

FILED
Court of Appeals
Division III
State of Washington
9/10/2019 9:55 AM

No. 36657-0-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

BRADLEIGH A. HINES, Appellant.

BRIEF OF RESPONDENT

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I. SUMMARY OF ISSUES

1. WAS THE COURT'S GUILTY VERDICT SUPPORTED BY SUFFICIENT EVIDENCE?

2. DID THE COURT IMPROPERLY AUTHORIZE INTEREST TO ACCRUE ON NON-RESTITUTION LEGAL FINANCIAL OBLIGATIONS?

II. SUMMARY OF ARGUMENT

1. AMPLE EVIDENCE, INCLUDING THE APPELLANT'S ADMISSION, SUPPORTED THE COURT'S GUILTY VERDICT.

2. THE COURT IMPROPERLY AUTHORIZED INTEREST ON NON-RESTITUTION LEGAL FINANCIAL OBLIGATIONS.

III. STATEMENT OF THE CASE

The Appellant, Bradleigh A. Hines, was convicted of Rape of a Child in the Third Degree on December 17, 2004, and as a result thereof, is required to register as a sex offender. Report of Proceedings (*hereinafter* RP), 30-31, Clerk's Papers (*hereinafter* CP), pp. 49, 53. Not including the current case, the Appellant has four prior convictions for Failure to Register as a Sex Offender, based upon separate occasions of his noncompliance with offender registration requirements. CP 53, RP 37-38. At the time of the events relating to the current charge, the Appellant was on Community Custody with the Washington Department of Corrections (*hereinafter* WADOC), as a result of his then most recent conviction for Failure to Register as a Sex Offender. RP 38, 59.

In July of 2017, the Appellant was evicted from the apartment in which he was residing and became homeless. RP 60. Community Corrections Officer Amanda Renzelman of WADOC was supervising the Appellant and began assisting him in applying for an Interstate Compact transfer of his supervision to Idaho to allow him to reside with a longtime girlfriend, Cassie Dahlman at her residence located at 628 Burrell Avenue #10, in Lewiston, Idaho.¹ RP 33, 61. During this time CCO Renzelman allowed him to stay with Dahlman pending his

¹Lewiston is a city in Nez Perce County, Idaho and is directly adjacent to Clarkston, Asotin County, Washington, with only the Snake River separating the two. Collectively, the two communities are commonly referred to as the Lewis-Clark Valley.

application for transfer of supervision. RP 60-61, 118. The Appellant abandoned his pursuit of transfer on November 20, 2017, after meeting with Idaho Probation and Parole and apparently becoming dissatisfied with the additional conditions the Idaho authorities would require. RP 62, 69-72. The Appellant registered as transient on November 21, 2017 with the Asotin County Sheriff's Office. RP 31-32, 34. One week later, on November 28, 2017, he registered with the Asotin County Sheriff's Office, at 2524 Sixth Avenue, Clarkston. RP 32. The Defendant was purportedly residing in a small camp trailer at that location, which he was renting from the owner of the residence. RP 62.

On December 14, 2017, after making attempts to contact the Appellant at the Sixth Avenue residence, CCO Renzelman was eventually able to locate him there at the trailer and conducted a home confirmation and inspection. RP 63. The Appellant told CCO Renzelman that he intended to continue to look for more suitable housing. RP 64. CCO Renzelman reminded the Appellant of his obligation to maintain contact with her office as well as keeping his registration current with the Sheriff. RP 64.

On December 20, 2017, CCO Renzelman requested assistance from, CCOs Kyle Helm and Kevin Vogeler, and asked, during their field visits with other community custody inmates, that they conduct a home visit with the Appellant. RP 64-65. CCOs Helm

and Vogeler went to the residence at approximately 9:00 a.m. on the 20th and were unable to locate the Appellant at the trailer. RP 77-78. At approximately 4:30 p.m. CCOs Helm and Vogeler made a second attempt, again without success. RP 79. CCO Helm sent a text message to the Appellant's phone advising him that they had stopped by and attempted contact, and asking where they could meet. RP 79-80. The Appellant did not respond. RP 80.

On January 17, 2018, CCO Renzelman attempted telephonic contact with the Appellant but he didnt answer. RP 66. She sent him a text message as well and the Appellant didn't respond. RP 66. On January 18, 2018, CCOs Renzelman and Vogeler went to the Sixth Avenue residence and attempted contact with the Appellant at the trailer, again without success. CCO Renzelman left her business card with written instructions directing the Appellant to report to the DOC office on January 22, 2018. RP 67. The door to the camper was ajar and the inside was cold and appeared "unlived in" RP 67, 81-82. There were garbage bags in front of the door which obstructed the use of the stairs and access in and out of the trailer. RP 81. Later, that date, CCOs Renzelman and Vogeler returned and spoke with Adam Schirm who stated that the Appellant had moved out around New Years and he had not seen the Appellant since. RP 67.

On January 22, 2018, the Appellant failed to report to WADOC and did not call. By that point, the Appellant had not been in contact

with WADOC since December 14, 2017. RP 68. On January 23, 2018, CCO Renzelman again attempted telephonic contact and left a message advising that a warrant would be issued for his arrest if he did not report to WADOC. RP 69. The Appellant did not respond. RP 69. CCO Renzelman notified the Asotin County Sheriff's Office that the Appellant did not appear to be residing at his last known address. RP 69. A warrant was issued by WADOC for the Appellant's arrest for absconding from supervision. RP 69.

Sgt. Tammy Leavitt, the sex offender registration compliance officer for the Asotin County Sheriff's Office, received the information from CCO Renzelman and requested that a patrol deputy respond to the Appellant's last registered address at the Sixth Avenue residence. RP 35, 54. On January 24, 2018, Deputy Jesse Carpenter of the Asotin County Sheriff's Office, responded to that address. RP 54. Deputy Carpenter was also unable to locate the Appellant and contacted Adam Schirm, the home owner. RP 55. Schirm advised that the Appellant no longer lived there at that address. RP 55. Schirm stated that he had told the Appellant he needed to move out after finding out that he was a sex offender. RP 56.

On January 31, 2018, Deputy Sgt. Lucas Martin of the Nez Perce County Sheriff's Office in Idaho received information that a sex offender was residing at 628 Burrell Avenue #10, in Lewiston, and had failed to register. RP 11. Sgt. Lucas responded to that location

(Cassie Dahlman's residence) and made contact with the Appellant at around 8:00 p.m. RP 11-12. After initially denying that he had been staying at that residence, the Appellant admitted that he had been living there since around Christmastime. RP 14. The Appellant stated that he had been unable to get back to Clarkston since that time because his vehicle had broken down.² RP 14; Plaintiff's Exhibit P-6 (*hereinafter* P-6). Sgt. Martin then asked about his registration requirements if he was going to live in Idaho, the Appellant claimed he was registered in Idaho. RP 21, P-6. When Sgt. Martin told him he wasn't, the Appellant claimed to be ignorant of the registration requirements in Idaho. RP 21, P-6. Sgt. Martin again challenged the Appellant's veracity, and pointed out that the Appellant had previously registered in Nez Perce County, Idaho, so he was aware of his requirements. RP 21, P-6. Sgt. Martin pointed out that the Appellant was living at the residence with children present and asked if he was on probation. RP 22, P-6. The Appellant acknowledged he was and Sgt. Martin asked for the probation officer's name and whether she knew that the Appellant was living there. RP 22, P-6. The Appellant

²The transcript contains errors with regard to the contents of the recording which is completely understandable as the recorded record of the exhibit is a is not as clear as the audio on the exhibit itself. For example, on page 21, the transcript states: "Mr. Hines: 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 21, ll. 2-4, *emphasis added*). In actuality, the Appellant told Sgt. Lucas, that his car broke down and he had "**no way to get up there.**" P-6. For this reason, the State designated the recording itself admitted at trial (P-6), and would invite the Court to review the exhibit for an accurate account of the conversation between Sgt. Martin and the Appellant.

stated that his probation officer was Renzelman and stated the she knew he was living there before he moved to the Clarkston Heights, but she didn't know he was living there since Christmastime. P-1. The Appellant was then arrested by Sgt. Lucas on the WADOC warrant as well as an Idaho charge of Failure to Register based upon him living in Idaho. RP 22-24, P-6.

The Appellant was charged in Asotin County Superior Court with Failure to Register as a Sex Offender (Third or Subsequent Conviction) and Escape from Community Custody. CP 1-2. The Appellant waived jury and the matter was tried to the bench. CP 11, RP 6-135.

At trial, the Appellant objected to testimony from Deputy Carpenter concerning statements made by Adam Schirm to Deputy Carpenter about the Appellant being asked to move out. RP 55-56. Schirm had previously testified and downplayed that he had asked the Appellant to move out. RP 50-51. Schirm did ultimately acknowledge that, after New Years, he did not see the Appellant on the property. RP 49. Over objection, the trial court admitted Deputy Carpenter's testimony for impeachment purposes. RP 55. Later in the trial, CCO Renzelman testified that Schirm told her that the Appellant had moved out on New Year's and hadn't been seen since. RP 67. The Appellant did not object. RP 67.

The Appellant took the stand and, in stark contrast to his inculpatory statements to Sgt. Martin, claimed that he had not been living on Burrell Avenue in Lewiston, and had been back and forth to the trailer on Sixth Avenue in the Clarkston Heights. RP 108-109. The Appellant was confronted with his statement to Sgt. Martin and acknowledged that he had told Martin that he had not been able to get back to the camp trailer since Christmas. RP 119.

The Appellant also called his then girlfriend,³ Kaitlyn Flerchinger, who testified that she was with the Appellant nearly the entire period from December 2017 to his arrest in January 2018 and claimed that, with occasional exceptions for nights spend at Dahlman's, she and the Appellant spent most nights in the camp trailer in the Heights. RP 88-89. Despite her presence at Dahlman's residence when the Appellant was arrested for failing to register, she did not make a statement to Sgt. Martin or protest the allegation that he had been living there and not at his registered address. RP 96-97, 100-101. She was further unaware that WADOC had left business cards on the door of the camp trailer. RP 97-98.

At the conclusion of the trial, the court found the Appellant's testimony and evidence not credible, and determined that the State's

³Despite the many cold nights spent together in the camp trailer, according to her testimony, she and the Appellant did not become romantically involved until after his arrest, which the State noted was odd, considering the Appellant remained incarcerated from his arrest up to and including his trial. RP 95.

evidence was consistent and compelling. RP 133. The court found the Appellant guilty of both charges and entered findings. RP 133, CP 48-52. The court sentenced the Appellant and imposed legal financial obligations (*hereinafter* LFOs). CP 56-65. The Judgement and Sentence included a provision authorizing interest on all LFOs including non-resitution LFOs. CP 58. The Appellant timely appealed. CP 68.

IV. DISCUSSION

The Appellant claims that insufficient evidence supports the court's verdict, and challenges two of the findings entered by the court. The Appellant further challenges imposition of interest on non-restitution LFOs. Because the court's findings were properly supported by competent evidence and sufficient evidence supported the court's the verdicts, the Appellant's convictions should be affirmed. Because the court erroneously ordered interest, this Court should remand for entry of an order striking the offending provision in the Judgement and Sentence.

1. AMPLE EVIDENCE, INCLUDING THE APPELLANT'S ADMISSION, SUPPORTED THE COURT'S GUILTY VERDICT.

The Appellant first challenges the sufficiency of the evidence to support the court's verdict on the charge of Failure to Register as

a Sex Offender.⁴ In so doing, the Appellant, attacks the sufficiency of the evidence to support the trial court's finding number seven concerning statements made by Adam Schirm. CP 49-50. The Appellant further challenges the trial court's finding number eleven concerning whether the Appellant's statements to Sgt. Martin were an admission to living at the Burrell address in Lewiston. CP 50.

The appellate courts review challenged findings of fact to determine whether the findings are supported by substantial evidence; substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the findings' truth. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). Unchallenged findings of fact are verities on appeal. State v. Bonds, 174 Wn.App. 553, 562, 299 P.3d 663, *review denied*, 178 Wn.2d 1011 (Div. II, 2013). The party challenging the findings bears the burden to show that substantial evidence does not support the superior court's findings. State v. A.N.J., 168 Wn.2d 91, 107, 225 P.3d 956 (2010).

With regard to the statement made to WADOC officers on January 18, 2018 by Adam Schirm, the testimony of CCO Renzelman supports the trial court's finding that the statement was made. CCO Renzelman testified that Mr. Schirm told her and CCO Vogeler that the Appellant had moved out on New Years and had not been back

⁴The Appellant does not assail his conviction for Escape from Community Custody.

to the residence. CP 67. CCO Vogeler confirmed this in his testimony. CP 80. The fact of Mr. Schirm's statement was supported by testimony.

The Appellant argues that the trial court could only consider these statements for impeachment purposes. Appellant's Brief, p. 9. However, the Appellant conflates statements and the testimony of Deputy Carpenter with the testimony of both CCOs. At trial, after Schirm testified that he didn't tell the Appellant he need to move out, Deputy Carpenter testified that Mr. Schirm told him that he had told the Appellant he couldn't stay and needed to "move along." CP 56. The Appellant objected to Deputy Carpenter's testimony on hearsay grounds but the court overruled the objection and allowed the testimony for impeachment as a prior inconsistent statement of Mr. Schirm. CP 55. Finding number seven does not involve the statement Mr. Schirm made to Deputy Carpenter, but rather, his statement to CCOs Renzelman and Vogeler. When CCO Renzelman testified, the Appellant did not object to introduction of Schirm's statement. Where a party fails to object to the introduction of hearsay at trial, such objection is waived. State v. Carlson, 2 Wn. App. 104, 106, 466 P.2d 539, 541 (Div. I, 1970). Likewise, the Appellant didn't object to the testimony of CCO Vogeler on the same point, and therefore waived any objection.

The Appellant may argue that the earlier objection to Schirm's statement to Deputy Carpenter preserved the issue. However, as pointed out above, this statement was made at a different time, to a different listener, and related different information. The challenged statement to Deputy Carpenter was with regard to whether or not Mr. Schirm told the Appellant to move out. The statement to CCOs Renzelman and Vogeler concerned whether or not the Appellant had, in fact, ceased residing in the camp trailer on Schirm's property. The Appellant's objection to Deputy Carpenter's testimony was not a timely and specific objection to CCO Renzelman's or CCO Vogeler's testimony that Schirm stated that the Appellant had moved out. See ER 103(a)(1). Because the Appellant failed to object to testimony concerning Mr. Schirm's statement to the CCOs, the court's finding in that regard is supported by evidence in the record.

The Appellant next attacks finding eleven, wherein the court found that the Appellant admitted to "living" at the Burrell residence. Specifically, the Appellant claims that the evidence only supports his admission to "staying" at that location since Christmas. This claim is controverted by the audio recording (P-6) which supports the court's finding.

During the Appellant's conversation with Sgt. Martin, Martin initially asked him how long he had been "staying" at the Burrell residence. P-6 at 1:05. The Appellant responded that he had been

“staying” there since around Christmas, and explained that his car had broken down and he “had no way to get up there.” P-6 at 1:07. Immediately thereafter, Sgt. Martin asked the Appellant, “What are your requirements if you’re going to *live* here?” P-6 at 1:17 (*emphasis added*). The Appellant responded, “I’m already registered over here.” P-6 at 1:22. At that point, Sgt. Martin challenged the Appellant’s statement that he was registered in Idaho, and confronted him with the fact that he was last registered in Washington. P-6 at 1:24. The Appellant’s response at that point is truly telling. He did not respond to Sgt. Martin’s statement and claim that he was still living in Washington. Instead, he stated that he didn’t “know how that works” because he had “never registered in Idaho.” P-6 at 1:30. Sgt. Martin immediately challenged the veracity of the Appellant’s claim of ignorance, pointing out that he had earlier that year registered at the Burrell address in Idaho. P-6 at 1:34. Sgt. Martin continued, establishing that it is the Appellant’s responsibility to register. P-6 at 1:40. Sgt. Martin continued, telling the Appellant, “And you know that you are to register where you live.” P-6 at 1:45. The Appellant replied, “Correct” P-6 at 1:50. Sgt. Martin then pointed out that the Appellant was “living” there with children. P-6 at 1:52. He then asked the Appellant if he was on probation and whether his probation officer knew he was living at the Burrell residence. P-6 at 1:56. The Appellant responded that “she knew I was living over here” and then

had moved up in the Clarkston Heights. P-6 at 2:03. The Appellant continued, explaining, “She doesn’t know I’m living here” referring to the Burrell residence. P-6 at 2:10.

At no point in his conversation did the Appellant claim he was still maintaining his prior registered residence in Washington. The Appellant instead admitted he had been living there at Dahlman’s residence, where he was contacted by Sgt. Martin, since Christmas time. It was January 31, 2018 when Sgt. Martin contacted him. This is the evidence that the trial court received and listened to. The court’s finding that the Appellant admitted to “living” at the Burrell residence in Lewiston, Idaho, was supported by substantial evidence. He was located at that residence in Lewiston, and admitted living there for over a month. The Appellant’s incomplete recitation of the conversation with Sgt. Martin notwithstanding, sufficient evidence supports the trial court’s finding on this point.

Addressing the remainder of the Appellant’s claim regarding sufficiency of the evidence, it is clear, based upon the evidence at trial and controlling law, that the trial court’s verdict was amply supported by sufficient evidence. Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the crime beyond a reasonable doubt. State v. Homan, 181 Wn.2d 102, 105,330 P.3d 182 (2014). Specific to review of bench trials, the issue

turns on whether substantial evidence supports each of the trial court's challenged findings of fact and whether the findings support the conclusions of law. *Id.* at 105-06. Substantial evidence is that quantum of evidence "sufficient to persuade a fair-minded person of the truth of the asserted premise." *Id.* at 106. Circumstantial evidence is as reliable as direct evidence. State v. Arquette, 178 Wn.App. 273, 282, 314 P.3d 426 (Div. II, 2013) (*citing State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). In claiming insufficient evidence, the appellant necessarily admits the truth of the State's evidence and all reasonable inferences arising from that evidence. Homan, 181 Wn.2d at 106. The reviewing court defers to the trier of fact's evaluation of the persuasiveness of the evidence, and treat unchallenged findings as verities. *Id.*

At trial, the State was required to prove:

- (1) Prior to (date of beginning of charging period), the defendant was convicted of [a [felony] [sex] [kidnapping] offense] [(name of offense)] [(language from stipulation)];
- (2) That due to that conviction, the defendant was required to register in the [State of Washington] [County of] [as a [sex] [kidnapping] offender] between (date 1) and (date 2); and
- (3) That during that time period, the defendant knowingly failed to comply with [a requirement of [[sex] [kidnapping] offender] registration] [(specific registration requirement from RCW 9A.44.130)].

See WPIC 49C.02. Here, there is no dispute that the Appellant was a convicted sex offender or that he was required to register in Asotin County, Washington as residing at 2524 Sixth Avenue, Clarkston.

The dispute arises with whether he ceased residing at that address, which triggers his obligation to notify the Asotin County Sheriff that he is moving out of the county and must do so within three business days of doing so. RCW 9A.44.130(5).

The Appellant disputes that the evidence is sufficient to support a finding that he ceased residing in Asotin County, triggering his obligation to notify the Asotin County Sheriff's Office. As stated above, circumstantial evidence is reliable. See *Arquette, supra*. Here, the Appellant could not be located at his claimed residence on Sixth Avenue after December 14, 2017. Multiple attempts by law enforcement, including WADOC and the Sheriff's Office were not successful at locating him. Cards were left at the door of the trailer with instructions to contact him. While the Appellant claims that he didn't respond because he thought he already had a warrant, this reverses the standard of review, which requires reasonable inferences be drawn in favor of the State, not the Appellant. Up to December 14, 2017, the Appellant had been doing well with reporting to WADOC and making contact with his supervising officer. Thereafter, he stopped contacting and communicating with them, and could not be located at his registered residence. This is circumstantial evidence that he was no longer residing at the camp trailer.

Also circumstantial evidence of his abandonment of the camp trailer as a residence can be found in the events leading up to him

moving into it. The Appellant clearly wanted to reside at the Burrell residence with Ms. Dahlman. He sought an interstate transfer of his probation to allow him to move in with her in Lewiston. Only when he met with Idaho probation officials and learned that they would have more stringent requirements, he decided against the transfer and began looking for a place in Clarkston. He apparently preferred the more lenient treatment he received from WADOC, who allowed him to reside with Dahlman during the application for interstate transfer. Clearly, he desired to reside in Idaho with Dahlman. His statement to CCO Renzelman when he found the camp trailer is further telling of his intentions. Rather than express satisfaction with his new found home, he told Renzelman that he intended to continue looking for a place to stay. The Appellant was hardly there a month before he could no longer be located at the camp trailer. Clearly, the Appellant never considered the camp trailer to be his home. The circumstantial evidence supports the conviction.

Finally, the Appellant's own statements to Sgt. Martin confirm his abandonment of the camp trailer in the Clarkston Heights. He characterized his, then more than month long, stay at the Burrell address as where he "lived." This is not the language of a person who merely views his occupancy as transitory or that of a visitor. The Appellant never intended to return to the camp trailer, except maybe to gather his belongings. Further circumstantial evidence that Mr.

Schirm had not seen him since New Year's, the garbage piled up in front of the camper step, and the door ajar in the cold winter months demonstrated his lack of intent to live in the camper. Had he so intended, his registered address was well within walking distance.⁵

The Appellant's reliance on State v. Drake, 149 Wn.App. 88, 201 P.3d 1093 (Div. III, 2009) and State v. Pickett, 95 Wn.App. 475, 975 P.2d 584 (Div. II, 1999), is misplaced. Both are factually and legally distinguishable. In Drake, the prosecution merely relied upon the defendant's eviction to establish the event triggering his obligation to notify the sheriff's office. Drake, at 91. There was no evidence of any attempts to contact the defendant at his registered address. The Drake Court relied heavily upon Pickett, and its definition of residence for the purposes of the sex offender registration statute. In Pickett, the Court stated:

Residence as the term is commonly understood is 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.

⁵Google Maps reports that it would take approximately 2 hours 12 minute by foot and 14 minutes by automobile. See <https://www.google.com/maps/dir/628+Burrell+Avenue,+Lewiston,+ID/2524+6th+Ave,+Clarkston,+WA+99403/@46.3893022,-117.0815744,13z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x54a1b53ac2c96ffd:0x22a6607ac93ae391!2m2!1d-116.998422!2d46.376213!1m5!1m1!1s0x54a1ca0c8b920583:0xe32103ac0ea7435a!2m2!1d-117.0942343!2d46.3878209!3e2>. The State's attorney pointed this fact out during closing argument. RP 126.

Pickett, at 478. Prior to Pickett and Drake, the term “residence” was undefined in the statute. However, since the decision in Drake and Pickett, the legislature defined, in pertinent part, the term “fixed residence” as:

“Fixed residence” means a building that a person ***lawfully and habitually uses as living quarters a majority of the week***. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter.

RCW 9A.44.128(5). See also 2011 Wash. Legis. Serv. Ch. 337. (*Emphasis added*). The judicially created Pickett definition of residence, which can be largely paraphrased as “home is where the heart is,” has been abrogated by the legislative definition provided above. Applying the definition above to the facts of Drake, it is clear that the outcome would have been completely different under the statutory definition. After his eviction, the defendant in Drake was no longer lawfully residing at the apartment and would therefore, lacking a fixed residence requiring him to register, regardless of his intentions or knowledge of the eviction.

Likewise, the outcome in Pickett would have been different as well. The defendant in Pickett, regardless of his intentions, could no

longer be said to be “habitually” using the prior residence at the time of his arrest. Pickett, at 476-7. The enactment of a statutory definition abrogated the decision in Pickett, and provided a definition that promotes the purposes of the registration act: specifically, the ability of law enforcement to be able to quickly locate sex offenders in the community. See State v. Ward, 123 Wn.2d 488, 493, 869 P.2d 1062 (1994). The Appellant’s reliance on an outdated legal definition of residence is misplaced.

Here, the Appellant’s abandonment of his registered address in favor of his preferred residence demonstrated that he no longer intended to reside there. Regardless, under the statutory definition of “fixed residence,” the Appellant’s intent is no longer an issue. The question is whether he “habitually” used the camp trailer as his residence, which question further turns on whether he was there a majority of the week. The circumstantial evidence clearly demonstrated that, at least after January 1, 2018 up to his arrest on January 31, 2018, the Appellant was not staying in the camp trailer a majority of the week. His confession confirmed this fact. The evidence amply supported the trial court’s finding that the Appellant was guilty of failing to register as a sex offender. This Court should affirm his now fifth conviction for Failure to Register as a Sex Offender.

2. THE COURT IMPROPERLY AUTHORIZED INTEREST ON NON-RESTITUTION LEGAL FINANCIAL OBLIGATIONS.

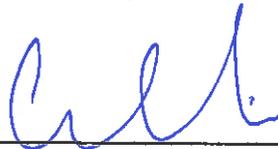
The State concedes, in light of applicable changes to the law regarding LFOs, that the court improperly authorized interest on non-restitution LFOs. For the reasons stated in the Appellant's brief, the Court should remand for entry of an order striking the offending language. This should be accomplished without the need for resentencing. See State v. Ramirez, 191 Wn.2d 732, 735, 426 P.3d 714 (2018).

V. CONCLUSION

Because the trial court's findings were supported by evidence in the record, and the evidence as a whole supported the Appellant's conviction, the Court should deny this appeal on that basis. The Court should, nonetheless, remand for entry of an order striking the language authorizing interest on non-restitution LFOs. The State respectfully requests this Court enter such a decision in this matter.

Dated this 10th day of September, 2019.

Respectfully submitted,



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**COURT OF APPEALS OF THE STATE OF
WASHINGTON - DIVISION III**

THE STATE OF WASHINGTON,

Respondent,

v.

BRADLEIGH A. HINES,

Appellant.

Court of Appeals No: 36657-0-III

DECLARATION OF SERVICE

DECLARATION

On September 10, 2019 I electronically mailed, through the portal, a copy of the BRIEF OF RESPONDENT in this matter to:

ANDREA BURKHART
andrea@2arrows.net

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

Signed at Asotin, Washington on September 10, 2019.


LISA M. WEBBER
Office Manager

**DECLARATION
OF SERVICE**

ASOTIN COUNTY PROSECUTOR'S OFFICE

September 10, 2019 - 9:55 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36657-0
Appellate Court Case Title: State of Washington v. Bradley Alexander Hines
Superior Court Case Number: 18-1-00018-3

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