

29046-8-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JARROD YOCKEY, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

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I.

APPELLANT'S ASSIGNMENT OF ERROR

- A. Because the facts did not satisfy the elements of the crime of failure to register as a sex offender, the court erred by finding a factual basis for appellant Yockey's guilty plea, which should be set aside.

II.

ISSUE PRESENTED

- A. Was the evidence insufficient to support the elements of failure to register as a sex offender?

III.

STATEMENT OF THE CASE

On April 30, 2010, the defendant pled guilty to one count of failure to register as a sex offender. CP 44-57. The basis for the charge was that the defendant was required to register as a sex offender. Sometime in August of 2008, the defendant departed his last registered address at 1316 W. Dean in Spokane. CP 3.

While awaiting an April 6, 2009, hearing at Airway Heights Correctional Facility the defendant engaged in conversation with Jannette Hibdon and Jill Volke, both Community Corrections Officers. CP 2-3. Ms. Hibdon told the defendant several times not to speak about his violations, but the defendant continued talking. Ms. Volke heard Ms. Hibdon tell the defendant to stop talking, but the defendant continued to speak. CP 3.

The defendant told the CCOs that he could not return to the Dean address and had a new residence on Knox since his release. CP 3. The defendant apologized for not reporting. CP 3. The defendant stated that the reason he could not return to the Dean address was because the defendant knew he would be located and arrested there. CP 3. The defendant stated that he was working and paying rent at the Knox address. CP 3.

The defendant was sentenced to 24 months incarceration. CP 44-57. The defendant then filed this appeal. CP 75-76.

#### IV.

#### ARGUMENT

The defendant pled guilty but now appeals on the theory that there was insufficient evidence to support the plea. The first thing to recognize

is that the defendant did not list the elements of the crime on his Statement of Defendant on Plea of Guilty, but did indicate that the trial court could use police reports and affidavits of facts in the court's decisions. CP 58-68.

The defendant appears to rely on a claim that there was no evidence that he was evicted or removed from his apartment on Dean. Brf. of App. at 4. It is this lack of being evicted that forms the core of the defendant's arguments. The problem facing the defendant on appeal is that there is nothing in RCW 9A.44.130 that requires a registrant to be evicted from his dwelling before charges can be pursued. The defendant attempts to insert a factor that is not in the statute.

Apparently, the defendant did not read the affidavit of facts in this case. CP 2-5. The affidavit of facts notes that Jannette Hibdon would testify that she was present on April 6, 2009, at Airway Heights Correctional Facility awaiting a violation hearing with the defendant. Despite the fact that that she repeatedly told the defendant to stop talking, the defendant apologized for not reporting in and said he could not return to his address on Dean. CP 3. The defendant stated that he had found a place on Knox and had stayed there since his release. CP 3.

Jill Volke was also present at Airway Heights and heard Ms. Hibdon tell the defendant repeatedly not to talk about the situation, but the defendant continued to talk. CP 3. Ms. Volke heard the defendant say that he could not return to his address on Dean because he knew he would be located and arrested there. CP 3. The defendant stated that he was working and paying his rent at the Knox address. CP 3.

The defendant's own statements terminate his arguments on appeal. He was not on a temporary sojourn or transient visit to the Knox address as suggested by the defendant on appeal. Brf. of App. at 4. By his own words, the defendant stated that he was living at the Knox address and paying rent there without reporting this new address. The defendant did not intend to ever return to the Dean apartment because he knew he would be arrested. The defendant was clearly attempting to evade capture by switching addresses. It is exactly this sort of activity that forms the reason for the reporting laws.

There is no argument from the defendant that he updated police on his current address on Knox. The defendant specifically noted that he did not want to be captured so he had a strong disincentive to properly report.

V.

CONCLUSION

For the reasons stated, the conviction of the defendant should be affirmed.

Dated this 16<sup>th</sup> day of November, 2010.

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