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Court of Appeals  
Division II  
State of Washington  
9/8/2020 8:00 AM  
NO. 54049-5-II

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

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STATE OF WASHINGTON,  
Respondent,

v.

HOMER CONNELL TAYLOR, III,  
Appellant.

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

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THE HONORABLE DAVID L. EDWARDS, JUDGE

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RESPONDENT'S BRIEF/RESPONSE TO APPELLATE  
COUNSEL'S MOTION TO WITHDRAW

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## **RESPONSE TO ASSIGNMENTS OF ERROR**

1. **Appellate counsel has correctly determined there are no non-frivolous issues on appeal.**
2. **The State presented sufficient evidence to prove Taylor's duty to register beyond a reasonable doubt.**

## **RESPONDENT'S COUNTER STATEMENT OF THE CASE**

The State does not take issue with the Appellant's Statement of the Case. The State will supplement the facts as necessary in its argument section below.

## **ARGUMENT**

1. **APPELLATE COUNSEL HAS CORRECTLY DETERMINED THERE ARE NO NON-FRIVOLOUS ISSUES ON APPEAL.**

Counsel has identified one potential appellate issue: (1) whether the State proved beyond a reasonable doubt that Taylor had a duty to register as a sex offender. Motion at 5. Counsel correctly notes that this issue lacks merit. Counsel also has requested permission from the Court to withdraw as Taylor's court appointed counsel.

A motion to withdraw as court appointed counsel on review on the ground there is no basis for a good faith argument must "be accompanied

by a brief referring to anything in the record that might arguably support the appeal.” *State v. Theobald*, 78 Wn.2d 184, 470 P.2d 188 (1970), *citing Anders v. California*, 386 U.S. 738, 744, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967); *see also* RAP 15.2(i); RAP 18.3(a). The indigent defendant should be given a copy of this brief and allowed time to raise any issues of his or her choosing. *Id.* The court then decides whether the case is wholly frivolous after a full examination of the proceedings. *Id.*

Taylor’s counsel has complied with this procedure. The State concurs with counsel’s assessment that there are no meritorious issues. The State, while understanding Taylor’s counsel’s addressment of the issues, would respectfully point out, if this were a full briefing, the State would be countering the issues as follows below. Even with the State’s reassessment of how the issues must be presented to this Court, there are still no meritorious issues to present. Taylor has not filed a pro se brief. Therefore, this Court should grant counsel’s motion to withdraw and affirm Taylor’s conviction and sentence.

**2. THE STATE PRESENTED SUFFICIENT EVIDENCE TO PROVE TAYLOR’S DUTY TO REGISTER BEYOND A REASONABLE DOUBT.**

The State presented sufficient evidence that Taylor had a duty to register as a sex offender; therefore, the Court should affirm his conviction and sentence in this matter.

**Standard of review.**

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068, 1074 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220–22, 616 P.2d 628 (1980).) “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* (citing *State v. Partin*, 88 Wn.2d 899, 906–07, 567 P.2d 1136 (1977).) “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Id.* (citing *State v. Theroff*, 25 Wn.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).) Appellate courts “defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the

evidence.” *State v. Homan*, 181 Wn. 2d 102, 106, 330 P.3d 182, 185 (2014) (citing *State v. Jackson*, 129 Wn.App. 95, 109, 117 P.3d 1182 (2005).)

**The State Presented Sufficient Evident to Prove Taylor Had a Duty to Register as a Sex Offender.**

The parties agree that Taylor was convicted in 1982 of Statutory Rape in the Third Degree, a violation of former RCW 9A.44.090. CP 4-7, 22-28; *see State v. Taylor*, 162 Wn.App. 791, 259 P.3d 289 (2011). Later, the legislature repealed former RCW 9A.44.090. LAWS OF 1988, ch. 145, § 24. The legislature replaced the statutes defining three degrees of statutory rape with three degrees of the crime of rape of a child. *State v. Taylor*, 162 Wn.App. 791, 796 n. 4, 259 P.3d 289 (2011).

In August 2009, Taylor was charged with failure to register as a sex offender, contrary to former RCW 9A.44.130 (2006). *Taylor*, 162 Wn.App. at 794. The State alleged that Taylor failed to register on July 8, 2009, citing the 1988 statutory rape conviction as his predicate offense. *Id.* In February 2010, the trial court found Taylor guilty and sentenced him to a standard range sentence of 43 months in prison. *Id.*

At the time of Taylor's 2009 failure to register offense, the sex offender registration statute required any adult who had been convicted of

a sex offense to register with the county sheriff. Former RCW 9A.44.130(1)(a). *Taylor*, 162 Wn.App. at 794.

In 2011, Division One decided *State v. Taylor*, supra, which held that offenders who were convicted under former RCW 9A.44.070, .080, and .090 (1979), do not have to register as sex offenders because the period when those crimes were in effect was not covered by the failure-to-register statute. The Court found those convictions fell within a statutory time period "gap" in the registration requirement. *Taylor*, 162 Wn.App. at 799. The offense of statutory rape was repealed in 1988 and, therefore, not a violation of chapter 9A.44 RCW in July 2009. See also *In re the Pers. Restraint of Wheeler*, 188 Wn.App. 613,619,354 P.3d 950 (2015).

Because the predicate offense for Taylor's 2009 failure to register conviction-- statutory rape in the third degree-- was not a violation of chapter 9A.44 RCW in 2009, Division One reversed the conviction. *Taylor*, 162 Wn.App. at 801.

In 2018, the Supreme Court decided *In re Pers. Restraint of Arnold*, 190 Wn.2d 136, 410 P.3d 1133 (2018), this decision addressed a split in the Divisions whether the sex offender registration statute, RCW 9A.44.130, requires registration after former RCW 9A.44.080 was repealed. The Supreme Court initially determined whether Arnold's

conviction under former RCW 9A.44.080 (1979) was a felony under chapter 9A.44 RCW to determine if it qualified as a "sex offense." *Id.* at 142. Then, the Court moved on to subsection (b) of RCW 9.94A.030. *Id.* The Court interpreted subsection (b) as containing a two-part inquiry: first, the reviewing court decides whether the prior crime of conviction was in effect prior to July 1, 1976; and, second, the court determines whether the prior crime of conviction is comparable to a felony listed under subsection (a) of the statute. *Id.* at 142-44. In deciding *Arnold*, the Court rejected the *Taylor* holding. *Arnold*, 190 Wn.2d at 146-47.

In this case, the court heard a motion to dismiss on September 30, 2019. RP (9/30/19) at 1-6. Defense counsel argued that in *Arnold*, the Court did not explicitly overrule *State v. Taylor*, but that the Court said that it "disagreed with the logic in *Taylor*" and that *Taylor* still provides that *Taylor* is not required to register. RP (9/30/19) at 2-5. The State argued that *Arnold* overruled *Taylor*. RP (9/30/19) at 3. The trial court found that the Supreme Court "clearly overturned that decision and reinstated the duty to register for *Taylor*, and every other person similarly situated." RP (9/30/19) at 5.

As the Supreme Court has held that statutory rape in the third degree requires registration and the Appellant was aware of this, there is

sufficient evidence to prove legally and factually that he had a duty to register as a sex offender.

**CONCLUSION**

Appellate counsel has correctly determined there are no non-frivolous issues that could be raised on appeal in this case. The single potential issue identified by counsel has no merit. There was sufficient evidence to prove that Taylor had a duty to register as a sex offender. This Court should grant appellate counsel's motion and dismiss this appeal.

DATED this 6<sup>th</sup> day of September, 2020.

Respectfully Submitted,

BY:   
KATHERINE L. SVOBODA  
Prosecuting Attorney  
WSBA # 34097

KLS /

# GRAYS HARBOR CO PROS OFC

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## Transmittal Information

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**Appellate Court Case Number:** 54049-5  
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