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Court of Appeals  
Division II  
State of Washington  
8/12/2019 1:08 PM

NO. 53114-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

RONALD SNIDER,  
Appellant.

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

Pierce County Cause No. 17-1-03643-1

The Honorable Garold E. Johnson, Judge

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BRIEF OF APPELLANT

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### **ISSUES AND ASSIGNMENTS OF ERROR**

1. The trial court violated Mr. Snider's Fourteenth Amendment right to due process by accepting his guilty plea.
2. The trial court violated Mr. Snider's article I, section 3 right to due process by accepting his guilty plea.
3. The trial court affirmatively misinformed Mr. Snider regarding the elements of Failure to Register as a Sex Offender under RCW 9A.44.132(1).
4. The trial court affirmatively misinformed Mr. Snider regarding the relation between the elements under RCW 9A.44.132(1) and the facts of his case.
5. Mr. Snider's guilty plea was not entered knowingly, intelligently, and voluntarily.
6. Mr. Snider's guilty plea and conviction must be vacated.

**ISSUE:** A guilty plea is not knowing, voluntary, and intelligent when it is based on misinformation regarding the elements of an offense. Was Mr. Snider's guilty plea to Failure to Register as a Sex Offender entered unknowingly and unintelligently when it was directly based on affirmative misinformation -- regarding the elements of the offense and the relation between those elements and the facts of the case -- provided by the trial court judge?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Ronald Snider is a veteran with significant mental health issues. RP (5/30/18) 4; RP (10/2/18) 10, 22-23; RP (12/14/18) 10. Mr. Snider becomes “incoherent” and completely loses his ability to function when he is not taking his medication. RP (12/14/18); RP (10/2/10) 22. At those times, he is unable to perform daily tasks of living like taking care of his personal hygiene, driving, talking coherently, or going somewhere on a bus. RP (10/2/18) 22-23; RP (12/14/18) 10.

Mr. Snider is required to register as a sex offender and has registered regularly for several years. *See* CP 38-44. He properly registered his address at a group home where he was living until June 2017. PC Affidavit, Supp. DCP.

A few weeks after Mr. Snider left that residence, however, the Sheriff’s Department found out that he was no longer living there. PC Affidavit, Supp. DCP. Because Mr. Snider had not re-registered after moving out of the group home, the state charged him with Failure to Register as a Sex Offender. PC Affidavit, Supp. DCP; CP 1-2, 4-5.

During the period after he left the group home, Mr. Snider was experiencing a mental health breakdown because the Veteran’s Administration had changed his medication. RP (10/2/18) 7, 10, 22-23; RP

(12/14/18) 10. As a result, he did not “know[] how to take care of [him]self.” RP (10/2/18) 11. He did not know that he had changed his address or how to get home by himself. RP (10/2/18) 11, 21-22.

Mr. Snider represented himself *pro se* in the trial court. *See* RP *generally*. His planned trial strategy was to pursue a diminished capacity defense, demonstrating that he did not have the capacity to “knowingly fail to comply” with the registration requirements during the charging period because of the significant decompensation of his mental health status. RP (10/2/18) 10.

But the trial judge told Mr. Snider that his mental health status at the time was inapposite because the only relevant issue was whether he had known that he was required to register as a sex offender. *See* RP (10/2/18) 13, 21, 24-25, 28. The judge repeatedly informed Mr. Snider that the *mens rea* element of the offense required the state to prove *only* that he had “knowledge of the responsibility to register.” RP (10/2/18) 13, 21, 24-25, 28.

After informing Mr. Snider that his entire defense strategy was not relevant to the *mens rea* element of the offense, the judge recommended that Mr. Snider and the prosecutor revisit plea negotiations. RP (10/2/18) 53-54.

After a brief recess, Mr. Snider pled guilty to the offense as charged. RP (10/2/18) 55-56, 63. This timely appeal follows. CP 86-101.

### **ARGUMENT**

**MR. SNIDER’S GUILTY PLEA WAS NOT ENTERED KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY BECAUSE IT WAS BASED ON AFFIRMATIVE MISINFORMATION FROM THE TRIAL COURT REGARDING THE ELEMENTS OF THE OFFENSE AND THE APPLICATION OF THE LAW TO MR. SNIDER’S CASE.**

In order to convict Mr. Snider of Failure to Register as a Sex Offender at trial, the state would have been required to prove beyond a reasonable doubt that he had “knowingly fail[ed] to comply” with the registration requirements on the dates in question. RCW 9A.44.132(1).

But the trial court judge told Mr. Snider that that was not the case. RP (10/2/18) 13, 21, 24-25, 28. Instead, the judge said that the state would only have been required to prove that Mr. Snider knew that he was required to register as a sex offender. RP (10/2/18) 13, 21, 24-25, 28.

After he had given this affirmative misinformation, Mr. Snider decided to enter a guilty plea. That plea was not entered knowingly and intelligently because it was directly based on misinformation from the judge regarding the elements of the offense and the relation of the law to the facts of the case. This court must vacate Mr. Snider’s guilty plea and conviction.

- A. A guilty plea is not entered knowingly, voluntarily, and intelligently when it is the result of misinformation provided by the trial court.

In order to be constitutionally valid and conform with due process, a guilty plea must be entered knowingly, voluntarily, and intelligently. *Bousley v. United States*, 523 U.S. 614, 618–19, 118 S. Ct. 1604, 1609, 140 L. Ed. 2d 828 (1998) (citing *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747 (1970)); *State v. R.L.D.*, 132 Wn. App. 699, 704–06, 133 P.3d 505, 508–09 (2006) (citing *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)); U.S. Const. Amend. XIV.<sup>1</sup>

The “first and most universally recognized requirement of due process” is that, in order for a guilty plea to be intelligent, the accused must first receive “real notice of the true nature of the charge against him.” *Bousley*, 523 U.S. at 618 (citing *Smith v. O’Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 574, 85 L.Ed. 859 (1941)).

A charging document, which accurately recounts the elements of a charged offense gives rise to a presumption that the accused was informed

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<sup>1</sup> Manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a)(3). The question of whether a guilty plea has been entered unknowingly, involuntarily, or unintelligently constitutes such an error. *State v. Walsh*, 143 Wn.2d 1, 4, 17 P.3d 591, 592 (2001).

of the nature of the charge against him. *Id.* (citing *Henderson v. Morgan*, 426 U.S. 637, 647, 96 S.Ct. 2253, 2258-2259, 49 L.Ed.2d 108 (1976)).

However, that presumption is overcome – and a guilty plea is rendered unintelligent – when the court subsequently misinforms the accused as to the elements of the offense. *Id.* at 18-19 (holding that a guilty plea is not entered intelligently when “the record reveals that neither [the defendant], nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged.”). A guilty plea “cannot be knowing and intelligent when the defendant has been misinformed about the nature of the charge.” *R.L.D.*, 132 Wn. App. at 705; *See also State v. Robinson*, 172 Wn.2d 783, 790, 263 P.3d 1233, 1236 (2011) (a guilty plea is not entered into knowingly and voluntarily when it is based on misinformation about the sentencing consequences).

In addition to knowing the elements of the offense, a guilty plea is also not entered into knowingly and intelligently when the accused does not understand whether “the alleged criminal conduct satisfies those elements” -- the relation of the law to the facts of the specific case. *R.L.D.*, 132 Wn. App. at 705 (citing *In re Pers. Restraint of Hews*, 99 Wash.2d 80, 88, 660 P.2d 263 (1983), *aff'd*, 108 Wash.2d 579, 741 P.2d 983 (1987); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22

L.Ed.2d 418 (1969)); *See also State v. A.N.J.*, 168 Wn.2d 91, 118–19, 225 P.3d 956 (2010).

This is because:

[w]ithout an accurate understanding of the relation of the facts to the law, a defendant is unable to evaluate the strength of the State's case and thus make a knowing and intelligent guilty plea.

*R.L.D.*, 132 Wn. App. at 705-06 (*citing State v. Chervenell*, 99 Wash.2d 309, 317–18, 662 P.2d 836 (1983)).

When a guilty plea is made unintelligently because it is based on misinformation regarding the elements of the offense or regarding the relation of those elements to the facts of the case, this court must permit the accused to withdraw that plea, if desired. *R.L.D.*, 132 Wn. App. at 705; *A.N.J.*, 168 Wn.2d at 118–19.

B. The trial court affirmatively misinformed Mr. Snider regarding the elements of offense of Failure to Register as a Sex Offender and regarding the relation of the law to the facts of his case.

A person is guilty of failure to register as a sex offender only if (a) s/he “has a duty to register under RCW 9A.44.130 and (b) s/he “*knowingly fails to comply*” with the registration requirements. RCW 9A.44.132(1) (emphasis added); *See also State v. Peterson*, 145 Wn. App. 672, 675, 186 P.3d 1179, 1181 (2008), *aff'd*, 168 Wn.2d 763, 230 P.3d 588 (2010) (Information charging Failure to Register is constitutionally inadequate if

it omits the “essential element” that the crime was committed “knowingly”).

Thus, for example, there is insufficient evidence to support a conviction for Failure to Register when the state fails to prove that the accused knew that his residence had changed. *State v. Drake*, 149 Wn. App. 88, 92–95, 201 P.3d 1093 (2009). The *Drake* court reversed the Failure to Register conviction in that case because the state did not show that Mr. Drake knew that he had been evicted from the residence at which he was registered. *Id.* at 94-95. Rather, the state proved only that he had not paid his rent and that his whereabouts were unknown for two weeks. *Id.* Absent some additional evidence that Mr. Drake had been informed of his “lockout” from his apartment, there was insufficient evidence to show that he *knowingly* failed to register after changing his residence, as required under RCW 9A.44.132(1). *Id.*

Similarly, in order to convict Mr. Snider at trial, the state would have been required to prove that he knew that he had changed his address, triggering the requirement that he re-register with the sheriff. *Drake*, 149 Wn. App at 92–95. The state would also have been required to prove that Mr. Snider knew that he had not re-registered. *Id.*; RCW 9A.44.132(1).

Indeed, Mr. Snider pointed this out to the judge, noting that the Information charged him with “knowingly fail[ing] to comply” with the

registration requirements. RP (10/2/18) 10. Mr. Snider went on to argue that his complete inability to function at the time of his alleged failure to register would have demonstrated that he had not acted “knowingly.” *See* RP (10/2/18) 10.

But the judge told Mr. Snider that he had misunderstood the *mens rea* element of the offense of Failure to Register. Rather, the judge told Mr. Snider that the state would only be required to prove at trial that “[knew] the registration requirement” or “[knew] whether or not [he was] required to register.” RP (10/2/18) 20-21.

The judge provided this misinformation to Mr. Snider repeatedly, phrasing it in a variety of ways:

[Evidence of diminished capacity would have to show that Mr. Snider’s mental disorder] interfered with the ability to form the mental state, which is knowledge, of the crime charged, which is *knowledge of the responsibility to register. That is the only thing at issue in this case.*  
RP (10/2/18) 13 (emphasis added).

[T]he state still has the burden of proof that the defendant knew. State is not denying that, that he had the responsibility to register; that is their responsibility to prove it.  
RP (10/2/18) 24-25.

[Evidence of diminished capacity would have to show that specific mental health condition] create[d] the inability for you to form the proper mental state, *which is knowledge of the duty to report. That's it. That's it.* That you have other mental health issues is not relevant.  
RP (10/2/18) 28 (emphasis added).

[Diminished capacity requires proof that] you had the inability to form the *mental state to know that you had a duty to register*. And that's what's missing here.  
RP (10/2/18) 28 (emphasis added).

The judge was wrong about the *mens rea* element of Failure to Register and about the application of the law to Mr. Snider's case. *Drake*, 149 Wn. App. at 92–95; RCW 9A.44.132(1). In fact, if the case had gone to trial, the state would have been required to prove that Mr. Snider knew that he had changed his residence and also knew that he had not re-registered after doing so – in addition to proving that he knew that he was required to register in the first place. *Drake*, 149 Wn. App. at 92–95; RCW 9A.44.132(1).

The trial court judge affirmatively misinformed Mr. Snider regarding the elements of the charge against him and regarding the application of the law to the facts of his case. *See* RP (10/2/18) 13, 20-21, 24-25, 28. Mr. Snider's guilty plea was not entered knowingly, intelligently, and voluntarily.<sup>2</sup> *R.L.D.*, 132 Wn. App. at 705; *A.N.J.*, 168

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<sup>2</sup> The factual basis for Mr. Snider's guilty plea properly states that he "knowingly failed to comply with the sex offender registration law..." CP 62. But Mr. Snider admitted to that only *after* the judge had misinformed him regarding the meaning of the term "knowingly" in the context of the Failure to Register statute. *See* RP (10/2/18) 13, 20-21, 24-25, 28. The language of Mr. Snider's guilty plea does not change the analysis regarding whether the plea was entered knowingly, voluntarily, and intelligently in this context. *See A.N.J.*, 168 Wn.2d at 118–19 (permitting the accused to withdraw his guilty plea because he did not understand the relation of the law to the facts of his case, even though the language of the plea satisfied the elements of the offense).

Wn.2d at 118–19. This Court must vacate Mr. Snider’s guilty plea and conviction. *Id.*

**CONCLUSION**

Mr. Snider’s guilty plea was not entered knowingly, intelligently, and voluntarily because it was acceded to only after the trial court judge had affirmatively misinformed Mr. Snider regarding the elements of the charge against him and regarding the relation of the facts of his case to the law. Mr. Snider’s conviction must be vacated.

Respectfully submitted on August 12, 2019,



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Skylar T. Brett, WSBA No. 45475  
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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Pierce County Prosecuting Attorney  
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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Signed at Seattle, Washington on August 12, 2019.



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**LAW OFFICE OF SKYLAR BRETT**

**August 12, 2019 - 1:08 PM**

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**Appellate Court Case Title:** State of Washington, Respondent v. Ronald Harris Snider, Appellant  
**Superior Court Case Number:** 17-1-03643-1

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