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No. 51630-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

BRADLEY REYNOLDS,

Appellant.

APPELLANT'S-PETITIONER'S REPLY BRIEF TO RESPONDENT'S RESPONSE BRIEF IN SECTION B OF ARGUMENT.

Bradley L. Reynolds No. 947739
Appellant - Petitioner

Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

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I. PETITIONER'S COUNTERSTATEMENT(S) TO RESPONDENT'S "ISSUES PRESENTED" AND "SHORT ANSWER" IN BRIEF OF RESPONDENT.

1. If documentary evidence, facts of the case, raised constitutional provisions, law precedent, mandated rules and regulations go uncontested or not analyzed as required, as in Petitioner's instant case, can the state logically and honestly claim it presented sufficient evidence in Petitioner's trial for the court to base a constitutional finding of guilt thereon?

2. Should the Appellate Court act on Respondent's request to dismiss Petitioner's personal restraint petition when Respondent has not refutted, rebutted, disputed, or fully contested the documentary evidence, facts of the case, raised constitutional provisions, law precedent,

mandatal rules and regulations in the petition?

II. LOGICAL RESULT OF THE COUNTERSTATEMENT(S) PRESENTED.

1. No. The record supplied by the State, in which Petitioner's defense relied on, was incomplete, that if it was complete would have produced a different outcome at time of trial. However, Petitioner provided more reliable new documentary evidence incorporated in his personal restraint petition for this Appellate Court's review that was obviously not supplied by State at the time of Petitioner's trial.

2. No. Respondent provides incomplete facts and argument of the newly presented documentary evidence of significant exculpatory nature provided in Petitioner's personal restraint petition.

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III. ARGUMENT.

Respondent's argument in section B of his response brief is to redirect the Court's attention from Directive in Oregon Revised Statute, section 163A.050, claiming Washington State is not required to prove if an out-of-state conviction for a sex offense has or does not have an existing, valid registration requirement originating in the state-of-conviction, and therefore claiming the foreign sex offense itself satisfies the mandates in the first prong of RCW 9A.44.128 (10) (h). Respondent's argument is misleading.

Oregon Revised Statute, section 163A.050, mandates, the Oregon Court at sentencing stage of conviction shall notify/order/require the convicted sex offender to register under Oregon State law - Oregon Revised Statutes, sections 163A.010

or 163A.015, respectively as promulgated in subsections (1) and (2) of that statute - and not at a later time.

When the Oregon State Judge convicted and sentenced petitioner on November 9, 1990 on the rape in the third degree offense, he knew of his obligation to notify and order petitioner of a sex offender registration requirement, if the conviction required it in that case, under ORS section 181.603 (recodified at ORS section 163A.050 - Oregon Session Laws of 2015). Evidence of the notification and order, if made, would have been included in the conviction and sentence order as part of that adjudication. However it is not there, because the Judge in that case honored the plea agreement, which

negated petitioner's obligation to register, if he was ordered and notified to have one, upon adjudication of the Oregon sex offense. (See Exhibits A of Personal Restraint Petition (PRP); Oregon Judgment of Conviction and Sentence, Case No. 90-262, evidencing no such notification or order was given, nor any conditions, provisions, rules or regulations were incorporated into or made a part of the conviction and sentence directing petitioner to register as a sex offender and obey any such conditions, etc., if they were ordered and set by the court).

Supra, respondent's argument at point 2, first paragraph, page 12 of the response brief, he states, to wit: "... Oregon did not follow their procedural requirements..."; is a misstated, bad characteriza-

tion and interpretation of the presented documentary evidence, facts, issues and supporting authority raised by petitioner and petitioner's counsel in other briefing. In short, Oregon was procedurally correct when the convicting and sentencing court exercised discretionary power to honor the plea agreement in that case. Here, respondent fails to address this procedural argument and thereby admits the Cowlitz County, Washington trial court did not fully and correctly review, deduce and conclude the documentary evidence, facts, issues and supporting authority provided and raised by petitioner, at any time. Thus, respondent's counterclaim(s) of the issues, etc., are incomplete with no record evidence, facts or authority to sub-

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substantiate and back his claims. Therefore, his claims are indicative of the slippery slope surplusage wording can lead to: Bad results, misdirected analogies, etc..

Ibid., there is only one logical result after deduction of the documentary evidence, issues, facts and argument raised and presented by petitioner and petitioner's counsel: State has failed to prove petitioner has an "original, existing sex offender registration requirement in Oregon State" that can be lawfully honored in Washington State. Ibid., that is the necessary element needed to prove the first prong of RCW 9A.44.128(10)(h) applies enforcement in petitioner's case.

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Supra, respondent's argument is presumption and speculative of coincidence at best, when considering respondent has failed to address the issues raised by petitioner hereinabove and in the personal restraint petition, and has removed from the argument what actually creates a registration requirement (on a case-by-case basis) in the state of conviction, from the analysis.

The first prong of RCW § 9A.44.128(10)(h) mandates analysis to fully examine and conclude the validity of "... Any out-of-state conviction for an offense for which the person "<u>would be required</u>" to register as a sex offender while residing in the state of conviction..." (Quoted and underlined emphasis added). RCW 9A.44.128(10)(h).

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An analysis looking into the first prong of RCW § 9A.44.128 (10)(h) must be properly employed so the deduction of all elements of the alleged out-of-state registration requirement at issue ~~issue~~ (BR) in this case can be lawfully determined a valid, original existing registration requirement. Therefore, afterword, it would only follow that the court come to a logical conclusion that the person convicted of an out-of-state sex offense, as in petitioner's case, "...would be...", or would not be "...required to register as a sex offender while residing in the state of conviction..." RCW § 9A.44.128 (10)(h) (First prong - Emphasis added).

Moreover, start of the second prong of RCW § 9A.44.128 (10)(h) is the directive "[sic]... or, if

not required to register in the state of conviction..." (RCW 9A.44.128(10)(h)), proves Washington State recognizes that an out-of-state conviction for a sex offense may not have a registration requirement attached to it in the state of conviction. Therefore, it would follow, if the out-of-state conviction on the sex offense does not have a registration requirement attached to it in the state of conviction, but Washington State is claiming there is, provider proof Washington State is not properly analyzing the out-of-state registration requirement rules, laws and regulations, that is, not in full spectrum regarding petitioner's case as in on a case-by-case standard. In short, this state must prove what creates and controls a registration requirement in a foreign

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jurisdiction in a particular case, because other parameters; elements included in the arrangements and agreements may have included an adjudication of that case that required the person convicted of a particular sex crime did not have to register in that state. This is the current state-of-the-case in petitioner's situation. Washington State must prove that a registration requirement exists in Oregon State, "currently" by analyzing all elements of the issues raised by petitioner and petitioner's counsel, so the court can lawfully claim the first prong requirement of RCW 9A.44.128(10)(h) is satisfied.

Supra, whereas if the first prong of RCW 9A.44.128(10)(h) cannot be proven enforceable in petitioner's

case, the second prong of the statute regarding comparability must be conducted. Therefore, if the first prong fails, respondent's argument asserting that a comparability analysis is not required, is without merit.

Supra, State v. Ford, 137 Wn. 2d 472, 973 P.2d 452, 1999 Wash. LEXIS (1999), in part, to wit: "... it is the state, not the Defendant, who bear the ultimate burden of ensuring the record supports the evidence and classification of the out-of-state convictions." State v. Ford, 137 Wn. 2d 472, 973 P.2d 452, 1999 Wash. LEXIS (1999).

Moreover, "... The proper forum for classification of out-of-state convictions is at the sentencing hearing.

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Classification is a mandatory step in the sentencing process under the SRA, and the sentencing court should be required to complete its task." State v. Beals, 100 Wn. App. 189, 997 P.2d 941, 2000 Wash. App. LEXIS 887 (Wash. Ct. App. 2000).

In the third sentence, last paragraph, page 13 of the response brief, respondent states, to wit: "... His argument that he does not have to register as a sex offender because Oregon failed to provide him with paperwork would lead to an absurd result ...", and thereby respondent admits the Oregon Court did not notify/order/required (BRC) petitioner to register under ORS's §§ 163A.050, 163A.010 or 163A.015. This is also an acknowledgement that respondent admits petitioner does not have an

original, valid existing registration requirement in Oregon State that can be honored in this state pursuant to the Judges order honoring the plea agreement evidenced in Oregon Judgment of conviction and Sentence adjudicated November 9, 1990. (See Exhibits A attached to Petitioner's PRP).

Respondent, at this part of the argument, is also admitting the second requirement of ORS § 163A.050 - that a form documenting the convicted sex offender's obligation to register under ORS 163A.010 or 163A.015 shall be filled-out by the person notified and ordered to register - must be ordered by the sentencing court. No evidence of an order was given by the sentencing court requiring petitioner

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fill-out such a form exists in the court record. Niether does the form. (See Exhibits A, B & C attached to Petitioner's personal restraint petition; particularly Exhibits B containing ORS § § 181.603, 163A.050, 163A.010, 163A.015).

Pages 13-14, last three sentences of respondent's argument in the response brief, respondent minimalizes the issues raised by petitioner that express the severity of injustice the unlawful restraint is causing petitioner, which is the direct result of the "... trial court[s] abuse ..." of "... its discretion ..." when "... its decision ..." was "... manifestly ... based on untenable grounds or untenable reasons ..." that correlates and stems directly from the incomplete record the State based its case on (In re

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Marriage of Littlefield, 133 Wn. 2d 39, 46-47, 940 P.2d 1362 (1997) - Cited in quoted, supra: Emphasis added). Clearly respondent's claims are an attempt to shift the Appellate Court's focus away from the documentary evidence, supporting argument, issues raised, et cetera, by petitioner and his counsel. For example, respondent has made no attempt to argue the record evidence that provides additional proof outside the trial court record that (i) Washington State unlawfully and erroneously forced petitioner to register as a sex offender, and when Washington State enforced that requirement, it did not inquire into the (a) comparability value of the Oregon rape in the third degree offense, or (b) alleged out-of-state regis-

tration requirement Washington State is now claiming to validate a registration requirement exists that can be honored in Washington State. (Please see Exhibits A - Petitioner's Oregon Judgment and Sentence, and Exhibits C evidencing no notification or order was given by the Oregon Court directing and requiring petitioner to register throughout the decade of the 1990's). (2) The unlawfully created registration requirement Washington State erroneously started against petitioner in year 2000 - specifically on May 30, 2000, approximately two months before Oregon State acted on the unlawfully created Washington State registration requirement - followed petitioner to Oregon State where Oregon State Department of Corrections acted

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on the Washington State created registration requirement, in which Oregon State erroneously forced petitioner to register on the mistaken belief that the Washington State created registration requirement was valid / constitutional. The Oregon state registration requirement that was based on the Washington State created registration requirement was added to petitioner's (BR) Oregon State probation conditions temporarily as "Special Probation Conditions - Sex Offender Package" (see Exhibits D attached to Petitioner's PRP) in year 2000, on July 17, by Oregon State Department of Corrections, not by the Oregon Court at any time. Those conditions of probation added were to last until probation was fulfilled on that Oregon Case. And (3), respondent further

admits, the special conditions of probation in Oregon State that were added on July 17, 2000 by Oregon State Department of Corrections relating to Oregon Case No. 90-262, were terminated on November 6, 2002 by Order of the Oregon State Circuit Court of Clackamas County when the Judge ordered "Probation has expired". (See Exhibits D, last "Probation Violation Judgment and Order", signed and ordered by Judge Gilroy on November 6, 2002; as an offer of documentary proof that is undisputed by respondent, and was not included in the trial court discovery records supplied by the state in re Cowlitz County, Washington Cause Number 17-1-01348-08. This order terminated the temporary probation conditions that petitioner

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register as a sex offender in Oregon State. Please note, this order came two years after the "Special Probation Conditions" were added by Oregon D.O.C.).

Moreover, the pressure of petitioner's undisputed facts, documentary evidence and issues raised when respondent exhibits bias/prejudice in his argument, page 14, last paragraph, second to last sentence in his response brief; stating: "[sic] The Petitioner wants this Court to hold that a 'convicted rapist' does not have to notify the community he resides in of his presence because another state did not provide him with paperwork..."; which evidences respondent elected to forego writing in English Prime and execute vindictive style of wording; using titling that is demeaning, unnecessary

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surplusage, clearly exhibiting motive of prejudice fueled by frustration and anger. Convicted "sex offender" is the required, appropriate term in this content of law writing; not "convicted rapist." The word "rapist" is singular when written in the tone and content as dipicted above and written by respondent providing a very evident personal view of the person targeted for that label. This was clearly respondent's tone and aim in his response brief.

It appears respondent has an emotional attachment in this case in a derogatory way against petitioner. This also becomes more evident when respondent's strongest argument is to push for denial of petitioner's personal res-

traint petition, but asks this court for so, without properly and fully addressing all issues, facts and evidence raised by petitioner. whereas, respondent's answer(s) in his response brief offers this court no solid rebuttal so this court can grant respondent's (BR) request to dismiss petitioner's (PR) personal restraint petition. Therefore, petitioner's claims should stand as not frivolous and be reviewed on the merits.

IV. CONCLUSION

Based on the foregoing reasons the court should grant the petition for review on the merits and deny respondent's request in his response brief.

Respectfully submitted this 15th day of April, 2019

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COURT OF APPEALS, DIVISION II
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State of Washington, Respondent, v. Bradley L. Reynolds, Appellant	No. 51630-6-II DECLARATION OF SERVICE BY MAILING

I, Bradley Reynolds, Appellant-Petitioner in the above-titled case, hereby declare I have served the following documents: "Appellant's-Petitioner's Reply Brief"; one set of documents to each party named below; totaling 26 pages not counting this one.

Parties served:
- Derek Byrne, Clerk of Court
- Court of Appeals, Division II
- 950 Broadway Suite 300
- Tacoma, WA. 98402

I deposited the aforementioned documents in the US Postal Service through the legal mail system of Clallam Bay Corrections Center; Erne unit; at 1830 Eagle Crest Way, Clallam Bay, Washington, 98326.

I declare under penalty of perjury the foregoing is true and correct pursuant to the laws of the State of Washington.

Signed and dated this 15 day of April, 2019 A.D.
Signature: Brad Reynolds, Appellant-Petitioner