

FILED
Court of Appeals
Division III
State of Washington
11/13/2019 11:11 AM

NO. 36885-8-III

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

STATE OF WASHINGTON,

Respondent,

v.

GLEN CATHERS,

Appellant

APPEAL FROM THE SUPERIOR COURT
OF KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 19-1-00024-20

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. By statute a sex offender who ceases to reside at a fixed residence must notify the County Sheriff. Depending on the circumstances the time allowed can vary. Here the evidence showed the defendant did not notify the Sheriff after ceasing to reside at his fixed residence. Was this evidence sufficient to support a conviction for failure to register as a sex offender?
2. Would the purpose of the sex offender registration statute be impeded if a registrant could escape prosecution by successfully concealing his whereabouts?

B. STATEMENT OF THE CASE

Glen Cathers is a Level 1 sex offender and is required to register in Klickitat County. RCW 9A.44.130, RP 10. He first registered in Klickitat County in 1988 and had been compliant with his registration obligation until June of 2018. RP 10. Once a year Level 1 offenders, such as the defendant, are checked on by the Klickitat County Sheriff's Office. RP 10. When an offender is checked on by a representative of the Sheriff's Office a Deputy will respond to the offender's registered address and attempt to make face-to-face contact with the offender. RP 10, 13.

In June of 2018, Lisa Shupe, the Sheriff's employee responsible for registration of sex offenders in Klickitat County, assigned Klickitat County Sheriff's Deputy Timothy Neher to perform the yearly check on Defendant's residence status. RP 11-12, 32-33. Deputy Neher went to 123 Jenkins Creek Road, Goldendale, Washington, the defendant's registered fixed address, on approximately June 20, 2018. RP 32-33. Deputy Neher

attempted contact at the residence but nobody was there so he placed a business card on the door. RP 33. The next day Deputy Neher attempted another contact at the residence and was able to contact the defendant's house/pet sitter, Kathleen O'Brennan. RP 36. On June 27, 2018, Deputy Neher again unsuccessfully attempted contact with the defendant but did speak with Ms. O'Brennan again and obtained a statement from her regarding the defendant's whereabouts. RP 36-37. Deputy Neher never did make face-to-face contact with the defendant. RP 39.

Kathleen O'Brennan is a self-described pet sitter who watched the defendant's residence during his prior absences. RP 23. She estimated that she watched the defendant's cats at his residence about 1.5 times a year and "when they traveled, they were gone for a while and they wanted someone the cats were comfortable with." RP 23. In this instance, Ms. O'Brennan watched the defendant's house from approximately June 14 through June 23, 2018. RP 24 She thought she was there for "like 12 days" RP 25. She testified that she had been watching the residence two or three days before Deputy Neher first came to check on the defendant and that he checked again two or three days later. RP. 26 Ms. O'Brennan also testified that throughout this time the defendant was not living at his registered fixed residence. RP. 26.

C. ARGUMENT

1. **The evidence was sufficient to support the defendant's conviction.**

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A reviewing Court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992).

The purpose of the sex offender registration statute is to aid law enforcement in keeping communities safe by requiring offenders to divulge their presence in a particular jurisdiction. LAWS OF 1990, ch. 3, § 401. The criminal punishment attendant to failure to register helps effectuate this purpose. The Court of Appeals and the Supreme Court have correctly observed that allowing individuals to escape punishment when they have failed to register within the prescribed deadlines is an absurd reading of the statute. State v. Peterson, 145 Wn. App. 672, 677, 186 P.3d 1179 (2008) (citing State v. Ammons, 136 Wash.2d 453, 457, 963 P.2d 812 (1998) (noting that courts cannot construe statutes in a manner that renders them absurd)); State v. Peterson, 168 Wn.2d 763 at 775, 230 P.3d 588,

(2010). The sex offender registration statute contains several provisions dealing with a person who registers as residing at a particular address and thereafter ceases to reside there. All of these, however, require prompt notification to the Sheriff of the county where the person formerly resided.

A sex offender is statutorily required to register with the Sheriff of his county of residence. RCW 9A.44.130(1); State v. Peterson, 168 Wn.2d 763, 768, 230 P.3d 588 (2010). This requirement aids law enforcement in keeping communities safe by requiring offenders to divulge their presence in a particular jurisdiction. Id. at 773-74. When a registered sex offender ceases to have a fixed residence, he must provide written notice to the sheriff's office within a specified period of time, report to the sheriff's office weekly, and keep a record of where he has stayed during the last seven days. RCW 9A.44.130(6)(b); State v. Stratton, 130 Wn. App. 760, 764, 124 P.3d 660 (2005). A person is guilty of failure to register as a sex offender when, having been previously convicted of a qualifying sex offense, he knowingly fails to comply with any of the statutory requirements. RCW 9A.44.133(1).

The crime of failing to register as defined by RCW 9A.44.133(1) provides that:

A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130. RCW 9A.44.130(2)(a) provides that: A person required to

register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

The present case involves an offender who registered as residing at a fixed address, but who then ceased to reside at that address. Here the defendant, in leaving his fixed address for more than seven days, ceased to have a fixed residence. RCW 9A.44.128(5) provides that a fixed residence is a building where a person lawfully and habitually uses as a living quarters the majority of the week and RCW 9A.44.128(9) provides that a person lacks a fixed residence when the person does not have a living situation that meets the definition of a fixed residence. Under these provisions any person subject to registration who ceases to reside at his fixed residence has an identical duty: to provide written notice to the sheriff of the county in which he last registered. This is true whether the person moved to a new residence within the county, moved to a new residence outside the county (whether within or outside of the State), or ceased to have a fixed residence. When the defendant left his fixed residence for longer than a week, for whatever reason, he ceased to have a fixed residence and was required pursuant to RCW 9A.44.130(6)(a) to provide written notice to the sheriff of Klickitat County where he last

registered within three business days after ceasing to have a fixed residence.

In the present case, the evidence showed that the defendant abandoned his fixed residence, for whatever reason, and did not notify the sheriff of his change of status. RP. 24. Even under the most generous assumption - that he was on vacation and intended to return to his fixed residence, after being gone for more than a week he no longer had a fixed residence and was required to notify the sheriff of his new status. Regardless of where the defendant went, or his ultimate intent, after he ceased to have a fixed residence, he failed to comply with the notification statute.

2. The purposes of the sex offender registration statute would be impeded if a registrant could escape prosecution by successfully concealing his whereabouts.

The conclusion above is reinforced by consideration of the purposes of the sex offender registration statute. "In interpreting a statute, the primary objective of the court is to ascertain and carry out the intent and purpose of the Legislature in creating it." *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002). The purpose of the sex offender registration statute is to provide law enforcement agencies with the information needed to protect communities against sex offenders. *State v. Heiskell*, 129 Wn.2d 113,117, 916 P.2d 366 (1996); Laws of 1990, ch. 3, §

401. The defendant's interpretation of the statute is contrary to this purpose. Under his interpretation, a sex offender could abandon his fixed residence to some undisclosed location and claim he intended to return at some undisclosed future time. To prosecute him, the defendant wants to require the State to either prove where his new residence was, prove the negative that he lacked a residence or somehow divine the offender's ultimate intent to ultimately return to his original fixed address at some future date known only to the defendant. As long as the defendant successfully frustrates the purpose of the statute, he cannot be prosecuted. The defendant seeks to avoid the requirement that he divulge his presence in a particular jurisdiction and force the State to prove the defendant's intent when his actions trigger some new registration requirement.

This court should not adopt such an absurd interpretation. Rather, the statute should be construed in accordance with its language. A person who no longer has a fixed residence must notify the Sheriff of that county. Depending on the circumstances, he may have as many as ten days to do so, but under the circumstances of this case he had three days. If he registers within this time, and the State seeks to prosecute him for not registering earlier, the State must prove circumstances that give rise to an earlier duty - that is, it must prove that he either moved to a new residence within the county or ceased to have a fixed residence. If, however, the

person does not register within the maximum allowable period, these facts become immaterial. The State need only prove that the defendant (1) was required to register, (2) registered as having a fixed residence, (3) ceased to reside at that fixed residence, and (4) knowingly failed to notify the county Sheriff within three days. Since the evidence in the present case established these facts, it was sufficient to support a conviction.

D. CONCLUSION

Reduced to its essentials, the defendant's argument is that an offender who registers at a fixed residence can then go on vacation, a trip, a journey of self-exploration or a walkabout effectively ceasing to divulge his presence in a particular jurisdiction and not be convicted of failure to register despite clear evidence that he failed to register within any statutorily prescribed deadline. This argument is superficial and overly simplistic. The defendant's arguments should be rejected and his conviction affirmed.

Respectfully submitted this 13th day of November, 2019.



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November 13, 2019 - 11:11 AM

Transmittal Information

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Appellate Court Case Title: State of Washington v. Glen Lindsay Cathers
Superior Court Case Number: 19-1-00024-6

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