No. ______

In The

Supreme Court of the United States

CAI HUNTER MCINTOSH,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of the
State of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In all fifty States, a person loses the constitutional right to possess firearms after being convicted of a crime punishable by more than one year in prison, even if the person committed the crime as a juvenile. If, however, a court sets aside the conviction or restores the individual's civil rights, the conviction disappears for purposes of federal law, and the person regains the constitutional right to keep and bear arms. In this case, the Washington Supreme Court refused to consider the petition of a young man who lost his firearm rights even though his state juvenile convictions were sealed and therefore "shall be treated as if they never occurred" under Washington law. Furthermore, Washington had already restored his civil rights to vote, to serve on a jury, and to hold public office.

The question presented is:

Should a sealed juvenile conviction that has essentially disappeared and for which a person's civil rights have been restored prevent someone from owning a firearm under federal law?

LIST OF PARTIES

The Petitioner is Cai McIntosh. The Respondent is the State of Washington.

RELATED PROCEEDINGS

McIntosh v. State of Washington, No. 22-2-01804-06, Clark County Superior Court.

McIntosh v. State of Washington, No. 57583-3-II, Washington State Court of Appeals

McIntosh v. State of Washington, No. 102394-9, Supreme Court of Washington

TABLE OF CONTENTS

Page(s)

QUESTION PRESENTED....................................i

LIST OF PARTIES..ii

RELATED PROCEEDINGS................................iii

TABLE OF CONTENTS.......................................iv

TABLE OF AUTHORITIES..................................vi

OPINIONS BELOW...1

JURISDICTIONAL STATEMENT.........................1

STATUTORY PROVISIONS INVOLVED...............1

STATEMENT OF THE CASE...............................2

A. Factual Background..............................2

B. Proceedings Below.................................3

REASONS FOR GRANTING THE WRIT................5

A. The Washington Supreme Court's Decision Affirming The Denial of Cai McIntosh's Firearm Rights Conflicts With The Ninth Circuit Court of Appeals And This Court's Own Precedent.....................................6

B. The Decision Below Raises An Important and Recurring Issue....8

C. This Case Provides A Good Vehicle To Consider The Important Question That It Presents....9

CONCLUSION....11

TABLE OF AUTHORITIES

Cases

Barr v. Snohomish County Sheriff
440 P.3d 131 (2019)…………………………..……..3, 4

Beecham v. United States
511 U.S. 368 (1994)…………………………..………6

Logan v. United States
552 U.S. 23 (2007)……………………………………7, 8

McIntosh v. State
544 P.3d 559 (Wash. Ct. App. 2024)…….................1

Roper v. Simmons
543 U.S. 551 (2005)……………………………………..9

United States v. Bean
537 U.S. 71 (2002)……….……………………………10

United States v. Gillaum
372 F.3d 848 (7th Cir. 2004)……………………………8

United States v. Laskie
258 F.3d 1047 (9th Cir. 2001)...……......................6, 7

Statutes and Rules

18 U.S.C § 921………...………………………………1, 4-7

18 U.S.C § 922……………………………………………2

18 U.S.C § 925……………………………………………10

26 CFR 0.130………………………………………………10

28 U.S.C § 1257……………………………………………1

Wash. Rev. Code § 9.94A.640…………………………..7

Wash. Rev. Code § 13.50.260……………………...3, 4, 7

Wash. Rev. Code § 29.08.520………………………..2, 8

Wash. Rev. Code § 42.04.020………………………..2, 8

Other Authorities

Black's Law Dictionary 1376 (7th ed. 1999)………6, 7

Riya Saha Shah and Lauren A. Fine,
Failed Policies, Forfeited Futures, Juvenile Law
Center, 2014, available at
https://juvenilerecords.jlc.org/juvenilerecords/docume
nts/publications/scorecard.pdf………………………...8, 9

OPINIONS BELOW

The Washington Supreme Court's order denying review is reproduced at Pet. App. 22a. The opinion of the Washington Court of Appeals, *State v. McIntosh*, 544 P.3d 559 (2024) is reproduced at Pet. App. 1a.

JURISDICTIONAL STATEMENT

The Washington Supreme Court entered an order denying McIntosh's petition for review on July 10, 2024. McIntosh invokes this Court's jurisdiction under 28 U.S.C § 1257(a). The Washington Supreme Court's order qualifies as a "[f]inal judgment or decree" within the meaning of this statute. *Id.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed."

18 U.S.C. § 921(a)(20) provides in relevant part:

> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which

> the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter….

18 U.S.C. § 922(g) provides in relevant part: "It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year … to possess … any firearm or ammunition…."

STATEMENT OF THE CASE

A. Factual Background

In 2014, when he was a juvenile, Cai McIntosh was convicted of two class A felonies in Washington state court. Pet. App. 37a. As a result, McIntosh lost his right to possess firearms under state and federal law. 18 U.S.C § 922(g)(1); Former Wash. Rev. Code § 9.41.040.

McIntosh successfully completed his sentence and remained crime-free as an adult. Pet. App. 22a. Washington restored his civil rights that he had previously lost, including the right to vote, to serve on a jury, and to hold state office. Wash. Rev. Code § 29.08.520 (right to vote and serve on jury); Wash. Rev. Code § 42.04.020 (right to hold public office). In 2019, he obtained a Washington state court order

sealing his prior felonies. Pet. App. 17a. Under state law, sealed convictions are "treated as if they never occurred," and a person may answer accordingly "to any inquiry about the events, records of which are sealed." Wash. Rev. Code § 13.50.260.

B. Proceedings Below

In July 2022, McIntosh petitioned a Washington state court to restore his firearm rights. Pet. App. 24a-27a. The superior court denied his motion, ruling that anyone with a class A felony conviction cannot restore firearm rights in Washington. Pet. App. 14a-16a. Citing the Washington Supreme Court's decision in *State v. Barr*, 440 P.3d 131 (2019), the superior court held that sealed convictions remain active convictions under state law. Pet. App. 15a.

On appeal, the Washington Court of Appeals affirmed in a published opinion. Pet. App. 1a-13a. Like the superior court, the Court of Appeals relied almost exclusively on the Washington Supreme Court's opinion in *Barr*. The court ruled that McIntosh's juvenile felony convictions "remained disqualifying convictions" under Washington law, regardless of the sealing order. Pet. App. 11a. Because his criminal records were not destroyed or deleted, McIntosh's convictions still exist despite the fact that these convictions are "shielded from public view." Pet. App. 13a. "[S]ealed juvenile proceedings," the Court of Appeals wrote, "continue to have an effect contingent on future events without requiring any affirmative action to bring the juvenile adjudications back into existence." Pet. App. 12a. For example,

under Washington law, if McIntosh were to be charged as an adult with felony, this charge "has the effect of nullifying the sealing order." Pet. App. 13a. For these reasons, the superior court properly denied McIntosh's petition to restore his firearm rights. Pet. App. 13a.

McIntosh then petitioned for review in the Washington Supreme Court. Pet. App. 42a-52a. In his petition, McIntosh urged the state's high court to focus on the "clear and unequivocal" meaning of RCW 13.50.260, the state's sealing statute, which treats conviction "as if they never occurred." Pet. App. 50a. Therefore, "this Court should presume," McIntosh wrote, "that het legislature meant exactly what it said when writing it." Pet. App. 50a.

The Washington Supreme Court denied review, in effect endorsing its previous ruling in *Barr*. Pet. App. 22a-23a.

In *State v. Barr*, the Washington Supreme Court held that a county sheriff is not required to issue a concealed pistol license (CPL) to an individual who has sealed class A juvenile felonies because such a person cannot legally possess firearms under federal law. 440 P.3d 132. In reaching this result, the court engaged in what it considered a "straightforward" inquiry into 18 U.S.C. § 921(a)(20). *Id.* at 133.

First, the court held, "Washington State law clearly provides" that the defendant's juvenile class A felonies are convictions punishable by over one year

in prison, regardless of any sealing order. *Id.* This is because a sealing order will be "nullified" if the juvenile is later charged with a felony as adult. "If that happens," the court ruled, "the convictions do not somehow come back into existence'; they merely come back into public view." *Id.*

Turning to 18 U.S.C. §921(a)(20), the court next held that none of the subsequent events—expungement, pardon, civil rights restored, or set aside—has occurred. *Id.* (citing 18 U.S.C. § 921(a)(20) Specifically, the defendant did not argue that his felonies had been set aside or pardoned, or that he has had his civil rights restored. Furthermore, a "sealing order is not equivalent to an expungement." *Id.*

Therefore, because the defendant's sealed felonies remain felony convictions under federal law and because he received none of the relief outlined in 18 U.S.C. § 921(a)(20), he cannot possess firearms under federal law. *Id.* at 134-35.

REASONS FOR GRANTING THE WRIT

For several reasons, this Court should grant the petition for writ of certiorari to review the Washington Supreme Court's decision in this case. **First**, the Washington Supreme Court's decision conflicts prevailing federal law, including a decision from the Ninth Circuit Court of Appeals, which held that a conviction that has been set aside does not qualify as a conviction for federal purposes. **Second,** this petition raises a recurring legal issue that

implicates a compelling state concern—the long-term effects of juvenile convictions on adults. **Third**, this case provides a good vehicle for the Court to consider the important question presented.

I. The Washington Supreme Court's Decision Affirming The Denial of Cai McIntosh's Firearm Rights Conflicts With The Ninth Circuit Court of Appeals And This Court's Own Precedent

This Court should grant review because the Washington Supreme Court's prior decision conflicts with its own federal circuit court in ruling that a sealed conviction counts as a valid conviction.

Under federal law, a person convicted of a crime punishable by more than one year in prison cannot possess a firearm unless this felony conviction "has been expunged, or set aside, or for which the person has been pardoned or has had civil rights restored…." 18 U.S.C. § 921(a)(20); *Beecham v. United States*, 511 U.S. 368, 371 (1994). Any of these four forms of relief, this Court has ruled, "can cancel [the] lingering effects of a conviction." *Logan v. United States*, 552 U.S. 23, 25 (2007).

In *United States v. Laskie*, 258 F.3d 1047, 1050 (9th Cir. 2001), the Ninth Circuit Court of Appeals ruled that a conviction has been "set aside" when the person has been "released from all penalties and disabilities" associated with the crime. The Ninth Circuit interpreted the phrase "set aside" means to "annul or vacate." *Id.* (citing Black's Law Dictionary

1376 (7th ed. 1999). In this case, the defendant received an honorable discharge from the Nevada state court after serving his felony drug sentence, which read that he has been "released from all penalties and disabilities resulting from the crime of which he has been convicted." *Id.* For this reason, the Ninth Circuit concluded that his conviction had been "set aside" within the meaning of 18 U.S.C. § 921(a)(20). *Id.* at 1052-53.

In ruling that a sealing order is not tantamount to a conviction that has been "set aside," the Washington Supreme Court clearly erred. Under Washington law, a sealed conviction is equivalent to a conviction that has been "set aside." A person whose felony has been vacated "may state that the offender has never been convicted of that crime." Wash. Rev. Code § 9.94A.640(4)(a). Similarly, the proceedings in a sealed case "shall be treated as if they never occurred" and the person may respond as such to an inquiry about the event. Wash. Rev. Code § 13.50.260. In Washington, therefore, a sealed conviction is precisely equivalent to a vacated conviction, both of which have been "set aside" under federal law.

Furthermore, the Washington Supreme Court erred in rejecting McIntosh's petition for relief because it failed to recognize that his civil rights had been fully restored within the meaning of federal law. Although 18 U.S.C. § 921(a)(20) does not define the term civil rights, this Court has held that this statute means the right to vote, the right to serve on a jury, and the right to hold public office. *Logan v. United*

States, 552 U.S. 23, 28 (2007). Once a convicted felon regains these "big three" rights, the conviction "shall not be considered a conviction" for purpose of firearm prohibition. *United States v. Gillaum*, 372 F.3d 848, 859-61 (7th Cir. 2004).

In this case, Washington restored his civil rights for his sealed convictions long before he petitioned to restore his firearm rights. Under Washington law, your rights to vote and serve on a jury are automatically restored as soon as you are no longer serving a prison sentence. Wash. Rev. Code § 29.08.520. Additionally, a Washington resident is qualified to hold elective public office upon regaining voting rights. Wash. Rev. Code § 42.04.020.

In short, the Washington Supreme Court's decision conflicts with federal law and this Court's own precedents.

II. The Decision Below Raises An Important And Recurring Issue

This Court should also grant the petition for writ of certiorari because this case implicates the effects of juvenile convictions on children as they move into adulthood, a recurring issue of compelling state interest.

"Children, especially teenagers, make mistakes. They engage in reckless and unwise behavior that, as adults, they would never even consider." Riya Saha Shah and Lauren A. Fine, Failed Policies, Forfeited Futures, Juvenile Law Center, 2014, available at

https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/scorecard.pdf.

According to the Juvenile Law Center, 95 percent of youth in the juvenile justice system have committed non-violent offenses, and the "vast majority of young people naturally mature into adulthood without any additional contact with the law. However, juvenile records can have "devastating effects." *Id.* A conviction can limit a youth's ability to secure housing, get a job, join the military, pursue higher education, or receive public assistance. *Id.*

This Court has also recognized three major differences between adult and juvenile offenders. *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (citing developmental and behavioral studies). First, juveniles show a lack of maturity and underdeveloped sense of responsibility, they are more susceptible to negative influences and outside pressures, and the character is not as well formed as adults. *Id.*

In sum, this Court should grant the petition because all states have a compelling interest in the workings and impact of the juvenile justice system, regardless of how it rules.

III. This Case Provides A Good Vehicle To Consider The Important Question That It Presents

Finally, this Court should grant the petition for writ of certiorari because the case provides a good vehicle to consider this question presented. In theory, convicted felons can petition to restore their right to

restore in firearms in federal court, but in practice, this is an empty right.

Under federal law, a person may apply to the Attorney General for relief from firearm disabilities, who then determines whether the individual "will not be likely to act in a manner dangerous to public safety." 18 U.S.C. § 925(c). The Attorney General has delegated this authority to grant relief to the Bureau of Alcohol Tobacco & Firearms (ATF). 26 CFR 0.130(a). An individual who is denied may then seek further relief in the federal district court. 18 U.S.C. § 925(c).

But since 1992, Congress has prohibited the ATF from spending money to investigate or act upon applications for relief from federal disabilities under 18 U.S.C. § 925(c). *United States v. Bean*, 537 U.S. 71, 74-75 (2002). In effect, this means ATF cannot and will not investigate or take any action on request to restore federal gun rights unless Congress steps in.

In *United States v. Bean*, this Court concluded that ATF's failure to act for lack of funding does not qualify as an "actual denial" for purposes of a 925(c) application. *Id.* at 75. Rather, an "actual adverse action on the application by ATF is a prerequisite for judicial review." *Id.* at 76.

In effect, no one across the United States can petition a federal court to restore the right to possess firearms under either state or federal law. Instead, a convicted felon must seek relief in state court. Thus, the only way this Court can decide this important

question presented is through a direct appeal from the state courts.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully Submitted

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APPENDIX TABLE OF CONTENTS

Appendix A: Court of Appeals of the State of Washington, Division II, Opinion, March 5, 2024 . . . . . 1a

Appendix B: Superior Court of the State of Washington, County of Clark, Findings of Fact, Conclusions of Law and Order of Court, October 4, 2022 . . . . . 14a

Appendix C: Superior Court of the State of Washington, County of Clark, Juvenile Court, Order Re: Sealing Records of Juvenile Offender, November 5, 2019 . . . . . 17a

Appendix D: Supreme Court of Washington, Order, July 10, 2024 . . . . . 22a

Appendix E: Superior Court of the State of Washington, County of Clark, Petition for Restoration of Firearm Rights, July 12, 2022 . . . . . 24a

Appendix F: Superior Court of the State of Washington, County of Clark, Response to RCW 9.41.040 Petition for Restoration of Firearm Rights, August 29, 2022 . . . . . 27a

Appendix G: Superior Court of the State of Washington, County of Clark, Petitioner's Reply in Support of Motion to Restore Firearm Rights, November 8, 2022 . . . . . 32a

Appendix H: Superior Court of the State of Washington, County of Clark, Notice of Appeal, November 8, 2022 . . . . 35a

Appendix I: Court of Appeals of the State of Washington, Division II, Petition for Review, April 4, 2024 . . . . 42a

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

[DATE STAMP]
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Division Two
March 5, 2024

CAI HUNTER MCINTOSH,
Appellant,

v. No. 57583-3-II

STATE OF WASHINGTON,
Respondent.

PUBLISHED OPINION

LEE, J. — Cai H. McIntosh appeals the superior court's order denying his petition to restore his firearm rights. McIntosh argues that the superior court erred by misapplying our Supreme Court's opinion in *Barr v. Snohomish County Sheriff* (*Barr* II)[1] and that under RCW 13.50.260, his sealed juvenile convictions must be treated as though they never occurred. We hold that

[1] 193 Wn.2d 330, 440 P.3d 131 (2019).

under our Supreme Court's decision in *Barr* II, an adjudication in a sealed juvenile proceeding in which a juvenile is convicted of an offense continues to exist as a conviction for the purposes of restoration of firearm rights. Therefore, McIntosh's juvenile adjudications resulting from his convictions for first degree rape of a child and first degree child molestation disqualify him from petitioning for restoration of firearm rights. We affirm the superior court's order denying McIntosh's petition for restoration of firearm rights.

FACTS

On July 25, 2022, McIntosh filed a petition to restore his firearm rights. In his petition, McIntosh declared that the court had previously terminated his firearm rights based on a now sealed 2014 conviction[2] and that he met the other statutory requirements for restoration of firearm rights. The State responded by arguing that McIntosh had prior class A sex offense convictions and that under our Supreme Court's opinion in *Barr* II, those convictions still made him ineligible for firearm rights restoration despite being sealed. McIntosh replied that *Barr* II did not apply to

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[2] It is undisputed that juvenile adjudications are convictions for the purposes of the firearm statutes. RCW 9.41.010(6) ("'Conviction' or 'convicted' means, whether in an adult court or adjudicated in juvenile court, that a plea of guilty has been accepted or a verdict of guilty has been filed, or a finding of guilt has been entered, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, posttrial or post-fact-finding motions, and appeals.").

a petition to restore firearm rights under state law.

Following a hearing, the superior court entered the following written findings:

1. That on or about 6/16/2014 Petitioner was convicted of Rape of a Child First degree and Child Molestation First degree pursuant to cause no: 14-8-00106-7 In Clark Co. Washington Juvenile court.

2. Rape of a Child First degree and Child Molestation First degree are Class A sex offenses pursuant to RCW 9A.44.073 and RCW 9A.44.083.

3. The convictions were sealed pursuant to RCW 13.5[0].260.

4. That based upon *Barr v. Snohomish County Sheriff*, 193 [Wn].2d 330, 440 P.3d 131 (2019), the Court finds that regardless of the sealing of the convictions for Rape of [a] Child in the first degree and Child Molestation in the first degree, they remain as convictions that still exist as a matter of State law.

Clerk's Papers at 11-12. Because a petitioner does not qualify to have their firearm rights restored if they have been convicted of a class A sex offense, the superior court denied McIntosh's petition for restoration of firearm rights.

McIntosh appeals.

ANALYSIS

McIntosh argues that the superior court erred by denying his petition to restore firearm rights because *Barr* II is inapplicable and his sealed convictions could not be considered in light of RCW 13.50.260(6)(a), which states that once sealed, "the proceedings in the case shall be treated as if they never occurred." The State argues that *Barr* II held that sealed juvenile convictions continue to exist as a matter of state law and, therefore, McIntosh's sealed juvenile convictions for class A felony sex offenses preclude McIntosh from petitioning for restoration of his firearm rights. We agree with the State.

A. LEGAL PRINCIPLES

Former RCW 9.41.040(4) (2022)[3] does not expressly grant the superior court discretion in the restoration of firearm rights. *State v. Swanson*, 116 Wn. App. 67, 75, 65 P.3d 343, *review denied*, 150 Wn.2d 1006 (2003). Instead, the superior court is required to serve a ministerial function once the petitioner has demonstrated they have satisfied all statutory requirements. *Id* at 78. Whether the superior court properly applied the facts to the requirements of the statute is a question we review de novo. *See Crossroads Management, LLC v. Ridgway*, ___ Wn.3d ___, 540 P.3d 82, 87, (2023) ("'Our review of the

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[3] In 2023, the legislature recodified the provisions for restoration of firearm rights from former RCW 9.41.040(4) to RCW 9.41.041. LAWS OF 2023, ch. 295, § 4.

application of a court rule or law to the facts is de novo.'" (quoting *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 525, 79 P.3d 1154 (2003))).

Further, this case requires an interpretation of the juvenile sealing statute, RCW 13.50.260, and we review questions of statutory interpretation de novo. *Jametsky v. Olsen*, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *Id.* at 762. To determine legislative intent, we first look to the statute's plain language. *Id.* "If the statute's meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended." *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010). Only when a statute is ambiguous do we turn to statutory construction, legislative history and relevant case law to determine legislative intent. *Jametsky*, 179 Wn.2d at 762.

Under former RCW 9.41.040(1), a person unlawfully possesses a firearm if they have previously been convicted of any serious offense. However, former RCW 9.41.040(4)(a) allows a person who is otherwise prohibited from possessing firearms under former RCW 9.41.040(1) to petition to have their right to possess firearms restored. If a person is prohibited from possessing firearms and has a conviction for a sex offense prohibiting firearm ownership or a class A felony, then that person is disqualified from petitioning for restoration of firearm rights. Former RCW 9.41.040(4)(a).

B. SEALED JUVENILE CONVICTIONS AS

DISQUALIFYING OFFENSES

McIntosh was convicted of first degree rape of a child and first degree child molestation, both serious offenses. Both first degree rape of a child and first degree child molestation are class A felonies. RCW 9A.44.073(2), .083(2). First degree rape of a child and first degree child molestation are also sex offenses that prohibit firearm ownership. Former RCW 9.41.040(1), (4); RCW 9.41.010(42), (43); RCW 9.94A.030(47). Generally, McIntosh's juvenile convictions disqualify him from petitioning for restoration of firearm rights. Former RCW 9.41.040(4)(a). However, McIntosh's juvenile convictions were sealed under RCW 13.50.260. Under RCW 13.50.260(6)(a), once sealed "the proceedings in the case shall be treated as if they never occurred."

McIntosh argues that because RCW 13.50.260(6)(a) requires that sealed proceedings be treated as though they never occurred, his juvenile convictions should be treated as though they never occurred—essentially that they no longer exist—and, therefore, his sealed juvenile convictions cannot disqualify him from having his firearm rights restored. Prior to *Barr* II, case law supported this position. *See Nelson v. State*, 120 Wn. App. 470, 85 P.3d 912 (2003).

In *Nelson*, the court addressed whether juvenile convictions that were sealed under former RCW 13.50.050 (2001), and expunged were convictions that prohibited a person from carrying a firearm. 120 Wn. App. at 475-76. Former RCW 13.50.050(14) provided that, if the court granted a motion to seal juvenile

records, “the proceedings in the case shall be treated as if they never occurred.” Based on the language of the statute, the court held,

> If the proceedings never occurred, logically the end result—a conviction— never occurred either. The plain language of the expungement statute entitles Nelson to act and be treated as if he has not previously been convicted. If he has not previously been convicted, he may legally possess firearms.
>
> The trial court did find that Nelson had previous convictions, and the State contends the finding is supported by Nelson’s acknowledgment of his prior convictions in his petition. But even if the fact of Nelson’s juvenile convictions is undisputed, legally the court could not conclude he had been “convicted” for purposes of the firearm statute because the court was obligated to treat the juvenile proceedings as if they never occurred.

Nelson, 120 Wn. App. at 479-80. The court held that following the sealing and expungement, Nelson had no convictions that make it unlawful for him to possess firearms under former RCW 9.41.040 (1997). *Id.* at 481.

Following *Nelson*, other courts determined that sealed juvenile convictions did not disqualify a person from restoration of firearm rights. The court in *Woodward v. State* relied on *Nelson* to hold that a sealed juvenile class A felony conviction did not render

an individual ineligible for restoration of firearm rights. 4 Wn. App. 2d 789, 793-95, 423 P.3d 890 (2018).

And in *Barr v. Snohomish County Sheriff* (*Barr* I), this court relied on *Nelson* to determine whether (1) sealed juvenile class A felony convictions prohibited a person from having their firearm rights restored and (2) a person with sealed juvenile class A felony convictions was entitled to have a concealed pistol license (CPL). 4 Wn. App. 2d 85, 93, 419 P.3d 867 (2018). Barr had been adjudicated of two class A felonies as a juvenile. *Id.* at 91. More than 20 years later, Barr's juvenile convictions were sealed by the juvenile court. *Id.* After Barr's juvenile records were sealed, the superior court entered an order restoring Barr's firearm rights, then Barr applied for a CPL. *Id.* at 91-92. The sheriff's office denied Barr's application for a CPL, and Barr sought a writ of mandamus directing the sheriff's office to issue him a CPL. *Id.* at 92.

This court held that *Nelson* was controlling and, therefore, the juvenile convictions were legally required to be treated as though they had never occurred. *Id.* at 98. This court stated, "[b]ecause Barr is treated as not having been previously adjudicated of the juvenile offenses, he is neither prohibited from possessing a firearm under RCW 9.41.040 nor prevented from receiving a CPL." *Id.* at 98-99. Our Supreme Court granted review of *Barr* I. *Barr v. Snohomish County Sheriff*, 191 Wn.2d 1019, 428 P.3d 1171 (2018).

On review, our Supreme Court noted that the

parties disagreed as to what happens to disqualifying juvenile adjudications after they are statutorily sealed. *Barr* II, 193 Wn.2d at 336. Barr argued that once his juvenile class A felony convictions were sealed, they no longer existed as convictions because the sealing statute dictated that "'the proceedings in the case shall be treated as if they never occurred'" and, therefore, the convictions never occurred. *Id.* at 336-37 (quoting RCW 13.50.260(6)(a)).

Our Supreme Court disagreed. Our Supreme Court determined that the relevant question was whether the sheriff properly denied Barr's CPL because a CPL could not be issued to a person who was prohibited by federal law from possessing a firearm. *Id.* at 335. Under federal law, a person is prohibited from possessing a firearm if they have a conviction for a crime punishable for a term of more than one year. *Id.* And for the purposes of the federal law, a conviction was determined by state law rather than defined by federal law. *Id.* The federal law explicitly stated that convictions that had been expunged, set side, pardoned, or had civil rights restored do not qualify as convictions. *Id.* Our Supreme Court determined its inquiry was straightforward:

> First, we ask whether Barr has been convicted of a crime punishable by over one year of imprisonment pursuant to Washington law. As detailed below, we conclude that he has. We then ask whether any of the specified subsequent events (expungement, setting aside, pardon, or restoration of civil rights) have occurred. Again as detailed below, we

> conclude they have not.

Id. at 335-36 (citations omitted). In addressing Barr's argument that because his juvenile class A felony convictions were sealed, they no longer existed as convictions pursuant the sealing statute, our Supreme Court stated:

> The problem with this argument is that it sidesteps the required federal statutory analysis. Under that analysis, the question is not how a conviction is currently treated by state law. Instead the question is whether there was a conviction and, if so, whether a subsequent event has occurred such that the conviction is no longer "considered a conviction" that prohibits firearm possession pursuant to the federal statute. 18 U.S.C. § 921(a)(20). Thus, our inquiry at the first step is limited to asking whether there was, in fact, a conviction of a crime punishable by over one year of imprisonment as a matter of state law. *Siperek v. United States*, 270 F. Supp. 3d 1242, 1248 (W.D. Wash. 2017).
>
> Washington State law clearly provides that Barr's juvenile class A felonies are convictions punishable by over one year imprisonment. While the sealing order makes those convictions invisible to most people, *they do still exist*. *Id.* at 1248- 49. This conclusion is evident from the simple fact that the sealing order will be nullified by "[a]ny charging of an adult felony subsequent to the sealing." RCW

> 13.50.260(8)(b). If that happens, the convictions do not somehow come back into existence; they merely come back into public view.

Id. at 337 (emphasis added) (alterations in original). Our Supreme Court then went on to explain that sealing juvenile records was not the equivalent of having convictions expunged, set aside, pardoned, or that his civil rights were restored. *Id.* at 338. Therefore, they remained disqualifying convictions. *Id.*

Barr relied on *Nelson*, but the court found Barr's reliance on *Nelson* to be misplaced. *Id.* at 339.

> *Nelson* explicitly states that the juvenile records at issue there were expunged, while Barr's were merely sealed. Some courts have read *Nelson* to mean that "the sealing of a juvenile case constitutes expungement of the juvenile offense," but that is not the case. . . . As detailed above, sealing merely hides a record from the view of the general public. Nelson, meanwhile, "had a full expungement, and the records have been destroyed." *Nelson*, 120Wn. App. at 474. Therefore, "there [were] no longer official records of any such [disqualifying] offense." *Id.* at 480. That is clearly not the case here, so *Nelson* does not apply.

Id. (some alterations in original). Thus, the court distinguished *Nelson* because *Nelson* explicitly stated that the juvenile convictions were expunged and the

records had been destroyed, not merely sealed. *Id*.

Here, we must determine whether to follow *Nelson* and, therefore conclude that McIntosh's juvenile convictions for class A sex offenses simply do not exist or whether *Barr* II controls and, therefore, McIntosh's convictions disqualify him from petitioning for restoration of firearm rights. We conclude that *Barr* II applies.

First, *Barr* II expressly distinguished *Nelson* because the records in *Nelson* had been expunged and destroyed. There is no evidence that the records of McIntosh's juvenile convictions have been expunged or destroyed. Therefore, *Nelson* is as inapplicable to McIntosh as it was to Barr.

Second, *Barr* II's determination is consistent with other provisions of the statute which clearly contemplate the conviction remain accessible to certain agencies. *See* RCW 13.50.260(8)(c)-(e) (requiring the administrative office of the courts to ensure prosecutors have access to information on the existence of sealed juvenile records and the Washington State Patrol ensure both state and out-of-state criminal justice agencies have access to sealed juvenile records).

Moreover, sealed juvenile proceedings continue to have an effect contingent on future events without requiring any affirmative action to bring the juvenile adjudications back into existence. For example, under RCW 9.94A.525(2)(a), "[c]lass A and sex prior felony convictions shall always be included in the offender

score." And RCW 13.50.260(8)(b) provides that "[a]ny charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order." Thus, if McIntosh reoffends and an offender score is calculated, he would necessarily have been charged with an adult felony and, therefore, the sealing order would be nullified. The fact that the sealing order can be automatically nullified further supports that McIntosh's convictions still exist but are merely shielded from public view as our Supreme Court stated in *Barr* II.

Accordingly, under *Barr* II, McIntosh's juvenile convictions for class A felony sex offenses still exist under state law and, therefore, he is disqualified from petitioning for restoration of firearm rights under former RCW 9.41.040(4)(a). The superior court properly denied McIntosh's petition for restoration of firearm rights.

We affirm the superior court's order denying McIntosh's petition for restoration of firearm rights.

/s/
Lee, J.

We concur:

/s/
Glasgow, C.J.

/s/
Price, J.

APPENDIX B

**IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

[DATE STAMP]
FILED
OCT 04 2022
Scott G. Weber, Clerk, Clark Co
3:23 PM

Cai Hunter McIntosh,
Petitioner

v.

STATE OF WASHINGTON,
Respondent,

No. 22-2-01804-06

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF COURT**

THIS MATTER having come on for hearing before the Court for an Order Restoring Right to Possess Firearms, and the Court having reviewed the petition and declaration and considered any objections herein, the Court finds:

1. That on or about 6/16/2014 Petitioner was convicted of Rape of a Child First degree and

Child Molestation First degree pursuant to cause no: 14-8-00106-7 In Clark Co. Washington Juvenile court.

2. Rape of a Child First degree and Child Molestation First degree are Class A sex offenses pursuant to RCW 9A.44.073 and RCW 9A.44.083.

3. The convictions were sealed pursuant to RCW 13.52.260.

4. That based upon *Barr v. Snohomish County Sheriff*, 193 Wash.2d 330, 440 P.3d 131 (2019), the Court finds that regardless of the sealing of the convictions for Rape of Child in the first degree and Child Molestation in the first degree, they remain as convictions that still exist as a matter of State law.

5. That pursuant to RCW 9.41.040 an individual may not have their firearm rights restored if they have been convicted of a Class A sex offense.

6. That the Petitioner does not qualify for restoration pursuant to the requirements of RCW 9.41.040(4) for restoration of his firearm rights.

Entered this 4 day of Oct, 2022

/s/
Honorable Jennifer Snider

Judge of the Superior Court

Presented by:

/s/
Jeannie Bryant SBA# 17607
Deputy Prosecuting Attorney

/s/ Brian Zuanich (agreed as to form)
Brian C. Zuanich, WSBA #43877
Attorney for Petitioner

APPENDIX C

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK
JUVENILE COURT

STATE OF WASHINGTON

v.

MCINTOSH, CAI HUNTER
Respondent.

D.O.B.: 09/07/2000

[DATE STAMP]
ORIGINAL FILED
NOV 05 2019
Scott G. Weber, Clerk, Clark Co.

JUVENILE NO: 935705
SCOMIS NO: 14-8-00106-7
REFERRAL NO: 14R006359

ORDER RE: SEALING RECORDS
OF JUVENILE OFFENDER
(ORSF, ORSFD)

I. **Basis**

1.1 THIS MATTER came on before the court on (choose one):

☒ **Motion to seal records under RCW 13.50.260:** Respondent's motion to vacate and seal records of juvenile offender pursuant to RCW Title 13.50.260.

☐ **Motion to Seal Records Under GR 15:** Respondent's motion to seal records of juvenile offender pursuant to GR 15.

1.2 The court heard the matter ☐ with ☒ without oral argument and considered ☒ the pleadings submitted on the matter ☒ and the relevant court records.

II. Findings

2.1 ☒ Motion to seal records pursuant to RCW 13.50.260:

☒ Notice of motion: Adequate notice ☒ was ☐ was not given to the appropriate parties and agencies; and,

☒ Satisfaction of motion requirements: Respondent ☒ has satisfied the requirements of RCW 13.50.260 and is entitled to have sealed the official juvenile court record, the social file, and the records of the court and of any other agency in the case ☐ has not satisfied the requirements of RCW 13.50.260 and is not entitled to have sealed the official juvenile court record, the social file, and the records of the court and of any other agency in the case.

2.2 ☐ **Motion to seal records under GR 15:**

Compelling privacy or safety concerns that outweigh the public interest in access to the court records ☐ have ☐ have not been found

III. Order

Based on the above findings, it is hereby ordered:

☐ **Sealing Denied:** The files and records in this case shall not be sealed.

☒ **Sealing Granted:** The files and records in this case shall be sealed as follows:

☒ **Pursuant to RCW 13.50.260 or RCW 13.40.127:** The court grants the motion to seal pursuant to RCW 13.50.260 or RCW 13.40.127, as applicable, including any administrative review required by statute. Pursuant to this order:

1. With the exception of identifying information specified in RCW 13.50.050(13), the official juvenile court record, the social file, and other records relating to the case as are named herein are sealed;

2. The proceedings in the case shall be treated as if they never occurred and the subject of the records may reply accordingly to any inquiry about the events, the records of which are sealed. However, county clerks may interact or correspond with the respondent, respondent's parents, and any holders of potential assets or wages of the respondent for the purposes of

collecting any outstanding legal financial obligations even after juvenile court records have been sealed.

3. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual;

4. Inspection. of the files and records included in this order may only be permitted by order of the court and upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(13);

5. Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying this order; however, the court may order this case resealed upon disposition of the subsequent matter if this case meets the sealing criteria under RCW 13.50.260 and this case has not previously been resealed;

6. Any charging of an adult felony subsequent to this order has the effect of nullifying this order.

☐ **Pursuant to GR 15:** The court grants the motion to seal pursuant to GR 15. The files and records in this case are sealed for a period not to exceed the following time period: ______ and the clerk of the court is ordered to seal the entire court file and to

secure it from public access. Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying this order.

Dated: 11/1/2019 /s/
Judge Commissioner

APPENDIX D

THE SUPREME COURT OF WASHINGTON

[DATE STAMP]
FILED
SUPREME COURT
STATE OF WASHINGTON
7/10/2024
BY ERIN L. LENNON
CLERK

CAI HUNTER MCINTOSH,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

No. 102934-9

O R D E R

Court of Appeals
No. 57583-3-II

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis (Justice Madsen sat for Justice Owens), considered at its July 9, 2024, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that

the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 10th day of July, 2024.

For the Court

/s/
Chief Justice

APPENDIX E

CLARK COUNTY SUPERIOR COURT
CLARK COUNTY, STATE OF WASHINGTON

MCINTOSH, CAI HUNTER,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

No.

PETITION FOR RESTORATION OF FIREARM RIGHTS

I. MOTION

Petitioner moves this Court to restore his right to possess firearms under RCW 9.41.040(4). This motion is based on the court file and the attached declaration.

DATED this 12th day of July 2022.

By: /s/ Brian Christopher Zuanich
Brian C. Zuanich, WSBA #43877
ZUANICH LAW PLLC
U.S. Bank Centre
1420 5th Avenue, Suite 2200
Seattle, WA 98101
Tel.: 206.829.8415

E-mail: brian@zuanichlaw.com
Attorney for Petitioner

II. DECLARATION

1. I am a resident of Clark County.

2. This court terminated my right to possess firearms as a result of a now sealed felony conviction in 2014.

3. I have not been convicted of a Class A felony or any disqualifying sex offense in Washington or any other state or federal court.

4. I am not subject to a court order prohibiting me from possessing firearms.

5. I have not been involuntarily committed for mental health treatment and I have not been found not guilty by reason of insanity in any court.

6. There are no pending criminal charges against me in any jurisdiction.

7. I have spent more than five (5) consecutive years in the community without committing any criminal offenses.

8. I do not have any disabling felony convictions that would be included in my felony offender score under RCW 9.94A.525.

I declare under penalty of perjury under the laws of

the State of Washington that 20 this declaration is true and correct.

Jul 18, 2022

DATED this ____ day of July 2022, at Vancouver, Washington.

/s/
CAI HUNTER MCINTOSH

APPENDIX F

**IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

[DATE STAMP]
E-FILED
08-29-2022, 12:40
Scott G. Weber, Clerk
Clark County

Cai Hunter McIntosh,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

No. 22-2-01804-06

RESPONSE TO RCW 9.41.040 PETITION FOR RESTORATION OF THE RIGHT TO POSSESS FIREARMS

COMES NOW the Respondent upon Petitioner's request for reinstatement of the right to possess a firearm, filed in this Court on July 25, 2022. Petitioner has not met the prerequisites of 9.41.040(4) in his petition for restoration of his right to possess firearms.

1. It appears from pleadings and papers filed

herein that Petitioner had qualifying convictions or events resulting in prohibition of firearms possession as described in Revised Code of Washington ("RCW") 9.41.040 (1) or (2). Such prior convictions included Class A felony sex offenses.

2. Since the above convictions, Petitioner has filed with the Court, and served upon Respondent a memorandum representing that he has met the statutory obligations required by RCW 9.41.040(4), and seeks restoration of his firearm rights pursuant to RCW 9.41.040(4). However, although the Petitioner claims in his declaration that he has not been convicted of a Class A felony or any disqualifying sex offense in Washington State, the statement is not correct. In a review of the Petitioner's criminal history, Respondent represents to the court that the petitioner's prior criminal history, includes convictions for Class A felony sex offenses, and therefor is not eligible to petition the court for restoration.

3. Respondent presumes that the Petitioner must believe that if his prior juvenile Class A sex offense convictions are sealed, that it cannot serve as a predicate offense. However pursuant to *Barr v. Snohomish County Sheriff*, 193 Wash.2d 330440 P3d 131 (2019), "Barr's juvenile adjudications are clearly convictions that do still exist as a matter of state law, the sealing order notwithstanding." *Barr* at 336. As a result, the Respondent represents to the court that since the petitioner's prior convictions include prior class A sex offenses, that he is not eligible for restoration.

3. RCW 9.41.040(4) gives no discretion to the restoring court once the enumerated threshold requirements are met. However, if those threshold requirements are not met, the court should deny the request for restoration. The Respondent at this time represents to the court that the Petitioner has not met the obligations under the statute for restoration as he has p1ior convictions for Class A felony sex offenses.

The Respondent asks the court to deny the motion at this time.

Dated this 28th day of August, 2022.

ANTHONY GOLIK
Prosecuting Attorney
Clark County, Washington

/s/
JULIE C. CARMENA, WSBA #25796
Deputy Prosecuting Attorney

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

CAI HUNTER MCINTOSH,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

STATE OF WASHINGTON
: ss
COUNTY OF CLARK

No. 22-2-01804-06

DECLARATION OF TRANSMISSION BY EMAIL

On August 29, 2022, I transmitted via email to the below-named individual, containing a copy of the Response to RCW 9.41.040 Petition for Restoration of the Right to Possess Firearms to which this Declaration is attached.

Brian Zuanich
brian@zuanichlaw.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

/s/

Date: August 29, 2022
Place: Vancouver, Washington

APPENDIX G

CLARK COUNTY SUPERIOR COURT
CLARK COUNTY, STATE OF WASHINGTON

MCINTOSH, CAI HUNTER,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

No. 22-2-01804-06

PETITIONER'S REPLY BRIEF IN SUPPORT OF MOTION TO RESTORE FIREARM RIGHTS

I. Argument

The State argues that this Court does not have the discretion to restore Petitioner Cai McIntosh's firearm rights under Washington law, principally relying on *Barr v. Snohomish County Sheriff,* 193 Wash.2d 330 (2019). For the reasons discussed below, however, *Barr* is not controlling.

The sole issue in *Barr* was whether a local sheriff is required to issue a concealed pistol license (CPL) to an individual whose sealed juvenile record includes Class A felony convictions. The answer is no, the Court answered, because sealed convictions are still

convictions under federal law, and the sheriff is not required to issue a CPL to someone ineligible to possess firearms under federal law. *Id.* at 340.

The Washington Supreme Court made crystal clear, however, that its analysis in Barr focused entirely on federal law. "We express no opinion," the court held. "on Barr's right to possess firearms as a matter of state law." *Id.* Whether McIntosh can possess firearms under RCW 9.41.010(4) is the only issue before this Court. Under state law, "the proceedings [in a sealed case] shall be treated as if they never occurred," regardless of whether the convictions have not been expunged or set aside or whether McIntosh has restored his civil rights for these convictions. **18 U.S.C. 921(a)(20); RCW 13.50.260(6)(a).**

McIntosh concedes that is ineligible to possess firearms under federal law. And he concedes, as he must under *Barr*, that he is ineligible to obtain a CPL. The issue in this case, however, is whether he can possess firearms under RCW 9.41.040(4)(a)— nothing more, nothing less.

II. Conclusion

For these reasons, this Court should grant McIntosh's motion to restore firearm rights under RCW 9.41.040(4).

DATED this 30th day of August 2022.

By: /s/ Brian Christopher Zuanich

Brian C. Zuanich, WSBA #43877
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U.S. Bank Centre
1420 5th Avenue, Suite 2200
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Tel.: 206.829.8415
E-mail: brian@zuanichlaw.com
Attorney for Petitioner

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on August 30, 2022, I served the attached motion on the Clark County Prosecutor's Office via email.

/s/ Brian Zuanich
Brian Zuanich
Seattle, WA

APPENDIX H

CLARK COUNTY SUPERIOR COURT
CLARK COUNTY, STATE OF WASHINGTON

CAI HUNTER MCINTOSH,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

No. 22-2-01804-06

NOTICE OF APPEAL
(COURT OF APPEALS)

Under RAP 2.2(a), Petitioner Cai McIntosh seeks review in the Court of Appeals of the following order entered in Clark County Superior Court:

1. **Findings of Fact, Conclusions of Law and Order of Court |** October 4, 2022

A copy of this Order is attached to this Notice.

DATED this 8th day of November 2022.

By: /s/ Brian Christopher Zuanich
Brian C. Zuanich, WSBA #43877
ZUANICH LAW PLLC
U.S. Bank Centre

1420 5th Avenue, Suite 2200
Seattle, WA 98101
Tel.: 206.829.8415
E-mail: brian@zuanichlaw.com
Attorney for Petitioner

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on August 30, 2022, I served the attached motion on the Clark County Prosecutor's Office via email.

/s/ Brian Zuanich
Brian Zuanich
Seattle, WA

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

[DATE STAMP]
FILED
OCT 04 2022
Scott G. Weber, Clerk, Clark Co
3:23 PM

Cai Hunter McIntosh,
Petitioner

v.

STATE OF WASHINGTON,
Respondent,

No. 22-2-01804-06

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF COURT

THIS MATTER having come on for hearing before the Court for an Order Restoring Right to Possess Firearms, and the Court having reviewed the petition and declaration and considered any objections herein, the Court finds:

1. That on or about 6/16/2014 Petitioner was convicted of Rape of a Child First degree and Child Molestation First degree pursuant to cause no: 14-8-00106-7 In Clark Co. Washington Juvenile court.

2. Rape of a Child First degree and Child Molestation First degree are Class A sex offenses pursuant to RCW 9A.44.073 and RCW 9A.44.083.

3. The convictions were sealed pursuant to RCW 13.52.260.

4. That based upon *Barr v. Snohomish County Sheriff*, 193 Wash.2d 330, 440 P.3d 131 (2019), the Court finds that regardless of the sealing of the convictions for Rape of Child in the first degree and Child Molestation in the first degree, they remain as convictions that still exist as a matter of State law.

5. That pursuant to RCW 9.41.040 an individual may not have their firearm rights restored if they have been convicted of a Class A sex offense.

6. That the Petitioner does not qualify for restoration pursuant to the requirements of RCW 9.41.040(4) for restoration of his firearm rights.

Entered this 4 day of Oct, 2022

/s/
Honorable Jennifer Snider
Judge of the Superior Court

Presented by:

/s/
Jeannie Bryant SBA# 17607
Deputy Prosecuting Attorney

/s/ Brian Zuanich (agreed as to form)
Brian C. Zuanich, WSBA #43877
Attorney for Petitioner

CLARK COUNTY SUPERIOR COURT
CLARK COUNTY, STATE OF WASHINGTON

CAI HUNTER MCINTOSH,
Appellant,

v.

STATE OF WASHINGTON,
Respondent.

No. 22-2-01804-0
(Court of Appeals No. 57583-3-II)

DESIGNATION OF CLERK'S PAPERS

Under RAP 9.6(b), Appellant Cai McIntosh requests that the Clerk's office transmits the following papers and exhibits to the Court of Appeals:

PLEADINGS

Sub No.	Date of Filing	Document of Title
2	07/25/2022	Petition for Restoration of Right to Possess Firearm
7	08/29/2022	Response – Petition for Restoration
8	08/31/2022	Reply – Petition for Restoration

11	11/09/2022	Notice of Appeal to Court of Appeals

DATED this 20th day of January 2023.

By: /s/ Brian Christopher Zuanich
Brian C. Zuanich, WSBA #43877
ZUANICH LAW PLLC
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1420 5th Avenue, Suite 2200
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Tel.: 206.829.8415
E-mail: brian@zuanichlaw.com
Attorney for Appellant

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on January 20, 2023, I served a copy of the attached document on the following parties:

1. Court of Appeals, Division Two **(via Clerk's e-filing portal)**

2. Respondent's counsel **(via Clerk's e-filing portal)**

/s/ Brian Zuanich
Brian Zuanich
Seattle, WA

APPENDIX I

No. 57583-3-II

COURT OF APPEALS, DIVISION TWO
STATE OF WASHINGTON

CAI HUNTER MCINTOSH,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

PETITION FOR REVIEW

Brian Christopher Zuanich
WSBA #43877
Attorney for Appellant
ZUANICH LAW PLLC
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TABLE OF CONTENTS

I. Introduction 1

II. Identity of Petitioner 2

III. Court of Appeals decision 2

V. Statement of the Case 3

VI. Argument 5

(1) The Court of Appeals misconstrued this Court's opinion in Barr v. Snohomish County Sheriff in concluding that McIntosh cannot restore his state firearm rights 6

(2) A sealed Class A juvenile conviction does not bar restoration of firearm rights under Washington law 10

VII. Conclusion 12

TABLE OF AUTHORITIES

State Cases

Barr v. Snohomish County Sheriff
193 Wash.2d 330, 440 P.3d 131 (2019) . . . . . . *passim*

Lake v. Woodcreek Homeowners Ass'n
169 Wash.2d 516, 243 P.3d 1283 (2010) 10

State v. Keller
143 Wash.2d 267, 19 P.3d 1030 (2010) 10

State v. Mitchell
169 Wash.2d 437, 237 P.3d 282 (2010) 10

State v. Swanson
116 Wn.App. 67, 75, 65 P.3d 343 (2003) 11

Statutes / Rules

Former RCW 9.41.040(4) . . . . *passim*

RCW 9A.20.021(1)a) 8

RCW 13.50.260(6)(a) . . . . *passim*

13 U.S.C §921(a)(20) 7-8

13 U.S.C §922)g) 7

I. Introduction

In *Barr v. Snohomish County Sheriff*, this Court concluded that a sealed juvenile Class A felony is a conviction for purposes of the federal firearm statute. "This case presents a narrow question," this Court wrote, to which we provide a narrow answer." This Court did not determine, however, whether a sealed juvenile Class A felony conviction is a conviction for purposes of our *state* firearm statute, which is the "narrow" question at issue in this appeal.

RCW 13.50.260 states explicitly that sealed proceedings "shall be treated as if they never occurred." Cai McIntosh's sealed juvenile class A sex offenses should be treated as if they never occurred, which means they should not be treated as disqualifying convictions under state law for purposes of Washington's firearms restoration statute. This Court should reverse the Court of Appeals, conclude that *Barr* does not apply in this case, and remand with an order directing the trial court to restore McIntosh's right to possess firearms under Washington law.

II. Identity of Petitioner

Petitioner Cai McIntosh seeks review of the Court of Appeals decision terminating review.

III. Court of Appeals Decision

Petitioner seeks review of the Court of Appeals' published decision in *State v. McIntosh*, No. 57583-3-II, issued on March 5, 2024, which is attached as

Appendix A.

IV. Issue Presented for Review

1. Under former RCW 9.41.040(4), the trial court must restore a petitioner's right to possess firearms under state law, regardless of whether the individual can lawfully possess firearms under federal law. In this case, the Court of Appeals relied almost exclusively on the Washington Supreme Court's opinion in *Barr v. Snohomish County Sheriff*, even though this Court in *Barr* did not decide whether state law prohibits someone with sealed class A convictions from possessing firearms under state law. Did the Court of Appeals err? court err?

V. Statement of the Case

When he was a juvenile, Cai McIntosh was convicted of rape of a child in the first degree and child molestation in the first degree, both class A sex offenses. As a result, McIntosh lost his right to possess firearms under Washington state law. But in 2019, his Clark County convictions were sealed under RCW 13.50.260.

In July 2022, McIntosh filed petitioned the trial court to restore his firearm rights under former RCW 9.41.040(4). (CP 1-2) In his petition, McIntosh declared that he satisfied all required statutory conditions, including the requirement that he had not been convicted (or found not guilty by reason of insanity) of

a class A felony or sex offense. (CP 2) The State opposed his petition (CP 3-4)

The trial court denied McIntosh's petition, ruling that his sealed convictions "remain as convictions that still exist as a matter of State law," contrary to McIntosh's declaration, relying on this Court's decision in *Barr v. Snohomish County Sheriff*, 193 Wash.2d 330, 440 P.3d 131 (2019) (CP 11-12) Therefore, McIntosh was ineligible for firearm restoration under former RCW 9.42.040(4). (CP 11-12)

On appeal, the Court of Appeals affirmed. The court held that McIntosh's juvenile convictions "remained disqualifying convictions" under Washington state law, regardless of the sealing order, citing *Barr*. (App 8) Because his records were not expunged and destroyed, McIntosh's convictions still exist, even though they are "shielded from public view." (App 9) For these reasons, the court rejected McIntosh's argument that sealed convictions should be treated as if they never occurred, referencing the specific language of RCW 13.50.260.

V. Argument

In rejecting Cai McIntosh's appeal, the Court of Appeals misconstrued this Court's opinion in *Barr v. Snohomish County Sheriff* to reach a result that *Barr* did not require or even support. In *Barr* this Court ruled that a county sheriff is not required to issue a concealed pistol license (CPL) to anyone with a sealed class A juvenile conviction, because such a person is ineligible to possess firearms under federal law.

McIntosh is not demanding a concealed pistol license. He is simply asking for the right to possess firearms under Washington state law, a question to which this Court pointedly did not address in *Barr*. For these reasons, this Court should accept review under RAP 13.4(b)(1).

1. **The Court of Appeals misconstrued this Court's opinion in Barr v. Snohomish County Sheriff in concluding that McIntosh cannot restore his Washington state firearm rights.**

In *Barr*, this Court did not decide whether sealed class A juvenile conviction forever bars restoration of state firearm rights. In concluding otherwise, the Court of Appeals erred.

In *Barr*, the court held that a county sheriff is not required to issue a concealed pistol license (CPL) to an individual who has sealed class A juvenile felonies because such a person cannot legally possess firearms under federal law. But because that case turned on federal firearms law, not state firearms law, Barr does not control this case.

Whether a criminal conviction makes someone ineligible to possess firearms under federal law, this Court held, is a two-part inquiry. *Id.* at 335-38. First, a person cannot possess a firearm if he or she has been convicted of any crime punishable by over one year in prison. 18 U.S.C. §922(g). To determine whether a crime meets this definition, a federal court determines a crime's classification under state law. *Barr*, 193

Wn.2d at 335 (quoting 18 U.S.C. §921(a)(20)). Second, a federal court must determine whether one of four specified events has occurred after the person was convicted: (1) the conviction has been expunged, (2) the conviction has been set aside, (3) the person has been pardoned, or (4) a person's civil rights have been restored. *Id.*

Applying federal law, this Court concluded that the petitioner's two sealed felony convictions were convictions for purpose of federal firearms law. In Washington, the maximum possible penalty for class A felonies is life imprisonment without the possibility of parole, so they automatically satisfy the first part of the test. RCW 9A.20.021(1)(a). Furthermore, this Court reasoned, sealing is not one of the specified events under 18 U.S.C. §921(a)(20). *Barr*, 193 Wn.2d at 337-38. Therefore, because a sheriff is not required to issue a CPL to anyone who is ineligible to possess firearms under federal law, Barr was not entitled to a writ of mandamus ordering the sheriff otherwise. *Id.* at 340.

Barr did not turn on state law, only federal law, this Court stressed. "We express no opinion on Barr's right to right to possess firearms as a matter of state law." *Id.*

In rejecting McIntosh's appeal, the Court of Appeals ruled that *Barr* applies because his convictions "still exist" under state law. (App 9) But in doing so, the trial court conflated the court's required analysis of federal law with the required analysis under state law. That a sealed class A felony

conviction is still a conviction is only the starting point in the federal analysis. What ultimately mattered in *Barr* is that the sealing is **not** one of the specified events that transforms a conviction into a non-conviction. Under state law, however, RCW 13.52.060 explicitly states that a sealed conviction is treated as if it never occurred, regardless of any further legal or political relief an individual receives.

2. A sealed Class A juvenile conviction does not bar restoration of firearm rights under Washington law.

This Court reviews de novo a question of statutory interpretation. *State v. Mitchell*, 169 Wash.2d 437, 442, 237 P.3d 282 (2010). "The court's fundamental objective in construing a statute is to ascertain and carry out the legislature's intent." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wash.2d 516, 526, 243 P.3d 1283 (2010) (internal citations omitted). In other words, this Court should assume the "legislature means exactly what it says," and plain words do not require further interpretation or construction. *State v. Keller,* 143 Wash.2d 267, 276, 19 P.3d 1030 (2010).

Under Washington law, sealed case proceedings are "treated as if they never occurred." RCW 13.50.260(6)(a). This language is clear and unequivocal, and this Court should presume that the legislature meant exactly what it said when writing it. Unlike *Barr*, RCW 13.50.260 was not dispositive because the case ultimately focused on federal law, not state law. But this statute is dispositive in McIntosh's case.

Under RCW 9.41.040(4), a person may petition a court of record to restore his or her right to possess firearms. RCW 9.41.040(b)(1). If an individual complies with the enumerated, threshold requirements, the trial court must grant the petition. *State v. Swanson,* 116 Wn.App. 67, 75, 65 P.3d 343 (2003). In other words, the trial court has no discretion to deny the petition, absent compliance with the statutory requirements. *Id.* One such requirement is that the petitioner was not previously convicted (or found not guilty by reason of insanity) of a class A felony or a sex offense. RCW 9.41.040(4)(a). Because McIntosh's sealed convictions should be treated as if they never occurred, he does not have any prohibitive convictions, and the trial court should have restored his firearm rights.

VI. Conclusion

This Court should accept review and reverse the Court of Appeals. This Court should remand and direct the trial court to enter an order restoring McIntosh's right to possess firearms under Washington state law.

I certify that this Brief contains XXX words in compliance with RAP 18.17.

DATED this 4th day of April 2024.

By: /s/ Brian Christopher Zuanich
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Attorney for Caleb McIntosh

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on April 4, 2024, I served this Petition on Respondent's counsel via the Court's e-service portal.

/s/ Brian Zuanich
Brian Zuanich
Seattle, WA