

CHELAN COUNTY DISTRICT COURT  
STATE OF WASHINGTON  
CITY OF WENATCHEE,

\_\_\_\_\_  
vs. \_\_\_\_\_ Plaintiff

\_\_\_\_\_  
Defendant.

No. \_\_\_\_\_

**Order on Motion Re: Vacating  
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.

**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 court (RCW 9.96.060(2)(a));

The offense for which the defendant was convicted is **not** one of the following offenses (RCW 9.96.060(2)(b)-(d)):

A prostitution offense that the defendant committed as a result of being a victim of trafficking under 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. If it is, skip to paragraph 2.4.

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

An offense considered a "prior offense" under RCW 46.61.5055 and the defendant has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.

A "prior offense" means:
<ul style="list-style-type: none"> <li>• Vehicular Homicide while under the influence of intoxicating liquor or any drug. (RCW 46.61.520)</li> <li>• Vehicular Assault while under the influence of intoxicating liquor or any drug. (RCW 46.61.522).</li> <li>• Vehicular Homicide or Vehicular Assault committed in a reckless manner or with disregard for the safety of others if the original charge was for Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug.</li> <li>• Negligent Driving in the 1<sup>st</sup> degree (RCW 46.61.5249), Reckless Driving (RCW 46.61.500), Reckless Endangerment (RCW 9A.36.050) or equivalent out of state or local ordinance, if the original charge was DUI, Actual physical control while under the influence, vehicular homicide, or vehicular assault.</li> <li>• Deferred prosecution for DUI/Physical control or equivalent local ordinance.</li> <li>• Deferred prosecution for Negligent Driving in the 1<sup>st</sup> degree if the original charge was DUI, Actual physical control, vehicular homicide, vehicular assault;</li> <li>• (Effective August 1, 2012) An equivalent out-of-state deferred prosecution for DUI/Physical control, including chemical dependency treatment program.</li> </ul>
A violation of chapter 9A.44 RCW (sex offenses)
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

The offense for which the defendant was convicted does **not** involve domestic violence and it has been at least three years since the defendant completed the terms and conditions of the sentence, including restitution/legal financial obligations. RCW 9.96.060(2)(f).

Or

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 has not been convicted of any other domestic violence offense arising out of any other incident. 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 not been convicted of any new crime in this state, another state, or federal court since the defendant was convicted in this matter. RCW 9.96.060(2)(g).

The defendant has never had the record of another conviction vacated. RCW 9.96.060(2)(h).

The defendant is not currently and has not been restrained within the last five years by a domestic violence protection order, a no-contact order, an antiharassment protection order, or a civil restraining order which restrains one party from contacting the other party. RCW 9.96.060(2)(i).

2.3 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 a new crime since the date of conviction in this matter 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.
- 2.4 The conviction was for a prostitution offense that was committed while the defendant was a victim of trafficking under state or federal law, of promoting prostitution in the first degree, or of promoting commercial sexual abuse of a minor:
- The defendant committed a prostitution offense 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.
  - 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.
  - The defendant  has  has not proved by a preponderance of the evidence the elements required under Laws of 2014, Ch. 109, §2.

### 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 and the conviction of that offense shall not be included in the defendant's criminal history for purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.

3.6 For all purposes, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.2.

3.7  The defendant has paid costs incurred by the court and probation services in the amount of \$\_\_\_\_\_.

The defendant is indigent and costs are waived. RCW 9.96.060(6).

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(7).

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE/COMMISSIONER

Submitted by:

Approved:

\_\_\_\_\_  
Defendant/Attorney for Defendant/WSBA #

\_\_\_\_\_  
Deputy Prosecuting Attorney/WSBA #

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name