

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 29511-7-III

Respondent,

)

)

) **Division Three**

v.

)

)

DAVID KAY DABOLL,

) **UNPUBLISHED OPINION**

)

Appellant.

)

)

Kulik, C.J. — David Kay Daboll challenges the trial court’s denial of his petition to restore firearm rights. Under former RCW 9.41.040(4) (2009), the trial court has no discretion to restore firearm rights to a person convicted of a felony sex offense. We affirm the trial court because Mr. Daboll was convicted of a felony sex offense. Thus, the petition to restore firearm rights was properly denied.

FACTS

In 1987, David Kay Daboll was convicted of dealing in depictions of minors engaged in sexually explicit conduct, RCW 9.68A.050(1). In 1990, Mr. Daboll was convicted of communication with a minor for immoral purposes, RCW 9.68A.090.

Communication with a minor is elevated to a felony if the offender has a prior sexual offense. RCW 9.68A.090. The Benton County Prosecutor's Office told Mr. Daboll that his 1987 conviction was a sex offense. The 1990 conviction was elevated to a felony. Mr. Daboll had doubts about the felony classification, but he did not appeal the conviction.

In 2010, Mr. Daboll petitioned the court to restore his firearm rights. However, the unlawful possession of firearm statute prohibits restoration of firearms to a person convicted of a felony sex offense. Former RCW 9.41.040(4). Consequently, Mr. Daboll asked the court to conclude his 1987 conviction was not a sex offense, thereby reclassifying his 1990 conviction as a misdemeanor.

The trial court granted the petition to reclassify the 1987 conviction, ruling it was not a sex offense as defined by RCW 9.94A.030. However, the court denied the petition to reclassify the 1990 conviction as a misdemeanor. The court ruled the 1987 conviction was still a felony sexual offense for purposes of elevating the 1990 conviction to a felony under RCW 9.68A.090(2) of the communication with a minor statute. The court also reasoned that the 1990 conviction would remain a felony sexual offense because the judgment and sentence had not been appealed. Mr. Daboll's petition to restore his firearm rights was denied.

ANALYSIS

The trial court analyzed whether Mr. Daboll's 1990 conviction was a felony sex offense prohibiting restoration. Under former RCW 9.41.040(4),¹ unlawful possession of firearms, restoration of Mr. Daboll's firearm rights is prohibited because he was convicted of a felony sex offense.

A court does not have the discretion to deny or grant a petition for restoration under former RCW 9.41.040(4) absent compliance with the enumerated, threshold requirements. *State v. Swanson*, 116 Wn. App. 67, 75, 65 P.3d 343 (2003). The court's

¹ Former RCW 9.41.040(4) states, in pertinent part:
. . . Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

. . . .
(b)(i) If 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.

role is limited to “ensuring that the petitioner has satisfied certain prerequisites.” *Id.* There is no legislative provision for investigation or other process for determining restoration. *Id.* at 78. “Without a legislative declaration that this is the intended result, [the court] cannot sanction such an unfettered grant of authority.” *Id.*

In *Swanson*, the trial court improperly denied Mr. Swanson’s petition to restore firearms even though Mr. Swanson had completed all the enumerated requirements under former RCW 9.41.040(4). *Swanson*, 116 Wn. App. at 78. The Court of Appeals concluded that the trial court performs only a ministerial duty when deciding to restore firearm rights. *Id.* The appellate court explained that the legislature could have given express discretion to the deciding court if it wanted the court to have a greater role in the process. *Id.*

In *State v. Hunter*, the trial court incorrectly believed that it had the discretion to restore firearm rights to a felony sex offender. *State v. Hunter*, 147 Wn. App. 177, 188, 195 P.3d 556 (2008), *review granted*, 169 Wn.2d 1005 (2010). The appellate court concluded that the trial court did not need to determine whether Mr. Hunter had been rehabilitated under former RCW 9.41.040(4) because, under this statute, a convicted felony sex offender “is forever precluded from having his firearm rights restored.” *Hunter*, 147 Wn. App. at 182.

As in *Swanson* and *Hunter*, this court is required to look only at former RCW 9.41.040(4) when reviewing an appeal denying restoration. This court does not have any further obligation or discretion to review Mr. Daboll's offenses to determine if the underlying conviction is correct. Here, Mr. Daboll has a conviction for a felony sex offense which precludes restoration under former RCW 9.41.040(4). Therefore, the trial court correctly denied Mr. Daboll's petition to restore his firearm rights. The trial court did not need to perform any other analysis.

Because this issue is dispositive, we need not address the other arguments raised by Mr. Daboll. We affirm the denial of the petition.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, C.J.

WE CONCUR:

Sweeney, J.

Korsmo, J.