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Division II
State of Washington
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No. 51291-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

ANDRE T. TAYLOR,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR COWLITZ COUNTY

The Honorable Michael Evans

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

In its response, the State argues that Andre Taylor's two convictions for failure to register constitute separate conduct, punishable by separate convictions. Brief of Respondent (BR) at 4. The State relies on *State v. Valencia*, 2 Wn.App.2d 121, 416 P.3d 1275 (2018) in support of its argument that intervening governmental action terminated the ongoing course of action between the two convictions, and its argument that *State v. Green*, 156 Wash. App. 96, 99-101, 230 P.3d 654 (2010) and *State v. Durrett*, 150 Wash. App. 402, 410-11, 208 P.3d 1174 (2009) are distinguishable. BR at 4-5. The State urges this Court to utilize the same reasoning used by the Court in *Valencia*.

Contrary to the State's assertion, *Valencia* is not on point. In *Valencia*, the defendant appealed a conviction for failure to register as a sex offender and his sentence. *Valencia*, 2 Wn.App.2d at 123-24. At sentencing, the trial court included in Valencia's offender score two prior convictions for failure to register: one conviction for failing to register in December 2014 after he moved from Oregon to Washington, and another conviction for failing to report weekly in March 2015 when he had no fixed residence. *Id.*, at 124. Valencia argued that his two prior offenses constituted the same criminal conduct. *Id.*, at 126. On appeal, *Valencia* argued that the trial court erred in ruling that the offenses underlying the

two 2015 convictions for failure to register as a sex offender did not encompass the same criminal conduct as defined in RCW 9A.44.130(1)(a). *Id.*, at 126.

This Court declined to apply *Durrett* and *Green* in evaluating Valencia's same criminal conduct determination. *Valencia*, 2 Wn.App.2d at 129. Leaving aside the factual differences between *Valencia* and *Green* and *Durrett*, *Valencia* solely utilizes a same criminal conduct analysis. Same criminal conduct analysis and double jeopardy analysis are distinct inquiries. This Court noted that the same criminal conduct analysis and double jeopardy analysis are distinct inquiries. *Valencia*, 2 Wn.App.2d at 129 (citing *State v. Chenoweth*, 185 Wn.2d 218, 222, 370 P.3d 6 (2016)). As this Court stated, Valencia violated two different reporting requirements: a duty to register after moving to Washington under RCW 9A.44.130(4)(a)(iv), and a duty to report weekly as a transient under RCW 9A.44.130(6)(b). On the other hand, in *Durrett* and *Green*, the defendants violated a repeating duty to report under RCW 9A.44.130. In *Durrett*, the defendant failed multiple times to report weekly in violation of RCW 9A.44.130(6)(b). *Durrett*, 150 Wn. App. at 407. In *Green*, the defendant failed multiple times to register every 90 days in violation of RCW 9A.44.130(7). *Green*, 156 Wn. App. at 98-99. Here, Taylor was charged with failure of register as a sex offender multiple times between August

2015 and January 2016, and failure register following his release from custody in August 2016. His challenge to the conviction is premised on a double jeopardy analysis, not same criminal conduct. Contrary to the State's argument, the analysis of *Valencia* is inapplicable in a challenge based on double jeopardy and should not be extended to the present case.

B. CONCLUSION

For the reasons contained in this reply brief, as well as the opening brief of appellant, the Court should dismiss the convictions for failure to register and bail jump.

DATED: October 12, 2018.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "P. Tiller", is written over the printed name of the law firm.

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CERTIFICATE

I certify that I sent by JIS a copy of the Reply Brief of Appellant to Clerk of Court of Appeals and to Mr. David Phelan and mailed copies, postage prepaid on October 12, 2018, to appellant, Andre Taylor:

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