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Cobb Judge Grants Retroactive First Offender Status Under New Law

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A court has granted retroactive first offender status under a new Georgia law allowing a second chance for those who were eligible but not offered the opportunity to earn the removal of a conviction from their record.

Cobb County Superior Court Judge Robert Leonard II granted a motion for retroactive first offender status Thursday, remarking that to his knowledge it was the first time the new law had been used.

Later that day, defense attorney Robert Hyden of the Hyden Law Firm in Marietta said he started getting calls from other lawyers who watched the proceeding in court or heard about it and wanted to ask, "How'd you do that?"

Although Thursday's hearing took about five minutes, Hyden said in an interview Friday that he has been working on the case for a year. Hyden's client, now a 40-year-old businessman, has been limited by the presence in his record of a felony drug conviction from 1994, when he was 19. He wasn't offered first offender status, even though he had no prior convictions. He pleaded guilty and served a sentence, which included jail and probation. He's had a clean record since.

Under first offender treatment, a person's record is cleared of the charge.

Hyden first took his client's case to the Georgia Board of Pardons and Paroles, which eventually granted a pardon. But the record remained, reflecting a conviction and a pardon.

Then came House Bill 310, which received attention when it passed this year as an overhaul of the state's probation system. It created greater transparency for probation companies and limited fines and fees in misdemeanor cases. Hyden heard about the bill and watched its progress, seeing that it could help his client.

On page 107 of its 119 pages, in section 5-75, the bill said those who were eligible for first offender status but were not offered it can receive it retroactively, with the approval of the prosecutor and a judge. Anyone charged with a violent crime may not receive retroactive first offender treatment.

"The ends of justice and the welfare of society are served by granting" petitions for retroactive

first offender treatment, the bill said.

Hyden's next stop was the office of Cobb County District Attorney Vic Reynolds, who was a defense attorney before being elected DA in 2012 .

The DA said in an interview that his experience defending clients made him understand immediately how important it is not to have a criminal history. Even with the pardon for Hyden's client, the conviction still showed up in the record on a background check.

"In the end, it all boiled down to fairness," Reynolds said. "He made a mistake. He accepted responsibility." Reynolds said Hyden's client "earned it."

When Hyden made his case in Thursday's hearing, Assistant District Attorney Sherwin Figueroa agreed to the motion, and Leonard granted it.

The judge said later he was "happy to do it in this case" for someone who had "done well in life and was being hampered by his old conviction for a nonviolent offense." Leonard added it was "the type of situation that the Legislature and the governor envisioned in their criminal justice reform efforts."

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