

No. 43745-7-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent/Cross-Appellant,

vs.

CHAD CHRISTENSEN,

Appellant/Cross-Respondent.

Appeal from the Superior Court of Washington for Lewis County

Respondent / Cross Appellant's Reply Brief

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I. ARGUMENT

A. THE STATE IS NOT EQUITABLY ESTOPPED FROM ARGUING THAT CHRISTENSEN'S 2005 UNLAWFUL POSSESSION OF A FIREARM CONVICTION HAS NOT WASHED-OUT AND SHOULD BE INCLUDED IN HIS OFFENDER SCORE.

The application of equitable estoppel is not appropriate in criminal cases and no Washington State case has ever applied the doctrine to a criminal case. *State v. Yates*, 161 Wn.2d 714, 738, 168 P.3d 359 (2007). There is federal case law, as cited in *Yates*, supporting the premise that equitable estoppel is not suited for incorporation into criminal law. *Yates*, 161 Wn.2d at 738, *citing United States v. Anderson*, 637 F. Supp. 1106, 1109 (D. Conn. 1986).

Yates argued to the Supreme Court that the Pierce County Prosecutor's Office should be equitably estopped from pursuing the death penalty because of his reliance on a global plea deal in Spokane County. *Yates*, 161 Wn.2d at 734-35. The Supreme Court rejected *Yates*' argument, stating, "[w]e hold that a criminal defendant may not rely on equitable estoppel to challenge a plea agreement." *Id.* at 738.

The case cited to by Christensen in support of the application of equitable estoppel does not state that equitable estoppel can be applied against the State in a criminal case. *See In*

re Peterson, 99 Wn. App. 673, 680-81, 995 P.2d 83 (2000); Brief of Appellant 4. The Court of Appeals in *Peterson* made no such broad holding. *Peterson*, 99 Wn. App. at 680-81. *Peterson* was a personal restraint petition which is a civil action. *In re Bailey*, 162 Wn. App. 215, 217, 252 P.3d 924 (2011); *Peterson*, 99 Wn. App. 673. Any application of equitable estoppel the Court of Appeals may have considered in *Peterson* would not be applicable to a criminal matter on direct appeal. This Court should not apply the doctrine of equitable estoppel in Christensen's case.

The State relies on its opening brief for the remainder of its argument regarding the trial court's error in finding the Unlawful Possession of a Firearm conviction washed-out.

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II. CONCLUSION

Equitable estoppel does not apply to criminal cases and this Court should remand Christensen's case for resentencing because the Unlawful Possession of a Firearm conviction does not wash-out.

RESPECTFULLY submitted this 10th day of July, 2013.

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Transmittal Letter

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