

FILED
Court of Appeals
Division II
State of Washington
9/14/2018 12:15 PM
No. 51291-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

vs.

ANDRE T. TAYLOR,
Appellant.

RESPONDENT'S BRIEF

RYAN JURVAKAINEN
Prosecuting Attorney
DAVID PHELAN/WSBA #36637
Deputy Prosecuting Attorney
Attorney for Respondent

Office and P. O. Address:
Hall of Justice
312 S. W. First Avenue
Kelso, WA 98626
Telephone: 360/577-3080

TABLE OF CONTENTS

I. FACTS	4
II. ARGUMENT	4
a. THE TWO SEPARATE CONVICTIONS REPRESENT TWO DIFFERENT UNITS OF PROSECUTION AND DO NOT VIOLATE PRINCIPLES OF DOUBLE JEOPARDY	4
b. COUNSEL WAS CONSTITUTIONALLY SUFFICIENT AND THE CONVICTIONS SHOULD AFFIRMED	8
III. CONCLUSION	13
APPENDICES.....	14

TABLE OF AUTHORITIES

Cases

Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 190, 76 L.Ed 306 (1932)	7
Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed. 2d 108 (1976)	10
Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366,370, 88 L.Ed.2d 203 (1985)9, 11	
In re Personal Restraint of Yim, 139 Wn.2d 581, 989 P.2d 512 (1999)...	10
State v. Barton, 93 Wn.2d 301, 609 P.2d 1353 (1980).....	10
State v. Cameron, 30 Wn. App. 229, 633 P.2d 901 (1981)	10
State v. Durrett, 150 Wn.App. 402, 208 P.3d 1174 (2009)	5, 6
State v. Green, 156 Wn.App. 96, 230 P.3d 654 (2010)	5, 6
State v. Osborne, 102 Wn.2d 87, 684 P.2d. 683 (1984)	10
State v. S.M., 100 Wn.App. 401, 996 P.2d 1111 (2000)	10
State v. Valencia, 2 Wn.App.2d 121, 416 P.3d 1275 (2018).....	5, 6
State v. Ward, 123 Wn.2d 488, 869 P.2d 1062 (1994).....	10

Statutes

RCW 9A.44 130.....	7
RCW 9A.44.142.....	12

ANSWERS TO ASSIGNMENTS OF ERROR

1. THE APPELLANT'S TWO CONVICTIONS FOR FAILURE TO REGISTER REPRESENT TWO INDEPENDENT UNITS OF PROSECUTION AND DO NOT VIOLATE DOUBLE JEOPARDY PROTECTIONS
2. THE TRIAL COURT APPROPRIATELY ACCEPTED THE STIPULATION
3. THE TRIAL COURT APPROPRIATELY ACCEPTED THE STIPULATION
4. THE TRIAL COURT PROPERLY FOUND THE APPELLANT GUILTY BASED ON THE STIPULATED FACTS
5. THE TRIAL COURT APPROPRIATELY DENIED THE APPELLANT'S MOTION TO DISMISS
6. THE APPELLANT'S CONVICTIONS FOR FAILURE TO REGISTER AND BAIL JUMPING COMPLY WITH DUE PROCESS

I. FACTS

The State generally accepts the appellant's recitation of facts.

Any specific issues will be discussed in the context of the argument.

II. ARGUMENT

a. THE TWO SEPARATE CONVICTIONS REPRESENT
TWO DIFFERENT UNITS OF PROSECUTION AND DO
NOT VIOLATE PRINCIPLES OF DOUBLE JEOPARDY

Appellant's twin convictions for failure to register under this consolidated cause do not violate double jeopardy. The two convictions are separated in time, involve different provisions of the sex offender registration statute, and are separated by an arrest and incarceration. In the first conviction, Appellant failed to check-in as a transient over a period of time. CP52, 16-1-00147-2. In the second conviction, Appellant failed to check in with the Sheriff's office within 72 hours of release from custody. CP31, 16-1-01305-5. These two actions represent separate conduct and such conduct is appropriately punished with separate convictions and all of the attendant consequences. Appellant's convictions should be affirmed.

Both *Durrett* and *Green*, the principle cases upon which the Appellant relies, discuss the appropriate unit of prosecution in terms of multiple violations of the same sentencing provision. This case is

distinguishable on that basis, using the same analysis this court used in *Valencia*. *Valencia* dealt with two convictions for violating different statutory provisions within the sex offender registration statute and the court distinguished both *Durrett* and *Green* on that basis. *State v. Valencia*, 2 Wn.App.2d 121, 129, 416 P.3d 1275, review denied 190 Wn.2d 1020 (2018). The court noted that the issue in *Durrett* was multiple failures to report weekly, while the issue in *Green* related to multiple failures to register every 90 days. *Id.*, citing *State v. Durrett*, 150 Wn.App. 402, 407, 208 P.3d 1174 (2009) and *State v. Green*, 156 Wn.App. 96, 98-99, 230 P.3d 654 (2010). In *Valencia*, appellant had two different violations, one based on a failure to check in weekly and another based on failure to register within 72 hours of moving to Washington. *Id.* at 126, 416 P.3d 1275. This case presents a nearly identical factual situation.

The underlying conduct in this case is different for the two convictions at issue. Each conviction is based on a different duty, which fits neatly into the *Durrett* court's analysis regarding unit of prosecution. The court found that the appropriate unit of prosecution was determined by the violation of the specific ongoing duty, not by many individual failures to abide by that duty. *Durette*, 150 Wn.App. at 410, 208 P.3d 1174. Because each violation here was based on a different duty, instead

of multiple violations of the same duty, under *Durette* the two convictions do not violate double jeopardy. The same analysis was used by this court in *Valencia*, which held that because the duties violated were different, “the two offenses were different.” 2 Wn.App. 2d at 129, 41 P.3d 1275 (2018). The two convictions do not violate double jeopardy because they are different offenses, based on violations of different duties imposed under the statute.

There was intervening State action that terminated the ongoing course of action between the two convictions in this case. In both *Durrett* and *Green*, the multiple convictions were based on an on-going course of conduct with no intervening event. *State v. Durrett*, 150 Wn.App. at 405, 208 P.3d 1174 and *State v. Green*, 156 Wn.App. at 97, 230 P.3d 654. However, in this case as well as in *Valencia*, State action terminated the on-going course of conduct between the two convictions. The idea that an arrest or state action can terminate an on-going course of conduct, which would then necessarily give rise to new jeopardy for subsequent conduct, is founded in existing caselaw. The court in *Durrett* explicitly stated arrest terminated the course of conduct. 150 Wn.App. at 411, 208 P.3d 1174. For *Valencia*, it was the being “charged” that was an intervening action. 2 Wn. App.2d at 130, 416 P.3d 1275. In this case, because there was intervening State action based on Appellant’s arrest, the

ongoing course of conduct was terminated and the subsequent conviction dealt only with a new course of conduct. There was no double jeopardy violation.

Moreover, intervening State action makes a logical end point for an on-going course of criminal conduct. Pursuant to RCW 9A.44 130(4)(c), “[a]n arrest on charges of failure to register...constitutes actual notice of the duty to register.” It only makes sense that an arrest would be the “end” of an on-going criminal course of conduct. If this court were to find that an arrest did not actually interrupt an ongoing course in terms of a failure to register, individuals who have been charged with failure to register could continue to avoid registration with impunity, so long as their case was pending. Defining the end point of the course of conduct at the arrest of the defendant logically ends a course of conduct and lawfully serves as actual notice, which would then trigger a return to compliance with the statutory provisions. *Blockburger* couched its double jeopardy analysis in terms of a criminal “impulse.” *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 190, 76 L.Ed 306 (1932). Failing to register after receiving actual notice of the need to register, in this case by means of the arrest, necessarily manifests a new criminal impulse. This is entirely unlike the singular criminal impulse that simply continued in

Green and *Durrett* because no State action intervened to end the on-going course of conduct.

The Appellant's convictions for failure to register do not violate double jeopardy principles. There was no continuous on-going course of conduct connecting the two offenses. Each offense involved a different course of conduct and violated a different statutory duty regarding registration. The on-going course of failing to register in this case, if it could even be considered such, was interrupted by State, thus separating the two convictions. *State v. Valencia* dealt with a nearly identical situation and the analysis in that case should guide this court in determining whether each conviction was for a separate unit of prosecution. Under the analysis provided in any of the three principle cases on this issue, *Green*, *Durrett*, and *Valencia*, the two convictions are properly understood to be two different units of prosecution, for two different violations of the failure to register statute. Appellant's convictions for these charges are lawful and do not violate constitutional principles of double jeopardy. The convictions should be affirmed.

b. COUNSEL WAS CONSTITUTIONALLY SUFFICIENT
AND THE CONVICTIONS SHOULD AFFIRMED

Appellant's counsel in his various prior failure to register cases were not ineffective. The only deficiencies alleged relate to collateral

consequences of the various pleas. Sex offender registration requirements are considered collateral consequences of a plea, so any failure to adequately advise does not implicate *Strickland*. Even if deficient and considered a direct consequence of the plea, any deficiency alleged by appellant would not have changed the outcome of events. No evidence exists within the record that suggests the Appellant had demonstrated anything regarding the statutory factors for relief of duty. Because no evidence exists within the record, Appellant is asking this court to speculate (1), as to whether, armed with the appropriate knowledge, he would have petitioned for relief of his duty to register before he committed any of his subsequent failure to register offenses, and (2) whether such relief was likely based on what he would have presented to the trial court in support of such a petition. Because Appellant cannot show that the outcome would have been different if the deficiency had been cured, he cannot satisfy the second requirement of *Strickland*. The convictions should be affirmed.

An ineffective assistance of counsel claim is governed by the *Strickland*. *Hill v. Lockhart*, 474 U.S. 52, 57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The *Strickland* test is a two-part test and the first part as it applies here is that a defendant's plea must be knowing, intelligent, and voluntary in order to satisfy due process requirements. *Henderson v.*

Morgan, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed. 2d 108 (1976).

Under *Strickland*, Counsel's duty as it relates to plea bargaining is to assist the defendant "actually and substantially" in deciding whether to plead guilty. *State v. Osborne*, 102 Wn.2d 87, 99, 684 P.2d. 683 (1984), quoting *State v. Cameron*, 30 Wn. App. 229, 232, 633 P.2d 901 (1981). Counsel has a duty to inform the defendant of all "direct" consequences of a guilty plea. *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

Counsel for Appellant in the various failure to register offenses did not provide ineffective assistance when they failed to advise him regarding his ability to petition for relief from duty. Failure to advise the defendant of an indirect consequence of a plea does **not** render a plea involuntary. *In re Personal Restraint of Yim*, 139 Wn.2d 581, 588, 989 P.2d 512 (1999). Sex offender registration requirements are **not** a direct consequence of a plea. *State v. Ward*, 123 Wn.2d 488, 513-14, 869 P.2d 1062 (1994). "The constitution does not require that counsel advise his client about this duty." *State v. S.M.*, 100 Wn.App. 401, 412-13, 996 P.2d 1111 (2000), citing *Ward*, 123 Wn.2d 2d at 513-14, 869 P.2d 1062. Counsel's performance in these various cases cannot be considered ineffective or deficient, because there was no requirement that registration be discussed with their client. Sex Offender registration requirements are not "direct" consequences of a guilty plea, so a failure to inform the Appellant

regarding a petition for relief of duty cannot establish an ineffective assistance of counsel claim.

Nor would such advisement have any direct relationship to plea bargaining. At the time Appellant alleges he was given ineffective assistance of counsel for failing to tell him about his ability to petition for relief of his duty to register, he had already committed the crime of failure to register. Any bearing his “relief of duty” had would only be theoretical as it might apply to plea negotiations, as any petition filed by Appellant after his arrest for failure to register would not serve to negate the fact that he had **already** failed to register. With plea bargaining out, the only possible changed outcome based on an advisement regarding his ability to petition for relief of his duty to register is based on speculation.

Appellant also fails to show that their claim satisfies the second prong of the *Strickland* test, prejudice. The Appellant’s argument for prejudice turns on the speculative calculation that had appellant been appropriately advised, he would have sought relief of duty to register and would not have racked up his additional offenses. This speculative calculation is insufficient to satisfy the “prejudice” requirement under *Strickland*, which requires a showing that but for counsel’s errors, there was a “reasonable probability” that the outcome would have been different. *Hill*, 474 U.S. at 59, 106 S.Ct. 366, 370, 88 L.Ed. 2d 203.

There is nothing in the record to suggest that Appellant would have been relieved of his duty to register even if he had petitioned.

The appellant has not demonstrated any reasonable probability that the outcome would have been different or that appellant would have been granted relief from his duty to register. While the statutory numbering has changed over the years, the basic factors that a court should consider when determining whether someone should be relieved of their duty to register have not. Currently enumerated in RCW 9A.44.142(4)(b), the court is to consider a number of factors in deciding whether to relieve someone of their duty to register and Appellant did not provide any information regarding these factors, further complicating the request that this court speculate that there was actual prejudice from the failure to advise regarding relief of duty. What we do know is that in addition to his myriad failure to register convictions, he had three convictions for theft in the first degree. CP 34. That is the entire factual basis this court has to evaluate Appellant's claim.

Appellant did not receive ineffective assistance from the counsel on his various failure to register cases. Petitioning for a relief of duty had no tactical or strategic effect on the outcome of the pending case for failure to register, nor is there any case that establishes defense counsel must advise their client on a collateral legal issue like this. Even if this

court were to find that counsel had such a duty, there is no evidence to support Appellant's claim that but for the failure to be advised by counsel, he (1) would have petitioned for relief, and (2) would have been granted that relief. Because there is nothing in the record to support Appellant's claim that the outcome would have changed if he had been informed of his ability to be relieved of his duty to register, he is not entitled to relief and this court should affirm Appellant's convictions for Failure to Register and Bail Jumping.

III. CONCLUSION

Based on the foregoing arguments, the State respectfully requests that this court affirm all of the Appellants convictions.

Respectfully submitted this 14th day of September, 2018.

RYAN JURVAKAINEN

Prosecuting Attorney

By:



DAVID L. PHELAN/WSBA # 36637
Deputy Prosecuting Attorney

Representing Respondent

APPENDICES

RCW 9A.44.130

**Registration of sex offenders and kidnapping offenders—
Procedures—Definition—Penalties.**

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. When a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection must give notice to the county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

(2)(a) A person required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

(b) A person may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the county sheriff or as part of any notice required by this section.

(c) A photograph or copy of an individual's fingerprints, which may include palmprints may be taken at any time to update an individual's file.

(3) Any person required to register under this section who intends to travel outside the United States must provide, by certified mail, with return receipt requested, or in person, signed written notice of the plan to travel outside the country to the county sheriff of the county with whom the person is registered at least twenty-one days prior to travel. The notice shall include the following information: (a) Name; (b) passport number and country; (c) destination; (d) itinerary details including departure and return dates; (e) means of travel; and (f) purpose of travel. If the offender subsequently cancels or postpones travel outside the United States, the offender must notify the county sheriff not later than three days after cancellation or postponement of the intended travel outside the United States or on the departure date provided in the notification, whichever is earlier. The county sheriff shall notify the United States marshals service as soon as practicable after receipt of the notification. In cases of unexpected travel due to family or work emergencies, or for offenders who travel routinely across international borders for work-related purposes, the notice must be submitted in person at least twenty-four hours prior to travel to the sheriff of the county where such offenders are registered with a written explanation of the circumstances that make compliance with this subsection (3) impracticable.

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) **OFFENDERS IN CUSTODY.** Sex offenders or kidnapping offenders who are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and

the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

When a person required to register under this section is in the custody of the state department of corrections or a local corrections or probations agency and has been approved for partial confinement as defined in RCW 9.94A.030, the person must register at the time of transfer to partial confinement with the official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county in which the offender is in partial confinement. The offender must also register within three business days from the time of the termination of partial confinement or release from confinement with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

(ii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders or kidnapping offenders who are in the custody of the United States bureau of prisons or other federal or military correctional agency must register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iii) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense and kidnapping offenders who are convicted for a kidnapping offense but who are not sentenced to serve a term of confinement immediately upon sentencing shall report to the county sheriff to register within three business days of being sentenced.

(iv) OFFENDERS WHO ARE NEW RESIDENTS, TEMPORARY RESIDENTS, OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. If the offender is under the jurisdiction of an agency of this state when the offender moves to Washington, the agency shall provide notice to the offender of the duty to register.

Sex offenders and kidnapping offenders who are visiting Washington state and intend to reside or be present in the state for ten days or more shall register his or her temporary address or where he or she plans to stay with the county sheriff of each county where the offender

will be staying within three business days of arrival. Registration for temporary residents shall include the information required by subsection (2)(a) of this section, except the photograph and fingerprints.

(v) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing a sex offense or a kidnapping offense and who is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register.

(vi) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than three business days after entering the county and provide the information required in subsection (2)(a) of this section.

(vii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(viii) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of RCW 9A.44.132, or arraignment on charges for a violation of RCW 9A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under RCW 9A.44.132 who asserts as a defense the lack of notice of the duty to register shall register within three business days

following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, within three business days of moving the person must register with the county sheriff of the county into which the person has moved and provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered is responsible for address verification pursuant to RCW 9A.44.135 until the person completes registration of his or her new residence address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (2)(a) of this section, except the photograph, fingerprints, and palmprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of

the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vi) or (vii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within three business days of the entry of the order.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section.

RCW 9A.44.142

Relief from duty to register—Petition—Exceptions.

- (1) A person who is required to register under RCW 9A.44.130 may petition the superior court to be relieved of the duty to register:
- (a) If the person has a duty to register for a sex offense or kidnapping offense committed when the offender was a juvenile, regardless of whether the conviction was in this state, as provided in RCW 9A.44.143;
 - (b) If the person is required to register for a conviction in this state and is not prohibited from petitioning for relief from registration under subsection (2) of this section, when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period; or
 - (c) If the person is required to register for a federal, tribal, or out-of-state conviction, when the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.
- (2)(a) A person may not petition for relief from registration if the person has been:
- (i) Determined to be a sexually violent predator pursuant to chapter 71.09 RCW; or
 - (ii) Convicted as an adult of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after June 8, 2000.
- (b) Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.

(3) A petition for relief from registration or exemption from notification under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal, tribal, or military court, to the court in the county where the person is registered at the time the petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The prosecuting attorney must make reasonable efforts to notify the victim via the victim's choice of telephone, letter, or email, if known.

(4)(a) The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination:

- (i) The nature of the registrable offense committed including the number of victims and the length of the offense history;
- (ii) Any subsequent criminal history;
- (iii) The petitioner's compliance with supervision requirements;
- (iv) The length of time since the charged incident(s) occurred;
- (v) Any input from community corrections officers, law enforcement, or treatment providers;
- (vi) Participation in sex offender treatment;
- (vii) Participation in other treatment and rehabilitative programs;
- (viii) The offender's stability in employment and housing;
- (ix) The offender's community and personal support system;
- (x) Any risk assessments or evaluations prepared by a qualified professional;
- (xi) Any updated polygraph examination;
- (xii) Any input of the victim;

(xiii) Any other factors the court may consider relevant.

(5) If a person is relieved of the duty to register pursuant to this section, the relief of registration does not constitute a certificate of rehabilitation, or the equivalent of a certificate of rehabilitation, for the purposes of restoration of firearm possession under RCW 9.41.040.

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

Mr. Peter Tiller
The Tiller Law Firm
P.O. Box 58
Centralia, WA 98531-0058
ptiller@tillerlaw.com
bleigh@tillerlaw.com

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on Sept. 14th, 2018.



Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

September 14, 2018 - 12:15 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51291-2
Appellate Court Case Title: State of Washington, Respondent v. Andre Terrell Taylor, Appellant
Superior Court Case Number: 16-1-01305-5

The following documents have been uploaded:

- 512912_Briefs_20180914121359D2590379_5828.pdf
This File Contains:
Briefs - Respondents
The Original File Name was SKMBT_65418091412230.pdf

A copy of the uploaded files will be sent to:

- bleigh@tillerlaw.com
- ptiller@tillerlaw
- ptiller@tillerlaw.com

Comments:

Sender Name: Michelle Sasser - Email: sasserm@co.cowlitz.wa.us

Filing on Behalf of: David Phelan - Email: pheland@co.cowlitz.wa.us (Alternate Email: appeals@co.cowlitz.wa.us)

Address:

312 SW 1St Avenue

Kelso, WA, 98626

Phone: (360) 577-3080 EXT 2318

Note: The Filing Id is 20180914121359D2590379