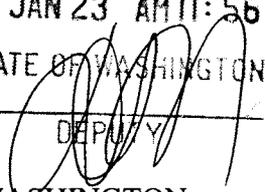


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STATE OF WASHINGTON
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE: STATE v. JOHN DOE, A Juvenile
CLARK COUNTY SUPERIOR COURT CASE NO. 07-2-05660-6
BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENT OF ERROR # 1

The Community Protection Act of 1990 applies to persons, among others, who are “adjudicated or convicted of a sex offense as defined in RCW 9A.44.130.” RCW 4.24.550(1)(a). Under the Act, if a Level I juvenile offender is a student, the Sheriff at a minimum is to share relevant information with “the public or private school regulated under Title 28A RCW or Chapter 72.40 RCW which the offender is attending, or planning to attend.” RCW 4.24.550(3). Greater levels of notice apply to offenders classified as Level II or Level III offenders. RCW 4.24.550(3) and (4).

The Community Protection Act requires any “juvenile residing...or who is a student...in this state who has been found to have committed or has been convicted of any sex offense...shall register with the county sheriff for the county of the person’s residence. RCW 9A.44.130(1)(a). In addition, any juvenile who is required to register “[w]ho is attending, or planning to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW shall, within ten days of enrolling or prior to arriving at the school to attend classes, whichever is earlier, notify the sheriff for the county of the person’s residence of the person’s intent to attend the school, *and the sheriff shall promptly notify the principal of the school.*” RCW 9A.44.130(1)(b)(emphasis added). At a minimum, the

sheriff is required to provide the school's principal with the same information derived from the juvenile offender at the time of registration, i.e., "(i) Name; (ii) complete residential address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints." RCW 9A.44.130(1)(d) and (3). Juvenile offenders who are returning Washington residents and under the jurisdiction of the State Department of Social and Health Services must register with the sheriff of their county of residence within 24 to 72 hours. RCW 9A.44.130(4)(a)(V).

Under the Act, a "sex offense" will subject a juvenile to registration if it involves:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or

criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

RCW 9A.44.130(10)(a).

RCW 9.94A.030 defines “conviction” and “sex offense” as follows:

"Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

* * *

"Sex offense" means:

(a) (i) A felony that is a violation of chapter 9A.44 RCW other than ***RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

RCW 9.94A.030(12) and (42).

Statutes relating to the same subject "are to be read together as constituting a unified whole, to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes" and courts will read such statutes as complimentary, rather than in conflict with each other. Waste Management v. Utilities & Transp. Comm'n, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994), quoting State v. Wright, 84 Wn. 2d 645, 650, 529 P. 2d 453 (1974). Under rules of statutory construction, the relevant provisions of RCW 9A.44.130 and RCW 9.94A.030, relating to the "conviction" for "sex offenses" should be read together (in para material) in order to determine the legislative intent underlying the entire statutory scheme. The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes. State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (2000); See also, State v. Morley, 134 Wn. 2d 588, 952 P. 2d 167 (1998)(construing SRA).

In Morley, the Supreme Court adopted the Washington definition of "conviction" under the SRA and applied it to out-of-state judgments. According to the Court, the definition of "conviction" under RCW 9.94A.030(12) unambiguously states:

[A] conviction is an adjudication of guilty pursuant to Titles 10 and 13 RCW. While it makes sense to apply this definition to convictions from this state, it would be absolutely unworkable to require out-of-state convictions to comply with Washington criminal procedure before allowing the out-of-state convictions to be included in a defendant's criminal history. Nothing in the SRA states or implies that a sentencing court must conduct the tedious task of comparing out-of-state criminal procedures to in-state procedures...[W]e find no mention of a sentencing court having to conduct such a ridiculous inquiry.

Id. at 596.

John Doe's pleadings show that, based upon his "admissions" in the Oregon Circuit Court, he was "found to have committed"¹ Sexual Abuse in the First Degree and Sodomy in the First Degree. Affidavit of Counsel for John Doe, Judgment of Jurisdiction and Conditions of Probation. John Doe does not challenge the constitutionality of the Oregon judgment.

Sodomy in the First Degree is defined in Oregon as follows:

(1) A person who engages in deviate sexual intercourse² with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

(a) The victim is subjected to forcible compulsion by the actor;

¹ See RCW 9A.44.130(1)(a).

² "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another. ORS 163.305(1).

(b) The victim is under 12 years of age;

(c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or

(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Sodomy in the first degree is a Class A felony.

ORS 163.405. Subject to John Doe's actual registration and a later comparability assessment, this adjudication may be comparable to Rape of a Child in the First or Second Degree, RCW 9A.44.073 or RCW 9A.44.076, both Class A felonies, or Incest in the First Degree, RCW 9A.64.020(1), a Class B felony. In any event, the offense is of the kind and quality requiring registration under the Community Protection Act.

In Oregon, Sexual Abuse in the First Degree is defined as follows:

(1) A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact and:

(A) The victim is less than 14 years of age;

(B) The victim is subjected to forcible compulsion by the actor; or

(C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or

(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

(2) Sexual abuse in the first degree is a Class B felony.

ORS 163.427. Subject to John Doe's actual registration and a later comparability assessment, this adjudication may be comparable to Child Molestation in the First or Second Degree, RCW 9A.44.083, a Class A felony, or Incest in the Second Degree, RCW 9A.64.020(2), a Class C felony. In either event, the offense is of the kind and quality requiring registration under the Community Protection Act.

By virtue of the transfer of his supervision under the Interstate Compact, John Doe is currently under the jurisdiction of the Department of Social and Health Services. RCW 9A.44.130(4)(a)(v) requires his prompt registration. State v. Linden, 118 Wn. App. 734, 77 P. 3d 668 (2003) is inapposite, because the purpose of registration of sex offenders under the Community Protection Act is regulatory not punitive. State v. Ward, 123 Wn.2d 488, 510, 869 P.2d 1062 (1994). The rule of lenity does not apply the regulatory provisions of RCW 9A.44.130.

II. RESPONSE TO ASSIGNMENT OF ERROR # 2

In its December 12, 2007 ruling, the trial court, upon examining the documents and facts surrounding the Oregon disposition, properly ruled that John Doe was found to have committed a sex offense in Oregon. The court also found that the Oregon conviction was a “fully adjudicated disposition;” not a diversion agreement, stay or proceedings, or deferred disposition as John Doe alleges. The trial court stated,

These documents [judgment of jurisdiction and conditions of probation, a parental supervision plan, a contract for vacating language, and an order of registration], taken together demonstrate to me that the proceeding in Marion County [Oregon] was the functional equivalent of a plea of guilty and disposition under Washington law. The admission by the juvenile; the imposition of conditions of probation for up to 5 years, the dismissal of some charges; the imposition (although suspended) of 4 days in detention; the language under “DNA TESTING”, specifically: the youth offender is within the jurisdiction of the court for having committed an act...that if done by an adult would constitute a felony...; the imposition of 80 hours of community service; and the imposition of fines and assessments all indicate that this is a fully adjudicated disposition, which would demonstrate that the juvenile was found to have committed the offenses. This is not a diversion agreement, nor stay of proceedings, nor deferred disposition.

Clark County Superior Court, Ruling on Motion, December 12, 2007, p 6.

III. RESPONSE TO ASSIGNMENT OF ERROR # 3

The Oregon adjudication is entitled to full faith and credit, but the Oregon Court's Order on Registration is not. State v. Berry, 141 Wn. 2d 121, 5 P. 3d 658 (2000). In Berry, the defendant argued that two "stayed" California convictions had been improperly counted as strikes under the Persistent Offender Accountability Act, which resulted in a sentence of life without possibility of parole following a robbery conviction. The Supreme Court disagreed and affirmed the conviction and sentence. The court held that the underlying convictions were entitled to full faith and credit.

"Judgments, including criminal convictions of sister states, are generally accorded full faith and credit and their validity may not be collaterally attacked," absent constitutional infirmity. State v. Rinier, 23 Wn. App. 102, 105, 595 P. 2d 43 (1979). "The Full Faith and Credit Clause provides a means for ending litigation by putting to rest matters previously decided between adverse parties in any state or territory of the United States." In re Estate of Tolson, 89 Wn. App. 21, 29, 947 P. 2d 1242 (1997). A valid foreign judgment may be collaterally attacked only if the court lacked jurisdiction or constitutional violations were involved. Absent these grounds, "a court of this state must give full faith and credit to the foreign judgment and regard the issues thereby adjudged to be precluded in a Washington proceeding." In re Tolson, 89 Wn. App. at 30 (quoting In re Estate of Wagner, 50 Wn. App. 162, 166, 748 P. 2d 639 (1987)).

We find that the full faith and credit clause applies with full force here. There is no claim that the conviction is invalid in California, or that the California court did not

have jurisdiction or committed constitutional error. Rather, the only claim is that the California court mistakenly applied California law.

We note that this case is distinguishable from Washington decisions that did not recognize out-of-state judgments. See State v. Carver, 113 Wn. 2d 591, 602-03, 781 P. 2d 1308 (1989) (full faith and credit clause not violated where custody statutes authorized Washington court to modify out-of-state custody decree). Here, there was no statutory authority to modify the California judgment. Thus, the basic tenet that foreign judgments control in Washington court proceedings applies. Consequently, we find that Berry's assault convictions, including the stay provisions, must be afforded full faith and credit.

141 Wn. 2d at 127-28.

However, the Court rejected the defendant's claim that the "stay" of the convictions should also be afforded full faith and credit.

The dissent contends that "if we are to give full faith and credit to the California judgment of conviction we must likewise give full faith and credit to the legal limitations on the use or meaning intrinsic to that stayed conviction." Dissent at 134 (emphasis omitted). This statement, however, is clearly contrary to the repeated pronouncements of the United States Supreme Court.

While the full faith and credit clause applies in full force to judgments, its effect is lessened when the statutes or judicial decisions of another forum are at issue. Baker v. General Motors Corp., 522 U.S. 222, 232-33, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1997). "The Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" *Id.* (quoting Pacific Employers Ins. Co. v. Industrial Accident

Comm'n, 306 U.S. 493, 501, 59 S. Ct. 629, 83 L. ED. 940
(1939).

141 Wn. 2d at 128-29 (footnote omitted).

In the present case, the Oregon court's Order on Registration clearly insinuates itself into the regulation of sex offenders under the Washington Community Protection Act of 1990 and, therefore, is not entitled to full faith and credit.

IV. CONCLUSION

The State respectfully requests that the trial court's declaratory judgment requiring juvenile John Doe to submit to the sex offender registration process in Clark County, Washington be affirmed.

Respectfully submitted:

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By:


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STATE OF WASHINGTON
BY [Signature]
DEPUTY

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

IN RE: STATE v. JOHN DOE, a Juvenile

No. 37519-2-II

AFFIDAVIT OF MAILING

The undersigned, being first duly sworn, upon oath, deposes and says:

That I am a citizen of the United States of America and of the State of Washington, living and residing in Clark County, in said state; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 21ST day of January, 2009, affiant deposited with the courier as set forth below properly stamped and addressed envelopes directed to the following named individuals, to-wit:

David T. McDonald
Attorney at Law
510 SW 3rd Avenue, Suite 400
Portland OR 97204

The envelope contained the following:

1. Appellant's Brief; and Affidavit of Mailing.

[Signature: Mandy Hamberlin]

SUBSCRIBED AND SWORN to before me this 21st day of January, 2009.

THELMA W. KREMER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
FEBRUARY 8, 2012

[Signature: Thelma Kremer]
NOTARY PUBLIC in and for the State of
Washington, residing in Vancouver.
My commission expires: Feb. 8, 2012