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DIVISION II

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STATE OF WASHINGTON

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STATE OF WASHINGTON  
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BY \_\_\_\_\_  
DEPUTY

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

ERIC A. WATSON, Petitioner.

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PETITION FOR DISCRETIONARY REVIEW

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Court of Appeals No. 32332-0-II  
Appealed from the Superior Court for Pierce County  
Superior Court Cause No. 04-1-00180-5

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## **A. IDENTITY OF PETITIONER**

Your Petitioner for discretionary review is Eric A. Watson, the Defendant and Appellant in this case.

## **B. COURT OF APPEALS DECISION**

The Petitioner seeks review of the opinion in the Court of Appeals, Division II, cause number 32332-0-II, which was filed on November 15, 2005. A copy of the opinion is attached hereto in the Appendix. No motion for reconsideration has been filed in the Court of Appeals.

## **C. ISSUES PRESENTED FOR REVIEW**

- A. Did the court of appeals err when it held that RCW 9A.44.130(4)(a)(i), defining the offense of failure to register, was not ambiguous as to whether it requires registration where the offender is being released from incarceration due to a probation violation to the same address he has already registered?

## **D. STATEMENT OF THE CASE**

On November 2, 1993, Eric Watson was convicted of a sex offense that required registration as a sex offender. CP 41. Watson served his time on the offense and was released into community custody. Watson registered as required by law on January 2, 2003, giving his residence as 7807 304<sup>th</sup> St. E, Graham, Washington. RP 8/30/04 – 6, CP 41. On May

27, 2003, Watson was sent to jail on three probation violations for a term of 60 days. CP 41. Watson was released from jail on July 2, 2003, and returned to the same address in Graham. CP 41.

Watson did not re-register upon his release from jail because his address had not changed and he did not believe that the law required him to formally re-register when he had not changed address and was being released from jail on separate incidents.

On January 14, 2004, Watson was charged with failure to register as a sex offender for failing to re-register when he was released from jail on July 2, 2003. CP 1-2. Watson brought a Knapstad motion to dismiss, arguing that RCW 9A.44.130(4)(a)(i) is ambiguous, and arguably only requires registration if the offender's address changes or if he is being released from his original sentence, but not when he is being released from a jail term following a probation violation and has not changed address. The trial court denied the motion to dismiss, finding that the language of the statute was not ambiguous and required re-registration under these circumstances. CP 8/30/04 – 14. Following a bench trial on stipulated facts, Watson was convicted of failure to register as a sex offender and sentenced to 30 days in jail, with one year of community custody. CP 46-52.

An appeal timely followed, in which Watson argued that a reasonable person would not understand that RCW 9A.44.130(4)(a)(i) required re-registration when a defendant is released from jail on a probation violation and has already registered his address (to which he is returning).

On November 15, 2005, the court of appeals, division II, held that RCW 9A.44.130(a)(i) is not ambiguous and affirmed Watson's conviction. Decision, at 4-5. The court specifically noted that Watson had no intent to violate the statute or conceal his address. Decision, at 5, footnote 2. Watson asks this court to accept review of the court's decision.

### **E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

The petitioner asserts that the issues raised by this Petition should be addressed by the Supreme Court because this case raises a significant question under the Constitution of the United States and this case involves an issue of substantial public interest that should be determined by the Supreme Court, as set forth in RAP 13.4(b).

**ISSUE 1: RCW 9A.44.130(4)(A)(I), DEFINING THE OFFENSE OF FAILURE TO REGISTER, IS AMBIGUOUS AS TO WHETHER IT REQUIRES REGISTRATION WHERE THE OFFENDER IS BEING RELEASED FROM INCARCERATION DUE TO A PROBATION VIOLATION TO THE SAME ADDRESS HE HAS ALREADY REGISTERED.**

Due process requires that penal statutes be drawn with sufficient specificity so that persons of common understanding will be on notice of the activity prohibited by the statutes. *State v. Richmond*, 102 Wn.2d 242, 243, 683 P.2d 1093 (1984). The fundamental principal underlying the vagueness doctrine is that the Fourteenth Amendment requires citizens be afforded fair warning of proscribed conduct. *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992).

The constitutionality of a statute is a question of law that the courts review de novo. *State v. Shultz*, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999). If the statute does not involve First Amendment rights, the courts evaluate the vagueness challenge by examining the statute as applied under the particular facts of the case. *Coria*, 120 Wn.2d at 163.

The challenger must show that either (1) the statute does not define the criminal offense with sufficient definiteness so that ordinary people can understand what conduct is proscribed, or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement. *Coria*, 120 Wn.2d at 163.

The requirement of sufficient definiteness “protects individuals from being held criminally accountable for conduct which a person of ordinary intelligence could not reasonably understand to be prohibited.” *Coria*, 120 Wn.2d at 163. Accordingly, a statute is unconstitutional if it “forbids conduct in terms so vague that persons of common intelligence

must guess at its meaning and differ as to its application.” *Coria*, 120 Wn.2d at 163.

In this case, the statute carrying the unconstitutionally vague language is RCW 9A.44.130(4)(a)(i), which provides that:

Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, ***are in custody, as a result of that offense***, . . . must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender.

(emphasis added).

Under this statutory language, one could reasonably interpret the “as a result of that offense” language to mean the sentence served on the original conviction, as opposed to time served on parole violations. A person such as Watson is not given sufficient notice that he must re-register following his release after serving time on parole violations, despite the fact that he had not changed address. The ambiguity in the statutory language makes it unconstitutionally vague as applied here and requires the application of the rule of lenity, construing the statute in the defendant’s favor. *See State v. Martin*, 102 Wn.2d 300, 304, 684 P.2d 1290 (1984).

Even looking to the purpose of the statute does not shed light on this question of when registration at release is required. The purpose of statute is clearly to keep law enforcement informed of the address of sex offenders. This purpose is served with an interpretation of the statute’s

language that registration is required upon release from the sentence served on the conviction, or when the offender's address changes. Interpreting this language to include any jail time tangentially related to the original conviction does not serve any additional purpose when the offender serves a short jail term that does not disrupt his living situation. In this case, for example, law enforcement knew at all times where Watson lived. Ironically, Watson was arrested on this offense at the address he gave when he registered. Thus, the purpose of the statute gives no guidance in resolving the ambiguity and again the ordinary person is left to wonder what is required of him.

Persons of common intelligence are left to guess about whether they are required to re-register or not following short jail time served on parole violations. Because of this ambiguity, the phrase "in custody, as a result of that offense" lacks sufficient definiteness to allow ordinary people to understand what conduct is proscribed.

The statute as applied to Watson's conduct in this case was unconstitutionally vague as to the conduct proscribed in that it could reasonably be interpreted as requiring registration only on release from the original prison term for the conviction. Therefore, this statute did not afford Watson fair notice that his conduct violated the law and his conviction must be reversed. The appellate court erred when it held that the statute was not ambiguous and affirmed Watson's conviction.

**F. CONCLUSION**

The Supreme Court should accept review for the reasons indicated in Part E, reverse the court of appeals, and reverse Watson's conviction for failure to register.

DATED: December 6, 2005.

By: Rebecca W. Bouchey  
Rebecca Wold Bouchey #26081  
Attorney for Petitioner

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STATE OF WASHINGTON  
BY \_\_\_\_\_ DEPUTY

**CERTIFICATE OF SERVICE**

I certify that on the 6th day of December 2005, I caused a true and correct copy of this Appellant's Brief to be served on the following via prepaid first class mail:

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

ERIC ALBERT WATSON,

Appellant.

No. 32332-0-II

PUBLISHED OPINION

VAN DEREN, A.C.J. – Eric Albert Watson challenges his conviction for failure to register as a sex offender, arguing that the registration statute, RCW 9A.44.130(4)(a)(i), is unconstitutionally vague because it fails to advise registrants that they must register after release from confinement for probation violations regardless of whether their registration information changed since their initial registration upon release into probationary status. We affirm.

**FACTS**

Watson was required to register as a sex offender under RCW 9A.44.130. Upon his release from prison into probationary status in January 2003, he complied with the registration requirements, reporting his address as 7807 304th St. E, Graham, Washington.

On May 27, 2003, Watson was found guilty of three probation violations related to his prior sex offense. The court modified his sentence, requiring him to serve an additional 60 days

in the Pierce County Jail. Watson was released from the jail on July 2, 2003, and returned to his prior residence, but he did not register with the Pierce County Sheriff's Department within 24 hours of his release. On January 14, 2004, the State charged him with failure to register as a sex offender.

Watson moved for dismissal, arguing that the registration statute did not require him to re-register after release from custody on probation violations unless he was not returning to his previously registered address. The trial court denied the motion, and the case proceeded to a bench trial on stipulated facts.

The trial court found Watson guilty, concluding that (1) he had been in custody as a result of a sex offense and therefore had a duty to register within 24 hours of release from jail under RCW 9A.44.130(4)(a)(i); and (2) he failed to comply with the registration requirements. The court sentenced Watson to 30 days confinement and imposed community custody requirements.

Watson appeals, arguing that the registration statute is ambiguous and unconstitutionally vague as applied.

#### DISCUSSION

Watson argues that RCW 9A.44.130(4)(a)(i) is void for vagueness under the due process clause of the Fourteenth Amendment because it fails to "define the criminal offense with

sufficient definiteness that ordinary people can understand what conduct is proscribed.”<sup>1</sup>

*Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). Because we presume statutes are constitutional, Watson has the burden of proving the statute is unconstitutional beyond a reasonable doubt. *State v. Smith*, 111 Wn.2d 1, 5, 759 P.2d 372 (1988).

But the fact that some terms in a statute are not defined does not necessarily mean the statute is void for vagueness. *Douglass*, 115 Wn.2d at 180. Impossible standards of specificity are not required, and a statute “is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct.” *City of Seattle v. Eze*, 111 Wn.2d 22, 27, 759 P.2d 366 (1988).

RCW 9A.44.130(4)(a) provides in part:

Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term “conviction” refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are *in custody, as a result of that offense*, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility . . . must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender.

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<sup>1</sup> Watson does not argue that the statute is void for vagueness because it fails to “provide ascertainable standards of guilt to protect against arbitrary enforcement.” *Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990).

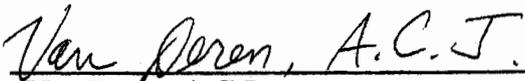
(Emphasis added). Watson argues that the phrase “in custody, as a result of that offense,” fails to advise registrants that they are required to re-register upon release from custody based on probation violations regardless of whether they previously registered and were planning to return to the same address. RCW 9A.44.130(4)(a)(i). We disagree.

Confinement on the basis of probation violations is a continuing consequence of the original prosecution rather than part of a new prosecution. *See State v. Prado*, 86 Wn. App. 573, 577-78, 937 P.2d 636 (1997) (citing *State v. Dupard*, 93 Wn.2d 268, 276, 609 P.2d 961 (1980)); *Standlee v. Smith*, 83 Wn.2d 405, 407, 518 P.2d 721 (1974)); *see also United States v. Soto-Olivas*, 44 F.3d 788, 792 (9th Cir. 1995) (revocation of defendant’s supervised release did not violate the double jeopardy clause because such punishment is part of the sanction for the original offense). Although probation status may determine the *degree of restraint*, the restraint is still a result of the original offense. Furthermore, nothing in the statute suggests that a prior registration exempts a registrant from later registration requirements as long as the registrant is returning to the same address. A reasonable person would understand that later restraint based on probation violations was a continuing consequence of the original offense, and the statute is not unconstitutionally vague. For the same reasons we also reject Watson’s apparent attempt to argue that the rule of lenity should apply because the statute is ambiguous.

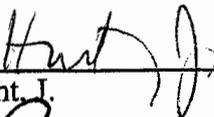
In addition, we do not agree with Watson’s assertion that there is no reason to require re-registration when a registrant is returning to a previously registered address. One purpose of the registration statute is to keep law enforcement advised of where sex offenders are living, *see*

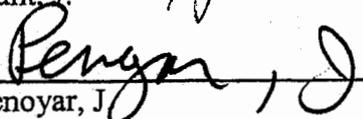
*State v. Heiskell*, 129 Wn.2d 113, 117, 916 P.2d 366 (1996) (legislative purpose behind sex offender registration is to assist law enforcement agencies' protection efforts), and there are undoubtedly many situations where sex offenders who have been returned to confinement after their initial release do not or cannot return to their previously registered address. By requiring mandatory re-registration each time a sex offender is released from any custody based on the original conviction, the statute ensures that the registrant's information is current and accurate.<sup>2</sup>

Accordingly, we affirm.

  
\_\_\_\_\_  
Van Deren, A.C.J.

We concur:

  
\_\_\_\_\_  
Hunt, J.

  
\_\_\_\_\_  
Penoyar, J.

<sup>2</sup> We note that there was no evidence that Watson's failure to re-register evinced the intent to violate the statute or conceal his residence from authorities, as he was returning to his already-registered address. It is within the legislative province to choose to provide specific registration provisions for sex offenders with stable addresses, but it is reasonable for authorities to require confirmation of a registered sex offender's address upon release from custody for any violation of conditions relating to the crime, whether it is called re-registration or something else.