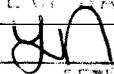


FILED  
COURT OF APPEALS  
DIVISION II

NO. 34506-4

06 DEC 12 PM 3:40

STATE OF WASHINGTON

BY  DEPUTY

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

STATE OF WASHINGTON, RESPONDENT

v.

JAMES SHAUGHNESSY, APPELLANT

Appeal from the Superior Court of Pierce County  
The Honorable D. Gary Steiner

No. 01-1-00619-5

**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was defendant afforded all of the minimal due process rights attendant to a SSOSA revocation hearing when he: received written notice of the alleged violations and supporting evidence; had the opportunity to cross-examine witnesses and present evidence on his own behalf; and was given a opportunity to be heard before a neutral judge?
2. Is the trial court's oral ruling on its reasons for revoking defendant's sentence sufficient when defendant stipulated to all of the violations and the only issue before the court was whether revocation was the proper sanction for someone who had fled the country and failed to comply with any condition of his community supervision?
3. Has defendant failed to demonstrate that the court abused its discretion in revoking defendant's SSOSA sentence when defendant absconded from supervision and failed to comply with any condition of his community supervision?

4. Has defendant failed to demonstrate that the neutrally worded condition of his sentence ordering him to complete outpatient sexual offender treatment, thereby making him safe to be in the community, impermissibly infringes on the free exercise of his religion?

B. STATEMENT OF THE CASE.

1. Facts

Appellant JAMES SHAUGHNESSY, hereinafter defendant, pleaded guilty to one count of child molestation in the first degree and one count of assault in the first degree with sexual motivation on April 30, 2001. CP 4-22. On June 15, 2001, the Honorable D. Gary Steiner accepted a joint recommendation that defendant be given a suspended sentence under a special sexual offender sentencing alternative (SSOSA). 1RP 2-5; RCW 9.94A.670. The court indicated some concern over whether a SSOSA sentence was the appropriate sentence. 1RP 8. The court imposed an 89 month sentence on the molestation and a 130 month sentence on the assault, then suspended both sentences on certain conditions. CP 4-22.

Included among the conditions was the requirement that defendant complete outpatient sex offender treatment program with Macy's for three years. CP 13. The judgment stated specifically that "[d]efendant shall not

change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. Id. The court also ordered defendant to report to his community corrections officer (CCO), not to have contact with minors 15 years old or younger, receive prior approval for living arrangements and residence location, not travel outside his county of residence without prior approval of his CCO and to register as a sex offender. CP 19-21.

Five months later the State obtained a bench warrant for defendant's arrest because he had failed to report to his CCO. CP 93. The State also filed a petition for hearing to determine noncompliance with the conditions of his sentence. CP 94-98.

Defendant's next appearance in Pierce County Superior Court was on June 14, 2005, four years after his initial sentencing hearing. CP 99. Defendant's CCO filed a supplemental notice of violation alleging five more violations of his supervision. CP 27-55. Defendant's attorney filed a memorandum of points and authorities essentially acknowledging that the alleged violations were factually supported. CP 56-81. The pleading argued that the court should not revoke the suspended sentence but allow defendant to continue in outpatient treatment under a different treatment

provider who would be more accommodating of defendant's religious beliefs. Id.

The revocation hearing was held on February 7 and March 3, 2002 before the Honorable D. Gary Steiner. 5RP 1; 6RP 1. The defendant made it clear that he was stipulating to the violations, but contesting that revocation was the appropriate sanction for his violations. 5RP 8-9; 6RP 140-145. The evidence adduced at the hearing revealed that defendant went to outpatient treatment twice; the second time he was confronted about his religious beliefs. 5RP 37-43; 90-93. Defendant testified that before this second session was over he had made the decision to run. 5RP 91-93. He left the session, grabbed a few personal belongings and left for the Mexico border without telling anyone, including his mother. 6RP 113. He lived in Mexico for a year before getting the opportunity to go to Venezuela. 5RP 93-94. Defendant needed a passport to go to Venezuela, so he used a someone else's birth certificate and social security card to obtain a passport with his picture and the other person's name. 5RP 94-95; 6RP 114-115. From Venezuela, defendant traveled in to Columbia where he was robbed of all of his belongings including the fraudulent obtained passport. 5RP 94-96. He went to the American Embassy in Bogota; from there he was shipped back to Florida where he was prosecuted and convicted for crimes regarding the passport and illegal

entry. 5RP 21-22, 97; Exhibits 2 and 3. When the federal authorities were through with him, he was shipped back to Pierce County. 5RP 21-22

At the hearing defendant claimed that he felt Macy was not respecting his religious beliefs, that he panicked and fled not knowing what else to do. 5RP 90-92. He also claimed that the victim account of his crimes “did not happened at all.” 5RP 101. At one point he indicated that the victim helped him in removing her pants. 5RP 103.

After hearing the evidence, the court rejected defendant’s arguments that religious freedom played a significant role in the case. 6RP 145. The court noted that if that was defendant’s concern that he could have raised the issue with the court rather than fleeing the country. Id. The court noted that it had set up a structured sentence to allow defendant to be treated in the community and that defendant simply ran away from it. 6RP 146. The court revoked the suspension of defendant’s sentence and sent him to the department of corrections for a total of 130 months. 6RP 136; CP 83-84. The court later entered an order correcting this revocation order so that it reflected the appropriate length of community custody. CP 85-86.

Defendant filed a timely notice of appeal from entry of the revocation order. CP 82.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT VIOLATE DUE PROCESS NOR ABUSE ITS DISCRETION IN REVOKING DEFENDANT'S SSOSA SENTENCE.

a. Defendant Was Properly Afforded All of the Minimal Due Process Rights That Attach to a Revocation Hearing.

A revocation of a suspended sentence is not a criminal proceeding; a sexual offender facing revocation of a SSOSA sentence is entitled to the same minimal due process rights as those afforded during the revocation of probation or parole. State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). The United States Supreme Court has determined that, in the context of parole violations, minimal due process entails: (a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the right to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation. Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). These requirements exist to ensure that the finding of a violation of a term of a suspended sentence will be based upon verified facts. Id. at 484.

The court may revoke a suspended sentence at any time during the period of community custody and order execution of the sentence if the

defendant violates the conditions of the suspended sentence, or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.670(10)(formerly RCW 9.94A.120(8)(a)(vi)). Proof of a violation need not be established beyond a reasonable doubt. The court need only be reasonably satisfied that the breach of a condition occurred. State v. Badger, 64 Wn. App. 904, 908, 827 P.2d 318 (1992). “Revocation of a suspended sentence rests within the discretion of the court.” Id.

As due process requires that judges articulate the factual basis of the decision, written findings are preferred but not required. State v. Nelson, 103 Wn.2d 760, 767, 697 P.2d 579 (1985). Written findings facilitate appellate review, allowing the appellate court to ascertain the presence or absence of substantial evidence in support of the decision to revoke. State v. Davenport, 33 Wn. App. 704, 657 P.2d 794 (1983), rev'd on other grounds, 100 Wn.2d 757, 675 P.2d 1213 (1984). However, the lack of specific written findings is not fatal where the trial court states on the record the evidence it relies upon and states its reasons for revocation. State v. Murray, 28 Wn. App. 897, 627 P.2d 115 (1981).

On June 15, 2001, The Honorable D. Gary Steiner accepted a joint recommendation from the prosecution and defendant and imposed a 130 month suspended sentence on many conditions including sexual offender treatment with Macy and Associates. 1RP 2-5, 9. At the time of sentencing, the court indicated that it questioned whether defendant was

truly a good candidate for a SSOSA sentence. 1RP 8. Five months later, on November 14, 2001, the State sought a bench warrant for defendant and filed a petition to determine non-compliance. CP 93, 94-98. The petition alleged that defendant had failed to report to his Community Corrections Officer (CCO). Id. The petition was supported by a notice of violation report dated October 23, 2001 indicating that defendant had never reported for an intake interview despite being directed to do so at sentencing. CP 94-98. The court authorized a bench warrant and it issued on November 14, 2001.

The warrant remained outstanding until 2005, when defendant was brought before the court on a preliminary hearing. CP 99. Defendant's CCO filed a supplemental notice of violation listing five additional violations; they can be summarized as: 1) failing to notify DOC about a change of address since 10/1/01 thereby making it impossible for DOC to locate him; 2) failing to comply with sex offender treatment program resulting in termination from treatment since 10/7/01; 3) failing to register as a sex offender since release from incarceration on 9/28/01; 4) failing to become gainfully employed; and, 5) failing to remain within proscribed geographic boundaries. CP 27-55. The report set forth the evidence supporting each claimed violation and recommended the court revoke defendant's SSOSA sentence and impose the original 130 month sentence. Id.

The court gave defendant's counsel time to prepare for the allegations, then granted another continuance so that defendant could have a substitution of counsel. 2RP 2-5; 3RP 2-7. The hearing was ultimately held several months after his initial appearances on February 7 and March 3, 2006. 5RP 1-105; 6RP 105-148. At this hearing defendant had the opportunity to cross-examine the witnesses against him and to present evidence on his own behalf. 5RP 30, 53, 64, 66, 85; 6RP 120, 127, 137.

At the hearing, defendant stipulated that he had violated the terms of his sentence. 5RP 8-9; 6RP 140. The sole focus of the hearing was whether revocation was the appropriate sanction for the violations. 6RP 138-145. After hearing the evidence and the argument of counsel, the court revoked defendant's SSOSA stating that he did not view the situation as "a religious freedom case" and that defendant had left the country and been an unsupervised pedophile "on the loose for a considerable number of months and years" during which he committed a federal crime. 6RP 145-146. The court stated that it was revoking the SSOSA "for all the reasons advanced by the State." 6RP 146.

Defendant does not claim that he was denied his minimum due process regarding his notice of the alleged violation or supporting evidence, his opportunity to be heard or the neutrality of the judge. His sole complaint is that the court did not enter written findings and the court's oral ruling is not sufficiently detailed to permit judicial review. He cites State v. Lawrence, 28 Wn. App. 435, 624 P.2d 201 (1981) and State

v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999) as supporting his claim. His reliance on these cases is misplaced.

Both Lawrence and Dahl involved trial courts issuing oral rulings that included reference or reliance upon a violation that the defendants had contested at their hearing. In each case the appellate court found that the evidentiary support for the contested violation was insufficient or based on improperly admitted evidence. As such the violation had not been based upon verified facts and should not have been considered as a basis for revocation. In the absence of a written ruling clearly stated the factual basis for the revocation, the appellate courts could not tell what effect the improperly considered evidence or violation had on the decision to revoke and remanded for a new hearing.

In this case, defendant stipulated to all of the five alleged violations. 5RP 8-9; 6RP 140. There were no contested violations; all violation were based upon verified facts, including the defendant's stipulation. Thus, unlike Lawrence or Dahl, this court need not determine whether the court would have made the same decision to revoke on the basis of only four or three violations. Here the court revoked on five violations and all five violations remain valid on appeal.

Defendant suggests that the court rested its decision on sheer speculation that Shaughnessy encountered numerous young girls while he was out of the country. Appellant's brief at p. 39. The State contends that this is not a fair summary of the court's ruling below. After indicating that

the court was not convinced by defendant's efforts to frame this as an issue of religious freedom, the court went onto say:

COURT: His history of deriving sexual arousal by lifting children by their buttocks, this is –he's been diagnosed and he is a pedophile. Paraphilia, pedophilia, chronic, personality disorder with histrionic personality features.

He goes to Mexico, then I think Venezuela, then [Columbia]...where there are literally thousands of unprotected and vulnerable children, young girls. It just scares me that he was unsupervised during that period of time. He indicates that nothing happened. He is a pedophile that was on the loose for a considerable number of months and years. In addition, committed a federal crime.

I'm not so sure that in hindsight I should have granted this SSOSA. I think this is a [sic] innocent sounding man, but very manipulative and quite convincing. I think convincing to kids. Very scary.

I'm revoking his SSOSA for all the reasons advanced by the State. ... It was suspended so that he do it and do it in a very meticulous and careful fashion. He really has not done it. He's run away from it. Committed a federal crime. I don't feel comfortable having him out in the community.

6RP 145-146. The focus of this ruling is talking about the components of the SSOSA sentence and how defendant failed to comply with any aspect of it. Defendant is diagnosed as a pedophile and ordered into treatment, but does not stay in treatment choosing to flee to Mexico. He was expected to keep in close contact with his CCO so that his activities in the community could be monitored but, he absconds, leaving the country and goes to where no one is watching his behavior and where he could come

into contact with children without fear of repercussion. The court's reference to the thousands of unprotected and vulnerable children does not accuse defendant of molesting that many children, but rather, is the court's reflection about the unlimited opportunities defendant had to come in contact with children while he was completely unsupervised. The court articulated that defendant had failed to comply with a single aspect of the carefully structured suspended sentence and that his conduct during his four year escape from supervision proved him too great a risk to leave in the community any longer.

This oral ruling provides a sufficient record for the reasons for revocation when the revocation is based on five stipulated violations which, taken together, show that defendant failed to comply with any condition of his suspended sentence once he was released from custody.

b. The Trial Court did not Abuse its Discretion by Revoking Defendant's SSOSA.

Courts of appeal review the superior court's decision to revoke a suspended sentence for an abuse of discretion. Badger, 64 Wn. App. at 908. A sentencing court abuses its discretion when the sentence is based on untenable grounds or when, under similar circumstances, no reasonable person would adopt the same position. State v. Ritchie, 126 Wn.2d 388, 393, 894 P.2d 1308 (1995)(citing State v. Oxborrow, 106 Wn.2d 525, 531, 723 P.2d 1123 (1986)). So long as a revocation proceeding comports with

the minimum requirements of due process, and revocation is based on evidence sufficient to reasonably satisfy the court that probation conditions have been breached, an appellate court will not find an abuse of discretion. State v. Drake, 16 Wn. App. 559, 563, 558 P.2d 828 (1976).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Courts of appeal must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Defendant contends that the court abused its discretion by refusing “to adequately consider the violation of his religious freedoms.” Brief of Appellant at 32. But this argument is essentially asking this court to improperly overrule the trial court on the persuasiveness of defendant’s evidence that he left treatment –and the country- because he found treatment at Macy’s hostile to his religious beliefs. It is clear that the court considered the evidence, it just did not find defendant’s contention credible or as providing a sufficient basis for fleeing supervision or the country. 6RP 145. Defendant’s judgment and sentence informed him that it was possible to change treatment providers if he had the court’s permission. CP 13. Defendant made no effort to continue in treatment with another provider after he discovered he was uncomfortable with how Macy handled his religious beliefs; he just packed his bags and left for Mexico where he lived under an assumed name so he would not be

returned to the States. The trial court did not find defendant's mitigation evidence to be persuasive. Not being persuaded by defendant's evidence is not equivalent to abusing one's discretion.

This court should uphold the trial court revocation of defendant's suspended sentence.

2. DEFENDANT HAS FAILED TO SHOW A VIOLATION OF HIS CONSTITUTIONAL RIGHT TO FREE EXERCISE OF RELIGION.

The free exercise clause of the First Amendment states that Congress shall make no law prohibiting the free exercise of religion; this prohibition applies to the states via the Fourteenth Amendment.

Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872, 876-877, 93, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990). The United States Supreme Court has held that neutral laws of general applicability that have the effect of burdening religious practices do not violate the First Amendment's protection of the free exercise of religion. Smith, 494 U.S. at 879-882. As the Supreme Court has articulated:

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. ... Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.

Reynolds v. United States, 98 U.S. 145, 166-167, 25 L. Ed. 244 (1879).

After Smith, probationers have been unsuccessful in claiming that some neutrally worded condition of probation violates their First Amendment rights to free exercise of religion. United States v. Myers, 864 F. Supp 794 (N.D. Ill. 1994); United States v. Jefferson, 317 F.3d 786 (7th Cir. 2003); see also, United States v. Ofchinick, 937 F.2d 892, 898 (3rd.Cir 1991) (upholding a probationary condition requiring a pastor to pay \$1,000 per month in restitution even though it would prevent him from making his desired monthly contributions to his church); United States v. Tolla, 781 F.2d 29, 36 n.3 (2d Cir. 1986) (rejecting a First Amendment argument and upholding as reasonably related to the goals of probation a condition barring defendant from teaching at a religious school); United States v. Nolan, 932 F.2d 1005 (1st Cir. 1991) (defendant who quit a treatment program required by conditions of probation on grounds that it conflicted with his religious beliefs could not challenge propriety of that condition in appeal from revocation of probation as that had to be challenged in direct appeal).

In United State v. Myers, supra, Myers had been convicted of several crimes including tax evasion and fraud and ordered to pay \$85,000 in fines and \$3,000 in restitution. After his release from prison, he was directed by his probation officer to find a job so that he could make payments toward these legal financial obligations. Myers sought to invalidate this requirement on the ground that it infringed upon his free exercise of religion. Instead of finding a paying job, Myers wished to

undergo two years of training to become a church missionary after which he would be sent to one of the Church's mission fields, an employment that did not pay any salary. See, 864 F.Supp. at 797-798. The court rejected this argument citing Smith:

[T]he United States seeks nothing more than to implement a facially unobjectionable directive, a standard condition of probation requiring former miscreants to seek employment to enable them to pay their fines and to repay the victims of their crimes. In light of Smith, the enforcement of that obligation is not rendered invalid by its side effect of rendering Myers' all-consuming religious endeavors more difficult or even impossible.

United States v. Myers, 864 F. Supp. 794, 799 (D. Ill. 1994).

The Washington Supreme Court has held that article I, section 11 of the state constitution offers broader protection of religious freedom than its federal counterpart. First Covenant Church v. Seattle, 120 Wn.2d 203, 226, 840 P.2d 174 (1992). Article I, section 11 provides in the pertinent part:

[a]bsolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.

Even these greater protection provided by the state constitution does not give a person the power to avoid compliance with state laws by simply claiming an infringement on religious practices. See, State v.

Balzer, 91 Wn. App. 44, 64-66, 954 P.2d 931, review denied, 136 Wn.2d 1022, 969 P.2d 1063 (1998) (Washington’s law prohibiting marijuana use serves a compelling state interest in public health and safety and is the least restrictive means of achieving that goal; the state constitution does not exempt religious practices from compliance with Washington’s prohibition on marijuana possession.).

The first prerequisite to a free exercise challenge under the state constitution requires the complaining party to demonstrate that his or her religious convictions are sincerely held and central to the practice of his or her religion. Munns v. Martin, 131 Wn.2d 192, 199, 930 P.2d 318 (1997); see, State v. Motherwell, 114 Wn.2d 353, 788 P.2d 1066 (1990); Backlund v. Board of Comm'rs, 106 Wn.2d 632, 639, 724 P.2d 981 (1986). The court will not inquire further into the truth or reasonableness of the party’s convictions or beliefs. Munns, 131 Wn.2d at 199; see, Backlund, 106 Wn.2d at 640 (“Courts have nothing to do with determining the reasonableness of the belief.”) (citations and internal quotes omitted). Next, the party seeking protection must demonstrate that the challenged enactment burdens his or her free exercise of religion. Munns, 131 Wn.2d at 200. An enactment unduly burdens free exercise if its “coercive effect. . . operates against a party in the practice of his [or her] religion.” Id.; First Covenant, 120 Wn.2d at 226. A facially neutral, evenhandedly enforced statute that does not directly burden free exercise may

nonetheless violate article I, section 11 if it indirectly burdens the exercise of religion. First Covenant, 120 Wn.2d at 226.

In this case the defendant alleges, in general terms, that his right to free exercise of religion has been violated by how Macy and Associates ran its sexual offender treatment program. Firstly, defendant fails to explain how any of Macy's policy can be attributable to the State as constituting state action. While the court ordered defendant into treatment with Macy, it was at the defendant's express request. The defendant went to Macy for an evaluation, received a favorable recommendation for a SSOSA sentence then asked the court to impose a sentence that included treatment with Macy and Associates. 1RP 3-5. Defendant cannot now claim that he was forced to go into treatment with Macy against his will when the court entered the order at his own request. If he developed second thoughts about the appropriateness of Macy as a treatment provider he needed to bring the issue back up before the court.

Secondly, the power of the court to impose conditions of sentence and of probation upon persons who have been convicted of crimes are neutral laws of general applicability. The laws do not interfere with defendant's religious beliefs and he remains free to believe as he chooses. But because the laws are neutral they may be enforced under Smith even though they may burden defendant's religious practices.

Finally, the record indicates that defendant's claims about the animosity Macy showed toward religion were greatly exaggerated, most of

the animosity came from other patients in his group therapy session. Macy testified that she encourages her clients to find a “moral compass” and that religion can provide such a base. 5RP 35. She went on to say that she does not allow her patients to use religious beliefs as a means of circumventing issues that need to be addressed to treat their sexual deviancy. 5RP 35-36. Macy allows her patients to attend church programs as long as there are no children present. 5RP 52-53. The limitation is clearly set forth in the rules for treatment. CP 69.

Macy testified that defendant showed up to group session on October 6, 2001, with a Bible and that another member of the group confronted him about “hiding behind religiosity.” 5RP 37. Defendant came back on October 9, 2001, then was never seen again. 5RP 41-43. Macy terminated him from the program in January 2002. 5RP 43.

According to defendant he went to two sessions. 5RP 90. The second time he brought his Bible and Macy told him that he couldn't have that in group. 5RP 90. He then testified that in the group session six or seven men told him that they used to believe in God but no longer because “God is a crutch.” 5RP 91. Defendant testified that before the session was over he had decided to get in his vehicle and flee. He got in his truck, retrieved a few of his belongings and – 30 hours later- was at the Mexico border. 5RP 91-93. He testified that he thought fleeing was the only option. 6RP 113. After living in Mexico for a year he used someone else's birth certificate and social security card to obtain fraudulently a U.S

passport. 5RP 94-95. He knew he could not obtain one in his real name because there would be a warrant out for his arrest. 5RP 94-95. He then traveled to Venezuela and Colombia. 5RP 95-96. After being robbed in Cartagena, he went to the U.S. Embassy in Bogota; from there he was shipped to Miami. 5RP 97. In Miami he was prosecuted federally for visa fraud. 5RP 21-28, 5RP 95. This record supports a conclusion that defendant was trying to escape from the consequences of his sentence rather than escape from the consequences of religious persecution.

Defendant has failed to show a constitutional violation. Under Smith, defendant cannot claim that a neutrally worded condition of probation violates his First Amendment rights to free exercise of religion. The court has a legitimate and compelling interest in making sure that sex offenders given the opportunity of a SSOSA sentence participate in treatment for their sexually deviant behavior. Not participating in such treatment leaves an untreated sex offender in the community which is a “practice[ ] inconsistent with the peace and safety of the state” and falls into an express exemption to the protection of article I, section 11 of the state constitution.

Defendant has failed to show an impermissible infringement on his free exercise of religion.

D. CONCLUSION.

This court should affirm the order of the court revoking defendant's SSOSA sentence.

DATED: December 12, 2006.

GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

  
\_\_\_\_\_  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12/12/06   
Date Signature