

_____ COURT OF
WASHINGTON
FOR _____

_____ Plaintiff
vs.
_____ Defendant.

No. _____

**Order on Motion Re: Vacating
Misdemeanor Conviction**

Granted (ORVCJG)

Denied (ORVCJD)

Clerk's Action Required

I. BASIS

This matter comes before the court on defendant's motion for order vacating misdemeanor or gross misdemeanor conviction pursuant to RCW 9.96.060. The court having heard argument of the parties and considered the case records and files, and the pleadings submitted on the matter, orders as follows:

II. FINDINGS

- 2.1 Adequate notice was was not given to the appropriate parties and agencies.
- 2.2 Defendant satisfied the following requirements of RCW 9.96.060:
- There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal or tribal court (RCW 9.96.060(2)(a));
- 2.3 **Excluded Offenses:** The offense for which the defendant was convicted is a misdemeanor offense and **not** one of the following offenses (RCW 9.96.060(2)(b)-(d)):
- A violation of chapter 9A.44 RCW (sex offenses) other than a conviction for failing to register under RCW 9A.44.132
 - A violation of chapter 9.68 RCW (obscenity and pornography)
 - A violation of chapter 9.68A RCW (sexual exploitation of children)
 - A violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense
 - Driving while under the influence (DUI) RCW 46.61.502
 - Actual physical control while under the influence, RCW 46.61.504
 - Operating a railroad, etc. while intoxicated, RCW 9.91.020

- 2.4 **Prior Offense:** The offense for which the defendant was convicted is considered a “prior offense” under RCW 46.61.5055 (see below), and
- the prior offense is not otherwise excluded from being vacated (see excluded offenses above); and
 - the defendant has not been convicted of any new crimes in this state, another state, or federal or tribal court in the last three years. RCW 9.96.060(2)(g); and
 - at least three years have passed since the defendant completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(f); and
 - the Defendant has not had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense; and
 - more than ten years has elapsed since the date of the arrest for the prior offense.

A “prior offense” means (RCW 46.61.5055(14)):

- **Original Convictions for the following** (including equivalent local ordinances):
 - Driving Under the Influence (DUI) RCW 46.61.502
 - Actual physical control while under the influence (Physical Control) RCW 46.61.504
 - Commercial Vehicle DUI/Physical Control, RCW 46.25.110
 - Watercraft DUI, RCW 79A.60.040(2)
 - Aircraft DUI, RCW 47.68.220, committed under the influence of intoxicating liquor or any drug;
 - Nonhighway vehicle DUI, RCW 46.09.470(2);
 - Snowmobile DUI, RCW 46.10.490(2);
 - Equivalent out-of-state statute for any of the above offenses.
- **Amended Convictions for the following:** *If originally charged with (i) DUI or Physical Control or an equivalent local ordinance;(ii) Vehicular Homicide, RCW 46.61.520; or (iii) Vehicular Assault, RCW 46.61.522; but convicted of:*
 - Negligent Driving 1st RCW 46.61.5249
 - Reckless Driving RCW 46.61.500
 - Reckless Endangerment RCW 9A.36.050,
 - Equivalent out-of-state or local ordinance for the above offenses.*If originally charged with Watercraft DUI RCW 79A.60.040(2); but convicted of*
 - Operating a Watercraft in a reckless manner, RCW 79A.60.040(1), or
 - Equivalent local ordinance.*If originally charged with Aircraft DUI RCW 47.68.220; but convicted of*
 - Operating an Aircraft in a careless or reckless manner, RCW 47.68.220, or
 - Equivalent local ordinance.
- **Deferred Sentences for the following:** *If originally charged with DUI or Physical Control or an equivalent local ordinance, or Vehicular Homicide, RCW 46.61.520, or Vehicular Assault, RCW 46.61.522; but deferred sentence was imposed for:*
 - Negligent Driving 1st RCW 46.61.5249
 - Reckless Driving RCW 46.61.500
 - Reckless Endangerment RCW 9A.36.050
 - Equivalent out-of-state or local ordinance for the above offenses.

- 2.5 **Domestic Violence:** The offense for which the defendant was convicted **does** involve domestic violence and the defendant complied with the following conditions (RCW 9.96.060(2)(e)):
- The defendant provided the prosecuting attorney's office that prosecuted the offense with written notice of this petition. RCW 9.96.060(2)(e)(i).

- The defendant filed the original notice with this court. RCW 9.96.060(2)(e)(i).
- The defendant does not have two or more domestic violence convictions stemming from different incidents. RCW 9.96.060(2)(e)(ii).
- It has been at least five years since the defendant completed the terms and conditions of the sentence, including restitution/legal financial obligations and successful completion of any treatment ordered. RCW 9.96.060(2)(e)(iv).
- The defendant has has not been convicted of any other domestic violence offense arising out of any other incident and has has not been convicted of any new crime in this state, another state, or tribal federal court in the last three years based upon the criminal history check of the following records:
 - Washington State Crime Information Center (WASIC), RCW 43.43.500 et seq;
 - National Crime Information Center (NCIC), including the Interstate Identification Index (Triple I), 28 USC § 534;
 - Judicial Information System (JIS), including Defendant Case History (DCH) from the District and Municipal Court Information System (DISCIS), RCW 2.68 et seq. and JISCR.

2.6 **Prostitution Conviction as a Victim.** The conviction was for prostitution, under RCW 9A.88.030, and:

- The defendant meets the requirements of RCW 9.96.060(2).

Or

- The defendant's prostitution conviction is the result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. § 7101 et seq.
 - There are no criminal charges pending against the defendant for any crime other than prostitution in any court of this state, or another state, or in any federal court.
 - The defendant has not been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction, but this limitation does not apply to convictions where the defendant committed the crime as a result of being a victim of trafficking (RCW 9A.40.100) promoting prostitution in the first degree (RCW 9A.88.070), promoting commercial sexual abuse of a minor (RCW 9.68A.101) or trafficking in persons under the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq., according to the requirements provided in RCW 9.96.070 for each respective conviction.

The defendant has has not proved by a preponderance of the evidence the elements required under Laws of 2014, Ch. 109, §2.

2.7. **Misdemeanor Marijuana Offenses.** Every person convicted of a misdemeanor marijuana offense, who was twenty-one years of age or older at the time of the offense, may apply to the sentencing court to vacate the applicant's record of conviction for the offense. A misdemeanor marijuana offense includes, but is not limited to: Any offense under RCW 69.50.4014, from July 1, 2004, onward, and its predecessor statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense under an equivalent municipal ordinance. See RCW 9.96.060.

2.8 **Offenses not otherwise specified above:**

- The offense for which the defendant was convicted is not an Excluded Offense, a Prior Offense, a Conviction for Prostitution as a Victim of Trafficking, a Misdemeanor Marijuana Offense, and did not involve Domestic Violence.
- At least three years have passed since the defendant completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(f).
- The defendant has not been convicted of any new crime in this state, another state, or federal or tribal court in the last three years. RCW 9.96.060(2)(g).

2.8 The defendant is not currently restrained by a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. RCW 9.96.060(2)(h).

2.9 In the last five years, the defendant has not been found to have committed one or more violations of a domestic violence protection order, a no-contact order, an anti-harassment protection order, or a civil restraining order which restrains one party from contacting the other party. RCW 9.96.060(2)(h).

III. ORDER

Based on the above findings, it is hereby ordered:

3.1 The motion for order vacating conviction records of the following offense(s) is denied.

Cause No: _____ Count No: ____ Offense:

Cause No: _____ Count No: ____ Offense:

Cause No: _____ Count No: ____ Offense:

3.2 The motion for order vacating conviction records of the following offense(s) is granted.

Cause No: _____ Count No: ____ Offense:

Cause No: _____ Count No: ____ Offense:

Cause No: _____ Count No: ____ Offense:

IT IS FURTHER ORDERED that:

3.3 The defendant's guilty plea for the offense listed in paragraph 3.2 is withdrawn and a not guilty plea is entered.

The guilty verdict for the offense listed in paragraph 3.2 is set aside.

3.4 The charging document is dismissed and the judgment and sentence is vacated for the offense listed in paragraph 3.2.

- 3.5 The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.2. For all purposes, including responding to questions on employment or housing applications, the defendant may state that he or she has never been convicted of that offense.
- 3.6 The fact that the defendant has been convicted of the offense shall not be included in defendant's criminal history for purposes of determining a sentence in any subsequent conviction. Although a vacated conviction will not be used for subsequent sentences purposes, it may be used for other purposes in a later criminal prosecution with the following exception: when a court vacates a record of domestic violence as defined in RCW 10.99.020, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or (ii) stalking.

A vacated conviction for domestic violence is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11, regarding reinstatement of firearms or explosives rights.

- 3.8 The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to _____ (local law enforcement agency) which agencies shall immediately update their records to reflect the vacation of the conviction of the offense listed in paragraph 3.2. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation. The Washington State Patrol or local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.96.060 to any person, except to other criminal justice enforcement agencies. RCW 9.96.060(6).

Dated: _____

JUDGE/COMMISSIONER

Submitted by:

Approved:

Defendant/Attorney for Defendant/WSBA #

Deputy Prosecuting Attorney/WSBA #

Print Name

Print Name