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Court of Appeals
Division III
State of Washington

NO. 32086-3-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

FILED
FEB 13 2015
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRF

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JESSE LEE CASTILLO,

Defendant/Appellant.

PETITION FOR DISCRETIONARY REVIEW

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1. IDENTITY OF PETITIONER

JESSE LEE CASTILLO requests the relief designated in Part 2 of this Petition.

2. STATEMENT OF RELIEF SOUGHT

Mr. Castillo seeks review of Commissioner Joyce McCown's ruling of October 1, 2014 granting the State's Motion on the Merits. (Appendix "A" 1-2), and the Order Denying Motion to Modify Commissioner's Ruling entered on January 16, 2015. (Appendix "B")

3. ISSUE PRESENTED FOR REVIEW

What is the correct interpretation of the statutory language contained in LAWS OF 2010, ch. 274, Sec. 101?

4. STATEMENT OF THE CASE

An Information was filed on September 24, 2013 charging Jesse Lee Castillo with violation of a no-contact order. A domestic violence tag was appended to the charge. (CP 4)

Mr. Castillo pled guilty as charged. An agreed mitigated sentence was imposed. Mr. Castillo reserved the right to challenge the domestic violence tag and did so. (CP 8; RP 2, ll. 12-16; RP 9, l. 24 to RP 10, l. 20)

The trial court determined that the State pled and proved domestic violence under paragraph 2.2 of the Judgment and Sentence.

Mr. Castillo filed his Notice of Appeal on November 22, 2013. (CP 25)

On October 1, 2014 Commissioner McCown of Division III of the Court of Appeals granted the State's Motion on the Merits.

Mr. Castillo filed a Motion to Modify the Commissioner's Ruling. The motion was denied by Order entered on January 16, 2015.

5. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

State v. McDonald, 183 Wn. App. 272 (2014) and *State v. Kozey*, 183 Wn. App. 692 (2014) have each interpreted the statutory language and determined that the word "and" means "or".

The Supreme Court recently denied review of the *Kozey* case. (February 3, 2015).

Mr. Castillo urges the Court to reconsider its denial of *Kozey* in his case. Guidance is needed for the courts to correctly apply the statutory language of this particular enactment.

The legislative statement of intent set forth in LAWS OF 2010, ch. 274, Sec. 101 makes the DV tag applicable to domestic violence offenses which are also violent offenses.

"... [A]n enacted statement of legislative purpose is included in a plain reading of a statute." *G-P Gypsum Corp. v. Department of Revenue*, 169 Wn.2d 304, 30, 237 P.3d 256 (2010).

Kozey and *McDonald* undermine that statement of intent. They replace the word "and" with the word "or" based upon the Attorney General's initial proposal to the Legislature. The Legislature obviously was aware of what it was doing when it made the change from "or" to "and."

The Legislature is presumed to know the statutory scheme. *Bishop v. City of Spokane*, 142 Wn. App. 165, 171, 173 P.3d 218 (2007). Because courts should assume the legislature “means what it says” ... *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) (quoting *Davis v. Dept. of Licensing*, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)) ... [w]here the legislature omits language from a statute, intentionally or inadvertently, **this court will not read into the statute the language that it believes was omitted.**” *State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002). ...

State v. Slattum, 173 Wn. App. 640, 655, 295 P.3d 788 (2013). (Emphasis supplied.)

The courts in *McDonald* and *Kozey* basically undermined the clear legislative intent when they ruled that “and” means “or.”

“As a default rule, the word “or” does not mean “and” unless legislative intent clearly indicates to the contrary.” *Tesoro Refining and Marketing Co. v. Department of Revenue*, 164 Wn.2d 310, 319, 189 P.3d 28 (2008).

Legislative intent with regard to LAWS OF 2010, ch. 274, Sec. 101 was to “identify violent perpetrators of domestic violence and hold them accountable.”

No fact presented to the sentencing court indicates that Mr. Castillo was a “violent perpetrator of domestic violence.”

Chapter 9.94A RCW is the Sentencing Reform Act of 1981 (SRA). The SRA is applicable to criminal proceedings. The Legislature saw fit to

include the definition of domestic violence contained in RCW 26.50.010 in its enactment of LAWS OF 2010, ch.. 274, Sec. 101.

Reliance upon the Attorney General's 2009 proposal is misplaced. The proposal was based upon relationship issues between an alleged victim and a perpetrator as set forth in RCW 10.99.020 "or" RCW 26.50.110. It did not relate to the definition adopted by the Legislature under RCW 9.94A.030(20).

6. CONCLUSION

Since the Legislature is presumed to know what it is doing, the substitution of the word "or" for the word "and" runs contrary to legislative intent. The Legislature specifically changed the language from the Attorney General's proposal. Courts should not then revert back to unrecognized authority. This is an issue of substantial public interest which needs to be addressed. *See*: RAP 13.4 (b)(4).

DATED this 12th day of February, 2015.

Respectfully submitted,

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APPENDIX "A"

The Court of Appeals
of the
State of Washington
Division III

OCT - 1 2014

STATE OF WASHINGTON,

Respondent,

V.

JESSE LEE CASTILLO,

Appellant.

COMMISSIONER'S RULING
NO. 32086-3-III

Mr. Castillo appeals his Yakima County Superior Court conviction of felony violation of a no-contact order – domestic violence. He contends the court erred by determining that the State pled and proved that the offense was a domestic violence offense. The State of Washington's motion on the merits is granted.

Mr. Castillo was charged with one count of Felony Violation of a Protection Order – Domestic Violence. He entered a plea of guilty to the charge but reserved the right to appeal the domestic violation designation. He now appeals.

On appeal, Mr. Castillo contends the State did not plead nor prove domestic violence and that the court was required to find that the conviction met the definitions of domestic violence set forth in both RCW 10.90.020 and RCW 26.50.010. He basis his

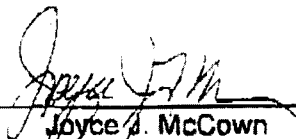
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argument on the language of RCW 9.94A.030(20) which provides: "'Domestic violence' has the same meaning as defined in RCW 10.99.020 and 26.50.010." (emphasis mine). Mr. Castillo asserts that this statute refers to two different statutory definitions and that in order to qualify as "domestic violence" the defendant's act must meet and satisfy both definitions of domestic violence.

This issue was raised in two very recent published decisions, *State v. Kozey*, ___ Wn. App. ___, ___ P.3d ___, WL 4627668 (Sept. 16, 2014) and *State v. McDonald*, ___ Wn. App., ___ P.3d ___, WL 4345448 (July 28, 2014). Both of those cases discuss statutory construction and legislative intent and then hold that a common sense reading of RCW 9.94A.030 indicates that the legislature's use of the word "and" means that in order for enhanced sentencing to be imposed, the crime must meet either the definition of domestic violence in RCW 10.99.020 or that in RCW 26.50.010. "Both definitions are independently sufficient." *Id.*

In light of the above, the State's motion on the merits is granted and the decision of the trial court is affirmed.

October 1, 2014.



Joyce P. McCown
COMMISSIONER

APPENDIX "B"

NO. 32086-3-III
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON;)	
)	YAKIMA COUNTY
Plaintiff,)	NO. 13 1 01354 7
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JESSE LEE CASTILLO,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 12th day of February, 2015, I caused a true and correct copy of the *PETITION FOR DISCRETIONARY REVIEW* to be served on:

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U.S. MAIL

E-file (per agreement)

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