

NO. 44674-0-II

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

STATE OF WASHINGTON,
Respondent,

v.

JAMES BERNARDE,
Defendant,

FILED
COURT OF APPEALS
DIVISION II
2014 FEB 24 PM 2:15
STATE OF WASHINGTON
BY _____
DEPUTY

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
PIERCE COUNTY

STATEMENT OF ADDITIONAL GROUNDS
FOR REVIEW

PRESENTED BY:
SIR REGINALD BELL, SR.,
INMATE LEGAL ADVISOR
COYOTE RIDGE CORRECTION CENTER
POST OFFICE BOX 769
CONNELL WA. 99326

Additional Ground 1

THE COURT ABUSED ITS DISCRETION IN
TERMINATING THE SSOSA

Mr. Bernarde contends that this Court should find that the trial court also abused its discretion in revoking the suspended sentence based on the court's finding Bernade violated the conditions of the suspended sentence. Former RCW 9.94A.670(1) not only authorizes the trial court to revoke a SOSSA provided the offender fails to make significant progress in treatment, it also authorizes the court to revoke a SOSSA if an offender violates conditions of the suspended sentence. State v. Pannell, 267 P.3d 349.

In the order revoking Bernarde's suspended sentence the trial court found three violations based on Bernarde's stipulation. (1) failure to report a change of address to DOC within 24 hours of his move on January 31, 2013; (2) failing to obey all laws by contacting his wife on February 3, 2012; and (3) that he had been terminated from court ordered sex offender treatment on February 17, 2013. The court also found, based on testimony, Bernarde had failed

to obey all laws by assaulting his wife on January 30, 2013, had failed to report to DOC within 24 hours after his release from custody on January 31, 2013, and had unreported and unauthorized contact with minors between March 1 and 15, 2013. [CP342-44]

To demonstrate that the trial court abused its discretion when it revoked Bernarde's suspended sentence he relies on State v. Miller, 159 Wash.App 911, 247 P.3d 457. In this case shortly after his release from custody and after beginning his sexual deviancy treatment, Miller violated the conditions of his suspended by moving into a friends home in which a minor child lived. Miller received a 45 day sanction for this violation. The trial court than modified Miller's sentence to include a provision stating he shall not have contact with minor children no exceptions.

In June 2003, three years after being sentenced to SOSSA, Miller completed his court ordered treatment. Six years later in June 2009 Miller polygraph exam revealed he had answered deceptively to the question of whether he had stayed the night anywhere other than at his two authorized locations.

Eventually, Miller admitted he was in a relationship with a women who had a 8 year old son. Miller denied having contact with the child but admitted that he had gave the boy high five's, had exchanged words with him, and allowed him to look at tattoos. Miller also admitted that he had been around the child unaccompanied.

The department filed a notice of violation and recommending revocation of Millers SOSSA due to long term serious nature of the violations and the current staus of Mr. Miller in the childs family.

The trial court vacated Miller's SOSSA and revoked the order suspending the execution of his sentence because it found several compelling reason. (1) Millers current violations involved a very vulnerable minor child who was of age similar to that of the child against whom he had previously offended. (2) Miller started a relationship with a women that had a child similar to the age of the child he offended against, and (3) the violations committed by Miller and the circumstances under which the violations were discovered are extremely serious. Miller, 159 Wn.App at 199.

"I'M JUST REALLY STRESSING IN TRYING TO FIGURE OUT WHY THE COURT SHOULD ESSENTIALLY SHOW MR. MILLER AN INCREDIBLE AMOUNT OF LIENENCY BECAUSE HE PRETTY FLAGRANLY DISREGARDED SOME OF THE MOST SERIOUS CONDITIONS OTHER THAN COMMITTING A NEW OFFENSE, WHICH OBVIOUSLY I DONT THINK ANYBODY HERE WOULD DISPUTE THAT HE WOULD BE REVOKED HAD HE DONE THAT. BUT SHORT OF DOING THAT THIS IS THE MOST SERIOUS KIND OF VIOLATION THAT HE COULD COMMIT, BEING ALONE WITH A CHILD, NOT COMPLETELY DISCLOSING HIS OFFENSE BEHAVIOR, AND THEN LYING ABOUT IT TO A NUMBER OF PEOPLE"

Miller, 159 Wn.App 920, 247 P.3d 461;

Moreover, Miller engaged in a series of what can only be termed as deceptive acts where he lied to his former treatment provider, lied to his CCO, where he was caught with the polygraph. The trial judge had also presided over Miller's violation proceedings in 2001 and she specifically recalled that Miller was in danger of being revoked even then.

"I RECALL TALKING TO MR. MILLER AND TELLING HIM IN NO UNCERTAIN TERMS THAT HE WAS IN GRAVE DANGER OF BEING REVOKED"

nMiller, 159 Wn.App 922;

Here, Bernarde did not engage any deceptive acts where he lied to his treatment provider or lied to his CCO where he was caught by polygraph. Judge Arend, nor any other judge, had presided over any violation proceedings regarding Bernarde.

In fact, from 2003 through 2012, 9 years in the SOSSA program the Court did not entertain an alleged violation relating to precursor behaviors or otherwise until Bernarde was given a new CCO whom immediately made unreasonable demands upon him and wanted to change everything that had been acceptable for the past 9 years by his previous CCO. [CP195-204] And in turn began to seek the revocation of Bernarde's suspended sentence.³

The Court's found violations are not of a serious nature which involve his offense behavior. The contact with the minor on the porch was incidental because there was no stopping, pursuing, delivery, communication of any sort therefore as a matter of law he did not have to report that which the state and the trial judge was fully aware of. [20VRP105-06] [3/25/2013VRP174-75,76]

³: CP195-204; [out of county travel for work] CP213-14; [driving without a license] CP 209-12; [church incident based on incidental contact] CP221-37; [same church incident based on incidental contact] CP 224; [same driving while license suspended incident] CP 244 [same church incident incidental contact incident] RCW 9.94A.670(10)(a) authorizes the department to refer the violation to the court and recommend revocation of the suspended sentence if there is a second violation of the conditions, other than those related to precursor behavior. Bernarde's CCO, although the violations alleged did not refer to precursor behaviors, referred the very first violation alleged to the court for revocation of the suspended sentence. [CP195-204]

The State also told the judge that it did not believe Bernarde intentionally tried to have contact with the minor in the lobby or intentionally engage or groom the children on the porch of his prospective job. [20VRP64-65] but still wanted to punish him by asking the court to revoke his suspended sentence for not doing something he was not required to do.

To compound the trial court errors it found that Bernarde assaulted his wife when Ms. Bernarde said he did not and the Municipal Court agreed with her by dismissing the charges with prejudice against Bernarde. [20VRP7-8] [3/25/2013VRP182] This incident and the violating of the no contact order when the court knew that Bernarde did not seek out his wife but rather she appeared unannounced and was dropped off at Bernarde's motel room further demonstrates the trial judge decision is manifestly unreasonable and she has acted on untenable grounds or for untenable reasons by further finding Bernarde was terminated from sex offense treatment February 17, 2013 when the court had already found that he had completed his sex offender treatment in 2009. [9VRP; CP80; CP171-74] [9VRP 3-8]

It is Bernarde's position that the court's revocation should not have been based on a failure to report incidental contact with minors when, in fact, as a matter of law he ^{was not} ~~was not~~ required to report it.

It is Bernarde position that the court's revocation should not have been based on his failure to obey all laws by assaulting his wife and violating no-contact order when the municipal court dismissed the charge against him and he had not initiated the contact with his wife and nor was the violation a part of his precursor behavior.

It is also Bernarde's position that the court's revocation should not have been based on a failure to report a change of address to DOC within 24 hours and a failure to to report to DOC within 24 hours after his release because Bernarde did report to the Sheriff office and the violation is not referred to precursor behavior. This court should so hold and should reverse and remand for the trial court to reconsider its decision to revoke.

DATED this 18 day of February, 2014.



JAMES BERNARDE/APPELLANT

CERTIFICATE OF SERVICE

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Statement of Additional Grounds to opposing counsel and my appellant counsel by depositing the same in the United States Mail as follows.

DATED this 13 day of February 2014.


JAMES BERNARDE

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

STATE OF WASHINGTON,)
)
 Appelle,)
)
 vs.) NO. 44674-0-11
)
) MOTION FOR ACCELERATED
) REVIEW OF SENTENCING
)
)
 JAMES BERNARDE,)
)
)
 Appellant,)
)
 _____)

A. IDENTITY OF MOVING PARTY

Petitioner James Bernard ask for relief
designated in Part B.

B. RELIEF REQUESTED

Accelerate the decisions of the trial court to
revoke Bernard's SOSSA sentence.

C. GROUND AND ARGUMENT

RAP 18.15(f) authorizes the appellate court to
accelerate the decisions of issues other than those
relating to the sentence pursuant to RAP 18.8 and 18.12.

Pursuant to this rule Bernarde's motion should be granted because his wife's health is in serious condition and his suspended SOSSA sentence was vacated erroneously. Accelerated review of this issue will serve the ends of justice.

Dated this 19th day of February 2014.

James L Bernarde
JAMES BERNARDE

CERTIFICATE SERVICE:

THE UNDERSIGNED CERTIFIES THAT ON THE DATE BELOW I CAUSED TO BE MAILED TO THE RESPONDENT'S ATTORNEY OF RECORD A TRUE AND CORRECT COPY OF THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED

2-18-14
DATE

James L Bernarde
SIGNATURE

BY _____
DEPUTY

STATE OF WASHINGTON

2014 FEB 24 PM 2:15

FILED
COURT OF APPEALS
DIVISION II