legislature must have intended that law enforcement use information about the sealed convictions in determining whether to issue a [concealed pistol license]." 193 Wn.2d at 337-38.

Second, we noted that sealing orders already permit additional use of adjudications. *McIntosh*, 544 P.3d at 564. For instance, class A and prior felony convictions for sex offenses are always included in offender scores, regardless of sealing. RCW 9.94A.525(2)(a). Finally, we reasoned that the fact that sealing orders are automatically nullified by reoffending, RCW 13.50.260(8)(b), supported the fact that the basic function of a sealing order is to shield adjudications from public view. *McIntosh*, 544 P.3d at 564. Thus, we held the trial court properly denied McIntosh's petition because his sealed adjudications could be considered. *Id.*

E. Peede's Petition to Restore His Firearm Rights

Here, we follow *Barr* II and our holding in *McIntosh*. Just like the plaintiff in *McIntosh*, Peede has a juvenile adjudication that prohibits the trial court from restoring his firearm rights under former RCW 9.41.040(4). For the reasons discussed in *McIntosh*, the fact that Peede's adjudication is sealed does not change the fact that it disqualifies him from petitioning to restore his firearm rights.

Our holding is further supported by former RCW 9.41.040(4)(a)(ii)(A), which provided that an "individual may petition a court of record to have [their] right to possess a firearm restored . . . . 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." As we noted in *McIntosh*, "'[c]lass

A and sex prior felony convictions shall always be included in the offender score.'" 544 P.3d at 564 (quoting RCW 9.94A.525(2)(a)). Thus, our firearm possession statute contemplates the inclusion of sealed class A felony offenses and felony sex offenses in evaluating petitions to restore firearm rights where they would be counted in an offender score. Peede has not established that he has overcome this additional barrier to restoration of his firearm rights.

Therefore, we affirm the trial court's denial of Peede's petition to restore his firearm rights.

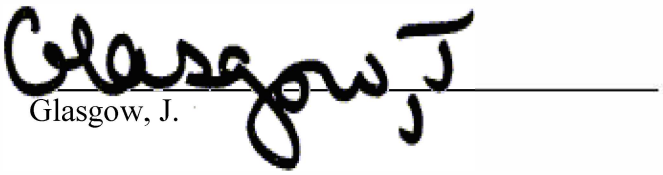
III. FIREARM POSSESSION

In addition to the question of whether Peede's sealed juvenile adjudication allows restoration of his firearm rights, in his brief, Peede also raises the question of whether his sealed conviction bars him from possessing firearms under former RCW 9.41.040. However, we review trial court decisions that are actually designated in the notice of appeal. RAP 2.4(a). In his notice of appeal, Peede seeks review of "the trial[] court[']s decisions and all written rulings or findings reduced to the judgment and sentence entered herein." Clerk's Papers at 10. The only orders attached to Peede's notice of appeal, or at issue in this case, are the trial court's order denying firearm restoration and its order denying Peede's motion for reconsideration of that order. There are no other orders in our record that would implicate Peede's right to possess firearms independent from his right to petition to restore his firearm rights. Thus, whether Peede's sealed juvenile conviction independently impacts his ability to possess firearms under RCW 9.41.040 is outside our scope of review.

CONCLUSION

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Glasgow, J.

We concur:

Maxa, P.J.

Che, J.

APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

March 5, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CAI HUNTER MCINTOSH, Appellant, v. STATE OF WASHINGTON, Respondent.	No. 57583-3-II PUBLISHED OPINION

LEE, J. — Cai H. McIntosh appeals the superior court's order denying his petition to restore his firearm rights. McIntosh argues that the superior court erred by misapplying our Supreme Court's opinion in *Barr v. Snohomish County Sheriff* (*Barr* II)[1] and that under RCW 13.50.260, his sealed juvenile convictions must be treated as though they never occurred. We hold that under our Supreme Court's decision in *Barr* II, an adjudication in a sealed juvenile proceeding in which a juvenile is convicted of an offense continues to exist as a conviction for the purposes of restoration of firearm rights. Therefore, McIntosh's juvenile adjudications resulting from his convictions for first degree rape of a child and first degree child molestation disqualify him from petitioning for restoration of firearm rights. We affirm the superior court's order denying McIntosh's petition for restoration of firearm rights.

[1] 193 Wn.2d 330, 440 P.3d 131 (2019).

FACTS

On July 25, 2022, McIntosh filed a petition to restore his firearm rights. In his petition, McIntosh declared that the court had previously terminated his firearm rights based on a now sealed 2014 conviction[2] and that he met the other statutory requirements for restoration of firearm rights. The State responded by arguing that McIntosh had prior class A sex offense convictions and that under our Supreme Court's opinion in *Barr* II, those convictions still made him ineligible for firearm rights restoration despite being sealed. McIntosh replied that *Barr* II did not apply to a petition to restore firearm rights under state law.

Following a hearing, the superior court entered the following written findings:

1. That on or about 6/16/2014 Petitioner was convicted of Rape of a Child First degree and Child Molestation First degree pursuant to cause no: 14-8-00106-7 In Clark Co. Washington Juvenile court.

2. Rape of a Child First degree and Child Molestation First degree are Class A sex offenses pursuant to RCW 9A.44.073 and RCW 9A.44.083.

3. The convictions were sealed pursuant to RCW 13.5[0].260.

4. That based upon Barr v. Snohomish County Sheriff, 193 [Wn].2d 330, 440 P.3d 131 (2019), the Court finds that regardless of the sealing of the convictions for Rape of [a] Child in the first degree and Child Molestation in the first degree, they remain as convictions that still exist as a matter of State law.

[2] It is undisputed that juvenile adjudications are convictions for the purposes of the firearm statutes. RCW 9.41.010(6) ("'Conviction' or 'convicted' means, whether in an adult court or adjudicated in juvenile court, that a plea of guilty has been accepted or a verdict of guilty has been filed, or a finding of guilt has been entered, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, posttrial or post-fact-finding motions, and appeals.").

Clerk's Papers at 11-12. Because a petitioner does not qualify to have their firearm rights restored if they have been convicted of a class A sex offense, the superior court denied McIntosh's petition for restoration of firearm rights.

McIntosh appeals.

ANALYSIS

McIntosh argues that the superior court erred by denying his petition to restore firearm rights because *Barr* II is inapplicable and his sealed convictions could not be considered in light of RCW 13.50.260(6)(a), which states that once sealed, "the proceedings in the case shall be treated as if they never occurred." The State argues that *Barr* II held that sealed juvenile convictions continue to exist as a matter of state law and, therefore, McIntosh's sealed juvenile convictions for class A felony sex offenses preclude McIntosh from petitioning for restoration of his firearm rights. We agree with the State.

A. LEGAL PRINCIPLES

Former RCW 9.41.040(4) (2022)[3] does not expressly grant the superior court discretion in the restoration of firearm rights. *State v. Swanson*, 116 Wn. App. 67, 75, 65 P.3d 343, *review denied*, 150 Wn.2d 1006 (2003). Instead, the superior court is required to serve a ministerial function once the petitioner has demonstrated they have satisfied all statutory requirements. *Id* at 78. Whether the superior court properly applied the facts to the requirements of the statute is a question we review de novo. *See Crossroads Management, LLC v. Ridgway*, ___ Wn.3d ___, 540

[3] In 2023, the legislature recodified the provisions for restoration of firearm rights from former RCW 9.41.040(4) to RCW 9.41.041. LAWS OF 2023, ch. 295, § 4.

P.3d 82, 87, (2023) ("'Our review of the application of a court rule or law to the facts is de novo.'" (quoting *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 525, 79 P.3d 1154 (2003))).

Further, this case requires an interpretation of the juvenile sealing statute, RCW 13.50.260, and we review questions of statutory interpretation de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *Id.* at 762. To determine legislative intent, we first look to the statute's plain language. *Id.* "If the statute's meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended." *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010). Only when a statute is ambiguous do we turn to statutory construction, legislative history and relevant case law to determine legislative intent. *Jametsky*, 179 Wn.2d at 762.

Under former RCW 9.41.040(1), a person unlawfully possesses a firearm if they have previously been convicted of any serious offense. However, former RCW 9.41.040(4)(a) allows a person who is otherwise prohibited from possessing firearms under former RCW 9.41.040(1) to petition to have their right to possess firearms restored. If a person is prohibited from possessing firearms and has a conviction for a sex offense prohibiting firearm ownership or a class A felony, then that person is disqualified from petitioning for restoration of firearm rights. Former RCW 9.41.040(4)(a).

B. SEALED JUVENILE CONVICTIONS AS DISQUALIFYING OFFENSES

McIntosh was convicted of first degree rape of a child and first degree child molestation, both serious offenses. Both first degree rape of a child and first degree child molestation are class A felonies. RCW 9A.44.073(2), .083(2). First degree rape of a child and first degree child

molestation are also sex offenses that prohibit firearm ownership. Former RCW 9.41.040(1), (4); RCW 9.41.010(42), (43); RCW 9.94A.030(47). Generally, McIntosh's juvenile convictions disqualify him from petitioning for restoration of firearm rights. Former RCW 9.41.040(4)(a). However, McIntosh's juvenile convictions were sealed under RCW 13.50.260. Under RCW 13.50.260(6)(a), once sealed "the proceedings in the case shall be treated as if they never occurred."

McIntosh argues that because RCW 13.50.260(6)(a) requires that sealed proceedings be treated as though they never occurred, his juvenile convictions should be treated as though they never occurred—essentially that they no longer exist—and, therefore, his sealed juvenile convictions cannot disqualify him from having his firearm rights restored. Prior to *Barr* II, case law supported this position. *See Nelson v. State*, 120 Wn. App. 470, 85 P.3d 912 (2003).

In *Nelson*, the court addressed whether juvenile convictions that were sealed under former RCW 13.50.050 (2001), and expunged were convictions that prohibited a person from carrying a firearm. 120 Wn. App. at 475-76. Former RCW 13.50.050(14) provided that, if the court granted a motion to seal juvenile records, "the proceedings in the case shall be treated as if they never occurred." Based on the language of the statute, the court held,

> If the proceedings never occurred, logically the end result—a conviction—never occurred either. The plain language of the expungement statute entitles Nelson to act and be treated as if he has not previously been convicted. If he has not previously been convicted, he may legally possess firearms.
>
> The trial court did find that Nelson had previous convictions, and the State contends the finding is supported by Nelson's acknowledgment of his prior convictions in his petition. But even if the fact of Nelson's juvenile convictions is undisputed, legally the court could not conclude he had been "convicted" for purposes of the firearm statute because the court was obligated to treat the juvenile proceedings as if they never occurred.

Nelson, 120 Wn. App. at 479-80. The court held that following the sealing and expungement, Nelson had no convictions that make it unlawful for him to possess firearms under former RCW 9.41.040 (1997). *Id.* at 481.

Following *Nelson*, other courts determined that sealed juvenile convictions did not disqualify a person from restoration of firearm rights. The court in *Woodward v. State* relied on *Nelson* to hold that a sealed juvenile class A felony conviction did not render an individual ineligible for restoration of firearm rights. 4 Wn. App. 2d 789, 793-95, 423 P.3d 890 (2018).

And in *Barr v. Snohomish County Sheriff* (*Barr* I), this court relied on *Nelson* to determine whether (1) sealed juvenile class A felony convictions prohibited a person from having their firearm rights restored and (2) a person with sealed juvenile class A felony convictions was entitled to have a concealed pistol license (CPL). 4 Wn. App. 2d 85, 93, 419 P.3d 867 (2018). Barr had been adjudicated of two class A felonies as a juvenile. *Id.* at 91. More than 20 years later, Barr's juvenile convictions were sealed by the juvenile court. *Id.* After Barr's juvenile records were sealed, the superior court entered an order restoring Barr's firearm rights, then Barr applied for a CPL. *Id.* at 91-92. The sheriff's office denied Barr's application for a CPL, and Barr sought a writ of mandamus directing the sheriff's office to issue him a CPL. *Id.* at 92.

This court held that *Nelson* was controlling and, therefore, the juvenile convictions were legally required to be treated as though they had never occurred. *Id.* at 98. This court stated, "[b]ecause Barr is treated as not having been previously adjudicated of the juvenile offenses, he is neither prohibited from possessing a firearm under RCW 9.41.040 nor prevented from receiving a CPL." *Id.* at 98-99. Our Supreme Court granted review of *Barr* I. *Barr v. Snohomish County Sheriff*, 191 Wn.2d 1019, 428 P.3d 1171 (2018).

On review, our Supreme Court noted that the parties disagreed as to what happens to disqualifying juvenile adjudications after they are statutorily sealed. *Barr* II, 193 Wn.2d at 336. Barr argued that once his juvenile class A felony convictions were sealed, they no longer existed as convictions because the sealing statute dictated that "'the proceedings in the case shall be treated as if they never occurred'" and, therefore, the convictions never occurred. *Id.* at 336-37 (quoting RCW 13.50.260(6)(a)). Our Supreme Court disagreed.

Our Supreme Court determined that the relevant question was whether the sheriff properly denied Barr's CPL because a CPL could not be issued to a person who was prohibited by federal law from possessing a firearm. *Id.* at 335. Under federal law, a person is prohibited from possessing a firearm if they have a conviction for a crime punishable for a term of more than one year. *Id.* And for the purposes of the federal law, a conviction was determined by state law rather than defined by federal law. *Id.* The federal law explicitly stated that convictions that had been expunged, set side, pardoned, or had civil rights restored do not qualify as convictions. *Id.* Our Supreme Court determined its inquiry was straightforward:

> First, we ask whether Barr has been convicted of a crime punishable by over one year of imprisonment pursuant to Washington law. As detailed below, we conclude that he has. We then ask whether any of the specified subsequent events (expungement, setting aside, pardon, or restoration of civil rights) have occurred. Again as detailed below, we conclude they have not.

Id. at 335-36 (citations omitted). In addressing Barr's argument that because his juvenile class A felony convictions were sealed, they no longer existed as convictions pursuant the sealing statute, our Supreme Court stated:

> The problem with this argument is that it sidesteps the required federal statutory analysis. Under that analysis, the question is not how a conviction is currently treated by state law. Instead the question is whether there was a conviction

> and, if so, whether a subsequent event has occurred such that the conviction is no longer "considered a conviction" that prohibits firearm possession pursuant to the federal statute. 18 U.S.C. § 921(a)(20). Thus, our inquiry at the first step is limited to asking whether there was, in fact, a conviction of a crime punishable by over one year of imprisonment as a matter of state law. *Siperek v. United States*, 270 F. Supp. 3d 1242, 1248 (W.D. Wash. 2017).
>
> Washington State law clearly provides that Barr's juvenile class A felonies are convictions punishable by over one year imprisonment. While the sealing order makes those convictions invisible to most people, *they do still exist*. *Id.* at 1248-49. This conclusion is evident from the simple fact that the sealing order will be nullified by "[a]ny charging of an adult felony subsequent to the sealing." RCW 13.50.260(8)(b). If that happens, the convictions do not somehow come back into existence; they merely come back into public view.

Id. at 337 (emphasis added) (alterations in original). Our Supreme Court then went on to explain that sealing juvenile records was not the equivalent of having convictions expunged, set aside, pardoned, or that his civil rights were restored. *Id.* at 338. Therefore, they remained disqualifying convictions. *Id.*

Barr relied on *Nelson*, but the court found Barr's reliance on *Nelson* to be misplaced. *Id.* at 339.

> *Nelson* explicitly states that the juvenile records at issue there were expunged, while Barr's were merely sealed. Some courts have read *Nelson* to mean that "the sealing of a juvenile case constitutes expungement of the juvenile offense," but that is not the case. . . . As detailed above, sealing merely hides a record from the view of the general public. Nelson, meanwhile, "had a full expungement, and the records have been destroyed." *Nelson*, 120 Wn. App. at 474. Therefore, "there [were] no longer official records of any such [disqualifying] offense." *Id.* at 480. That is clearly not the case here, so *Nelson* does not apply.

Id. (some alterations in original). Thus, the court distinguished *Nelson* because *Nelson* explicitly stated that the juvenile convictions were expunged and the records had been destroyed, not merely sealed. *Id.*

Here, we must determine whether to follow *Nelson* and, therefore conclude that McIntosh's juvenile convictions for class A sex offenses simply do not exist or whether *Barr* II controls and,

therefore, McIntosh's convictions disqualify him from petitioning for restoration of firearm rights. We conclude that *Barr* II applies.

First, *Barr* II expressly distinguished *Nelson* because the records in *Nelson* had been expunged and destroyed. There is no evidence that the records of McIntosh's juvenile convictions have been expunged or destroyed. Therefore, *Nelson* is as inapplicable to McIntosh as it was to Barr.

Second, *Barr* II's determination is consistent with other provisions of the statute which clearly contemplate the conviction remain accessible to certain agencies. *See* RCW 13.50.260(8)(c)-(e) (requiring the administrative office of the courts to ensure prosecutors have access to information on the existence of sealed juvenile records and the Washington State Patrol ensure both state and out-of-state criminal justice agencies have access to sealed juvenile records).

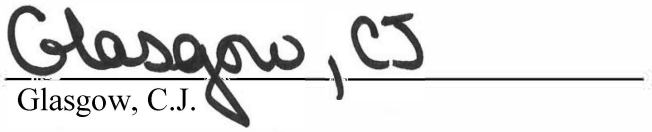
Moreover, sealed juvenile proceedings continue to have an effect contingent on future events without requiring any affirmative action to bring the juvenile adjudications back into existence. For example, under RCW 9.94A.525(2)(a), "[c]lass A and sex prior felony convictions shall always be included in the offender score." And RCW 13.50.260(8)(b) provides that "[a]ny charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order." Thus, if McIntosh reoffends and an offender score is calculated, he would necessarily have been charged with an adult felony and, therefore, the sealing order would be nullified. The fact that the sealing order can be automatically nullified further supports that McIntosh's convictions still exist but are merely shielded from public view as our Supreme Court stated in *Barr* II.

Accordingly, under *Barr* II, McIntosh's juvenile convictions for class A felony sex offenses still exist under state law and, therefore, he is disqualified from petitioning for restoration

of firearm rights under former RCW 9.41.040(4)(a). The superior court properly denied McIntosh's petition for restoration of firearm rights.

We affirm the superior court's order denying McIntosh's petition for restoration of firearm rights.

We concur:



Glasgow, C.J.

Price, J.

CERTIFICATE OF SERVICE

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/s/ John C. Terry

_____

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