

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 82557-2
Respondent,)	
)	
v.)	En Banc
)	
R.P.H.,)	
)	
Petitioner.)	
)	Filed December 1, 2011

ALEXANDER, J.—We granted R.P.H.’s petition to review a decision of the Court of Appeals in which that court affirmed the King County Superior Court’s denial of R.P.H.’s petition for restoration of his right to possess firearms. We reverse the Court of Appeals, concluding that R.P.H.’s conviction was the subject of a procedure equivalent to a certificate of rehabilitation.

I

In 2000, 13-year-old R.P.H. pleaded guilty to one count of first degree child rape for sexually assaulting his 11- and 6-year-old sisters. At sentencing, the King County Juvenile Court accepted the State’s recommendation to impose a special sexual offender disposition alternative that included a suspended term of commitment, 12 months of community supervision, sexual deviancy counseling, and various other

conditions, including a requirement that R.P.H. “[n]ot possess or use a weapon of any kind.” Clerk’s Papers at 14. R.P.H. was advised that, as a consequence of pleading guilty to a felony sex offense, he could no longer possess a firearm and would be required to register as a sex offender. R.P.H. was also notified orally and in writing about the prohibition regarding possession of a firearm pursuant to RCW 9.41.040 and RCW 9.41.047. At the disposition hearing, the juvenile court suggested that R.P.H.’s right to possess a firearm could be restored if he successfully completed treatment. Thereafter, R.P.H. successfully completed treatment and fulfilled the other conditions of his alternative disposition.

In 2007, R.P.H. petitioned the King County Superior Court to relieve him of the obligation to register as a sex offender and to reinstate his right to possess firearms.¹ In support of his petition for relief from the registration requirement, R.P.H. submitted a three-page letter from his deviancy counselor, Timothy Kahn. Kahn wrote that R.P.H. had successfully completed treatment in 2002, had graduated from high school in 2005, and was attending community college. Kahn stated, additionally, that he had met with R.P.H. and R.P.H.’s fiancée in order to review R.P.H.’s behavior, relationships, and lifestyle following his completion of his treatment. Kahn observed that R.P.H. had maintained a healthy, age-appropriate relationship for two years and had disclosed his sex offense history to his fiancée early in their relationship. Kahn supported R.P.H.’s request to terminate his registration requirement, opining that R.P.H. presented a low

¹The record shows that R.P.H.’s family had a long tradition of hunting, this fact being made known to the juvenile court by R.P.H.’s father.

risk of reoffense.

The State opposed termination of the registration requirement as well as the restoration of R.P.H.'s right to possess a firearm. In support of its position, the State cited the nature of the offense and the fact that R.P.H. had received five traffic infractions since obtaining his driver's license. The State conceded, however, that R.P.H. had satisfied the requirements of former RCW 9A.41.040(4) (2005) governing the restoration of firearm rights.

The superior court, relying on the provisions of former RCW 9A.44.140 (2002), granted R.P.H.'s request to terminate the registration requirement. It, however, denied his motion to restore his right to possess firearms, noting a concern over R.P.H.'s traffic infractions. The court told R.P.H., however, that he could try again in one year. When R.P.H. argued, based on *State v. Swanson*, 116 Wn. App. 67, 65 P.3d 343 (2003), that the court was required to reinstate his firearm rights if he satisfied the statutory requirements, the court invited him to file a motion for reconsideration.

R.P.H. duly moved for reconsideration. In its response to that motion, the State indicated that its earlier concession that R.P.H. had satisfied the statutory requirements for reinstating his right to possess firearms was erroneous. Relying on *Graham v. State*, 116 Wn. App. 185, 64 P.3d 684 (2003), the State asserted that R.P.H.'s juvenile adjudication of a class A felony sex offense prohibited him from ever having his firearm rights restored. The court denied R.P.H.'s motion for reconsideration without comment.

R.P.H. appealed the superior court's decision to the Court of Appeals, which

affirmed. He then sought discretionary review in this court, raising statutory and constitutional issues. We deferred consideration of R.P.H.'s petition pending our decision in *State v. Sieyes*, 168 Wn.2d 276, 225 P.3d 995 (2010). After *Sieyes* became final, we granted R.P.H.'s petition.²

II

Issues of statutory construction and constitutionality are questions of law subject to de novo review. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010); *State v. Chavez*, 163 Wn.2d 262, 267, 180 P.3d 1250 (2008).

III

R.P.H. presents a number of arguments in support of his position that his right to possess firearms should be restored. We find it unnecessary to address his constitutional argument and address only his assertion that because the requirement he register as a sex offender was terminated by the superior court, his right to possess firearms should be restored. In support of that argument, he relies on the provisions of RCW 9A.41.040(3), which provide that “[a] person shall not be precluded from possession of a firearm if the conviction has been the subject of a . . . certificate of rehabilitation, or *other equivalent procedure* based on a finding of the rehabilitation of the person convicted.” (Emphasis added.)

R.P.H. argues that the superior court, acting pursuant to former RCW 9A.44.140,

²In *Sieyes*, we concluded that the Second Amendment to the United States Constitution applies to the states through the due process clause of the Fourteenth Amendment.

made a finding equivalent to a certificate of rehabilitation when it terminated the requirement that he register as a sex offender. The State, citing *State v. Masangkay*, 121 Wn. App. 904, 91 P.3d 140 (2004), responds that there is no certificate of rehabilitation in Washington, saying that “[i]f the Legislature had wanted courts to treat certain Washington convictions as non-convictions under RCW 9A.44.040(3), it would have identified the ‘equivalent procedures’ existing in Washington under which courts could do so.” Suppl. Br. of Resp’t at 15-16.³

Former RCW 9A.44.140(4)(b)(ii) (2000) provided that a court may relieve a person of the duty to register for a sex offense committed when the person was under the age of 15 if the person has not been adjudicated of any additional sex offenses or kidnapping offenses during the 24 months following the adjudication and “proves by a preponderance of the evidence that future registration . . . will not serve the purposes of RCW 9A.44.130, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330.” It is our view that the order of the superior court terminating R.P.H.’s registration requirement, which was based in part on a submission from his treatment provider, is tantamount to a determination that R.P.H. is rehabilitated.⁴ It is, in sum, equivalent to a

³In *Masangkay*, the 14-year-old defendant pleaded guilty to second degree robbery. When the defendant, Masangkay, turned 18 he petitioned the superior court for a certificate of rehabilitation so that he could join the United States Marine Corps. The superior court’s order stating that the defendant was rehabilitated was reversed by the Court of Appeals on the basis that the superior court had no authority to issue a certificate of rehabilitation. We granted review of that decision but later dismissed review on the basis the case was moot.

⁴Notably, RCW 9A.44.143(3)(c) now provides that a court may relieve an offender of the duty to register if the petitioner “shows by a preponderance of the

certificate of rehabilitation based on a finding of rehabilitation.

Our holding is entirely consistent with a prior decision of this court, *State v. Radan*, 143 Wn.2d 323, 21 P.3d 255 (2001). There we concluded that an early discharge from supervision by Montana authorities of a person who had been convicted in that state of first degree theft, combined with a letter from that state's department of corrections recommending discharge, was a procedure equivalent to a certificate of rehabilitation based on a "finding of the rehabilitation" under RCW 9.41.040(3). *Id.* at 336. In reaching this decision, our court did not rely on the fact that Montana's early discharge of the defendant, Richard Radan, automatically restored all of his civil rights, including the right to bear arms. Rather, we looked to what the discharge procedure in Montana was based on in reaching our conclusion that it was equivalent to a certificate of rehabilitation pursuant to RCW 9.41.040(3).

Here we have a situation very similar to that in *Radan*, albeit with a superior court judge of this state discharging R.P.H. The fact that the discharge was ordered by a court, rather than a department of corrections of another state, does not render the discharge any less equivalent to a certificate of rehabilitation. Indeed, in our view, it carries more force. In sum, we consider the superior court's order discharging R.P.H. from the necessity of registering as a sex offender to be equivalent to a certificate of rehabilitation under RCW 9.41.040(3). R.P.H. should, therefore, not be barred from exercising the right to possess firearms.

evidence that the petitioner is sufficiently *rehabilitated* to warrant removal from the central registry of sex offenders." (Emphasis added.)

IV

In light of our determination that R.P.H.'s conviction was the subject of a procedure equivalent to a certificate of rehabilitation, we do not address R.P.H.'s other arguments.⁵ We reverse the Court of Appeals' decision affirming the superior court's order denying R.P.H.'s petition to have his right to possess firearms restored.

⁵R.P.H. claims that a lifetime ban on firearm possession for an adult who was convicted of a juvenile offense violates the Second Amendment to the United States Constitution. He also asserts that the juvenile court judge's statement to R.P.H. that his right to possess firearms could be restored in the future was binding on the superior court.

No. 82557-2

AUTHOR:

Justice Gerry L. Alexander

WE CONCUR:

Justice Mary E. Fairhurst

Justice Charles W. Johnson

Justice James M. Johnson

Justice Debra L. Stephens

Justice Tom Chambers

Justice Susan Owens
