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NO. 51630-6-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

BRADLEY REYNOLDS,

Appellant.

RESPONDENT'S BRIEF

RYAN JURVAKAINEN
Prosecuting Attorney
SEAN BRITTAIN/WSBA 36804
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
KELSO, WA 98626
(360) 577-3080

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I. ISSUE PRESENTED

1. Did the trial court err when it denied the Appellant's motion to dismiss based upon the sufficiency of the evidence?
2. Should the Court grant the Petitioner's personal restraint petition?

II. SHORT ANSWER

1. No. The trial court correctly determined that the State had sufficient evidence to prove the validity of the underlying sex offense conviction.
2. No. The Petitioner's personal restraint petition should be denied

III. STATEMENT OF FACTS

In 1990, the Appellant, Bradley Reynolds was convicted of Rape in the Third Degree in the Circuit Court of the State of Oregon for Clackamas County. CP 52; CP 64. Rape in the Third Degree in Oregon is a sex offense that requires an offender to register as a sex offender. Former ORS § 181.594(2); ORS § 181.595.

In 2005 and 2006, the Appellant was convicted of Failure to Register as a Sex Offender in Kitsap County. CP 64. The convictions were based upon the belief that the Oregon Rape in the Third Degree conviction was comparable to a Washington sex offense.

In 2010, the Washington legislature amended RCW 9A.44.128 to include a registration requirement if the individual was required to register

in the state of conviction. Laws of 2010 c 267 § 1, eff. June 10, 2010. This amendment removed the comparability analysis previously required.

On 2014, the Appellant was convicted in Jefferson County Superior Court of Failure to Register as a Sex Offender. CP 52; CP 64. In 2016, the Cowlitz County Prosecutor's Office charged the Appellant with Failure to Register as a Sex Offender. The trial court there held that the 1990 Oregon conviction was not comparable to a Washington offense, thus rendering the 2005 and 2006 Kitsap County convictions invalid. RP 9. However, the trial court found that the 2013 Jefferson County conviction was valid due to the 2010 amendment. RP 9-10. Through a stipulated facts trial, Cowlitz County Superior Court found the Appellant guilty of Failure to Register as a Sex Offender. RP 9-10; CP 52; CP 64.

On August 1, 2017, the Cowlitz County Superior Court imposed its sentence and the judgment and sentence was entered. The Appellant was notified of his duty to register as a sex offender. The Appellant did not appeal the trial court's verdict.

On August 3, 2017, the Appellant registered as a sex offender with the Cowlitz County Sheriff's Office as transient. CP 52. Kris Taft, an employee of the Cowlitz County Sheriff's Office, provided written notice of his duty to register as a sex offender and to report any change of address or transiency to the Cowlitz County Sheriff's Office. CP 52.

Due to registering as transient, the Appellant was required to report to the Cowlitz County Sheriff's Office on a weekly basis. On August 8, 2017, the Appellant reported to his scheduled check-in with the Cowlitz County Sheriff's Office. However, between August 15, 2017 and October 3, 2017, the Appellant failed to appear for his required weekly check-ins. CP 52.

The Cowlitz County Prosecutor's Office charged the Appellant with Failure to Register as a Sex Offender. CP 3-4. The Appellant waived his right to a jury trial. CP 7. His attorney, Josh Baldwin, filed a "motion in limine" challenging the State's ability to present sufficient evidence to establish the validity of the underlying Oregon sex offense conviction. CP 8-50. The trial court correctly determined that the Appellant's motion was actually a *Knapstad*¹ motion to dismiss. RP at 4. Much of the Appellant's motion was simply a refiled motion from the Appellant's 2016 Cowlitz County Failure to Register case.

The Appellant argued that because Oregon failed to properly notify the Appellant of his duty to register under their own statutory provisions, the State could not present sufficient evidence that the Oregon conviction was valid for the purpose of Washington's registration requirements. The trial court rejected this argument, concluding that the State does not have

¹ *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

the obligation to prove that the Appellant was properly notified of his duty to register based upon a conviction from another jurisdiction; rather, the State is required to prove that the Appellant was convicted of a sex offense that required registration. RP 22-24. The court also noted that the failure to notify an individual of the requirement to register does not negate the duty to register. RP at 15.

The Appellant then stipulated that (1) he had a duty to register based upon the Oregon conviction and 2016 Cowlitz County conviction; (2) he was provided notice of his duty to register; (3) he registered as transient, thereby requiring him to report on a weekly basis to the Cowlitz County Sheriff's Office; and (4) that he failed to comply with his check-in requirement between August 15, 2017 and October 3, 2017. CP 51-52. Based upon these stipulated facts, the trial court found the Appellant guilty. CP 53.

The Appellant was given an exceptional sentence below the standard range. CP 66-67; CP 78. He filed a timely notice of appeal. CP 79-95. He also filed a timely personal restraint petition.

IV. ARGUMENT

A. **The State Presented Sufficient Evidence That The Appellant Was Previously Convicted Of An Offense That Required Him To Register As A Sex Offender**

1. *Standard of review.*

A challenge to the sufficiency of the evidence presented at a bench trial requires the court to review the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the challenged findings and whether the findings support the conclusions. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). The court reviews challenges to a trial court's conclusions of law de novo. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *State v. Jones*, 63 Wn. App. 703, 707-08, 821 P.2d 543, *review denied*, 118 Wn.2d 1028, 828 P.2d 563 (1992).

Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993). A reviewing court need not itself be convinced beyond a reasonable doubt, *Jones*, 63 Wn. App. at 708, and must defer to the trier of fact on

issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). Evidence is sufficient to support a conviction if, after viewing the evidence and all reasonable inferences from it in the light most favorable to the State, a rational trier of fact could find each element of the crime proved beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

RCW 9A.44.130(1)(a) requires individuals who have been convicted of any sex offense to register with the county sheriff for the county of the person's residence. RCW 9A.44.128(10)(h) defines "sex offense" as:

any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection

A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. RCW 9A.44.130(6)(b).

A person commits the offense of failure to register as a sex offender "if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130." RCW 9A.44.132(1).

Notice of a duty to register can occur upon arrest, service of an information, or arraignment:

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.

RCW 9A.44.130(4)(c).

2. *The State presented sufficient evidence.*

The State was required to prove that the Appellant had a previous conviction for a sex offense that required him to register as a sex offender, and that he knowingly failed to comply with the requirement that he, lacking a fixed residence, reported weekly on a day specified by the county sheriff's office and during normal business hours, in person, to the sheriff of the county where he was registered. Based upon the stipulated facts, the State presented evidence that: (1) the Appellant was convicted in Oregon of Rape in the Third Degree; (2) the conviction is a sex offense that requires registration; (3) the Appellant registered as a transient sex offender with

Cowlitz County; (4) the Appellant was notified of his duty to report weekly to the Cowlitz County Sheriff Department; (5) the Appellant reported as required one time; and (6) the Appellant failed to report on a weekly basis for eight consecutive weeks. This is sufficient evidence to sustain the trial court's finding of guilt.

The Appellant argues that the trial court's denial of the Appellant's motion to dismiss was improper. The Appellant's argument is a thinly-veiled due process argument, brought in through a sufficiency of the evidence analysis, and asks this court to incorporate an additional element for the State to prove. Simply put, the Appellant's argument is without merit.

The Appellant acknowledges that under the 2010 statutory amendment, the State no longer has to prove that the out-of-state conviction is comparable to a Washington offense; rather, the statute now requires an individual to register in Washington if the out-of-state conviction requires registration in the state of conviction. However, the Appellant goes further, arguing that the State must additionally prove that the Appellant was provided with proper notice of his duty to register from the state of conviction. The Appellant cites no authority to support this position.

The Appellant's argument is essentially a due process argument – he was never properly provided notice by Oregon. It is safe to assume that

the Appellant did not raise due process because that would entail an analysis of whether he “knowingly” failed to register. This argument would easily be defeated by the fact that (1) he has 2 previous convictions for failing to register as a sex offender; (2) he registered with the Cowlitz County Sheriff’s Office; and (3) he checked in as required one week after he registered. The Appellant knew he had a conviction that required he registered, he registered as required, and he failed to properly check-in as required.

The Appellant’s argument ignores a basic tenant of a sufficiency of the evidence analysis – that the Appellant admits the truth of the State’s evidence. Thus, the Appellant must admit that the State presented evidence that Oregon provided notice of the registration requirement to the Appellant through the July 17, 2000 addendum to judgment. The State presented as evidence a certified copy of the addendum that was entered into the Appellant’s file from a probation violation. Part of this packet was notice of his requirement to register as a sex offender.

The Appellant’s argument would also have this court ignore RCW 9A.44.130(4)(c), which states that an individual is provided with notice of a duty to register upon arrest, summons, and/or arraignment of a charge of failing to register as a sex offender. Despite the fact that the trial court found

the 2005 and 2006 convictions invalid², those arrests/arraignments/guilty pleas would put the Appellant on notice of his duty to register. This analysis applies to the 2013 and 2016 convictions as well.

The inquiry in this matter would be identical to a case involving Unlawful Possession of a Firearm. If a person is convicted of a felony, but not notified that their right to possess a firearm has been revoked, then that person would have a solid argument if they were subsequently charged with unlawfully possessing a firearm. However, the arrest/charging of that offense then places that person on notice that they have lost their right to possess a firearm. The lack of notice does not negate this.

The State is not required to prove that Oregon followed their own registration requirements. The essential elements of Washington's Failure to Register as a Sex Offender charge are: (1) the Appellant was convicted of a sex offense; (2) the Appellant was required to register as a sex offender; and (3) that during the charged time period, the Appellant knowingly failed to comply with the registration requirements. Following the Appellant's line of thinking, he simply cannot be prosecuted for failing to register in any state he chooses to live in because of his claim that Oregon did not properly provide him with or complete a form documenting the registration

² It must be noted that at this time, those convictions have not been vacated by the jurisdictions. The Appellant has never attempted to address this issue in Kitsap County.

requirement. This is an absurd result. This Court should affirm the Appellant's conviction.

B. The Appellant's Personal Restraint Petition Should Be Denied.

A petitioner may request relief through a PRP when he is under an unlawful restraint. RAP 16.4(a) - (c). The Washington Supreme Court has limited collateral relief available through a PRP "because it undermines the principles of finality of litigation, degrades the prominence of trial, and sometimes deprives society of the right to punish admitted offenders." *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 670, 101 P.3d 1 (2004) (quoting *In re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 329, 823 P.2d 492 (1992)). For a personal restraint petition to succeed, it must prove either a "(1) constitutional error that results in actual and substantial prejudice or (2) nonconstitutional error that 'constitutes a fundamental defect which inherently results in a complete miscarriage of justice.'" *In re Pers. Restraint of Monschke*, 160 Wn. App. 479, 488, 251 P.3d 884 (2010) (quoting *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 672, 101 P.3d 1 (2004)). "Additionally, the petitioner must prove the error by a preponderance of the evidence. *Monschke*, 160 Wn. App. at 488 (citing *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004)).

The Petitioner presents two arguments in his personal restraint petition: (1) the trial court failed to properly conduct a comparability analysis; and (2) that he does not have a duty to register as a sex offender because Oregon did not follow their procedural requirements. Both arguments are without merit.

First, the trial court was not required to conduct a comparability analysis in this matter. As noted above, the 2010 statutory amendments removed the requirement that the underlying out-of-state sex offense conviction be comparable to a Washington sex offense. Instead, a person is required to register in Washington if they have an out-of-state sex offense conviction that requires registration in the state of the conviction. As the Petitioner correctly notes in his petition, a conviction for Rape in the Third Degree in Oregon is a sex offense that would require him to register as a sex offender. Therefore, the trial court was correct in forgoing a comparability analysis and focusing its attention on the Petitioner's notice argument.

The Petitioner's second argument would have this court find that because Oregon failed to follow its own procedures, he therefore has no duty to register as a sex offender. The duty to register as a sex offender does not flow directly from the check boxes on a Judgment and Sentence or the

oral statements of the judge. Rather, they flow from the nature of the conviction and the statutes that create the duty.

In the above appeal reply, the State equated this scenario to that of an Unlawful Possession of a Firearm charge. The same rationale applies here. The revocation of the right to possess a firearm is not negated by the lack of notice from the court; it simply becomes a defense to the subsequent prosecution for that offense. Notice is provided when the person is arrested/charged/arraigned for the offense. The underlying revocation of the right to possess a firearm is not changed or diminished. Here, the “lack of notice” from Oregon when the Petitioner’s Rape in the Third Degree conviction occurred does not negate his subsequent duty to register as a sex offender.

The Petitioner acknowledges that he was notified by Washington of his duty to register as a sex offender back in 2000 as he was being released from prison. His subsequent arrests and convictions for failing to register as a sex offender in 2005, 2006, 2013 and 2016 also provided him notice of his duty to register as a sex offender. The “lack of notice” the Petitioner asserts here would be an applicable due process argument to failure to register as a sex offender charge in Oregon twenty years ago. 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. 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. The personal restraint petition must be denied.

V. CONCLUSION

Based on the preceding argument, the State respectfully requests the Court to affirm Appellant's conviction and deny the Petitioner's petition.

Respectfully submitted this 21 day of March, 2019.

RYAN P. JURVAKAINEN
Prosecuting Attorney



SEAN M. BRITTAIN
WSBA #36804
Deputy Prosecuting Attorney
Representing Respondent

CERTIFICATE OF SERVICE

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

Mr. Eric J. Nielsen/David Koch
Attorney at Law
Nielsen Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA 98122-2842
nielsene@nwattorney.net
sloanej@nwattorney.net
kochd@nwattorney.net

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 March 21st 2019.



Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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