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STATE OF WASHINGTON
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SUPREME COURT NO. 90058-2
COURT OF APPEALS NO. 43444-0-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

MICHAEL DAVID COLLINS, II,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAMANIA COUNTY

The Honorable Brian Altman, Judge

RESPONDENT'S REPLY TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

Michael David Collins II, Respondent, asks this court to deny review of the Court of Appeals's unpublished opinion.

B. COURT OF APPEALS DECISION

The Court of Appeals, in an unpublished opinion, reversed Mr. Collins conviction for failure to register as sex offender with instruction to the trial court to dismiss the conviction with prejudice.

C. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals' unpublished opinion conflict with this Court's opinion in *State v. Peterson* when it adheres to, rather than conflicts with, Peterson? RAP 13.4(b)(1).

2. The Skamania County prosecutor did not charge Mr. Collins with failure to register as a sex offender two years and not until after the Court of Appeals reversed Mr. Collins's attempted first degree murder conviction. As the prosecutor chose not to file the charge against Mr. Collins for two years is the issue now before this court of substantial public interest? RAP 13.4(b)(4).

D. RESPONDENT'S STATEMENT OF THE CASE

Michael Collins pleaded guilty in Clark County to failure to register as a sex offender. Opinion at 1. He had reported a fixed Clark County address to the sheriff's office after being released from prison, but

later moved from that address without notifying any sheriff's office of his changed status. Opinion at 1-2. Although the failure to register occurred between January 1 and March 4, 2009, the State amended the charge to specify it having occurred in 2006. Opinion at 1. The 2006 occurrence dates were a legal fiction that allowed Mr. Collins to take advantage of a reduced sentencing range. Opinion at 1.

Prior to his guilty plea in Clark County, Mr. Collins had been convicted of attempted murder in the first degree and robbery in first degree in Skamania County jury. CP 22-35. The attempted murder was reversed on appeal. *State v. Collins (unpublished opinion)*, 162 Wn.2d 1051, ___ P.3d ___, WL 2848819 (2011). It was only after remand from appeal and the dismissal of the attempted murder charge that the Skamania County prosecutor filed the current failure to register as a sex offender charge against Mr. Collins. CP 4.

Specifically, Skamania County charged Mr. Collins with having failed to register in Skamania County between February 4 and February 9, 2009. Opinion at 1. On February 3 or 4, 2009, friends dropped Mr. Collins and his son at a Skamania County campground. RP 2B at 317-18. The two stayed at the campground for several days and were last seen there on February 9, 2009. RP 2B at 282-83, 319, 321; RP 2B at 361. During his stay at the campground, Mr. Collins never went to the

Skamania County Sheriff's Office to report his presence at the campground. RP2B at 397-98; Opinion at 1-2.

A Skamania County jury found Mr. Collins guilty of failure to register. Opinion at 1. Pre-trial and post-trial, Mr. Collins moved unsuccessfully to have the charge dismissed as it violated double jeopardy. CP 1-36; RP at 1-33.

The trial court acknowledged that the 2006 Clark County dates were legal fiction and that the Clark County failure to register actually occurred between January 1 and March 4, 2009. RP1 at 19. Nevertheless, the trial court held Skamania County had an independent right to prosecute Mr. Collins for failure to register even though Mr. Collins had already been convicted in Clark County for the same offense occurring during the same window of time. RP 20-22; Exhibits 4 and 5 filed December 15, 2011; Exhibits 1, 2, and 3 filed January 5, 2012.

On appeal, the Court of Appeals, in the attached unpublished unanimous opinion, reversed Mr. Collins's Skamania County failure to register because it violated double jeopardy. Opinion at 5. The court relied on this court's precedent in *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010). *Peterson* established that failure to register is a alternative means crime. It was a violation of double jeopardy to twice-

convict Mr. Collins for one event: failing to notify any sheriff's office of his current address. Opinion at 5.

E. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

1. Contrary to the State's assertion, the Court of Appeals's unpublished opinion does not conflict with this court's opinion in *State v. Peterson*.¹

In *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010), this court held that failure to register as a sex offender is not an alternate means crime. *Id.* at 771. Rather “the failure to register statute contemplates a single act that amounts to failure to register: the offender moves without alerting the appropriate authority.”

The Court of Appeals opinion in Mr. Collins's case does not conflict with that holding.

Mr. Collins pleaded guilty in Clark County to failing to register by specifically failing to notify any county sheriff's office of his change of address between January 1, 2009 to March 4, 2009. Between February 4 and 9, 2009, Mr. Collins did the same thing: he did not notify any sheriff's office of his change of address.

The issue in Mr. Collins's case is whether his Skamania County conviction for failure to register as a sex offender violated double jeopardy

¹ *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010)

when Mr. Collins's was also convicted of failing to register in Clark County over the same time period. Opinion at 1.

In keeping with the *Peterson* opinion, the Court of Appeals held the failure to register statute does not allow for a defendant to be found guilty in two different counties for the same conduct in the same time period. Opinion at 3. To decide otherwise would be to reject the holding in *Peterson*. Opinion at 4.

Thus, Mr. Collins's opinion does not conflict with *State v. Peterson*. The State's Petition for Review should be denied.

2. The petition does not involve an issue of substantial public policy that should be decided by this court.

The State's own actions demonstrate there is not a substantial public policy at issue in the Court of Appeals's opinion or this Petition for Review.

When Mr. Collins was prosecuted in Skamania County in 2009 for attempted first degree murder and first degree robbery, the State was undoubtedly aware that Mr. Collins was a sex offender who had a duty to register. After all, at sentencing, the State argued that had Mr. Collins registered in Skamania County, it is likely the attempted murder and robbery would not have occurred.

[A]lthough this was a crime separate and apart from the assault and robbery of Mr. Tracey, nevertheless it takes on enhanced

seriousness because of the crime, in the sense that if he [i.e., the appellant] had lived up to the obligation to register as a sex offender...this crime [i.e. the robbery and near murder of Mr. Tracey] likely would never have occurred.

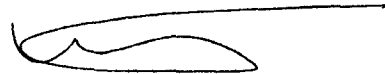
State's Petition for Review at 14-15,

Yet, the State waited for two years, and until Mr. Collins's attempted murder conviction was reversed and dismissed on appeal, to pursue a failure to register charge in Skamania County. When a prosecutor does not assert his or her "right" to pursue charges for a known criminal act for over two years, the claim that the county is now aggrieved is hardly "substantial."

F. CONCLUSION

The State's Petition for Review should be denied.

Respectfully submitted this 21st day of May 2014.



LISA E. TABBUT/WSBA #21344
Attorney for Michael David Collins, II

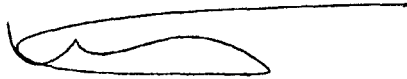
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled Appellant's Brief to: (1) Yarden Weidenfeld, Skamania County Prosecutor's Office, at weidenfeld@co.skamania.wa.us; (2) the Washington State Supreme Court, and (3) I mailed it to Michael David, II, DOC#805173, Washington State Penitentiary, 1313 N. 13th Ave., Walla Walla, WA 99362

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed May 21, 2014, in Mazama, Washington.



Lisa E. Tabbut, WSBA No. 21344
Attorney for Michael David Collins, II

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, May 22, 2014 8:02 AM
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From: Lisa Tabbut [mailto:lisa.tabbut@comcast.net]
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