FILED
OCTOBER 30, 2014
Court of Appeals
Division III
State of Washington

NO. 32269-6-III

CONSOLIDATED WITH 32384-6-III PRP

STATE OF WASHINGTON

COURT OF APPEALS - DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

GREGG WYNN HANSEN

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR

FRANKLIN COUNTY

BRIEF OF RESPONDENT

SHAWN P. SANT
Prosecuting Attorney

by: Maureen R. Lorincz, #40987
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A. STATEMENT OF FACTS

The Defendant in this case, Gregg Wynn Hansen, is a sex offender by virtue of a Sexual Assault in the Second Degree conviction out of the State of Oregon. (1/16/14 RP, 6 ll. 20-23). Due to that conviction, the Defendant was required to register as a sex offender in Washington. (Id. ll. 23-25). The Defendant was registered as transient with the Franklin County Sheriff's Office and was required to check in weekly. (Id. at 7, ll. 4-10; Id. at 11, ll. 2-9). During the period of time between November 28th of 2012 and February 8th of 2013, the Defendant failed to check in weekly as required. (Id. at 7, ll. 7-10). Because he has at least two prior Failure to Register as a Sex Offender convictions, he was charged with a Class B Felony Failure to Register as a Sex Offender by Information dated September 23, 2013. (CP 33). He was convicted after a Bench Trial before the Honorable Bruce A. Spanner on January 16, 2014 (1/16/14 RP, 71 ll. 6-10). It is from this decision that the Defendant now appeals. From prison, the Defendant filed a Motion to Modify or Correct Judgment and Sentence (CP 3-11). It has been transferred to this Court, treated as a Personal Restraint Petition, and consolidated with this appeal. (CP 2).

B. ISSUES FOR REVIEW

The issues for review in this case are whether the Defendant should have been charged the $100 DNA fee, and whether his offender score was miscalculated.

C. ARGUMENT

1. THE DEFENDANT WAIVED AN ARGUMENT ON HIS DNA FEE AS HE FAILED TO OBJECT AT SENTENCING. THE DNA FEE IS A MANDATORY FINE IMPOSED IN ALL FELONY CASES WHETHER OR NOT THE OFFENDER HAS PREVIOUSLY SUBMITTED A SAMPLE. IT WAS PROPERLY IMPOSED IN THIS CASE.

As a foundational matter, the Defendant failed to object to the imposition of the DNA fine in this case. The sentencing judge, recognizing that the Defendant was indigent, struck most of the fines in the Judgment and sentence. He stated "I cannot make a finding that you have now or will in the future have the ability to pay legal/financial obligations. So, I'll only impose the mandatory—the legal/financial obligations, namely the $500.00 victim assessment and the $100.00 DNA collection fee." (2/19/14 RP 82, ll. 4-9). He later stated "I've simply stricken that finding . . . that he has the ability now or in the future, and I've crossed out all of the non mandatory legal/financial obligations that were listed in the

judgment and sentence." (Id. at 84, ll. 3-4, 6-10). The Defendant failed to object to the imposition of the $100 DNA fee, despite two separate opportunities, and waives the issue on appeal.

Even if this Court determines that the argument was not waived, the $100 DNA fee is mandatory and should be imposed. The Defendant directs the Court's attention to RCW 43.43.754, but that statute must be read in conjunction with RCW 43.43.7541 which states, in relevant part that:

> Every sentence imposed for a crime specified in RCW 43.43.754 *must* include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed.

(Emphasis added). While RCW 43.43.7541(2) states that a subsequent DNA submission is not required if the Washington State Patrol crime laboratory already has a DNA sample on file, this ignores the fact that "[t]he DNA collection fee serves to fund the collection of samples and the maintenance and operation of DNA databases." State v. Brewster, 152 Wash.App. 856, 860, 218 P.3d 249 (2009). The fee, therefore, encompasses more than the mere

collection of DNA alone. The plain language of the statute that *every* sentence imposed for a crime specified in RCW 43.43.754 *must* include the $100 fee is unambiguous and clearly announces the Legislature's intent in enacting the mandatory fee. Because the issue was waived and the fee is mandatory, the Defendant should be required to pay his DNA fee.

2. THE DEFENDANT WAIVED AN ARGUMENT ON HIS OFFENDER SCORE AS HE AGREED TO ITS CORRECTNESS AT HIS SENTENCING HEARING. IN ANY EVENT, HIS OFFENDER SCORE WAS PROPERLY CALCULATED. HE IS NOT ENTITLED TO RELIEF AND HIS PRP SHOULD BE DENIED.

In his Motion to Modify his Judgment and Sentence, the Defendant claims his offender score is improperly calculated. (CP 3). He provides no argument or basis for this assertion. Based on the Defendant's prior felony convictions, his offender score for this case was calculated to be 9+. (CP 18). The State listed the Defendant's extensive felony criminal history in his Judgment and Sentence. (CP 17). The box preceding the criminal history section stating "Unless the Defendant otherwise objects, the defendant agrees that this is [a] correct recitation of his criminal history" was marked. Id. At his sentencing hearing, the Defendant signed his

criminal history form that was submitted to the court. (CP 30). The following exchange took place:

> THE COURT: ...I've been handed up Mr. Hansen's criminal history that he signed. Mr. Hansen, Did you sign this indicating this is a correct and complete criminal history?
>
> DEFENDANT: Yeah. As far as I know, Your Honor.

(2/19/14 RP, 76 ll. 16-21). The Defendant made no argument whatsoever that his offender score was incorrect at his sentencing hearing; thus, the issue is waived.

Even if this Court decides to address the issue, the offender score was properly calculated. According to RCW 9.94A.525(18), prior adult and juvenile sex offense convictions (excluding convictions for Failure to Register As a Sex Offender) are scored as 3 points each. All other adult felonies count as 1 point. Starting with the Defendant's oldest felony conviction, Robbery in the Second Degree counts as 1 point. (See chart in Judgment and Sentence, CP 17). RCW 9.94A.525(2)(a) denotes that Class A and sex prior felony convictions shall always be included in the offender score. Burglary in the First Degree, as properly included, counts as 1 point. Violation of the Uniform Controlled Substances Act—Manufacturing/Delivery counts also as 1 point. The Defendant's

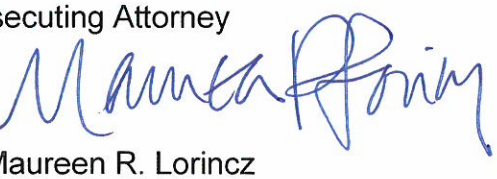
Sexual Abuse in the Second Degree conviction out of Oregon is worth 3 points since it is a sex offense. RCW 9.94A.525(18). All of the Defendant's other adult felonies (5 Failure to Register As a Sex Offender convictions, 2 Unlawful Possession of a Controlled Substance Convictions, and an Attempting to Elude a Pursuing Police Vehicle) count as 1 point each. The Defendant was on community custody at the time of this conviction which additionally adds one point to his score. His raw offender score is 15, so the finding in his Judgment and Sentence that his offender score was 9+ was correct. (CP 18).

D. CONCLUSION

Based on the foregoing, the State respectfully requests that this Court affirm the Defendant's conviction for Failure to Register As a Sex Offender (Third or Subsequent Offense) and dismiss his PRP.

Dated this 30th day of October, 2014.

Respectfully submitted,
SHAWN P. SANT
Prosecuting Attorney

By: 
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WSBA #40987
Deputy Prosecuting Attorney

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)

) SS.

County of Franklin)

COMES NOW Abigail D. Iracheta, being first duly sworn on oath, deposes and says:

That she is employed as a Legal Secretary by the Prosecuting Attorney's Office in and for Franklin County and makes this affidavit in that capacity. I hereby certify that on the 30th day of October, 2014, a copy of the foregoing was delivered to Gregg W. Hansen, #322696, Appellant, 1830 Eagle Crest Way, Clallam Bay, WA 98326-9724 by depositing in the mail of the United States of America a properly stamped and addressed envelope; and to David N. Gasch, opposing counsel, gaschlaw@msn.com by email per agreement of the parties pursuant to GR30(b)(4).

Signed and sworn to before me this 30th day of October, 2014.

Notary Public in and for
the State of Washington,
residing at Kennewick
My appointment expires:
May 19, 2018