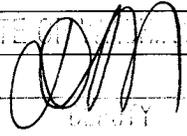


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COURT OF APPEALS
DIVISION II
LEWIS & CLARK
STATE OF WASHINGTON
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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

ERIC ALBERT WATSON, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Thomas J. Felnagle

No. 04-1-00180-5

Brief of Respondent

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Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 1

 1. Has defendant failed to establish that the sex offender registration statute (RCW 9A.44.130) is unconstitutionally vague? 1

B. STATEMENT OF THE CASE..... 1

 1. Procedure 1

 2. Facts 2

C. ARGUMENT. 4

 1. DEFENDANT FAILS TO ESTABLISH THAT THE STATUTE UNDER WHICH HE WAS CONVICTED IS UNCONSTITUTIONALLY VAGUE. 4

D. CONCLUSION..... 8

Table of Authorities

Federal Cases

- Maynard v. Cartwright, 486 U.S. 356, 361, 109 S. Ct. 1853,
100 L.Ed.2d 372 (1988)..... 6-7
- Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S. Ct. 839,
31 L.Ed.2d 110 (1972)..... 5

State Cases

- City of Bellevue v. Lorang, 140 Wn.2d 19, 30, 992 P.2d 496 (2000)..... 5
- City of Seattle v. Abercrombie, 85 Wn. App. 393, 400, 945 P.2d 1132,
review denied, 133 Wn.2d 1005 (1993)..... 7
- Haley v. Medical Disciplinary Bd., 117 Wn.2d 720, 739,
818 P.2d 1062 (1991)..... 6
- Seattle v. Eze, 111 Wn.2d 22, 26, 759 P.2d 366 (1988)..... 6, 7
- Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)..... 5, 7
- State v. Halstein, 122 Wn.2d 109, 117, 857 P.2d 270 (1993)..... 5, 6
- State v. Hegge, 89 Wn.2d 584, 589, 574 P.2d 386 (1978) 7
- State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986)..... 1
- State v. Lee, 135 Wn.2d 369, 393, 957 P.2d 741 (1998)..... 6
- State v. Maciolek, 101 Wn.2d 259, 265, 676 P.2d 996 (1984)..... 7
- State v. Williams, 144 Wn.2d 197, 204, 26 P.3d 890 (2001) 6

Constitutional Provisions

Article I, Section 3, Washington State Constitution 5
First Amendment, United States Constitution 6
Fourteenth Amendment, United States Constitution 5

Statutes

RCW 9A.44.130 1, 2, 3, 4, 7
RCW 9A.44.130(4)(a) 5

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Has defendant failed to establish that the sex offender registration statute (RCW 9A.44.130) is unconstitutionally vague?

B. STATEMENT OF THE CASE.

1. Procedure

On January 14, 2004, the State filed an information charging ERIC ALBERT WATSON (hereinafter "defendant") with one count of failure to register as a sex offender, in violation of RCW 9A.44.130. CP 1-2.

The case came on for trial before the Honorable Thomas J. Felnagle on August 13, 2004. RP 1-21. Defense moved to dismiss the charges pursuant to State v. Knapstad, 107 Wn.2d 46, 729 P.2d 48 (1986), claiming that the registration statute did not mandate registration after serving time for a probation violation for a sex offense. CP 3-35; RP 3-5. According to defendant, the statute required registration after serving time on the original sentence only. CP 3-35; RP 3-5. The judge denied defendant's motion. RP 13-15.

The defendant waived his right to jury trial and submitted the case to the judge on stipulated facts. CP 36-39. The court found the defendant guilty of failing to register as a sex offender under RCW 9A.44.130. RP

19. The court entered findings of fact and conclusions of law on October 1, 2004. CP 40-43.

The court sentenced the defendant to 30 days in custody. CP 44-54.

This timely appeal follows. CP 57-68.

2. Facts

The following facts are taken from the court's findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That on the 13th day of January 2004, an Information was filed charging the defendant with FAILURE TO REGISTER AS A SEX OFFENDER.

II.

Defendant was convicted of the crime of child molestation in the first degree on November 2, 1993, in Pierce County Superior Court #92-1-04728-6, for an offense committed on July 6, 1992.

III.

Defendant was notified by law enforcement on several occasions after November 2, 1993, of both his duty to register as a sex offender and the requirements set forth in RCW 9A.44.130.

IV.

On January 2, 2003, the defendant was residing in Pierce County, Washington, and he registered his address with the Pierce County Sheriff's Department as 7807 304th St. E., in Graham, Washington, a residence in Pierce County.

V.

On May 27, 2003, the Pierce County Superior Court entered an order modifying sentence that found 3 separate probation violations under Pierce County Superior Court #92-1-04728-6 (the defendant's child molestation in the first degree conviction). The court sentenced the defendant to serve 60 days in the Pierce County Jail.

VI.

On July 2, 2003, the defendant was released from the Pierce County Jail after completing his sentence for the probation violation under Pierce County Superior Court #92-1-04728-6.

VII.

Following his release from jail on July 2, 2003, the defendant returned to reside primarily at the residence at 7807 E. 304th St. E., in Graham, Washington.

VIII.

The defendant did not register his address, or any other information required under RCW 9A.44.130, with the Pierce County

Sheriff's Department on July 3, 2003, or within 24 hours of his release from jail on July 2, 2003. CP 40-43.

C. ARGUMENT.

1. DEFENDANT FAILS TO ESTABLISH THAT THE STATUTE UNDER WHICH HE WAS CONVICTED IS UNCONSTITUTIONALLY VAGUE.

Defendant claims that the statute under which he was convicted is unconstitutionally vague because it does not provide sufficient notice that a sex offender who is serving time on a probation violation must re-register upon his or her release from jail. As set forth below, defendant fails to meet his burden of proving the statute unconstitutional beyond a reasonable doubt.

Defendant was convicted of failure to register as a sex offender under RCW 9A.44.130. That statute provides, in pertinent 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 ... a local jail ..., must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender ... The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence ... Failure to

register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

RCW 9A.44.130(4)(a)(emphasis added). Subsection (10) of the section provides that violation constitutes the crime of failure to register as a sex offender, a class C felony.

Under the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, a statute is void for vagueness if: (1) the statute does not define the criminal offense with sufficient definiteness 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. Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S. Ct. 839, 31 L.Ed.2d 110 (1972); City of Bellevue v. Lorang, 140 Wn.2d 19, 30, 992 P.2d 496 (2000); Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). This test serves two purposes. First, it ensures that citizens receive fair warning of what conduct they must avoid, and, second, it protects citizens from “arbitrary, ad hoc, or discriminatory law enforcement.” State v. Halstein, 122 Wn.2d 109, 117, 857 P.2d 270 (1993). A statute is unconstitutionally vague if either requirement is not satisfied. Douglass, 115 Wn.2d at 178.

Despite its broad sweep, the vagueness doctrine is limited in two important ways. Seattle v. Eze, 111 Wn.2d 22, 26, 759 P.2d 366 (1988). First, a statute is presumed to be constitutional unless it appears unconstitutional beyond a reasonable doubt. Haley v. Medical Disciplinary Bd., 117 Wn.2d 720, 739, 818 P.2d 1062 (1991); Eze, 111 Wn.2d at 26. A party bringing a constitutional challenge to a statute bears the burden of proving its unconstitutionality. Halstien, 122 Wn.2d at 118. Second, “impossible standards of specificity” or “mathematical certainty” are not required because some degree of vagueness is inherent in the use of language. Eze, 111 Wn.2d at 26-27; Haley, 117 Wn.2d at 740. “Consequently, a statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his [or her] actions would be classified as prohibited conduct.” Eze, 111 Wn.2d at 27. Rather, a statute will be deemed void for vagueness only “if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its applicability.” State v. Williams, 144 Wn.2d 197, 204, 26 P.3d 890 (2001)(citing State v. Lee, 135 Wn.2d 369, 393, 957 P.2d 741 (1998)).

Vagueness challenges to statutes which do not involve First Amendment rights are to be evaluated under the particular facts of each case. Maynard v. Cartwright, 486 U.S. 356, 361, 109 S. Ct. 1853, 100

L.Ed.2d 372 (1988). The context of the entire statute is considered by the court to determine a sensible, meaningful, and practical interpretation. Douglass, 115 Wn.2d at 177. A defendant whose conduct clearly fits within the proscriptions of a statute does not have standing to challenge the constitutionality of that statute for vagueness and, thus, may not challenge the statute on the ground that it is vague as applied to the conduct of others. City of Seattle v. Abercrombie, 85 Wn. App. 393, 400, 945 P.2d 1132, review denied, 133 Wn.2d 1005 (1993); State v. Hegge, 89 Wn.2d 584, 589, 574 P.2d 386 (1978). If a person of ordinary intelligence can understand what the ordinance proscribes, *notwithstanding some possible areas of disagreement*, the ordinance is sufficiently definite. Eze, 111 Wn.2d at 27 (emphasis in original)(quoting State v. Maciolek, 101 Wn.2d 259, 265, 676 P.2d 996 (1984)).

RCW 9A.44.130, as applied in this case, is not unconstitutionally vague. An ordinary person who reads the registration statute would understand that a sex offender must re-register with the county sheriff after he serves time on a sex offense, regardless if the time served is a part of the original sentence or imposed pursuant to a probation violation. The statute clearly states that offenders who committed a sex offense in the past “and who, *are in custody, as a result of that offense*, of ... a local jail” must register within 24 hours of release. The phrase “as a result of

that offense” is broad. It clearly applies to any jail time that is served “as a result of” the prior sex offense. A probation violation, and any jail time imposed pursuant thereto, is “a result of” prior offenses. There are no restrictions within the statute that limit the statute’s application to offenders who are in custody on the original sentence.

In this case, defendant was in custody *as a result of* his 1992 sex offense conviction for child molestation. According to the plain language of the statute, the defendant was therefore required to register his address with the county sheriff within 24 hours of his release. Defendant’s conduct falls squarely within the statute’s proscriptions. A person of common intelligence reading the statutory provision would understand that the statute required registration under the circumstances of defendant’s case. Defendant has not overcome the presumption that the statute is constitutional.

D. CONCLUSION

For the foregoing reasons, the trial court did not err in denying defendant’s motion to dismiss. The failure to register statute is not void

for vagueness. The State respectfully requests this court affirm
defendant's conviction.

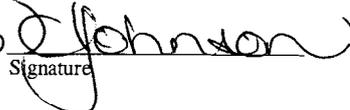
DATED: June 27, 2005

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WSB # 29285

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7/1/05 
Date Signature