State of Washington
Court of Appeals
Division II

FILED
COURT OF APPEALS
06 JUL 31 AM 9:51
STATE OF WASHINGTON
BY

James Locke
Petitioner,
v.
State of Washington
Respondent

No. 33599-9-II
Declaration of
Service by Mailing

I James Locke, Petitioner, in the above entitled cause, do hereby declare that I have served the following documents;

1. Statement of Additional Grounds for Review
2. Service by Mailing

Upon;

Court of Appeals and
My Attorney of Record in this Action-

I deposited with the C4 Unit Officers station, by processing as Legal Mail, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2079, Airway Heights, WA 99001-2079.

On this 25 day of July 2006, I certify under the penalty of Perjury under the laws of the State of Washington that the foregoing is true and correct.

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State of Washington
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State of Washington, Respondent v. James Locke, Appellant.	No. 33599-9-II Statement of Additional Grounds for Review

I, James Locke, have received and reviewed the opening brief prepared by my attorney. Summarized below is an additional ground for review that is not addressed in that brief. I understand the Court will review this Statement of Additional Ground for Review when my appeal is considered on the merits.

ISSUE

The specific issue is whether or not R.C.W. § 69.50.401(a)(1)(ii) has mutiple subjects in the title in violation of the Constitution of the State of Washington Article II § 19. And by these mutiple

subjects is the law unconstitutionally vague because it does not define the criminal offence with sufficient definitness so that ordinary people can understand what conduct is prohibited.

Where the language of the law is clear and unambiguous the court may not look beyond the language of the law; an unambiguous statute is not subject to judical interpretation. However, in this case the law, when interpreted is vague and ambiguous. A person with normal understanding does not know what he or she is prohibited from possessing pursuant to RCW § 69.50.401 as the legislature has pleaged to many subjects into this law.

Article II § 19: Bill To Contain One Subject. No bill shall enbrace more than one subject, and that shall be expressed in the title.

The purpose of the first requirement to the above provision is to prevent logrolling or hodgepodge legislation. The purpose of the second requirement is to notify members of the legislature and the public of the subject matter.

The subjects of RCW § 69.50.401 (a)(1)(ii) are as follows;

1. Manufacture
2. Delivery
3. Possession with intent to manufacture
4. Possession with intent to deliver.

the controlled substance of (amphetamine or methamphetamine).

The statute RCW § 69.50.401 (a) reads as follows;

Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance. And (1)(ii) tells us the controlled substance is Amphetamine or

methamphetamine.

The mutiple subjects make this law unconstitutional, ambigueus, and vague. It fails to warn citizens of what substance they are prohibited from possessing.

ANALYSIS

In the case at issue is the 2005 version of RCW § 69.50.401 (a)(1)(ii).

Under the analysis of the Const. Art. II § 19, Manufacture, Delivery or possession with intent to manufacture or deliver methamphetamine fails to warn citizens of the conduct forbidden by the statute RCW § 69.50.401(a)(1)(ii).

The exact problem lies in the latter wording of section (a) "... Possess with intent to manufacture or deliver (methamphetamine). This part of the law prohibits two seperate things,

1. Possession with the intent to manufacture methamphetamine, and
2. Possession with the intent to deliver methamphetamine.

Possession with the intent to deliver refers to possession of the controlled substance methamphetamine and the words of this part of the law make it unlawful for any person to possess methamphetamine with the intent to deliver the substance. In this same sentence the law prohibits a person from possession with the intent to manufacture methamphetamine. This is the problem, we already know that the word possess refers to possessing the controlled substance methamphetamine. So how is it possible for a person to be in possession of methamphetamine with the intent to manufacture methamphetamine? It is specifically this reason

the constitution of the State of Washington prohibits this type of hodgepodge legislation by demanding all laws to contain a single subject. Const. Art. II § 19.

1. The Rules of Statutory Interpretation Should be Used to Resolve the Ambiguity and/or Unconstitutionality of RCW § 69.50.401(a)(1)(ii).

When examining a statute the Court should assume that the legislature meant exactly what it said. State v. Murrin, 85 Wn. App. 754 at 758, 934 P.2d 728 (1997), State v. Keller, 143 Wn 2d 267, 19 P.3d 1030 (2001) cert den sub nom Keller v. Washington 534 U.S. 1130 122 S. Ct. 1070, 151 L.Ed.2d 972 (2002). If a statute is clear on its face, its meaning is derived from the statutory language alone; an unambiguous statute is not subject to judical

interpretation. State v. Cramm 114 Wn App. 170 at 173, 56 P.3d 999 (2002). In this case the statute is ambiguous. The language is not clear and a citizen does not know what the legislature meant by the word "possess" in the statute RCW 69.50.401 (a)(1)(ii).

2. If the Statute is Ambiguous or Unconstitutional the Sentence should be Reversed or Vacated

If the statute were considered ambiguous, the rules of statutory construction mandate reversal. Moreover, if the ambiguity is because of the mutiple subjects the rules require Mr. Lecke's sentence be vacated because where there is no law prohibiting an action there is no crime and where there is no crime the Court lacks Subject Matter Jurisdiction. Futhermore,

First, the rule of lenity requires that criminal statutes capable of more than one interpretation be construed strictly against the State and in favor of the accused. State v. Bourne, 90 Wn. App. 963 at 969, 954 P.2d 366 (1998). The policy underlying the rule of lenity is "to place the burden squarely on the legislature to clearly and unequivocally warn people of the action that exposes them to liability for penalties and what those penalties are" State v. Jackson, 61 Wn. App. 86 at 93, 809 P.2d 221 (1991). "Due Process requires that citizens be given fair notice of conduct forbidden by a penal statute . . . and the rule of lenity prevents such statutes from trapping the innocent." State v. McGee 122 Wn.2d 783 at 800, 864 P.2d 912 (1993) Justice Johnson dissenting; citations omitted. Applying the rule of lenity to this

to this statute, the sentence must be reversed. A Judical Extention of the statute to include words which would describe the possession of any other substance other than amphetamine or methamphetamine would go against the plain language of the statute, and would frustrate the rule of lenity, and would expose citizens to the criminal liability without the warning required by Jackson.

A criminal statute is unconstitutionally vague if it does not define the criminal offense with sufficient definiteness so that ordinary people can understand what conduct is prohibited or if it fails to provide ascertainable standards of guilt to protect against arbitrary enforcement. In other words, a statute is unconstitutionally vague if it forbids conduct in terms so vague that persons

of common intelligence must guess at its meaning and differ as to its application." State v. Lecklear 105 Wn. App 555 20 P.3d 993 (2001).

3. Legislature Omissions are Interpreted as Intential.

Second, where the legislature specifically designated the things to which a statute applies, there is an inferance that omissions were intentional. Queets Band of Indians v. State, 120 Wn2d 1 at 5, 682 P.2d 909 (1984). In such cases "the silence of the legislature is telling." Queets Band of Indians, supra at 5. This rule of statutory construction is frequently expressed by the latin phrase expressio unins est exclusio alterius specific inclusions exclude implication. State v Sommerville, 111 Wn.2d 524 at 535, 760 P.2d 932 (1988). The statute here (RCW § 69.50.401 (a)(1)(ii)) specifically includes

Possession of methamphetamine with intent to manufacture methamphetamine, it does not refer to any other substance. This omission of what substances a person is prohibited from possessing is clear evidence that the statute as written is ambiguous. Quects Band of Indians; Sammerville. "A construction of a statute that yields an unlikely, strange or absurd consequence should be avoided." State v. Keller, 143 Wn. 2d 267 (2001). In this case it is unavoidable for the statute to be construed in any other way that does not yield it as strange or absurd.

Possession of Methamphetamine with intent to manufacture methamphetamine.

4. The Same Word in the Same Statute (Sentence) Must Refer to the Same Thing.

Third, when when the same word is used in the same

statute, (or more specifically the same sentence) it must refer to the same thing. In other words, different words are used in the same statute to deal with different things, A court must presume that legislature intended those words to have different meanings State v. Keller, supra.

If the legislature intended other substances, that were unlawful, for a person to possess to be included in RCW § 69.50.401 they would have described them.

Does the Legislature have the ability to describe what substances a person is forbidden to possess? The answer is yes.

Lets look to R.C.W. § 69.50 440 - Possession with intent to manufacture - Penalty. "It is unlawful for any person to possess ephedrine or Pseudoephedrine with intent to manufacture" (emphasis added).

This statute shows that when the legislature follows the instructions set forth by Article II § 19 of the Wash. State Const. they end up with a law that informs citizens of what substance or substances that a person is forbidden to possess with intent to manufacture. This way a citizen does not have to guess at what substances they are forbidden to possess.

> absent a contrary indication of legislative intent, the legislature's use of different words in the same statute indicates that the words have different meaning.

State v. Keller, 143 Wn2d 267 (2001). This tells us that the same word would then have the same meaning — possession refers to methamphetamine and amphetamine, nothing else.

Conclusion

The evidence above shows beyond a reasonable doubt that RCW§69.50.401 is ambiguous, vague, and unconstitutional. This defect is because the legistature has installed to many subjects into the statute in question. Because of this a reasonable person would need to guess which substance he or she is prohibited from possessing.

Mr. Locke's sentence should be vacated.

Dated this the 25 day of July, 2006

Respectfully Submitted

sign x James Locke

Print James Locke