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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 36657-0-III

STATE OF WASHINGTON, Respondent,

v.

BRADLEIGH ALEXANDER HINES, Appellant.

APPELLANT'S BRIEF

Andrea Burkhart, WSBA #38519
Two Arrows, PLLC
8220 W. Gage Blvd #789
Kennewick, WA 99336
Phone: (509) 572-2409
Andrea@2arrows.net
Attorney for Appellant

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I. INTRODUCTION

The trial court convicted Bradleigh Hines of failing to register as a sex offender after the Department of Corrections ("DOC") could not locate him for a few weeks and he was subsequently found at the home of his child's mother in Idaho. The trial court erred in entering a finding of fact that Hines had been told to leave his residence because the only evidence supporting that fact was a hearsay statement admitted only for impeachment purposes, not as substantive evidence. An additional finding of fact that Hines admitted living at the Idaho address is unsupported by substantial evidence. The remaining evidence is insufficient to establish that Hines changed his residence and consequently had a duty to register the new address. Additionally, language imposing interest on Hines's non-restitution legal financial obligations ("LFOs") must be stricken.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred in entering finding of fact number 7.

ASSIGNMENT OF ERROR NO. 2: The trial court erred in entering finding of fact number 11.

ASSIGNMENT OF ERROR NO. 3: The evidence is insufficient to establish that Hines failed to register as required by law.

ASSIGNMENT OF ERROR NO. 4: The trial court erred in providing for interest to accrue on Hines's non-restitution LFOs.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Whether Adam Schirm's statement to police outside of court that Hines no longer lived there was admissible as substantive evidence of guilt.

ISSUE NO. 2: Whether substantial evidence supports the trial court's finding that Hines admitted to living at the Lewiston trailer when the recorded conversation establishes only that he admitted staying there due to his car breaking down around Christmas.

ISSUE NO. 3: Whether the remaining findings are sufficient to establish Hines' guilt for failing to register.

ISSUE NO. 4: Whether RCW 10.82.090(1) prohibits the language in the judgment and sentence providing for interest to accrue on Hines's non-restitution LFOs.

IV. STATEMENT OF THE CASE

Bradleigh Hines was convicted of an offense that required him to register as a sex offender. RP 30. He was also on community custody for a 2014 conviction. RP 59. Initially, he resided in Asotin County, but after he was evicted from his house, he sought permission to transfer his supervision to Lewiston, Idaho. RP 60-62. Ultimately, the Idaho corrections officer who evaluated the transfer expressed concerns about Hines's proposed residence and Hines decided he did not want to be supervised in Idaho, so he returned to Washington. RP 62.

When he first returned to Washington, Hines registered with Asotin County as transient. RP 32, 62. Shortly afterward, he registered an address in Asotin County associated with a camper trailer belonging to Adam Schirm. RP 32, 48, 63. DOC officers contacted Hines at the camper on December 14 and confirmed that the people who lived in the main house knew him. RP 63. At the time, Hines said he intended to keep looking for a place to live in Clarkston. RP 64. About a week later, on December 20, DOC officers tried to contact Hines at the trailer but were told by somebody in the shop that he was not home. RP 64.

About a month later, on January 17, a DOC officer attempted to call Hines but he did not answer. The officer sent a text message asking if

Hines was still living in the same place or if he had moved, but Hines did not respond to the call or text. RP 66. The next day, two officers went to the trailer to attempt personal contact. RP 66. The trailer appeared dark and Hines did not respond to knocks on the door. RP 66-67, 78. The door was slightly ajar and it appeared cold and unoccupied inside. RP 67, 81-82. The officers also observed garbage out in front of the trailer in front of the steps that led inside. RP 81. They did not believe anyone was living in the trailer. RP 82.

One of the officers left a card directing Hines to report to the DOC office first thing in the morning on January 22, 4 days later. RP 67. Hines did not go to the office or call on January 22. RP 68. The officer called Hines and left a voice message directing him to report within 24 hours or a warrant would be issued. RP 68-69. Hines did not respond or report, and a warrant was issued for his arrest. RP 69.

On January 31, a Nez Perce deputy contacted Hines at a trailer park in Lewiston. RP 10-12. Hines denied that he was living there but said he had been staying there since Christmas because his vehicle broke down. RP 14. When the deputy asked why Hines had not registered in Lewiston, Hines said he did not know Idaho law and did not know he was required to register. RP 15. The deputy arrested Hines but did not enter

the residence where he was located or verify whether Hines had any personal effects there. RP 24-25.

The State charged Hines with failing to register as a sex offender and escaping from community custody. CP 1-2. He waived a jury and proceeded to a trial by the bench. CP 11, 40. At trial, Schirm testified that he had allowed Hines to stay in the camper trailer and last saw him on New Year's eve. RP 49. He said Hines was not there very often but Schirm worked nights and did not see Hines coming and going. RP 49. Schirm denied ever telling Hines that he had to leave, but he did acknowledge expressing some concerns about the address appearing on the sex offender registry. RP 50-51.

After Schirm testified, the State called a deputy who reported that he contacted Schirm on January 24th and Schirm told him that Hines no longer lived there. RP 55. Hines objected to the testimony on hearsay grounds, but the court allowed it in for impeachment. RP 55. Consequently, the deputy reported that Schirm told him he had asked Hines to move out. RP 56.

Hines testified in his own defense and also called his friend Kaitlyn Flerchinger to testify. RP 84-85, 103. Both testified that they lived in the trailer but spent a lot of their time at the trailer belonging to

the mother of Hines's children in Lewiston. RP 85-87, 104-05. Hines's car was not reliable and for a period of time in December, he was stranded at the Lewiston trailer because the car broke down. RP 89, 105-06. After he missed his appointment with DOC in December, Hines said that he knew from past experience there would be a warrant issued for his arrest and he did not want to miss Christmas with his kids, so he did not respond to DOC's effort's to contact him. RP 107, 109. Hines denied that he had moved any personal items to the Lewiston trailer and had not changed his residence. RP 112, 113. Both Flerchinger and Hines testified that they had cleaned out the trailer and placed the garbage by the front entry because they did not know where Schirm stored garbage for collection. RP 91, 110. Flerchinger also reported that after Hines was arrested, she did not return to the trailer to retrieve his belongings and mail until March. RP 92, 93-94.

The trial court found Hines guilty on both counts and entered findings of fact and conclusions of law in support of its verdict. RP 133, CP 48-52. Among the findings it entered were finding no. 5, which stated in part, "During the afternoon attempt, officers contacted Adam Schirm who stated that the Defendant was no longer living there," CP 49-50, and finding no. 11, which states in part, "During his contact with Sgt. Martin on January 31, 2018, the Defendant initially denied that he was living at

that location, but then admitted, on audio recording, that he had been living at that location since Christmas." CP 50. Accordingly, the trial court concluded that Hines ceased residing at the Asotin County residence no later than January 1, 2018 and thereafter had a duty to notify the Asotin County Sheriff that he no longer resided there. CP 51-52. At sentencing, the court imposed a mid-range sentence of 50 months and imposed a $500 crime victim assessment. CP 57, 59. A provision in the judgment and sentence reads, "The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090." CP 58.

Hines now appeals. CP 68.

V. ARGUMENT

The trial court's findings of fact do not comport with the substantive evidence presented at trial and fail to support the conclusion that Hines did not intend to return to the trailer in Asotin County. Accordingly, the State failed to establish that Hines had a duty to report a change of residence to Asotin County and the conviction for failure to register should be reversed. Additionally, the language in the judgment and sentence imposing interest on non-restitution legal financial obligations ("LFOs") is contrary to law and should be stricken.

A. Because substantial evidence does not support the trial court's findings that Hines admitted he lived in Lewiston or that Schirm told Hines he had to move out, insufficient evidence supports the conviction for failure to register.

The standard of review for sufficiency of the evidence following a bench trial is well established, requiring the reviewing court to determine whether substantial evidence supports the trial court's findings and whether, in turn, the findings support the court's legal conclusions. *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). Evidence is substantial when it is sufficient to support a fair-minded and rational person of the truth of the finding. *Id.* The trial court's conclusions of law are reviewed *de novo*. *Id.*

To convict Hines of failing to register, the State was required to prove that he failed to comply with any of the requirements of RCW 9A.44.130. CP 1; RCW 9A.44.132(1). The evidence and the trial court's findings reflect that Hines complied by registering the Asotin County address belonging to Schirm, where he was allowed to reside. CP 49. Here, the State alleged (and the trial court found) that by New Year's day of 2018, Hines was no longer residing at the Asotin County address and was instead residing in Lewiston, Idaho. CP 51. Under RCW

9A.44.130(4)(a)(viii), offenders who move to another state must register with the new state within three days after establishing residence there and send written notice of the move to the sheriff of the county of former residence within three days. Thus, the issue presented here is whether the State met its burden to prove that Hines moved to Idaho and ceased residing at the Asotin County address.

In support of the State's case, the trial court found that Schirm told officers during a January contact that Hines was no longer living there. CP 49-50. But no substantive evidence was admitted that proved this fact. Although a deputy testified that Schirm told him this, that evidence was admitted solely for impeachment purposes over Hines's hearsay objection. RP 55-56. Thus, the deputy's testimony was not admissible as substantive evidence and cannot be relied upon to prove the truth of the matters asserted – whether Schirm told Hines to move out and told the deputy Hines no longer lived there. *See State v. Sua*, 115 Wn. App. 29, 49, 60 P.3d 1234 (2003). Finding of fact number 7 is, therefore, unsupported by substantial evidence.

Second, the trial court found in finding of fact number 11 that Hines admitted to the Nez Perce deputy that he had been living at the Lewiston address since Christmas. CP 50. But the testimony does not

establish that Hines made this admission. The recorded statement, played for the court at trial, showed that the deputy asked Hines, "Be honest with me and tell me, how long have you been staying here?" Hines responded, "I've been staying here since it was like right around Christmas, a little bit after my car broke down and nobody would help me." RP 20-21. Contrary to the court's finding, Hines told the deputy that he was *staying* at the Lewiston trailer, not that he was *living* there. Thus, finding of fact number 11 also fails for lack of substantial evidence.

Presumably, the State contends that Hines's admission that he was staying at the Lewiston trailer from around Christmas until the end of January is sufficient to establish his residency in Lewiston such that the registration requirements of RCW 9A.44.130(4)(a)(viii) were triggered. But under this court's prior decision in *State v. Drake*, 149 Wn. App. 88, 94-95, 201 P.3d 1093 (2009), the dispositive question in determining where a person resides is whether the person intends to return. Adopting the definition of "residence" established in *State v. Pickett*, 95 Wn. App. 475, 478, 975 P.2d 584 (1999) as "the place where a person lives as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit," the *Drake* court concluded that even though the defendant had no legal right to return to his residence, if he maintained the residence and intended to

return there, he had no duty to register a new residence or a lack of a fixed residence. *Id.* at 94-95.

A person cannot have more than one domicile and, once established, a domicile continues until it is superseded by a new one. *In re Lassin's Estate*, 33 Wn.2d 163, 165, 204 P.2d 1071 (1949). Here, the fact that Hines stayed at the Lewiston trailer for a period of some weeks is insufficient, in itself, to establish that he did not intend to return to the Asotin County address. There was no evidence introduced that Hines had moved belongings to the Lewiston trailer, that he received mail there, or that he paid bills there. Nor did DOC or the Asotin County deputies enter the trailer in Asotin County to confirm whether Hines's property was there or whether other evidence tended to establish (or negate) his continuing dominion and control over the premises, even though DOC may search the residence of a person under supervision if there is reasonable cause to believe the offender is in violation. *See* RCW 9.94A.631(1).

Consequently, the State failed to meet its burden to show that Hines changed his residence and was required to register the Lewiston address. Because Hines did not fail to comply with the registration requirements established in RCW 9A.44.130, the evidence is insufficient

to establish the crime of failure to register, and the conviction should be reversed.

B. Revisions to RCW 10.82.090 eliminating interest on non-restitution LFOs requires that language in Hines's judgment and sentence imposing interest be stricken.

Effective June 7, 2018, the legislature revised several statutes pertaining to the imposition of LFOs on indigent defendants. Laws of 2018, ch. 269. As pertinent here, the bill amended RCW 10.82.090(1), which now includes the language: "As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations."

Hines's judgment and sentence was entered in February 2019, well after the amendment to RCW 10.82.090(1) came into effect. CP 56. No restitution was ordered in his case. CP 58. Consequently, interest on the nonrestitution LFOs is not allowed by law. The language in the judgment and sentence providing for interest to accrue on the nonrestitution LFOs at the rate applicable to civil judgments should be stricken. *See* CP 58.

VI. CONCLUSION

For the foregoing reasons, Hines respectfully requests that the court REVERSE and DISMISS his conviction for failure to register as a

sex offender or, alternatively, STRIKE the language in his judgment and sentence providing for interest to accrue on his non-restitution LFOs.

RESPECTFULLY SUBMITTED this 19 day of August, 2019.

TWO ARROWS, PLLC

ANDREA BURKHART, WSBA #38519
Attorney for Appellant

CERTIFICATE OF SERVICE

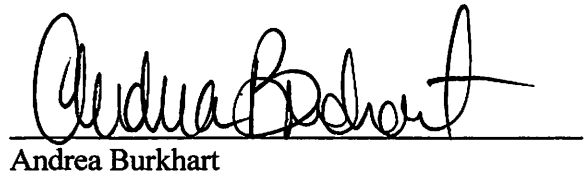
I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Bradleigh Hines, DOC #864668
Airway Heights Corrections Center
PO Box 2049
Airway Heights, WA 99001

Benjamin Curler Nichols
Asotin County Prosecutor's Office
PO Box 220
Asotin, WA 99402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed and sworn this 19 day of August, 2019 in Kennewick, Washington.



Andrea Burkhart

BURKHART & BURKHART, PLLC

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