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Court of Appeals
Division II
State of Washington
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NO. 54049-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

HOMER TAYLOR,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable David L. Edwards, Judge

MOTION TO WITHDRAW AND BRIEF REFERRING TO MATTERS
IN THE RECORD WHICH MIGHT ARGUABLY SUPPORT REVIEW

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I. IDENTITY OF MOVING PARTY

CATHERINE E. GLINSKI, appointed counsel for appellant, HOMER TAYLOR, requests the relief designated in part II of this motion.

II. STATEMENT OF RELIEF REQUESTED

Appointed counsel requests permission to withdraw pursuant to RAP 15.2(i)

III. FACTS RELEVANT TO MOTION

By order dated December 11, 2019, and pursuant to an order of indigency entered in superior court, this Court appointed Catherine E. Glinski to represent appellant in his appeal from Grays Harbor County Superior Court's imposition of a Judgment and Sentence on November 1, 2019.

In reviewing this case for issues to raise on appeal, counsel did the following:

- (a) read and reviewed the verbatim report of proceedings from the motion hearings, bench trial, and sentencing;
- (b) read and reviewed all of the clerk's papers;
- (c) researched all pertinent legal issues and conferred with other attorneys concerning potential legal and factual bases for appellate review.

IV. GROUNDS FOR RELIEF

RAP 15.2(i) allows an attorney to withdraw on appeal where counsel can find no basis for a good faith argument on review. In accordance with the due process requirements of *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967); *State v. Theobald*, 78 Wn.2d 184, 185, 470 P.2d 188 (1970); and *State v. Pollard*, 66 Wn. App. 779, 825 P.2d 336, 834 P.2d 51, *rev. denied*, 120 Wn.2d 1015 (1992), counsel seeks to withdraw as appellate counsel and allow Taylor to proceed *pro se*. Counsel submits the following brief to satisfy her obligations under *Anders*, *Theobald*, *Pollard*, RAP 15.2(i), and RAP 18.3(a)(2).

V. BRIEF REFERRING TO MATTERS IN THE RECORD THAT MIGHT ARGUABLY SUPPORT REVIEW

A. Potential Issue on Appeal

Did the State fail to establish that Taylor was required to register as a sex offender?

B. Statement of the Case

On August 14, 2019, appellant Homer Taylor III was charged in Grays Harbor Superior Court with one count of failure to register as a sex offender during the period of July 1 through August 13, 2019. CP 1-3; RCW 9A.44.130. He had also been charged with failure to register during May 2019. He was taken into custody on that charge but released on July

1, 2019, after acknowledging in court that he understood he had a duty to register as a sex offender. Exhibit 9¹ (VRP of 7/1/19 hearing), at 4-5.

Taylor moved to dismiss the charges, arguing that the Court of Appeals had previously held that he was not required to register as a sex offender based on his 1982 conviction of third degree statutory rape. CP 4-7; *see State v. Taylor*, 162 Wn. App. 791, 259 P.3d 289 (2011). Counsel acknowledged that the Supreme Court subsequently held that persons in Taylor's position are required to register as sex offenders. *Id*; *Matter of Arnold*, 190 Wn.2d 136, 410 P.3d 1133 (2018). Counsel argued, however that while the Supreme Court disagreed with the Court of Appeals's logic in *Taylor*, it did not specifically overrule that case, and therefore the decision that Taylor is not required to register based on his prior offense is still binding. CP 4-7; 2RP 2-4.

The trial court disagreed. It ruled that under *Arnold*, Taylor has a duty to register as a sex offender, and it denied the motion to dismiss. 2RP 5-6.

Taylor waived his right to a jury and the case proceeded to a bench trial on both charges. CP 8. The State presented evidence that Taylor was incarcerated at Airway Heights in September 2018. Before he was

¹ The exhibits from the joint trial have been designated in Cause No. 54191-2-II. Counsel previously filed a motion requesting that the exhibits be made available for this appeal as well.

released, he was provided information regarding registration as a sex offender. He signed the order of release but declined to sign other forms. 3RP² 6-7, 11, 17-19.

Upon his release from Airway Heights, Taylor was transferred to the custody of Thurston County. 3RP 20. While he was in custody, the Thurston County Sheriff's Department became aware that due to a change in the law, Taylor was required to register as a sex offender, although he had not been required to register for some time. 3RP 27. The Sheriff's Department left a letter for Taylor at the jail, informing him of his duty to register. 3RP 28.

Taylor did not register after his release from jail. 3RP 40. On May 31, 2019, Aberdeen Police arrested Taylor for failure to register as a sex offender. 3RP 34. Taylor completed the registration forms on July 1, 2019, while he was in the Grays Harbor County Jail. 3RP 41. He listed an address in Hoquiam and indicated he had read and understood the forms explaining his duty to register. 3RP 43-45. He was released from custody.

Hoquiam Police were asked to verify Taylor's address on July 23, 2019. They discovered that the address Taylor listed in his registration did not exist. 3RP 50. On August 12, 2019, Taylor was arrested for failure to register as a sex offender. 3RP 52. Taylor waived his rights and gave a

² The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP—9/20/19; 2RP—9/30/19; 3RP—10/25/19 and 4RP—11/1/19.

statement, telling police he had been homeless after staying briefly with a niece and then in a motel. 3RP 52. The niece Taylor mentioned in his statement testified that he had not lived with her in 2019. 3RP 59.

Certified copies of Taylor's prior convictions, as well as a transcript from the July 1, 2019, hearing in which Taylor acknowledged his duty to register, were admitted into evidence. 3RP 59; Exhibits 9-10.

Taylor testified that he had suffered massive head trauma with a skull fracture which affected his memory retention. 3RP 63. His caretaker, who usually reminded him of dates and requirements, had died, and he was unable to keep track of his responsibilities on his own. 3RP 61-64.

The court found Taylor guilty on both counts of failure to register. CP 22-28. It imposed standard range sentences of 57 months, to be served concurrently. CP 33; 4RP 7. Taylor appealed both convictions. The appeals have not been consolidated.

C. Potential Argument on Appeal

Did the State establish beyond a reasonable doubt that Taylor had a duty to register as a sex offender?

The burden of proving the essential elements of a crime unequivocally rests on the prosecution. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Wash. Const. art. I, § 3. Proof beyond a reasonable doubt of all essential elements

is an “indispensable” threshold of evidence the State must establish to garner a conviction. *Winship*, 397 U.S. at 364. Therefore, as a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); *State v. Chapin*, 118 Wn.2d 681, 826 P.2d 194 (1992); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

To convict Taylor of failure to register as charged in this case, the State was required to prove he had a duty to register as a sex offender. RCW 9A.44.130. The State alleged this duty arose out of Taylor’s 1982 conviction of third degree statutory rape.

In 2011, the Court of Appeals held that Taylor’s prior conviction did not entail a duty to register as a sex offender. *Taylor*, 162 Wn. App. at 793. In that case, Taylor was convicted of failure to register in 2010, and he challenged the conviction, arguing that his 1982 conviction of statutory rape did not give rise to a duty to register. The Court of Appeals agreed, reasoning that because Taylor was convicted of a crime which had been repealed, his conviction did not meet the definition of a sex offense. *Id.* at 799-800.

In 2018, the Supreme Court criticized the reasoning applied in *Taylor. Matter of Arnold*, 190 Wn.2d 136, 145-56, 410 P.3d 1133 (2018). It held that statutory rape meets the statutory requirements for classification as a sex offense, and thus triggers the duty to register, even though the statute establishing the offense of statutory rape has been repealed. *Id.* at 145-47.

Taylor may wish to argue, as he did below, that because the Supreme Court did not specifically reverse the decision in *Taylor*, that decision is binding, and he does not have a duty to register as a sex offender. His conviction should therefore be reversed.

VI. CONCLUSION

For the reasons stated above, counsel for appellant asks that the motion to withdraw as appointed counsel be granted, and that appellant be allowed to proceed *pro se* should he choose to do so.

DATED this 6th day of April, 2020.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



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Attorney for Appellant

Certification of Service

Today I caused to be mailed a copy of the Motion to Withdraw and Brief in *State*

v. Homer Taylor, Cause No. 54049-5-II as follows:

Homer Taylor/DOC#250420
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
April 6, 2020

GLINSKI LAW FIRM PLLC

April 06, 2020 - 11:57 AM

Transmittal Information

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