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SUPREME COURT OF THE STATE OF WASHINGTON

SHELDON MARTIN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

**ANSWER OF THE STATE OF WAHINGTON TO APPELLANT'S
PETITION FOR REVIEW**

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I. RESPONDENT

The Respondent is the State of Washington.

II. DECISION BELOW

The decision below is a published decision by the Washington State Court of Appeals, Division II, entered on June 14, 2006, dismissing Mr. Martin's direct appeal of his civil commitment as a sexually violent predator. *In re Detention of Martin*, __ Wn. App. __, 136 P.3d 789 (2006).

III. ISSUE FOR REVIEW

This case is a direct appeal of a trial court order committing Mr. Martin as a sexually violent predator. For the reasons stated below, the issue presented by the petition is not appropriate for review under the considerations of RAP 13.4(b). If review were accepted, the issue would be whether the Thurston County Superior Court lacked jurisdiction to commit Mr. Martin under RCW 71.09 when Mr. Martin had not been convicted of any prior offenses in Thurston County.

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IV. STATEMENT OF THE CASE

A. Factual Background

1. Burglary in the Second Degree with Sexual Motivation, Clark County Cause Number 91-1-01069-2.

On October 22, 1991, Mr. Martin followed a female patron into a public restroom at a Fred Meyer's Department Store in Vancouver, Washington. After she entered a stall, he pulled his pants down, and stared up at the woman from underneath the bathroom stall while laying on the floor. After the woman saw him, Mr. Martin grabbed her ankle. She kicked him and then chased him out of the bathroom as he attempted to pull up his pants. It appeared to the woman that Mr. Martin was masturbating. Fred Meyer's personnel indicated that Mr. Martin had been engaging in this type of behavior since the early 1980s. Clerk's Papers (CP) 9-10.¹

Mr. Martin was convicted of the crimes of Burglary in the Second Degree with Sexual Motivation and Indecent Exposure in Clark County Superior Court on March 3, 1992. These offenses are not sexually violent offenses as that term is defined in RCW 71.09.020(15) and used in

¹ Since Mr. Martin stipulated to commitment as a Sexually Violent Predator there was no trial, and therefore no testimony regarding the underlying facts of his prior convictions. However, in his stipulation to civil commitment Mr. Martin agreed that the Findings of Fact were agreed upon by the parties and were based upon the pleadings filed in this matter, particularly the Certification for Determination of Probable Cause. CP 102. Therefore, respondent is relying on the Certification for Determination of Probable Cause to provide the Court with background information useful to understanding this case. CP 6-16.

RCW 71.09.030. Pending sentencing, Mr. Martin fled to Oregon where he committed and was convicted of two sexually violent offenses, as described below. Mr. Martin later was returned to Clark County by the Oregon authorities and, on March 8, 1994, was sentenced to serve thirty months in a Washington State prison at the conclusion of his Oregon incarceration. CP 10.²

2. Kidnapping in the Second Degree and Attempted Sexual Abuse in the First Degree, Multnomah County Cause No. 92-04-32087.

On April 8, 1992, Mr. Martin was seen in the children's clothing section at an Oregon Fred Meyer's department store. Security personnel observed Mr. Martin approach a three-year-old girl, take her by the hand, and lead her out of the store and into the parking lot towards his truck. Security personnel stopped Mr. Martin and he was arrested. After Mr. Martin was arrested, police searched his truck and recovered a machete, a 6-inch boning knife, a tan shoe containing a bong and a pill container with residue, a towel, a map with markings, a shovel, and a rake. Mr. Martin eventually admitted that he kidnapped the child and intended to drive her to another location where he could sexually molest her. CP 7.

Mr. Martin was convicted on July 22, 1992 of the crimes of Kidnapping in the Second Degree and Attempted Sexual Abuse in the

² See fn 1, *supra*.

First Degree in Multnomah Superior Court. He was sentenced to serve one hundred twenty months in prison for these offenses. CP 8.

B. Procedural History

On August 26, 2002, the Department of Corrections Community Protection Unit submitted a letter to Thurston County Prosecuting Attorney Edward Holm. The letter advised Mr. Holm that Mr. Martin appeared to meet the criteria of a sexually violent predator, and asked him to determine if he intended to file a petition for civil commitment against Mr. Martin. CP 84. On March 4, 2003, shortly before he was due to be released from total confinement, the Attorney General's Office filed a petition on behalf of Mr. Holm and the Thurston County Prosecuting Attorney's Office alleging that Mr. Martin is a sexually violent predator as defined by RCW 71.09.020(16). CP at 3-5. Consistent with its standard practice, the State filed its petition in Thurston County because Mr. Martin's sexually violent offense conviction occurred in a state other than Washington.

On October 6, 2004, Mr. Martin filed a Motion to Dismiss the petition, asserting that Thurston County Superior Court was not the proper court to hear the State's petition since he had never been convicted of an offense there. CP 69-86. The State responded to the Motion to Dismiss on October 13, 2004, arguing that the definition of "sexually violent

offense” under RCW 71.09.020(15) clearly allows the use of out-of-state convictions as predicate sexually violent offenses, and the established practice of the Attorney General’s Office is to file these petitions in Thurston County. CP 87-91.

The Motion was argued on October 29, 2004. Report of Proceedings (RP) at 1 (October 29, 2004). The court orally denied the Motion. The court noted that the Attorney General’s Office standard practice was to file in Thurston County when the sexually violent offense occurred out of state, and determined that the language of the statute “does not limit the authority of a prosecutor to make such a request of the Attorney General to only those prosecutions where the sexually violent offense was committed.” RP at 23 (October 29, 2004). The court recognized that “if the law was such, then in the case of this respondent and in the case of any respondent who is convicted of a sexually violent offense in a jurisdiction other than Washington, there would be no prosecutor who could make such a request of an attorney general [and] [a]s a consequence, the provisions for addressing sexually violent offenders who have committed their offense outside the state of Washington that are included in RCW 71.09 would have no effect at all.” RP at 23 (October 29, 2004). The court explained that such a construction of RCW 71.09.030 would lead to an absurd result, and therefore could

clearly not be the will of the Legislature. The court concluded by finding that both jurisdiction and venue were proper. RP at 23-34 (October 29, 2004).

On February 22, 2005, respondent stipulated to commitment as a sexually violent predator. In his stipulation Mr. Martin stipulated that his Oregon conviction for Attempted Sexual Abuse in the First Degree was comparable to Child Molestation in the First or Second Degree under Washington law, and that this conviction constituted a sexually violent offense as that term is defined in RCW 71.09.020(15). CP 102-103. The stipulation, however, provided that Mr. Martin could appeal the trial court's denial of his motion to dismiss. On June 14, 2006, the Court of Appeals, Division II, affirmed the trial court's order denying Mr. Martin's motion to dismiss.

V. REASONS WHY REVIEW SHOULD BE DENIED

A. Considerations for Discretionary Review

Under RAP 13.4(b), Mr. Martin must show (1) that the Court of Appeals decision is in conflict with a decision of the Supreme Court, (2) that the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, (3) that there is a significant question of law under the Washington or United States Constitution, or (4) that there

is an issue of substantial public interest involved that should be determined by the Supreme Court. RAP 13.4(b)(1-4).

Mr. Martin seeks review to argue that RCW 71.09.030 deprives superior courts of subject matter jurisdiction to hear his commitment case where the predicate sexually violent offence occurred in Oregon. That argument was properly rejected by the Court of Appeals, consistent with Supreme Court decisions regarding both statutory construction and jurisdiction. Mr. Martin's petition offers no argument to challenge the Court of Appeals core rulings that superior courts are courts of general jurisdiction. Slip Opinion at 3³. Therefore, Mr. Martin's arguments about which county prosecutor might request the Attorney General to seek a commitment under RCW 71.09.030 implicated only the question of whether Thurston County was the proper venue, which Mr. Martin did not contest. Slip Opinion at 1, 4.

Mr. Martin identifies no true conflict with prior decisions of this court calling for review. The Court should therefore deny review because the issue presented does not meet any of the considerations of RAP 13.4(b)(1) or (2).⁴

³ "Martin does not dispute that all Washington State superior courts, including Thurston County, have subject matter jurisdiction to hear SVP civil commitment cases under RCW 71.09.020(15)(b)." Slip Opinion at 3-4.

⁴ Mr. Martin appears to rely solely on his argument that the Court of Appeals decision is in conflict with other decisions regarding rules of statutory interpretation. He

B. The Decision Of The Court Of Appeals Is Consistent With Rules Of Statutory Construction Enunciated By The Supreme Court

The Petition argues that the Court of Appeals “sidestepped” a basic rule of statutory construction which provides that “[w]here a statute is unambiguous, the court assumes the legislature means what it says and will not engage in statutory construction past the plain meaning of the words.” *In re Estate of Jones*, 152 Wn.2d 1, 11, 93 P.2d 147 (2004). Petition for Review at 8. This argument falls far short of the requirement in RAP 13.4(b)(1) or (2) that the case present some conflict with a decision by this Court or other Courts of Appeals.

The Court of Appeals ruling does not stand for the proposition that courts can now ignore the meaning expressed by plain words in an unambiguous statute. The Court of Appeals simply found that principle inapplicable when it rejected Mr. Martin’s interpretation that RCW 71.09.030 precludes state superior courts from exercising jurisdiction to commit a sexually violent predator whose predicate sexually violent offense occurred in another state.

The Court of Appeals reached this conclusion because RCW 71.09.020(15)(b) expressly contemplates that a sexually violent

offers no argument to suggest that the issue he argues has any constitutional basis, or why the issue would have a wide public importance requiring a decision by this Court. The State’s response, therefore, does not address the considerations of RAP 13.4(b)(3) or (4).

offense includes out of state convictions, and construed the statute to preserve that logical and express legislative intent. Mr. Martin's argument, in contrast, led to an absurd result contradicting the provisions, and purposes of the law.

Thus, rather than "sidestepping" rules of statutory construction, the Court of Appeals properly applied principles of statutory construction when it affirmed the trial court's order denying Mr. Martin's motion to dismiss. It is a cardinal principle of statutory construction "to give effect, if possible, to every clause and word of a statute." *Montclair v. Ramsdell*, 107 U.S. 147, 152, 2 S.Ct. 391 (1883). The Washington Supreme Court has observed, "[s]tatutes must be construed so that all the language is given effect and no portion is rendered meaningless or superfluous." *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). The legislature is presumed not to include unnecessary language when it enacts legislation. *McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240, (2004).

Washington's Sexually Violent Predators statute, RCW 71.09, provides that any out-of-state conviction that meets the criteria for a sexually violent offense under Washington law constitutes a sexually violent offense. RCW 71.09.020(15)(b). The legislature thus unambiguously anticipated the possibility that an offender's predicate sexually violent offense might have been committed out of state, and

created language defining these offenses as sexually violent offenses. There can be little doubt that the legislature intended for prosecutors to be able to file petitions on persons who had at any time previously been convicted of a sexually violent offense, even if that offense was not committed in Washington.

Additionally, the purpose of an enactment should prevail over express but inept wording. *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 462, 869 P.2d 56 (1994). Here, the intent of the legislature is readily apparent. In RCW 71.09.010, the legislature notes that the group of sex offenders classified as sexually violent predators are extremely dangerous and are unique as a class of offenders due to their high recidivism rate, specialized treatment needs, and poor prognosis for recovery. The primary goal of legislature when it first enacted RCW 71.09 in 1990 was to contain sexual offenders who pose extreme risks to the public. *See, e.g., David Boerner, Confronting Violence: In the Act and in the Word*, 15 U. Puget Sound L. Rev. 525 (1992). This goal is furthered by interpreting RCW 71.09.030 to allow prosecutors to file petitions on offenders in Washington whose predicate sexually violent offenses were committed out of state.

Finally, a court must avoid constructions that yield unlikely, absurd or strained consequences. *Kilian*, 147 Wn.2d at 21. The trial court

recognized this potential for absurdity when it denied the Motion to Dismiss. If Mr. Martin's argument were to be taken to its logical conclusion, then an individual within Washington's criminal justice system who has only out-of-state convictions for sexually violent offenses could not be subject to RCW 71.09. This is an unreasonable and absurd result which could not be the intent of the legislature, for it frustrates the operation of the sexually violent predator law and gives no effect to the provisions for addressing sexually violent offenders outside the state of Washington outlined in RCW 71.09.020(15). The Court of Appeals explained that by including out-of-state convictions as sexually violent predicate offenses in RCW 71.09.020(15)(b), the legislature demonstrated its intent to provide for the civil commitment of such a person. Slip Opinion at 4, citing *CF* RCW 71.09.020(15)(b) with RCW 71.09.030.

Mr. Martin's argument that the Court of Appeals did not apply "the plain meaning of the words" of the statute is incorrect. Mr. Martin has not shown that the Court of Appeals decision is in conflict with a decision of the Supreme Court or with another decision of the Court of Appeals. Therefore, the petition is not appropriate for review under the considerations of RAP 13.4(b)

C. The Court Of Appeals Properly Found That Washington State Superior Courts Have Jurisdiction Over Sexually Violent Predator Petitions

In the decision below, the Court of Appeals correctly affirmed the trial court's determination that the Thurston County Superior Court has jurisdiction to commit Mr. Martin as a sexually violent predator. The court noted that Mr. Martin did not dispute that all Washington State superior courts have subject matter jurisdiction to hear SVP civil commitment cases under RCW 71.09.020(15)(b). Slip Opinion at 3-4. The Court of Appeals explained that "[i]n Washington, superior courts are courts of general jurisdiction and 'have authority to hear and decide cases in equity, and all cases at law for which jurisdiction has not been vested by law exclusively in some other court.'" Slip Opinion at 3, citing WASH. HANDBOOK ON CIVIL PROC. Section 9.3, at 124 (2006)(citing WASH.CONST. art. IV, section 6); *see also Wash. State Coal. for the Homeless v. Dep't of Soc. and Health Servs.*, 133 Wn.2d 894, 915, 949 P.2d 1291 (1997). The Court of Appeals decision regarding jurisdiction in this matter is consistent with well-established law, and Mr. Martin does not even suggest that this issue is appropriate of review by this Court.

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D. The Court of Appeals Properly Recognized That Mr. Martin's Arguments Implicated Venue, Which He Did Not Contest

Mr. Martin identified that RCW 71.09.030 provides for the filing of a sexually violent predator petition in the "county where the person was convicted or charged," and that Mr. Martin was never convicted or charged with an offense in Thurston County. However, as noted by the Court of Appeals "Martin did not move for a change in venue; he moved to dismiss for lack of jurisdiction." Slip Opinion at 4.

The Court of Appeals acknowledged that venue may have been improper. Slip Opinion at 1. However, the court correctly held that the proper remedy for improper venue is a change of venue, not dismissal of the action. Slip Opinion at 4, citing *J.A. v. State*, 120 Wash.App. 654, 659, 86 P.3d 202 (2004)(citing *Sim v. Wash. State Parks and Recreation Comm'n*, 90 Wash.2d 378, 383, 583 P.2d 1193 (1978)); cf. *Shoop v. Kittitas County*, 149 Wash.2d 29, 35, 65 P.3d 1194 (2003). Therefore, having established that the superior court had subject matter jurisdiction, the court below properly ruled that Mr. Martin was not entitled to a dismissal of the action for want of venue, particularly because Mr. Martin never moved for a change of venue. Slip Opinion at 1, fn.1.

VI. CONCLUSION

For the above reasons, this case presents no conflict with other case law appropriate for review under RAP 13.4(b). The State therefore asks that the Court deny the petition for review.

RESPECTFULLY SUBMITTED this 21st day of August, 2006.

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