FILED

JAN 24, 2014

Court of Appeals
Division III
State of Washington

NO. 317803-III
317811-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

JEREMIAH JAMES HODGINS,

Respondent.

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR.

Appellant makes follows assignment of errors:

1. The trial court erred by ruling that the present conviction was not a felony conviction of domestic violence as defined in RCW 9.94A.030(20) although it was plead and proven..

2. The trial court erred in calculating the respondent's offender score as one, by only counting the concurrent offense and not the prior repetitive nonfelony domestic violence convictions.

B. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes numerous assignments of error. These can be summarized as follows;

1. Was the present conviction a felony domestic violence offense as defined by RCW 9.94A.030(20), which was plead and proved?

2. Did the court err by not counting the prior repetitive nonfelony domestic violence convictions in determining the respondent's offender score?

C. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The trial court erred by ruling that the present conviction was not a felony conviction of domestic violence as defined by RCW 9.94A.030(20).

2. The trial court erred by not counting the prior repetitive nonfelony domestic violence convictions in determining the respondent's offender score.

II. STATEMENT OF THE CASE

The respondent, Jeremiah James Hodgins, was charged by a second amended information, in Yakima County Cause No. 13-1-00306-1, with the crime of Felony Violation of a Protection Order – Domestic Violence, allegedly having occurred on February 20, 2013. (13-1-00306-1 CP 1). He was also charged by a six count information in Yakima County Cause No. 13-1-00343-6, with the crimes of Felony Violation of a Protection Order – Domestic Violence, allegedly having occurred on February 20, 21, 22, 23, 24, and 25, 2013. (13-1-00343-6 CP53-55).

The parties came to an agreement whereby the defendant would plead guilty to one count in each cause number, but there was a dispute as to the offender score. (6-4-13 RP 19). The trial court heard argument regarding the offender score and then orally gave its ruling. The trial court ruled that "I believe that there must be some allegation pled and proved of violence of some sort, not just a violation of protective order and I – it's a very circular statutory to get from one place to the other and I just think that if the legislature intended it to be something less than domestic violence, that it would be more clearly stated." (6-4-13 RP 37). The trial court also issued a written ruling. (31730-3 CP 14-16; 31781-1 CP 65-67).

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On June 7, 2013, the respondent entered a plea of guilty to those charges. (6-7-2013 RP 44-51; 31780-3 CP 17-23; 31781-1 CP 68-74). The respondent was then sentenced on each cause number and a felony judgment and sentence was entered. (6-7-2013 RP 65-67; 31780-3 CP 24-32; 31781-1 CP 91-99). This appeal timely followed. (31780-3 CP 87-99; 31781-1 CP 36-48).

III. ARGUMENT.

A. The statute defines domestic violence to include Felony Violation of Protection Orders.

1. Standard of Review.

Courts review issues of statutory interpretation de novo. State v. Lilyblad, 163 Wn.2d 1, 6, 177 P.3d 686 (2008).

2. Argument.

"'Statutory construction begins by reading the text of the statute.' *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005); see *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000). 'When we read a statute, we must read it as a whole and give effect to all language used.' *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 948, 162 P.3d 413 (2007); see *State v. Young*, 125 Wn.2d 688, 696, 888 P.2d 142 (1995). 'We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute.'

C.J.C. v. Corp. of Catholic Bishop, 138 Wn.2d 699, 708, 985 P.2d 262 (1999)." State v. Lilyblad, 163 Wn.2d 1, 6, 177 P.3d 686 (2008). The court should "read a statute as a whole and harmonize its parts to avoid inconsistent results". State v. Lilyblad, 163 Wn.2d at 12.

In 2010, the Washington State Legislature enacted ESHB 2777, which modified statutes relating to domestic violence. Section 101 of the act expressed the legislative intent of the law, "to improve the lives of persons who suffer from the adverse effects of domestic violence and require reasonable, coordinated measures to prevent domestic violence from occurring." ESHB 2777.

During a public hearing on the bill before the House Public Safety & Emergency Preparedness Committee, on Tuesday, January 26, 2010, http://www.tvw.org/index.php?option=com_tvwliveplayer&eventID=2010011282, State Representative Roger Goodman, the sponsor of the bill, addressed the committee, stating that "when you look at domestic violence, most of the time. . . most of the time people just lose it. It's inexcusable what they do to their partners when committing acts of violence. But a minority of the time there are terroristic, repeated acts, and sometimes, not violence, it's usually subtle, manipulative, insidious pattern of coercion and control which can erupt in violence and death. These repeat offenders are the ones we are targeting in this bill."

The trial court, in deciding that the current offense did not meet the definition of domestic violence in RCW 9.94A.030(20), stated that:

> RCW 9.94A.030(20) provides: "Domestic violence has the same meaning as defined in RCW 10.99.020 **and** 26.50.010." (Emphasis added). Pursuant to RCW 10.99.020(r), a violation of a restraining order constitutes "domestic violence." However, RCW 26.50.010 defines domestic violence as the following types of conduct against a family or household member: (a) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, boily injury or assault, (b) sexual assault, or (c) stalking. Notably, a violation of a restraining order does **not** constitute "domestic violence" under RCW 26.50.010.
>
> This court interprets the word "and" in RCW 9.94A.030(20) as meaning "and." Therefore, if a defendant's conduct does not amount to domestic violence under both RCW 10.99.020 and 26.50.010, then it is not "domestic violence" pursuant to RCW 9.94A.030(20). Because a violation of a restraining order does not constitute domestic violence under RCW 26.50.010, this court concludes that a violation of a restraining order does not constitute "domestic violence" for purposes of RCW 9.94A.030(20).
>
> Because the present convictions are for violations of restraining orders, not for "domestic violence" as defined by RCW 9.94A.030, RCW 9.94A.525(21) does not authorize additing points to Mr. Hodgins' offender score for his prior misdemeanor convictions. As a result, Mr. Hodgins' offender score is 1.

(31780-3 CP 15-16; 31781-1 CP 66-67).

By analyzing the statute in the way it did, the trial court failed to carry out the intent of the legislature, failed to consider the statute as a whole, **and** failed to harmonize its parts to avoid an inconsistent and absurd result. As part of the sentencing reform portion of the act, encompassing section 4, the legislature defined "domestic violence."

Section 401 amended RCW 9.94A.030 to add a definition of "domestic violence" to include the definitions of "domestic violence" from two other statutes.

The first statute, RCW 10.99.020, specifically defines "domestic violence" as including the crimes of assault in the first, second, third and fourth degrees, drive-by shooting, reckless endangerment, coercion, burglary in the first and second degrees, residential burglary, criminal trespass in the first and second degrees, malicious mischief in the first, second and third degrees, kidnapping in the first and second degrees, unlawful imprisonment, violation of the provisions of a restraining order, no-contact order, or protection order, rape in the first and second degrees, stalking, and interference with the report of domestic violence. These crimes must be committed by one family or household member against another. Further, the list of crimes in RCW 10.99.020 is nonexclusive.

When considering the reasoning that the trial court engaged in, one clearly observes that the trial court failed to consider the intent of the legislature and failed to read the statute as a whole. By the inclusion of the list of crimes from RCW 10.99.020, the legislature was specifically including those crimes in their definition of domestic violence. If the crimes listed where limited by the definition of domestic violence in RCW 26.50.010, not only would a felony violation of a protection order not be

included the trial court's definition of "domestic violence," but also the crimes of reckless endangerment, coercion when not threatening bodily injury, burglary in the first degree when armed with a deadly weapon, second degree burglary, residential burglary, criminal trespass in the first and second degrees, malicious mischief in the first, second, and third degrees, kidnapping in the second degree where there is no threat of physical harm, unlawful imprisonment, and interference with the reporting of domestic violence.

Moreover, there are other crimes that may not be considered domestic violence under the court's definition of domestic violence, most notably the crime of first degree animal cruelty under RCW 16.52.205. The ASPCA reports that there is a documented connection between animal abuse and domestic violence. Abusers batter animals in order to demonstrate power and control over the family, to isolate the victim and children, to enforce submission, to perpetuate an environment of fear, to prevent the victim from leaving or coerce her to return and to punish for leaving or showing independence. http://www.aspca.org/fight-cruelty/report-animal-cruelty/domestic-violence-and-animal-cruelty. See also Facts About Animal Abuse & Domestic Violence, American Human Society. http://www.americanhumane.org/interaction/support-the-bond/fact-sheets/animal-abuse-domestic-violence.html.

"A statute is construed as a whole, with all its parts being harmonized to give effect to the intent of the Legislature and to avoid inconsistent and absurd results." State v. Postema, 46 Wn. App. 512, 515 (1987). "A principle consistent with this view is that of noscitur a sociis, which provides that a single word in a statute should not be read in isolation, and that "'the meaning of words may be indicated or controlled by those with which they are associated.'" *Citations Omitted.* In interpreting statutory terms, a court should """take into consideration the meaning naturally attaching to them from the context, and . . . adopt the sense of the words which best harmonizes with the context.""" State v. Roggenkamp, 153 Wn.2d 614, 623, 106 P.3d 196 (2005).

"Another well-settled principle of statutory construction is that "each word of a statute is to be accorded meaning." *State ex rel. Schillberg v. Barnett*, 79 Wn.2d 578, 584, 488 P.2d 255 (1971). "'[T]he drafters of legislation . . . are presumed to have used no superfluous words and we must accord meaning, if possible, to every word in a statute.'" *In re Recall of Pearsall-Stipek,* 141 Wn.2d 756, 767, 10 P.3d 1034 (2000) (quoting *Greenwood v. Dep't of Motor Vehicles*, 13 Wn. App. 624, 628, 536 P.2d 644 (1975)). "[W]e may not delete language from an unambiguous statute: '"Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous."'"

State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing,* 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996))).” State v. Roggenkamp, 153 Wn.2d 614, 624, 106 P.3d 196 (2005).

If the legislature wanted to limit the offender score to crimes that met the definition of “domestic violence” by the definition in RCW 26.50.010, then they would not have included the language of RCW 10.99.020, therefore making the inclusion of RCW 10.99.020 superfluous, as it was interpreted by the trial court.

The use of the word “and” in the statute, was clearly meant to be inclusive, not limiting as the court had decided. Webster’s Encyclopedic Unabridged Dictionary of the English Language states that the word “and” is a conjunction. It defines “and” as “1) (used to connect grammatically coordinate words, phrases or clauses); with, along with, together with; in addition to; besides; also.” By the language of the statute, when considering the statute as a whole, the legislature meant “and” to mean “in addition to” and not “as limited by.”

B. By reading the statute as a whole, the defendant's prior acts of violating orders of protection are repetitive acts of domestic violence.

Limiting the definition of domestic violence as found in RCW 9.94A.030(20), by excluding many of the crimes listed in RCW 10.99.020, to only those crimes that fit the definition of RCW 26.50.010, completely misconstrues the intent of the legislature. While RCW 9.94A.525(21) references RCW 9.94A.030(20) for the definition of "domestic violence," the statute also references RCW 9.94A.030(41) for the definition of "repetitive domestic violence offense." "Domestic violence" under RCW 9.94A.030(20) has the same meaning as it does in RCW 10.99.020 and RCW 26.50.010. Meanwhile "repetitive domestic violence offense" is defined as any:

> (a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;
>
> (ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;
>
> (iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;
>
> (iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or
>
> (v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

> (b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

RCW 9.94A.030(41).

The legislature intentionally made a distinction in RCW 9.94A.030 between "domestic violence" and "repetitive domestic violence offenses." One may logically infer that had the legislature intended "repetitive domestic violence offenses" to have the same meaning as "domestic violence" under RCW 9.94A.030(20), the legislature would not have carved out a special definition for "repetitive domestic offenses" in RCW 9.94A.030(41). The trial court's opinion that felony violations of protection orders are not considered domestic violence offenses because felony protection order violations do not meet the definition of domestic violence under RCW 26.50.110 and RCW 10.99.020 runs counter to the intent of the legislature.

Both RCW 26.50.010(1) and RCW 10.99.020(5) address domestic violence. Where the trial court misses the mark is that neither statute is designed to punish offenders. Title 26 addresses domestic relations while Title 10 addresses criminal procedure. To argue as defense counsel is undercuts the entire utility of the Sentencing Reform Act of 1981. The

Sentencing Reform Act, after all, is the statute that offenders are sentenced under.

Accordingly, H.B. 2777 amended RCW 9.94A.525(21) to reflect the enhanced sentencing of domestic violence offenders desired by the legislature. In felony domestic violence offender scoring, adult felony domestic violence offenses encompassed by the definition outlined in RCW 9.94A.030 count as two points. Misdemeanor convictions, on the other hand, counts as one full point where domestic violence was pled and proven after August 1, 2011 and the offense qualifies as one of the enumerated "repetitive domestic violence offenses" under RCW 9.94A.030(20). The legislature included misdemeanor no contact order violations as a "repetitive domestic violence offense." Importantly, the legislature makes no such requirement in RCW 9.94A.525(21)(c) that misdemeanor convictions must satisfy the definition of "domestic violence" under RCW 9.94A.030(20). Misdemeanor convictions only need to satisfy the definition of "repetitive domestic violence" under RCW 9.94A.030(41) in order to count as one point.

IV. CONCLUSION

For the reasons set forth above this court should reverse the trial court, and hold that felony violation of a protection order –domestic violence, as charged, was a crime of domestic violence as defined by RCW 9.94A.030(20). Further, this court should instruct the trial court to include the respondent's convictions for repetitive domestic violence in his offender score.

Respectfully submitted this 24th day of January, 2014,

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DECLARATION OF SERVICE

I, Kenneth L. Ramm, state that on January 24, 2014, I emailed a copy, by agreement of the parties, of the Appellant's Brief , to David N. Gasch, gaschlaw@msn.com, and by US Mail to Jeremiah James Hodgins, 3107 Castlevale Rd, Apt. 1, Yakima, WA 98902.

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

DATED this 24h day of January, 2014 at Yakima, Washington.

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