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No. 50108-2-II

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**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

CORY TASH,

Defendant/Appellant.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner, Cory Tash, asks this Court to accept review of the Court of Appeals decision terminating review, designated in Part II of this petition.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals Opinion filed March 27, 2018, affirming his conviction and sentence. A copy of the Court's published opinion is attached as Appendix A. This petition for review is timely.

III. ISSUES PRESENTED FOR REVIEW.

1. Does RCW 9A.44.130, as amended in 2015, require a sex or kidnapping offender to re-register with the sheriff in the county where the offender resides after being released from custody after being incarcerated for any offense or just sex offenses.

2. Where RCW 9A.44.130 is ambiguous as to whether the duty to re-register arises after release from any offense or only sex offenses - must the statute be interpreted in the defendant's favor such that the duty to re-register arises only where the defendant was in custody of a sex offense.

3. Was the notice defendant received regarding his duty to re-register after being released from custody at the Nisqually Jail adequate under RCW 9A.44.130(4)(a)(i).

IV. STATEMENT OF THE CASE

On November 3, 2003 Cory Tash was convicted of Indecent Liberties in Thurston County Superior Court. He was fifteen years old at the time of the offense. CP 51. On February 8, 2016 Mr. Tash was convicted of the crime of felony Violation of Sex Offender Registration, thus making the current failing to register charge a Class C felony. CP 59.

Mr. Tash was in custody of the Nisqually Jail for a DOC violation until his release on June 1, 2016. The parties stipulated that as of June 3, 2016, “He has not submitted a change of address to where he is now living.” And, that up to July 6, 2016 he had not checked in with the Thurston County Sheriff and that his whereabouts were unknown to that office. CP 53.

The Information in the instant case was filed on October 5, 2016. Mr. Tash was charged with Violation of Sex Offender Registration under RCW 9A.44. (1)(a) CP 5. A jury trial was ultimately set for February 14, 2017. CP 13.

Then, as the Court was preparing to call in the jury, Mr. Tash's attorney informed the Court that the case had boiled down to a single dispositive legal issue. That is, the State's position is that whenever someone is taken into custody they must re-register within three days after they are released. Mr. Tash's position was that RCW 9A.44.130 only requires re-registration if you were in custody as a result of a sex or kidnapping offense. And, there was no dispute that Mr. Tash was *not* in custody for a sex or kidnapping offense when he was released from the Nisqually Jail on June 1, 2016. RP 25-26.

The Court and counsel engaged in a colloquy - agreeing that the defense was making the equivalent of an oral *Knapstead* motion. The Court then excused the jury and recessed to enable the State and defense to research the issue and return for argument. RP 27-37.

The Court returned, also after researching the issue, and framed the issue as whether the 2015 amendment to RCW 9A.44.130, which is the statute governing the registration requirements for a person convicted of a sex offense, required re-registration any time they were released after being incarcerated, or only if they were in custody for the sex offense conviction for which they were required to register. The Court noted that the consequences of the amendment was an issue of first impression in the

appellate courts and that the published legislative history was silent as to the legislative intent behind the amendment. RP 37-39.

RCW 9A.44.130 with the 2015 amendments states in relevant part:

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, ... who has been found to have committed or has been convicted of any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence... . When a person required to register under this section is in custody of ... a local jail ... as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

...

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) OFFENDERS IN CUSTODY. ~~(A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) or~~ kidnapping offenders who ~~on or after July 27, 1997,~~ are in custody of ... a local jail ..., must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence. ... The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

During argument, Mr. Tash's attorney emphasized that all of the sections and subsections of RCW 9A.44.130 must be read together. Accordingly, the first part of Section (4)(a); "(4)(a) Offenders shall register with the county sheriff within the following deadlines:" must be read together with Section (1)(a); (1)(a) "... When a person required to register under this section is in custody of ... local jail ... as a result of a sex offense or kidnapping offense the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person." Therefore, sex offenders are required to re-register after being incarcerated *only if* they were in custody for a sex or kidnapping offense.

Counsel also argued that reading the 2015 amendment to create an independent duty to re-register upon release from custody for *any* criminal offense could lead to an absurd result:

To carry the State's argument to its logical limit would mean if one is, for example, arrested for DUI and is taken to a county jail, bails out after one hour, you then must go and reregister because you were in custody for an hour, and I don't think the legislature ever meant to imply that kind of requirement. You get to a slippery slope as to how long you have to be in custody before you have to reregister. I just don't think that's what it means. RP 42.

After hearing argument, the trial court decided that the reason for the 2015 amendment was that the Legislature wanted to tighten sex

offender registration requirements and there would have been no reason to strike the first sentence of RCW 9A.44.130(4)(a)(i) unless it was to broaden an offender's duty to re-register when they were released from custody for any criminal offense. RP 49-50

The next issue was whether the State had given Mr. Tash adequate notice of his obligation to re-register as required by the last sentence of the first paragraph of RCW 9A.44.130(4)(a)(i):

(i) OFFENDERS IN CUSTODY. Sex offenders ... who are in custody of the state department of corrections ... or a local jail ... must also register within three business days from the time of release with the county sheriff The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.
Emphasis added.

The record shows that Mr. Tash did not receive any notice of his obligation to re-register from the Nisqually jail when he was released from custody on June 1, 2016.

He did receive and sign a Sex Offender/Kidnapping Registration Requirements form on December 26, 2014, *a year and a half earlier*, when he was released from the Thurston County Jail. CP 57-58.¹ That form provided notice that:

¹ The stipulated facts in this case are set forth in the filed stipulations at CP 59-60 and The Thurston County Sheriff's Office Field Report at CP 48-58.

1. If you are an offender who is currently in custody for a sex offense, you must register with your incarcerating agency at the time of release. You must also register in the county where you reside within three business days of your release.
2. If you change your address within Thurston County, **or have been released from custody**, you are required to notify the Thurston County Sheriff's Office in person or by mail within three business days of moving to the new address. If you make your notification by mail it must be sent by certified mail return receipt requested. When submitting written changes to include the following information: **A) The date. B) Your old address. C) your new physical and mailing address, phone number. D) Your signature.** (Emphasis in Original).

A second, and the only other attempt to provide notice to Mr. Tash, is noted in an entry in a phone log by the Thurston County Sheriff's Office:

Date Added: 6-3-2016 11:43AM (ET)

Investigative Note: OFFENDER RELEASED FROM NISQUALLY JAIL ON 06/01/2016. HE HAS NOT SUBMITTED A CHANGE OF ADDRESS AS TO WHERE HE IS NOW LIVING. I LEFT A PHONE MESSAGE AT HIS LAST REGISTERED ADDRESS INSTRUCTING CORY TO SUBMIT A CHANGE OF ADDRESS. I ALSO INFORMED DET FRAWLEY. (CP 53).

The trial court determined that the lack of notice went to the issue whether Mr. Tash knowingly failed to re-register (CP 60), and that the registration notices provided to Mr. Tash were not sufficiently deficient to

require dismissal under *State v. Clark*, 75 Wash.App. 827, 880 P.2d 562 (Div. 1, 1994). RP 66-67.

The Court then proceeded with the stipulated facts trial, indicating that the Court had reviewed the two stipulations and the packet submitted by the State, and requested argument by counsel. After that, the Court first determined that Mr. Tash did have a duty to register and that he did not re-register after being released from custody on June 1, 2016. RP 75-76. The Court then addressed whether Mr. Tash knowingly failed to comply with his duty to re-register:

That leaves the final element that there has been much discussion regarding, which is whether or not you, Mr. Tash, knowingly failed to comply with the registration requirements within three business days from your release from custody on June 1st, 2016. That issue comes down to whether or not you received notice, in the Court's opinion, of that requirement. The Court is sensitive to the fact that perhaps it could have been best practice if you were in person given that warning as you were leaving custody that you would be required to give that new address within three business days. The Court does note in the record, however, that there was an effort made to give you that second very notice by means of a phone call to your last known address two calendar days after you were released. Additionally, the Court notes that in December of 2014 you were given notice of your requirements, and I will quote for the record: "If you change your address within Thurston County or have been released from custody, you are required to notify the Thurston County Sheriff's Office in person or by mail within three business days of moving to the new address." You signed that in December of 2014. While there would come a point in time where that would be too distant in time, in the Court's opinion, for that to

satisfy the requirements of giving you notice for this to be a knowing violation, this is not that case. The Court finds that that notice is sufficiently close in time to when you left. When combined with the other efforts from Thurston County to contact you at your prior address, I find that the final element of the crime requiring that you knowingly failed to comply with registration within three days of release from custody has been satisfied beyond a reasonable doubt. For those reasons, the Court is finding you guilty of the crime that you have been charged with in the information in this case. RP 76-78.

Finally, The Court asked Mr. Tash if he had any questions. Mr.

Tash answered, "... I don't know. Because I've been at the same address. I've been doing this since I was 14 years old. I'm 29 now. It's really hard - - you know, I've been at the same address. Every time I've been picked up by the police for this, even the last time, I was at my address."

The court then sentenced Mr. Tash to 22 months of confinement on March 14, 2017. CP 84-96.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

The considerations which govern the decision to grant review are set forth in RAP 13.4(b). Petitioner believes that this court should accept because this is a case of first impression on the interpretation of RCW 9A.44.130, as amended in 2015, and involves an issue of substantial public interest that should be determined by the Supreme Court. Specifically, accepting review will permit the Court to correctly construe

this statute as it pertains to when a sex offender must re-register after being held in custody and whether the agency or jail that releases the offender must give notice of the duty to re-register.

The public has an interest in sex offenders being rehabilitated and reentering civil society. Studies show the more often a sex offender is convicted of failure to register the more likely they are to recidivate, which suggests that increasing prosecution for this crime is detrimental to society.² The Washington Legislature has also recognized the problem of recidivism in the justice system, correctional system and community services in Washington. See RCW 43.380.005, et seq:

The legislature finds that the cycle of recidivism warrants a closer examination of our criminal justice system, correctional systems, and community services in Washington. Over ninety-five percent of persons in prison will return to the community, and more than half of those persons will reoffend and be reincarcerated in today's system. This high rate of recidivism results in more crimes, more victims, more prisons, and more trauma within families and communities. We can do better for the people of Washington.

The legislature intends to establish the Washington statewide reentry council to develop collaborative and cooperative relationships between the criminal justice system, victims and their families, impacted individuals and their families, and service

² Washington State Institute for Public Policy, Sex Offender Sentencing
In Washington - Failure to Register as a Sex Offender - Revised 2006:

http://www.wsipp.wa.gov/ReportFile/926/Wsipp_Failure-to-Register-as-a-Sex-Offender-Revised_Failure-to-Register.pdf

providers, with the purpose of improving public safety and outcomes for people reentering the community from incarceration.

The Court of Appeals incorrectly interpreted the plain language and ambiguities in RCW 9A.44.130 in a manner that is contrary to settled precedents and contrary to the Legislature's stated objective of reducing recidivism.

1. The trial court and Court of Appeals misinterpreted RCW 9A.44.130 when it construed it as requiring Mr. Tash to re-register when he was released from custody after serving time for an offense that was not a sex or kidnapping offense.

a. Standard of Review.

An appellate court reviews a trial court's interpretation of a statute de novo. *State v. Weatherwax*, 188 Wash.2d 139, 148, 392 P.3d 1054 (2017). The court's primary duty in construing a statute is to determine the legislature's intent. *Id.*; *State v. Ervin*, 169 Wash.2d 815, 820, 239 P.3d 354 (2010). Statutory interpretation begins with the statute's plain meaning, "if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent which is discerned from the ordinary meaning of the language used, related statutory provisions, and the statutory scheme as a whole." *Id.* If the statute remains susceptible to more than one reasonable interpretation, it is ambiguous, and courts may look to the statute's legislative history and

circumstances surrounding its enactment to determine legislative intent. *Weatherwax*, 188 Wash.2d at 149.

A statute is ambiguous ‘[i]f more than one interpretation of the plain language is reasonable.’ *Weatherwax*, 11 Wash.2d at 154, citing *State v. Evans*, 177 Wash.2d 186, 192, 298 P.3d 724 (2013).

If a statute is ambiguous it must be strictly construed in favor of the defendant. *Weatherwax*, 188 Wash.2d at 156, citing; *State v. Conover*, 183 Wash.2d 706, 712, 335 P.3d 1093 (2015). “ ‘[W]hen choice has to be made between two readings of what conduct [the legislature] has made a crime, it is appropriate, before we choose the harsher alternative, to require that [the legislature] should have spoken in language that is clear and definite.’ ” Id, citing: *State v. Tvedt*, 153 Wash.2d 705, 710-11, 107 P.3d 728 (2005) (quoting; *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 222, 73 S.Ct. 227 (1952)). “The underlying rationale for the rule of lenity is to place the burden on the legislature to be clear and definite in criminalizing conduct and establishing criminal penalties. *Weatherwax*, 188 Wash.2d at 15, (cites omitted).

Finally, “When interpreting statutes, ‘we presume legislature did not intend absurd results,’ and thus avoid them where possible.” *Weatherwax*, 188 Wash.2d at 148; citing, *State v. Eaton*, 168 Wash.2d

476, 480, 229 P.3d 704 (2010) (citing *State v. J.P.*, 149 Wash.2d 444, 450, 69 P.3d 318 (2003)).

b. Analysis.

Cory Tash was convicted for Indecent Liberties as a juvenile in 2003. His obligation to register and re-register thereafter is defined by RCW 9A.44.130 (2015), which provides in relevant part:

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, ... who has been found to have committed or has been convicted of any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence... . When a person required to register under this section is in custody of ... a local jail ... **as a result of a sex offense or kidnapping offense**, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

...

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) **OFFENDERS IN CUSTODY.** Sex offenders or kidnapping offenders who are in custody of ... a local jail ..., must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. ... The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence. ... The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. (Emphasis added).

The meaning of this statute appears to be clear on its face. That is, under the first sentence of §(1)(a), a person convicted of a sex or kidnapping offense must initially register with the sheriff in the county where they reside. And, if that person is subsequently in custody in a local jail “as a result of a sex or kidnapping offense,” they must re-register when they are released.

§(4)(a) then expressly sets forth the deadline for the offender to re-register - when they are released from custody “as a result of a sex or kidnapping offense” as stated in §(1)(a).

In this case, Mr. Tash was not being held for a sex or kidnapping offense when he was in the custody of the Nisqually Jail. Therefore, under the plain language of the statute he had no duty to re-register when he was released from custody. To impose a duty to re-register any time an offender is in custody for *any* criminal offense you must ignore the language in §(1)(a) that imposes this obligation if the offender is in custody “as a result of a sex offense or kidnapping offense.” And, you must also also ignore the first part of §(4)(a) stating that the section is limited to the deadlines to re-register (for those who are obligated to do so).

Interpreting §(4) as imposing a duty for an offender to re-register independently from §(2) creates an ambiguity in the statute. Looking to

the legislative history of the bill to determine the legislative intent to help resolve the ambiguity is not helpful here because the published legislative history is silent why language was deleted from §(4):

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) OFFENDERS IN CUSTODY. ~~(A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) or kidnapping offenders who on or after July 27, 1997, are in custody of ...~~ a local jail ..., must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence. ... The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

The only hint as to legislative intent is in the final bill report explained the 2015 amendment “close[d] various loopholes” and “provide[d] clarification with regard to sex offender registration.” Final B. Rep. on S.S.B. 5154, at 3, 64th Leg., Reg. Sess. (Wash. 2015).

However, the Legislature's attempt to clarify RCW 9A.44.130 left the statute susceptible to two reasonable interpretations when it comes to the duty for an offender to re-register after being in custody for an offense

that is not a sex or kidnapping offense. The statute is therefore ambiguous and it must be interpreted in favor of Mr. Tash.

Finally, Mr. Tash's trial counsel ably pointed out the absurd results that could happen when RCW 9A.44.130 is interpreted as requiring an offender to re-register following their release from custody for *any* criminal offense:

To carry the State's argument to its logical limit would mean if one is, for example, arrested for DUI and is taken to a county jail, bails out after one hour, you then must go and reregister because you were in custody for an hour, and I don't think the legislature ever meant to imply that kind of requirement. You get to a slippery slope as to how long you have to be in custody before you have to reregister. I just don't think that's what it means. RP 42.

The purpose behind sex offender registration is to assist law enforcement agencies' efforts to protect the public by keeping law enforcement informed of the whereabouts of sex offenders who may reoffend. *State v. Watson*, 160 Wash.2d 1, 9-10, 154 P.3d 909 (2007). The DUI hypothetical - or consider the situation where an offender is a DV victim who is in custody on a material witness warrant - or consider the plethora of fact patterns where someone is taken into custody then released (for example due to jail overcrowding). All of these situations illustrate why re-registration every time someone is in custody has no relationship with the stated public safety goals - or common sense.

The Court of Appeals summarily dismissed this problem, stating, “While Tash points out that custody may be brief, it may also be long term.” ¶13. This suggests there may be temporal limits on the length of being in custody, but there is no meaningful guidance here. The Supreme Court must reinterpret RCW 9A.44.130 with the 2015 amendments to restore a coherent reading of the statute and common sense.

2. The trial court and Court of Appeals also misconstrued RCW 9A.44.130(4) by finding that the State was *not* required to give Mr. Tash notice of his obligation to re-register when he was released from custody of the Nisqually Jail on June 1, 2016.

The trial court ruled that, although it would have been best practices for the Nisqually Jail to inform Mr. Tash he was supposed to re-register after his release on June 1, 2016, The Thurston County Sheriff’s Office Sex Offender/Kidnapping Registration Requirements Form he received and signed a year and a half earlier plus the voicemail left on his phone was all the notice required by the statute. And therefore, Mr. Tash knowingly failed to register. CP 76-78.

RCW 9A.44.130(4)(a)(i) states in pertinent part:

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) OFFENDERS IN CUSTODY. Sex offenders or kidnapping offenders who are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the

time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. (Emphasis added).

...

Here, the Nisqually Jail was the "agency that has jurisdiction over" Mr. Tash. And, the statute clearly states that the agency (i.e.: Nisqually Jail) "shall provide notice" to Mr. Tash of his duty to register after his release from custody. This issue was addressed in *State v. Munds*, 83 Wash. App. 489, 495, 922 P.2d 215 (Div. III, 1996) where the court of appeals held that lack of statutory notice of the duty to register is corrected by giving actual notice, which then would trigger the duty to register. Citing; *State v. Clark*, 75 Wash.App. 827, 832-33, 880 P.2d 562 (Div. I, 1994).

The trial court erred when it determined that the Thurston County Sheriff's Office Sex Offender/Kidnapping Registration Requirements Form that Mr. Tash received and signed on December 26, 2014 after being released from the Thurston County

Jail was the “actual notice” as referenced in *Munds*. That form

provided notice that:

1. If you are an offender who is currently in custody for a sex offense, you must register with your incarcerating agency at the time of release. You must also register in the county where you reside within three business days of your release.
2. If you change your address within Thurston County, **or have been released from custody**, you are required to notify the Thurston County Sheriff’s Office in person or by mail within three business days of moving to the new address. If you make your notification by mail it must be sent by certified mail return receipt requested. When submitting written changes to include the following information: **A) The date. B) Your old address. C) your new physical and mailing address, phone number. D) Your signature.** (Emphasis in Original).

This form provides notice that the offender has a duty to re-register if they are in custody, then released for a sex offense, not some other offense, such as the DOC violation here. At best, the notice is misleading.

Also, there is no evidence in the record that Mr. Tash listened to the voicemail that was left by the Thurston County Sheriff’s Office, and therefore no evidence had had actual notice of his obligation to re-register. Accordingly, the State failed to show their lack of notice was remedied under *Munds*.

The record is also silent as to whether the state patrol provided notice to Mr. Tash of any change to registration requirements through the years as required by RCW 9A.44.145.

The statute plainly requires the State agency with jurisdiction over Mr. Tash provide him notice of his obligation to re-register after being incarcerated. This is a due process right as the failure to re-register has caused Mr. Tash to be sentenced to 22 months in prison.

VI. CONCLUSION

For the reasons stated, Defendant/Petitioner Cory Tash respectfully asks this Court to grant the petition for review and reverse the decision of the Court of Appeals.

DATED this 16th day of April, 2018.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert M. Seines", is written over a horizontal line.

Robert M. Seines, WSBA 16046
Attorney for Cory Tash

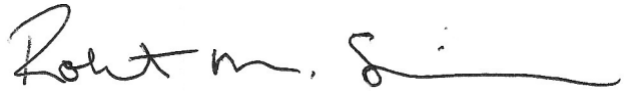
CERTIFICATE OF SERVICE

I, Robert M. Seines, do hereby certify under penalty of perjury that on April 16, 2018, I provided e-mail and USPS service a true and correct copy of the annexed Petition for Review to.

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APPENDIX A

State v. Tash, --- Wash.App. ---, 413 P.3d 1069 (2018)

413 P.3d 1069

Editor's Note: Additions are indicated by **Text** and deletions by ~~Text~~.

Court of Appeals of Washington,
Division 2.

STATE of Washington, Respondent,
v.
Cory Daniel TASH, Appellant.

No.

50108

-2-II

Filed March 27, 2018

Synopsis

Background: Defendant was convicted in the Superior Court, Thurston County, No. 16-1-01745-6, [Christopher Lanese, J.](#), of failure to register as a sex offender. Defendant appealed.

Holdings: The Court of Appeals, [Melnick, J.](#), held that:

[1] a sex offender is required to register within three days of release from custody, regardless of whether the offender had been in custody as a result of a sex offense;

[2] defendant received notice of his duty to register; and

[3] trial court was not required to inquire into defendant's ability to pay before imposing mandatory legal financial obligations.

Affirmed.

West Headnotes (9)

[1] **Criminal Law**
🔑 Review De Novo

The appellate court reviews conclusions of law following a motion to dismiss de novo.

[Cases that cite this headnote](#)

[2] **Statutes**
🔑 Absent terms; silence; omissions

Removing language from a statute generally shows the legislature's intent that those words not be given the same effect as when initially included.

[Cases that cite this headnote](#)

[3] **Constitutional Law**
🔑 Making, Interpretation, and Application of Statutes

It is beyond the court's power and function to add words when the legislature has chosen not to include them.

[Cases that cite this headnote](#)

[4] **Mental Health**
🔑 Registration and Community Notification

The purpose of the sex offender registration statute is to assist law enforcement agencies in their efforts to protect their communities against sex offenders who reoffend.

[Cases that cite this headnote](#)

[5] **Mental Health**
🔑 Registration and Community Notification

A sex offender is required to register within three days of release from custody with the county sheriff for the county of the person's residence, regardless of whether the offender

had been in custody as a result of a sex offense.
Wash. Rev. Code Ann. § 9A.44.130(4)(a)(i).

[Cases that cite this headnote](#)

[6]

Mental Health

🔑 [Offenses and prosecutions](#)

Lack of notice of the duty to register constitutes a defense to the crime of knowingly failing to register as a sex offender, but only for the first such offense; an arrest for failure to register constitutes actual notice of the duty to register. Wash. Rev. Code Ann. § 9A.44.130(4)(a)(i).

[Cases that cite this headnote](#)

[7]

Mental Health

🔑 [Offenses and prosecutions](#)

Sex offender who had been convicted of multiple offense of failure to register received notice of his duty to register, as required to support conviction for knowingly failing to register; upon his release from custody, offender was informed that he must contact the sheriff's office to stay in compliance. Wash. Rev. Code Ann. § 9A.44.130(4)(a)(i).

[Cases that cite this headnote](#)

[8]

Costs

🔑 [Taxation or Allowance of Bill](#)

Trial court was not required to inquire into defendant's ability to pay before imposing mandatory legal financial obligations (LFOs) upon conviction for failure to register as a sex offender; \$500 crime victim assessment fee, \$100 DNA fee, and \$200 court costs fee were each required by statute.

[Cases that cite this headnote](#)

[9]

Costs

🔑 [Taxation or Allowance of Bill](#)

Trial courts are not required to inquire into a defendant's ability to pay before imposing mandatory legal financial obligations (LFOs).

[Cases that cite this headnote](#)

Appeal from Thurston Superior Court, No. 16-1-01745-6, Honorable [Christopher Lanese](#), Judge.

Attorneys and Law Firms

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Opinion

PUBLISHED OPINION

[Melnick, J.](#)

*1070 ¶1 Following a bench trial, the trial court found Cory Daniel Tash guilty of failure to register as a sex offender. Tash appeals his conviction. He asserts that he was not required to register because [RCW 9A.44.130\(4\)\(a\)\(i\)](#)'s registration requirement applies only to those released from custody on a sex or kidnapping offense, and he was released from custody on a Department of Corrections (DOC) violation. Tash also alleges he did not receive notice that he was required to register. Lastly, Tash argues that the sentencing court erred when it failed to consider his ability to pay before imposing legal financial obligations (LFOs). We affirm Tash's conviction and the sentencing court's imposition of LFOs.

FACTS

¶2 In November 2003, Tash was convicted of indecent liberties with forcible compulsion in Thurston County and was required to register as a sex offender. In 2014, Tash was convicted of failure to register as a sex offender. On December 26, 2014, Tash was released from custody after serving his sentence for failure to register as a sex offender. At that time, Tash signed a sex offender registration requirement form notifying him that he is required to register as a sex offender. The form also notified Tash, “If you change your address within Thurston County, **or have been released from custody**, you are required to notify the Thurston County Sheriff’s Office in person or by mail within three business days.” Clerk’s Papers (CP) at 57

¶3 On February 8, 2016, Tash was again convicted of failure to register as a sex offender. Tash was released on May 13, 2016, and then incarcerated again following a DOC violation. He was released from custody on June 1, 2016. At that time, he was notified that he must “immediately contact the Sheriff’s Office to stay in compliance.” CP at 51. Also, on June 3, 2016, an employee of the Thurston County Sheriff’s Office left Tash a phone message “INSTRUCTING [TASH] TO SUBMIT A CHANGE OF ADDRESS.” CP at 53.

¶4 Tash did not register. On October 6, 2016, the State charged him with felony violation of sex offender registration.

¶5 Tash moved to dismiss the charge, arguing [RCW 9A.44.130\(4\)\(a\)\(i\)](#) only requires registration if Tash was in custody as a result of a sex or kidnapping offense. The trial court denied his motion, concluding, “The plain language of the statute requires that individuals required to register as sex offenders must register within three business days of their release from custody regardless of the reason for their detention.” CP at 104.

¶6 Following a bench trial, the trial court found Tash guilty of failure to register as a sex offender. The sentencing court imposed as LFOs a \$500 crime victim assessment fee, a \$100 deoxyribonucleic acid (DNA) collection fee, and a \$200 court costs fee. Tash appeals.

ANALYSIS

I. FAILURE TO REGISTER

¶7 Tash argues that we should reverse his failure to

register as a sex offender conviction because the trial court erred in denying his motion to dismiss when it misconstrued [RCW 9A.44.130](#) regarding the registration requirement and because Tash did not receive notice of his duty to register. We disagree.

A. [RCW 9A.44.130](#)

¶8 We review conclusions of law following a motion to dismiss de novo. *State v. Garvin*, 166 Wash.2d 242, 249, 207 P.3d 1266 (2009). Similarly, statutory interpretation is a question of law that we review de novo. *State v. Watson*, 146 Wash.2d 947, 954, 51 P.3d 66 (2002). “In interpreting statutory provisions, the primary objective is to ascertain and give effect to the intent and purpose of the Legislature in creating the statute.” *Watson*, 146 Wash.2d at 954, 51 P.3d 66. “The court discerns *1071 legislative intent from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole.” *Fast v. Kennewick Pub. Hosp. Dist.*, 187 Wash.2d 27, 33, 384 P.3d 232 (2016).

¶9 [RCW 9A.44.130\(1\)\(a\)](#) requires any person who “has been convicted of any sex offense or kidnapping offense” to “register with the county sheriff for the county of the person’s residence.” This statute also states, “When a person required to register under this section is in custody of ... a local jail ... as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody.” [RCW 9A.44.130\(1\)\(a\)](#). The registration statute applies retroactively, so changes made following Tash’s crimes apply to him. *In re Pers. Restraint of Estavillo*, 69 Wash. App. 401, 404 n.2, 848 P.2d 1335 (1993).

¶10 [RCW 9A.44.130\(4\)\(a\)\(i\)](#) sets forth the deadline to register when released from custody. This statute states in relevant part:

“OFFENDERS IN CUSTODY.
Sex offenders or kidnapping offenders who are in custody of ... a local jail ... must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender The offender must also register within three business days from the time of release with the county sheriff for the county of the person’s residence.

RCW 9A.44.130(4)(a)(i). Moreover, “[t]he agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.” RCW 9A.44.130(4)(a)(i).

¶11 In 2015, our legislature amended RCW 9A.44.130(4)(a)(i) as follows:

OFFENDERS IN CUSTODY. (A) Sex offenders ~~who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) or kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender.~~

Former RCW 9A.44.130(4)(a)(i) (2011); LAWS OF 2015, ch. 261, § 3. Tash contends this statute only applies to individuals in custody for a sex offense. We disagree.

[2] [3] ¶12 In 2015, the legislature removed the above crossed out language from RCW 9A.44.130(4)(a)(i) regarding when a sex offender in custody must register. LAWS OF 2015, ch. 261, § 3. This change clarified that the sex offender did not have to be in custody as a result of a sex offense to be required to register. In the same year, the legislature also created a new statute regarding registration requirements in general, including some of the above language. RCW 9A.44.148; LAWS OF 2015, ch. 261, § 4. Removing language from a statute generally shows the legislature’s intent that those words not be given the same effect as when initially included. *Watson*, 146 Wash.2d at 955, 51 P.3d 66. It is beyond our power and function to add words when the legislature has chosen not to include them. *State v. Larson*, 184 Wash.2d 843, 851, 365 P.3d 740 (2015).

[4] ¶13 The purpose of the sex offender registration statute

is to assist law enforcement agencies in their efforts to protect their communities against sex offenders who reoffend. *State v. Stratton*, 130 Wash. App. 760, 765, 124 P.3d 660 (2005); *State v. Pray*, 96 Wash. App. 25, 28, 980 P.2d 240 (1999). “Specifically, registration provides law enforcement agencies with an address where they can contact a sex offender.” *Stratton*, 130 Wash. App. at 765, 124 P.3d 660; *Pray*, 96 Wash. App. at 28-29, 980 P.2d 240. It furthers the purpose of the sex offender registration statute to require sex offenders in custody to register when they are released. While Tash points out that the custody may be brief, it also may be long term. Clearly, the purpose of the sex offender registration *1072 statute is better furthered by requiring registration upon release.

[5] ¶14 We, therefore, conclude that RCW 9A.44.130(4)(a)(i) requires a sex offender to register within three days of release from custody with the county sheriff for the county of the person’s residence. The trial court correctly concluded likewise.

B. Notice

[6] ¶15 RCW 9A.44.130(4)(a)(i) requires “[t]he agency that has jurisdiction over the offender” to “provide notice to the offender of the duty to register.” “Lack of notice of the duty to register constitutes a defense to the crime of knowingly failing to register as a sex offender—but only for the first such offense; an arrest for failure to register constitutes actual notice of the duty to register.” *State v. Clark*, 75 Wash. App. 827, 832, 880 P.2d 562 (1994).

[7] ¶16 Here, Tash has been convicted of multiple offenses of failure to register. At the time of his latest release, Tash was notified that he must “immediately contact the Sheriff’s Office to stay in compliance.” CP at 51. Also, on June 3, 2016, an employee of the Thurston County Sheriff’s Office left Tash a phone message “INSTRUCTING [TASH] TO SUBMIT A CHANGE OF ADDRESS.” CP at 53. Additionally, in December 2014, Tash signed a sex offender registration requirement form, which notified him that he was required to register as a sex offender. The form also notified Tash, “If you change your address within Thurston County, **or have been released from custody**, you are required to notify the Thurston County Sheriff’s Office in person or by mail within three business days.” CP at 57

¶17 Based on the above, Tash received notice of his duty to register. RCW 9A.44.130(4)(a)(i)’s notice requirement was satisfied.

II. LFOS

^[8] ¶18 Tash next argues that the sentencing court erred when it failed to consider his ability to pay before imposing LFOS. But trial courts are not required to inquire into a defendant's ability to pay before imposing mandatory LFOS. *State v. Lundy*, 176 Wash. App. 96, 102, 308 P.3d 755 (2013). Here, the sentencing court imposed a \$500 crime victim assessment fee, a \$100 DNA fee, and a \$200 court costs fee. Each of these LFOS are required by statute and thus are mandatory. *Lundy*, 176 Wash. App. at 102, 308 P.3d 755. Because the trial court imposed only mandatory LFOS, Tash's claim fails.

¶19 We affirm.

We concur:

Worswick, P.J.

Lee, J.

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