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Court of Appeals
Division III
State of Washington
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NO. 360474

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES NATHEN DOLLARHYDE,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 18-1-0016-20

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Did the court err in sentencing the Defendant?
2. Did the State present sufficient evidence of failure to register as a sex offender?
3. Did the court exceed its statutory authority in imposing community custody conditions?
4. Should certain LFOs imposed be stricken from the judgement and sentence?

B. STATEMENT OF THE CASE

In 2013 the then juvenile Defendant, James Dollarhyde, was convicted of Child Molestation in the First Degree. CP 15, Ex. 1. Pursuant to his conviction the Defendant was subject to reporting requirements which he was found to have violated on two separate occasions, resulting in two additional felony convictions for Failure to Register. CP 9, 15; Exs. 2, 3.

After the Defendant was released on the most recent conviction he registered with the Klickitat County Sheriff's Office as homeless. RP 19, 29, 42-43, 73; CP 10, 11. Due to his status as homeless the Defendant was required to check in weekly with the Sheriff's Office in-person. RP 19, 30-31; CP 10-11. The Defendant was also monitored by Department of Corrections Community Corrections Officer Jordan Bergstrom which required weekly reporting requirements. RP 38-44.

To complete a weekly check-in with the Sheriff's Office the Defendant would fill out a form provided by the office. RP 19, 31; Exs. 4-8. The form

requested the individual's name and identifying information, as well as the "last registered address" and "new address." Exs. 4-8. The Sheriff's Office requested that the defendant provide a list of where he was staying the previous seven days. CP 26, 30.

When reporting to the Sheriff's Office, the Defendant would utilize the back side of the form to write out the locations he was staying. On each report in the month of January 2018 the Defendant listed three separate locations: "315 West Allyn," "ABC Bridge," and "Signing Bridge" with "Goldendale, WA, 98620" to the side of these names. Exs. 4-8. For two of the reports he placed numbers to the left of the location, apparently specifying the number of nights at each address. Exs. 7-8. The other reports did not contain these numbers. Exs. 4-6.

The Defendant was charged with failing to comply with reporting requirements from January 1-31, 2018. The State's position was that the Defendant failed to disclose for periods of time he was in the Klickitat County Jail and at a private residence. RP 13-15, 40-42, 77.

The jail stay was part of sanctions for the Defendant's violation of his DOC community custody where he tested positive for marijuana. RP 40-41, 77; CP 10. On the subsequent weekly report to the Sheriff's Office the Defendant did not include the stay at his jail, only listing "315 West Allyn," "ABC Bridge," and "Signing Bridge." Ex. 6.

Beyond not reporting his stay in the jail, the Defendant spent several nights in the apartment of Julie Larson. RP 45-47. Ms. Larson testified at trial that the Defendant stayed at her apartment at 102 East 21st Street “for several nights,” later clarified to be “somewhere around a week...[m]aybe four days.” RP 47-48. During that time the Defendant was seen “sleeping on the floor” by Ms. Larson and helping out in the home. RP 47-48. During the Defendant’s stay Ms. Larson became aware of the Defendant’s status as a sex offender through her daughter. Fearful for her three children, including her 12-year old son living at the same address, Ms. Larson asked the Defendant to leave. RP 48. Ms. Larson’s daughter also testified at trial that the Defendant had stayed at the Larson residence for a couple of days. CP 57.

During trial the Defendant alleged he had not stayed at the apartment of Ms. Larson overnight, directly contradicting the testimony of two witnesses, and that he had been at one of the three addresses provided to the Sheriff’s Office on each night. RP 78-79. The Defendant also alleged that nobody in the Sheriff’s Office ever requested he provide an accounting of his previous weeks’ stays, and that he did not list the stay at the jail because it was known he was there. RP 75-78.

Lisa Shupe, a Criminal Records Technician for the Klickitat County Sheriff’s Office, testified at trial as to her overseeing the reporting of the Defendant. RP 28-31. Ms. Shupe testified that pursuant to state guidelines

and RCWs, the Defendant, as a transient, was required to come in weekly to provide a list of addresses that he had been staying at. RP. 29. Ms. Shupe testified she had personally met with the Defendant to go over the RCWs concerning the reporting requirements for registering and personally requested the defendant to provide a list every week of his whereabouts the previous week. RP 30. Reviewing the forms the Defendant submitted in January, 2018, Ms. Shupe explained the addresses written by the Defendant were provided “as to where he is staying the night.” RP 31, Exs. 6-8. Going through the weekly reports, Ms. Shupe clarified that based on the information provided she was unable to determine where the Defendant stayed on each day in January, 2018 and that the Defendant never reported staying in the Klickitat County Jail nor the Larson residence. RP 31-36.

The Defendant was found guilty of failure to register and sentenced him to 50 months, with 36 months of community custody. CP 12-13, 16-17; RP 110.

C. ARGUMENT

1. THE COURT DID ERR IN SENTENCING DEFENDANT UNDER A SCORE OF NINE.

The State concedes that all parties (the State, the defense attorney, the Department of Corrections, and the court) miscalculated the offender score of the Defendant as a nine when it should have been a seven. An

offender score of seven results in a presumptive sentence range of 22 to 29 months and the matter should be remanded for resentencing.

2. THE COURT WAS PRESENTED WITH SUFFICIENT EVIDENCE TO FIND THE DEFENDANT GUILTY OF HIS THIRD OFFENSE OF FAILING TO REGISTER AS A SEX OFFENDER.

Sufficient evidence supports the current conviction if, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). For this analysis, circumstantial evidence is as reliable as direct evidence. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences from that evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). The court is the trier of fact on issues of credibility or persuasiveness of the evidence. *State v. Johnston*, 156 Wn.2d 355, 365-66, 127 P.3d 707 (2006).

Defendant alleges there was insufficient evidence to support his third conviction of Failing to Register as a Sex Offender. Defendant's reliance on *State v. Flowers*, 154 Wn. App. 462, 225 P.3d 476 (2010) is

misplaced as the statute analyzed in that case was amended by the legislature to vitiate the holding of *Flowers*. The *Flowers* opinion was issued by Division 2 on February 9, 2010 and the legislature quickly moved to amend the statute with an unanimous Senate vote on March 3, 2010, and an unanimous House vote on March 8, 2010, to make clear that transient sex offenders required to register “must keep an accurate accounting of where he stays during the week” as opposed to the prior softer language that stated a county sheriff “may require the person list locations where the person has stayed during the last seven days.” LAWS OF 2010, Reg. Sess., ch. 265., sec. 1. The change in language unambiguously imposes upon transient sex offenders the “shall” requirement of keeping an accurate accounting of where they stay during the week regardless of whether the Sheriff requests that information to be provided. Therefore, the focus of the Defendant on whether the sheriff is authorized to ask sex offenders to list the prior week’s location is irrelevant. The statute now imposes a mandatory condition on transient sex offenders to keep an accurate accounting, regardless of whether a county sheriff wants them to list that information.

The court found sufficient evidence that the Sheriff’s Office had required the Defendant to provide an accurate accounting of where he stayed the previous week based on the testimony of Lisa Shupe who stated she informed the defendant of his various obligations under sex offender

registration statute and by the fact the defendant did provide a weekly list of his whereabouts. Why else would he provide the list unless prompted to do so by the Sheriff's Office? When asked to identify the sheets filled out by the Defendant, sheriff employee Angel Hill testified that "this is the document that James Dollarhyde would turn in on Mondays regarding his whereabouts for the week prior." CP 20. When asked if she had requested an accounting of his whereabouts she specifically stated "I know I have" but could not recall when exactly. CP 26. Furthermore, sheriff employee Lisa Shupe, who as part of her duties oversees the registration of sex offenders, identified the Defendant and testified that she has personally requested the Defendant to provide a list every week of where he had stayed the prior week. CP 30.

As made clear in the preceding sections, RCW 9A.44.130(6)(b) unambiguously requires transient sex offenders to keep an accurate accounting of where he or she stays during the week. The court found that on two instances the Defendant violated this requirement. First by being in jail and then, according to the defendant, "spacing" on listing that stay and second by lying about spending at least one or two nights at a residence he never listed or otherwise accounted for in violation of his obligations. The court was the factfinder in this case and was in the position to evaluate the truthfulness of the testimony he heard. The court found that the Defendant did stay at the Larson residence and apparently disregarded the Defendant's

self-serving testimony. This Court should resist the invitation of appellant counsel to substitute her judgment for the superior court judge that presided over the trial as to who told the truth. The court found the defendant violated his duties and was guilty of Failing to Register as a Sex offender. Any rational trier of fact would have found the same based on the testimony heard. The Defendant “spaced” on listing the jail and outright lied about staying at the Larson residence. Either fact leads to criminal culpability for Failing to Register as a Sex Offender.

3. SOME CONDITIONS OF COMMUNITY CUSTODY MAY BE UNRELATED TO DEFENDANT’S CRIME OF FAILURE TO REGISTER BUT ARE NOT VAGUE.

When the Defendant was sentenced the court adopted the Appendix H as proposed by the Department of Corrections in its pre-sentence investigation. That Appendix H contains the provisions complained of by the Defendant. The Defendant objects to the impositions of conditions 9, 10, 14 and 15.

The Defendant mischaracterizes all these conditions as imposed pursuant to the court’s ability to impose conditions to comply with any discretionary crime-related prohibitions under RCW 9.94A.703(3)(f). Condition 14 prohibits the Defendant from possessing or consuming alcohol and may be imposed under RCW 9.94A.703(3)(e) regardless of whether it is crime related. *See State v. Munoz-Rivera*, 190 Wn. App. 870, 892, 361 P.3d 182 (Div. 3 2015) (*citing State v. Jones*, 118 Wn. App. 199,

206-207, 76 P.3d 258 (Div 2 2003)). Condition 3, which is not objected to, prohibits the consumption of controlled substances. Therefore, condition 10, which directs the Defendant to subject to submit to tests of blood or urine is a necessary component of conditions 3 and 14. Condition 9 is also imposed pursuant to the court's discretion under RCW 9.94A.703(3)(f) related to crime-related prohibitions but under RCW 9.94A.703(3)(a). Condition 9 is also required of the Department of Corrections under RCW 9.94A.704(3)(b).

However, the State does concede that condition 15 to obtain a drug and alcohol evaluation and follow through with treatment was imposed under RCW 9.94A.703(3)(f) and is not crime related. Therefore, it should be stricken.

Finally, the State maintains that condition 13 is not vague as a person of ordinary intelligence will understand the prohibition not to frequent areas where children congregate and is illustrated by examples such as playgrounds, parks and schools.

4. PURSUANT TO RECENT CASELAW THE \$200.00 FILING FEE AND \$100.00 DNA FEE SHOULD BE STRICKEN FROM THE DEFENDANT'S JUDGMENT AND SENTENCE.

The state concedes that the trial court should remove both the \$200.00 filing fee and \$100.00 DNA fee. These concessions as to the defendant's legal financial obligations are made in light of recent legislative changes to sentencing of indigent defendant. *State v. Wallmuller*, 4 Wn.

App.2d 698, 4 P.3d 282 (2018).

D. CONCLUSION

We ask the court to affirm the underlying conviction, a third conviction for failing to register as a sex offender for the defendant. As the sentencing court informed the Defendant, the Defendant knew full well what his responsibilities were, that his previous convictions “would put somebody on high alert to make sure they’re following through with everything to a T.” CP 109. The Defendant chose not to comply and either “spaced” or lied about his whereabouts during his weekly check-ins with the Sheriff in January of 2018.

Respectfully submitted this 1st day of March, 2019.



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Transmittal Information

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