

FILED
May 31, 2013
Court of Appeals
Division III
State of Washington

NO. 31137-6-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

CORY LEE LANE,

Defendant/Appellant.

APPELLANT'S REPLY BRIEF,

Dennis W. Morgan WSBA #5286
Attorney for Appellant
PO Box 1019
Republic, Washington 99166
(509) 775-0777

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES	ii
STATUTES	ii
OTHER AUTHORITIES	ii
ARGUMENT	1

TABLE OF AUTHORITIES

TABLE OF CASES

State v. Aho, 137 Wn.2d 736, 975 P.2d 512 (1999)..... 2

State v. Medina, 112 Wn. App. 40, 48 P.3d 1005 (2002)..... 1

State v. Peterson, 168 Wn.2d 763, 230 P.3d 588 (2010)..... 1

State v. Releford, 148 Wn. App. 478, 200 P.3d 729 (2009) 2

STATUTES

RCW 9A.44.130..... 1

RCW 9A.44.130(11)(a) 1

RCW 9A.44.132..... 1

OTHER AUTHORITIES

LAWS OF 2010, ch. 267, § 2..... 1

ARGUMENT

Cory Lee Lane does not disagree with the State's analysis and reliance upon *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010).

What the State fails to recognize is that there is an overlap in the charging period as a result of statutory amendments to RCW 9A.44.130 and .132.

When RCW 9A.44.130(11)(a) was amended in 2010 it changed the registration requirements from then-existing RCW 9A.44.130(11)(a).

Mr. Lane does not contest the charging language of either the original Information or the Amended Information. He asserts that Instructions 11 and 12 set forth the specific language from the predecessor statute and that the State is limited to the facts contained in the jury instructions.

The jury instructions became the law of the case since no objection was asserted by either the State or Mr. Lane. *See: State v. Medina*, 112 Wn. App. 40, 45, 48 P.3d 1005 (2002).

Since the Amended Information encompassed the charging period of May 1, 2010 to June 16, 2011, the State could only rely upon evidence that pre-dated June 10, 2010 (effective date of LAWS OF 2010, ch. 267, § 2).

There is no way to determine whether or not the jury confined itself to the time period prior to June 10, 2010. Whatever evidence the jury relied upon is beyond the ability of either Mr. Lane or the State to determine.

The State claims that Mr. Lane is precluded from arguing the limitations contained in the jury instructions since no objection was raised at trial. Mr. Lane is unaware of any requirement that an objection be made to an instruction which correctly states the law as to a specific time frame.

Failure to object to a correct instruction is not ineffective assistance of counsel. *See: State v. Releford*, 148 Wn. App. 478, 497-98, 200 P.3d 729 (2009).

Mr. Lane relied upon *State v. Aho*, 137 Wn.2d 736, 744, 975 P.2d 512 (1999) in his original brief. He asserts that *Aho* is the controlling authority under the facts and circumstances of his case.

The State concedes that there is likely error in the calculation of Mr. Lane's offender score. Insofar as that concession is concerned the case needs to be remanded for resentencing.

Mr. Lane otherwise relies upon the argument contained in his original brief.

DATED this 31st day of May, 2013.

Respectfully submitted,

s/Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant
P.O. Box 1019
Republic, Washington 99166
Phone: (509) 775-0777/Fax: (509) 775-0776
nodblspk@rcabletv.com

NO. 31137-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
) PEND OREILLE COUNTY
 Plaintiff,) NO. 11 1 00033 1
 Respondent,)
) **CERTIFICATE OF SERVICE**
 v.)
)
)
 CORY LEE LANE,)
)
)
 Defendant,)
 Appellant.)
)

I certify under penalty of perjury under the laws of the State of Washington that on this 31st day of May, 2013, I caused a true and correct copy of the *MOTION AND AFFIDAVIT TO EXTEND TIME TO DATE OF FILING REPLY BRIEF* and *APPELLANT'S REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK
Court of Appeals, Division III
500 North Cedar Street
Spokane, Washington 99201

E-FILE

CERTIFICATE OF SERVICE

PEND OREILLE COUNTY PROSECUTOR'S OFFICE U. S. MAIL
Attn: Dolly N. Hunt
PO Box 5070
Newport, Washington 99156-5070

CORY LEE LANE #987521 U. S. MAIL
Coyote Ridge Correction Center
PO Box 769
Connell, Washington 99326

s/Dennis W. Morgan
Dennis W. Morgan, Attorney at Law
DENNIS W. MORGAN LAW OFFICE
PO Box 1019
Republic, WA 99166
(509) 775-0777
(509) 775-0776
nodblspk@rcabletv.com

CERTIFICATE OF SERVICE