

No. 402070-6-II
THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

AMANDA PHILLIPS

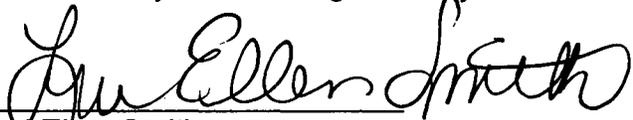
Appellant.

Appeal from the Superior Court of Washington for Lewis County

RESPONSE BRIEF

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COURT APPEALS

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STATEMENT OF THE CASE

For the purpose of responding to this appeal, Appellant's statement of the case is adequate, except as further discussed in the argument section of this brief, in addition to the following supplemental statement of facts.

Amanda Phillips pleaded guilty to failure to register as a sex offender in Lewis County Superior Court. The predicate offense triggering Ms. Phillip's duty to register in Washington is adjudication for a sex offense committed in the State of Utah and adjudicated in a Utah Juvenile Court. CP 22. Ms. Phillips pleaded guilty to "Aggravated Sexual Abuse of a Child in the First Degree – Victim Under 14" in a Utah Juvenile Court. CP 18, 22,23,35. Ms. Philipp's case number on the Utah case is 501807. CP 22. To the best of the State's knowledge, Ms. Phillips had not at any time during the pendency of this case in Lewis County moved to vacate her guilty plea in the Utah juvenile court.

Ms. Phillips pleaded guilty to knowingly failing to register as a sex offender in Lewis County Superior Court. The predicate offense triggering the duty to register in Washington is the juvenile adjudication out of Utah Juvenile Court. The trial court in the Lewis County failure to register case found that Ms. Phillips' juvenile

offense out of Utah was equivalent to Washington's Rape of a Child in the Second Degree crime. CP 35.

Nearly a year after she was sentenced in the present case, in the Lewis County Superior Court, Ms. Phillips moved to vacate her guilty plea for failure to register as a sex offender, claiming that the juvenile adjudication out of Utah could not be a predicate offense for failure to register because, according to Ms. Phillips, juvenile cases in Utah are treated differently than in Washington because in Utah juvenile offenses are classified as "civil" matters. CP 18-21. Ms. Phillips further claimed her Utah adjudication was invalid because the Juvenile Court Rule governing juvenile guilty pleas in Utah, in existence when she pled in Utah, was found to violate due process in one Utah case, State ex rel. K.M., 173 P.3d 1279 (Utah Supreme Court 2007); CP 20-23. Ms. Phillips did not provide a transcript of her Utah guilty plea proceeding.

When Ms. Phillips filed the motion to vacate her plea, the trial court asked the State to provide additional information about the way guilty pleas are handled in juvenile courts in Utah. The trial court was concerned about what the burden of proof is in Utah for juvenile cases, as well as whether juveniles in Utah are provided the full panoply of rights afforded juveniles in Washington courts.

9/30/09RP 12-16. The State did provide information to the trial court regarding the text of Utah Juvenile Court Rule 24, as well as the 2009 version of the rule at issue in State ex rel K.M. Utah Rule 24 states that the burden of proof in juvenile cases there is proof beyond a reasonable doubt. 12/9/09RP 24.

In denying Ms. Phillips' motion to withdraw her plea in the present case, the Lewis County judge stated:

I'm denying the motion for the reasons [the State] indicates here. Utah can call it whatever it wants, however, it is the functional equivalent of a criminal case just like an adjudication in juvenile court in Washington, equivalent of a felony. The charge here has to be proved beyond a reasonable doubt. She has all the other rights that attend to a criminal prosecution. So I conclude that the prior in Utah was in fact a felony for Washington purposes and that means the conviction, the motion here to vacate the conviction, is being denied.

12/9/09 RP 25. Findings were entered, and Ms. Phillips filed a timely appeal. The State submits this brief in response to Ms. Phillips' opening brief.

ARGUMENT

A. THE TRIAL COURT DID NOT ERR WHEN IT DENIED PHILLIPS' MOTION TO WITHDRAW HER GUILTY PLEA BECAUSE THE COURT PROPERLY DETERMINED THAT PHILLIPS' PREDICATE UTAH CONVICTION WAS CONSTITUTIONALLY VALID.

Phillips argues that the trial court should have allowed her to withdraw her guilty plea because, according to her, her Utah juvenile sex offense adjudication is constitutionally invalid pursuant to the ruling of the Utah Court in State ex rel K.M., 173 P.3d 1279(Utah 2007). Brief of Appellant 4. Phillips also claims that her Utah conviction did not require her to register in Washington because, according to her, the Utah offense is not a "felony," or a "conviction," or a "sex offense." Brief of Appellant 6-10; CP 18-23. All of Phillips' arguments are without merit.

The validity of a predicate offense is a question of law. State v. Miller, 156 Wn.2d 23,24, 123 P.3d 827 (2005). The validity of a predicate offense is reviewed *de novo*. State v. Carmen, 118 Wn.App. 655, 667, 77 P.3d 368 (2003), *review denied*, 151 Wn.2d 1039, 95 P.3d 352 (2004). The defendant bears the initial burden of offering a "colorable, fact-specific argument" supporting the claim

of error in the predicate conviction. State v. Summers, 120 Wn.2d 801, 812, 846 P.2d 490 (1993).

In the present case, the trial court did find that Phillips' prior Utah juvenile adjudication for a sex offense was constitutionally valid. In so ruling, the trial court said:

Utah can call it whatever it wants, however, it is the functional equivalent of a criminal case just like an adjudication in juvenile court in Washington, equivalent of a felony. The charge here [in Utah] has to be proved beyond a reasonable doubt. She has all the other rights that attend to a criminal prosecution. So I conclude that the prior in Utah was in fact a felony for Washington purposes and that means the conviction, the motion here to vacate the conviction, is being denied.

12/9/09 RP 25. The trial court's reasoning in this case was sound.

But Phillips claims that the ruling in one Utah case which found a former Utah juvenile court rule governing the taking of guilty pleas deficient under the facts of that case means that Phillips' Utah guilty plea is *ipso facto* unconstitutional. Brief of Appellant 5; citing K.M., 173 P.3d 1279 (UT 2007). This reasoning is flawed.

In the K.M. case, the Utah Court found that rule 25 of Utah's Rules of Juvenile Procedure was constitutionally defective because it did not ensure that the juvenile entering the plea fully understood the elements and nature of the crime she was pleading

guilty to. K.M., 173 P.3d at 1280. Specifically, in K.M.'s case, the crime was child abuse homicide. The court focused in depth on K.M.'s cognitive difficulties and the fact that she never admitted that the baby had been born alive. K.M. had an IQ between seventy-nine (79) and eighty-four (84) and also had multiple learning disabilities. K.M., 173 P.3d at 1280. The State alleged that K.M. had given birth to a live baby, and that K.M. had placed the baby in the window sill, where the baby later died.

K.M. pleaded guilty to one count of child abuse homicide in Utah Juvenile Court. K.M., 173 P.3d at 1280. In K.M.'s statement at her guilty plea hearing, she expressly refused to admit that the baby had been born alive. K.M., 173 P.3d at 1285, 1286. Despite K.M.'s refusal to admit that the baby had been born alive, the juvenile court accepted K.M.'s guilty plea and convicted her. K.M. later moved to withdraw her guilty plea, claiming it was involuntarily given. At the hearing to withdraw the plea, K.M. said that at the time she entered her plea, she did not understand the plea colloquy because of the "big words" and that she "didn't want to sound stupid" by saying she did not understand the court's inquiries. And when the judge asked questions about K.M.'s understanding of basic legal concepts, K.M. "gave nonsensical answers." K.M., 173

P.3d at 1281. Given the facts in the K.M. case, it is perhaps not surprising that the reviewing court found that K.M.'s guilty plea was not "knowing and voluntary"--deficient court rule or not.

In contrast, in the instant case, even if the juvenile court rule in effect when Ms. Phillips entered her guilty plea was the same rule found deficient in the K.M. case--we nonetheless have no information regarding the sufficiency of the colloquy when Phillips entered her guilty plea in Utah. For all we know, the Utah trial court went above and beyond the requirements of the "deficient" court rule when it engaged in the plea colloquy with Phillips. But we do not have this information, because we do not have the *transcript of Phillips' Utah plea hearing*.

Still, is this what is required of the State in these cases? Is the State required to track down and obtain transcripts of plea hearings when attempting to prove the validity of out-of-State predicate convictions? Where does this end? And, are we required to *presume* that the result in the K.M. case automatically invalidates Phillips' Utah guilty plea--even though Phillips took no action in the Utah juvenile court to vacate her plea? This would be an *impossible* burden for the State to meet, and Phillips has not

cited a single on-point case mandating such action in failure to register as a sex offender cases.

Indeed, none of the cases cited by Phillips for her proposition that the State must prove the constitutional validity of her predicate sex conviction beyond a reasonable doubt pertain to *failure to register as a sex offender cases*.¹ Brief of Appellant 3-4. Nor has the State found a single case in Washington that requires the State to prove beyond a reasonable doubt the constitutional validity of the predicate sex offense in failure to register as a sex offender cases. The cases cited by Phillips are all cases discussing challenges to the validity of predicate convictions for the offense of unlawful possession of a firearm. Brief of Appellant 3, *citing Summers, supra; State v. Swindell*, 93 Wn.2d 192, 607 P.2d 852 (1980).

In fact, it appears that Washington Courts have required the State to go to the lengths Phillips describes only in certain cases-- none of which are failure to register as a sex offender cases. See e.g., Carmen, supra. In Carmen, Division One of this Court explained:

¹ In so stating, Respondent is not, in any way, suggesting that the State could prove the charge of failure to register as a sex offender without proving the validity of the underlying predicate conviction.

[i]n only two kinds of cases has our Supreme Court held that, where challenged, the State must prove the constitutional validity of the predicate conviction(s) beyond a reasonable doubt: (1) a proceeding to establish a status of habitual criminal or habitual traffic offender, and (2) a proceeding to establish the crime of felon in possession of a firearm.

Carmen, 118 Wn.App. 665 (citations omitted). Additionally, the Carmen Court noted that whether a predicate conviction is *invalid* is properly considered by the trial court, not the jury:

evidence of a constitutionally invalid conviction may not properly be admitted for the jury's consideration. And it is the trial court, not the jury, which decides the constitutional validity of the predicate conviction, at a hearing held outside the presence of the jury, as in other situations where the court must determine the admissibility of evidence that has been challenged.

Id. This was done in the present case. The trial court did find that Phillips' predicate conviction was constitutionally valid. 12/9/09 RP 25. Accordingly, the State met its burden in this case, and Phillips' guilty plea to failure to register as a sex offender should be upheld.

1. Phillips' Remaining Arguments Were Rejected in State v. Acheson.

Phillips' remaining claims re-hash previously-tried, but never adopted invitations to exempt juveniles from sex offender registration such as juvenile adjudications do not qualify as "sex offenses" or "felonies" and various other as-yet-unsuccessful-in-our-courts arguments. For example, Phillips concludes as follows:

[s]ince juvenile adjudications are not felonies, a juvenile offense cannot be "an offense that under the laws of this state would be a felony classified as a sex offense." RCW 9.94A.030(42)(d). Because Ms. Phillips' 2006 juvenile conviction is not "an offense that under the laws of this state would be a felony classified as a sex offense," it does not qualify as a "sex offense" for purposes of the registration statute. . . . Accordingly, it cannot form the basis for her conviction in this case. RCW 9A.44.130(1).

Brief of Appellant 9.

But none of the cases cited by Phillips has expressly held that juvenile sex offenses cannot trigger registration requirements because such offenses are "not felonies" or do not otherwise qualify as a "sex offense" by virtue of the offense being committed when the defendant was a juvenile. This general argument has never been successful in this State, and Respondent doubts that it ever will be. See, e.g., State v. Acheson, 75 Wn.App. 151, 877 P.2d 217(1994). In Acheson, this Court rejected these same arguments, and none of the subsequent cases that Phillips claims would change this Court's Acheson decision compel any such reconsideration. Brief of Appellant, citing State v. Chavez, 163 Wn.2d 262, 180 P.3d 1250 (2008); In re Weaver, 84 Wn.App. 290, 929 P.2d 445 (1996). See also, State v. Cheatham, 80 Wn.App. 269, 276-279, 908 P.2d 381 (1996)("even if juveniles cannot technically be convicted of crimes or felonies, the mere fact that the

statute uses the terms "crime" or "felony" in defining a juvenile offense does not preclude applying that statute to juveniles").

In sum, Phillips' arguments are unsupported under current law, and are thus without merit. This Court should affirm Phillips' conviction and sentence.

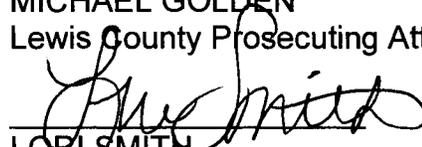
CONCLUSION

For the reasons set out above, this Court should affirm.

Respectfully submitted this 19th day of August, 2010.

MICHAEL GOLDEN
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by:


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Declaration of Service

The undersigned certifies that a copy of the document to which this certificate is attached was served upon the Appellant by U.S. mail, addressed to Appellant's Attorney as follows:

BACKLUND & MISTRY
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Olympia, WA 98501

Dated this 18th day of August, 2010, at Chehalis, Washington.

