

WASHINGTON SUPREME COURT

State v. Dennis

421 P.3d 944 (Wash. 2018) · Decided July 26, 2018

SUMMARY

The Washington Supreme Court interpreted RCW 9.41.040(4), which governs restoration of firearm rights after a felony conviction. The opinion addressed whether a later misdemeanor conviction restarts the required five-year crime-free period. The dissent argues that the statute requires the petitioner to have remained crime-free for at least five consecutive years immediately before petitioning and that Dennis’s 2014 conviction restarted the waiting period.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Madsen, J.; Owens, J.; Stephens, J.; Wiggins, J.; Gordon McCloud, J.; González, J.; Fairhurst, C.J.; Yu, J.
JURISDICTION	Washington
DECIDED	July 26, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Dennis petitioned for restoration of his firearm rights under RCW 9.41.040(4)(a)(ii)(A). The superior court denied the petition, and the Washington Court of Appeals, Division One, affirmed. The Washington Supreme Court granted review to resolve a conflict between appellate divisions concerning whether the required five-year conviction-free period must immediately precede the petition.
STANDARD OF REVIEW	De novo review of statutory interpretation.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Edgar Dennis III v. State of Washington

TOPICS

- statutory interpretation
- legislative intent
- criminal procedure
- post-conviction relief
- sentencing

PRACTICE AREAS

- firearms law
- criminal law
- statutory interpretation
- post-conviction relief

QUESTIONS PRESENTED

1. Whether RCW 9.41.040(4)(a)(ii)(A) requires a petitioner to have been conviction-free for five consecutive years immediately preceding the filing of a petition for restoration of firearm rights, or whether any prior five-year conviction-free period satisfies the statutory eligibility requirement.

HOLDINGS

1. For a petitioner with a qualifying prior class C felony conviction, any period of five or more consecutive years in the community without a conviction satisfies the statute; the five-year period need not immediately precede the petition.

KEY QUOTATIONS

“We reverse the Court of Appeals and hold that any five-year conviction-free period satisfies this requirement for eligibility to petition for restoration of firearm rights.” (at 946)

“The language of the restoration provision is clear: an offender having previously been convicted of a class C felony needs a period of five years without any convictions before he or she can petition for restoration of rights; this five-year period need not immediately precede the petition.” (at 949)

“The only discretion the restoration provision contemplates is the petitioner’s discretion to decide when to petition.” (at 949)

FACTUAL BACKGROUND

Edgar Dennis III was convicted in 1991 of second degree robbery, third degree assault, and two felony violations of the Uniform Controlled Substances Act, and he was convicted of third degree assault in 1998. After living in the community for more than 15 years without a conviction, he was convicted of first degree negligent driving, a misdemeanor, in 2014. He petitioned for restoration of his firearm rights in April 2016, after having previously completed a conviction-free period of more than five consecutive years.

PROCEDURAL HISTORY

Dennis was convicted of several felonies in 1991 and a misdemeanor in 1998, losing his right to possess firearms. After more than 15 years in the community without a conviction, he was convicted of first degree negligent driving in 2014 and petitioned for restoration in April 2016. The superior court denied the petition, and Division One affirmed on the ground that the five-year period had to immediately precede the petition. The Supreme Court reversed and remanded with instructions to grant the petition.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court with instructions to grant Dennis's petition for restoration of his firearm rights.

CASES CITED

- State v. Swanson, 116 Wash. App. 67, 78, 65 P.3d 343 (2003)
- Payseno v. Kitsap County, 186 Wash. App. 465, 473, 346 P.3d 784 (2015)
- State v. Dennis, 200 Wash. App. 654, 666, 402 P.3d 943 (2017)
- State v. Moses, 145 Wash. 2d 370, 374, 37 P.3d 1216 (2002)
- Jenkins v. Bellingham Municipal Court, 95 Wash. 2d 574, 579, 627 P.2d 1316 (1981)
- Rivard, 168 Wash. 2d at 784, 231 P.3d 186
- In re Marriage of Schneider, 173 Wash. 2d 353, 363, 268 P.3d 215 (2011)
- State v. Vela, 100 Wash. 2d 636, 641, 673 P.2d 185 (1983)
- State v. Larson, 184 Wash. 2d 843, 851, 365 P.3d 740 (2015)
- Columbia Riverkeeper v. Port of Vancouver USA, 188 Wash. 2d 421, 440, 395 P.3d 1031 (2017)
- Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wash. 2d 1, 10-11, 43 P.3d 4 (2002)
- State v. Dennis, 189 Wash. 2d 1031, 407 P.3d 1146 (2018)

OPINION

State v. Dennis 421 P.3d 944

MADSEN, J.

Madsen, J. Owens, J. Stephens, J. Wiggins, J. Gordon McCloud, J. González, J. (dissenting) ¶ 20 RCW 9.41.040(4)(a)(ii)(A) unambiguously sets forth the prerequisites for the restoration of one's firearm rights. One of those prerequisites is that the petitioner must be crime-free for at least five years at the time of petition. The majority concludes that a person previously convicted of a felony may successfully petition for the restoration of their firearm rights, even if they have had a new conviction in the last five years, so long as they were crime-free for five years at some point in the past. This reading of the statute is not what the people intended in 1995 proposing, or the legislature intended in passing, the Hard Time for Armed Crime Act, LAWS OF 1995, ch. 129. Therefore, I respectfully dissent. ¶ 21 In Washington, a person convicted of a felony loses the right to possess firearms. RCW 9.41.040. However, with some exceptions, the right can be restored. RCW 9.41.040(4). In relevant part, the statute sets forth the criteria as follows: 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. RCW 9.41.040(4)(b), (4)(a)(ii)(A) (emphasis added). Once the person satisfies the statutory criteria, the trial court acts in a ministerial capacity and without discretion in approving the petition. State v. Swanson, 116 Wash. App. 67, 78, 65 P.3d 343 (2003). ¶ 22 I agree with the majority that this statute is unambiguous. But I disagree with the interpretation the majority derives from this unambiguous statute. When construing an

unambiguous statute, "we will give effect to the plain meaning of the statutory language." In *re Marriage of Schneider*, 173 Wash.2d 353, 363, 268 P.3d 215 (2011) ; see also *State v. Vela*, 100 Wash.2d 636, 641, 673 P.2d 185 (1983) ; *State v. Larson*, 184 Wash.2d 843, 851, 365 P.3d 740 (2015). ¶ 23 Here, Dennis was convicted of assault in the third degree, robbery in the second degree, and two violations of the Uniform Controlled Substances Act, ch. 69.50 RCW (none of which permanently disqualify him). Because of these convictions, Dennis lost his right to possess firearms. He had the opportunity to restore that right. Dennis remained crime-free for 16 years following his last conviction in 1998, but, in 2014, two years before petitioning for the restoration of his firearm rights, Dennis was convicted of first degree negligent driving-a misdemeanor. ¶ 24 Under the majority's interpretation, Dennis would be prohibited from petitioning to restore his firearm rights while charged, but not after conviction because first degree negligent driving is a misdemeanor. Majority at 948 ("[T]he provision's plain language states that an offender may not petition while a charge is pending, nothing more."); *id.* at 949 ("[A] simple misdemeanor conviction does not prevent restoration of firearm rights."). Yet, the statute clearly dictates that a person may petition after five or more consecutive years in the community without [(1)] being convicted [,] or [(2)] found not guilty by reason of insanity [,] or [(3)] currently charged with any felony, gross misdemeanor, or misdemeanor crimes. RCW 9.41.040(4)(ii)(A) (emphasis added). A person whose firearm rights have been lost because of a felony conviction and who is later convicted for a crime that itself typically does not result in the loss of firearm rights (for example, misdemeanor negligent driving) remains barred from restoring their right to possess a firearm. The new conviction restarts the clock. ¶ 25 This was clearly intended, considering the provision's context. *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wash.2d 421, 440, 395 P.3d 1031 (2017) ("Plain language analysis also looks to amendments to the statute's language over time." (citing *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 10-11, 43 P.3d 4 (2002))). The restoration provision at issue was included in the Hard Time for Armed Crime Act, which enhanced sentencing to "sufficiently stigmatize the carrying and use of deadly weapons by criminals." LAWS OF 1995, ch. 129, § 1(c). Before 1995, the only people eligible for restoration were those who lost their rights to possess firearms because they were convicted of three or more DWIs (driving while intoxicated) in five years, and those who had been involuntarily committed. LAWS OF 1994, 1st Spec. Sess., ch. 7, § 404(2), (3), (4)(a)(i). In addition, before 1995, the law did "not provide similar procedures for the other *951classes of people who are subject to unlawful possession of a firearm." H.B. REP. ON INITIATIVE 159, at 2, 54th Leg., Reg. Sess. (Wash. 1995). Thus, it is highly unlikely, given this history, that the people intended to prevent someone from possessing a firearm while a misdemeanor charge was pending, but then allow that the same person to obtain a firearm following a conviction. ¶ 26 The majority spends a considerable amount of time parsing out the statutory meaning of "or more." The phrase "or more" simply denotes that an offender must be crime-free for a minimum of five years in order to petition for restoration. RCW 9.41.040(4) requires no involvement in criminal activity at for

least five years, while recognizing the petitioner may have more than five crime-free years at the time of petition. Dennis remained crime-free for at least five years before being convicted again in 2014. Once Dennis was charged and convicted, the clock restarted. Dennis is eligible to petition for the restoration of his firearm rights five years after his 2014 conviction, which, if he remains crime-free, is next year. RCW 9.41.040(4) places the responsibility on the defendant to petition for the restoration of their firearm rights. Here, Dennis' opportunity to restore his right lapsed because of his own criminal behavior. ¶ 27 Because the majority would restore Dennis' firearm rights sooner than the people intended, I respectfully dissent. Fairhurst, C.J. Yu, J.