NO. 71126-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

PEDRO NAVARRO,

Appellant.

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

The Honorable Theresa B. Doyle, Judge
The Honorable Julie Spector, Judge
The Honorable Ronald Kessler, Judge

REPLY BRIEF OF APPELLANT

CHRISTOPHER H. GIBSON
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

RULES, STATUTES AND AUTHORITIES

A. ARGUMENTS IN REPLY

1. THE STATE'S CONCESSIONS OF ERROR SHOULD BE ACCEPTED.

The State concedes the sexual assault protection orders (SAPOs) entered against Navarro exceed the statutorily authorized term because the expiration dates set fail to account for time Navarro served prior to his convictions. Brief of Respondent (BOR) at 1-2, 23-24. The concession is appropriate and should be accepted.

2. THE PLAIN LANGUAGE OF THE SAPO STATUTE LINKS THE TERM OF THE ORDER TO TERM OF THE SENTENCE FOR THE PREDICATE OFFENSE, AND NOT, AS THE STATE CLAIMS, TO THE LONGEST SENTENCE IMPOSED.

In its response, the State claims the plain language of the relevant statute directs that the expiration date for a SAPO issued in conjunction with a sex offense conviction should be two years after the offender has completed the sentences for all crimes of conviction resulting from the trial, rather than two years after completing the sentence for the predicate offense. BOR at 24-29. The State is wrong.

This Court reviews issues of statutory interpretation de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). Of paramount importance in such analysis is the Legislature's intent in adopting the statute.

Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 536, 199 P.3d 393 (2009).

In analyzing a statute, this Court looks first to its plain language. Armendariz, 160 Wn.2d at 110. Under the "plain meaning rule," this Court examines the language of the statute, other provisions of the same act, and related statutes. City of Seattle v. Allison, 148 Wn.2d 75, 81, 59 P.3d 85 (2002). This Court examines the statute as a whole. In re Detention of Williams, 147 Wn.2d 476, 490, 55 P.3d 597 (2002). If the plain language of the statute is unambiguous, the inquiry ends, and the statute is enforced "in accordance with its plain meaning." Armendariz, 160 Wn.2d at 110.

If after this inquiry the statute remains susceptible to more than one reasonable meaning, then the statute is ambiguous. State v. Slattum, 173 Wn. App. 640, 649, 295 P.3d 788, review denied, 178 Wn.2d 1010 (2013). In such circumstances, this Court may resort to construction aids. State ex rel. Citizens Against Tolls v. Murphy, 151 Wn.2d 226, 242-43, 88 P.3d 375 (2004). "The spirit and intent of the statute should prevail over the literal letter of the law." Morris v. Blaker, 118 Wn.2d 133, 143, 821 P.2d 482 (1992). But the rule of lenity requires that, absent clear legislative intent to the contrary, a statute must be construed in the light most favorable to an accused. Slattum, 173 Wn. App. at 657-58.

The statute at issue here is RCW 7.90.150. The first five parts of the statute mandate when a protection order is required prior to a conviction and what provisions must be contained in that order. See RCW 7.90.150(1) - (5). The last two parts designate under what authority violation of the protection order may be prosecuted and directs how the protection order should be distributed to relevant authorities and when it should be removed from law enforcement data bases. See RCW 7.90.150(7) & (8). These parts of the statute are no directly implicated by Navarro's challenge here.

Navarro's challenge instead implicates part (6), which provides:

> (a) When a defendant is found guilty of a sex offense . . ., and a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition shall be recorded as a sexual assault protection order.
>
> . . .
>
> (c) A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

RCW 7.90.150(6).

The State's interpretation focuses on the "any sentence" phrase in subsection (c). BOR at 24. The State makes the unfounded assumption that "any" refers to the *number* of sentences imposed, instead of to the *type*

of sentence imposed[1] for the predicate offense. But when considered as a whole, as it must be, it is apparent "any" refers to the sentence imposed for the predicate crime, whether it is a mitigated or aggravated exceptional sentence, a determinate or indeterminate standard range sentence, or a Sex Offender Special Sentencing Alternative (SOSSA).

This interpretation is supported over the State's because the Legislature's phrasing of subsections (a) and (c). Subsection (a) references "a sex offense", i.e., in the singular rather than the plural. Similarly, subsection (c) refers to "A final sexual assault protection order," again singular rather than plural. Notably absent from the statute is any reference to a multiple offense scenario, much less a clear directive that the post-conviction order's expiration date is dependent on factors other than the conclusion of the sentence for the predicate offense.

In light of the singular focus of the statute as a whole on the parameters of the SAPO in relation to the predicate offense, it is apparent the plain meaning of "any sentence" in subsection (6)(c) is to the *type* of sentence imposed on the predicate offense rather than on the *number* of sentences imposed against the offender.

---

[1] Several types of sentences may be imposed for sex offenses, including determinate standard range sentences, indeterminate standard range sentences, mitigate or aggravated exceptional sentences, and Sex Offender Special Sentencing Alternative (SOSSA) sentences. RCW 9.94A.505, .507, .535, .670.

In the alternative, if this Court concludes the "any sentence" phrase is ambiguous, and statutory construction fails to reveal the actual legislative intent, then under the rule of lenity, it should be interpreted in the light most favorable to Navarro. Slattum, 173 Wn. App. at 657-58. Thus, under the rule of lenity, this Court should hold that the SAPO entered in conjunction with Navarro's convictions should on remand be set to expire two years following the completion of his sentence for each specific offense.

B. CONCLUSION

For the reasons stated here and in the opening brief, this Court should reverse Navarro's conviction and remand for a new trial based on the trial court's affirmatively misinforming Navarro about the potential consequences of proceeding pro se. In the alternative, this Court should reverse and remand to the trial court all of the SAPOs entered against Navarro so that the expiration dates may be corrected.

DATED this 7th day of December 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH PLLC

CHRISTOPHER H. GIBSON
WSBA No. 25097
Office ID No. 91051

Attorneys for Appellant

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

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 71126-1-I
	)	
PEDRO NAVARRO,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 17TH DAY OF DECEMBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] PEDRO NAVARRO
DOC NO. 368301
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 17TH DAY OF DECEMBER 2014.

X Patrick Mayovsky