

X

82089-9

NO.
Court of Appeals no. 59722-1-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL E. PETERSON,

Petitioner.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 SEP 10 AM 7:46
BY RONALD W. CARPENTER
CLERK

ANSWER TO PETITION FOR REVIEW

JANICE E. ELLIS
Prosecuting Attorney

SETH A. FINE
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

TABLE OF CONTENTS

I. IDENTITY OF RESPONDENT..... 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 2

 A. THE COURT OF APPEALS' INTERPRETATION OF THE SEX
 OFFENDER REGISTRATION STATUTE COMPLIES WITH BOTH
 THE STATUTE'S LANGUAGE AND ITS PURPOSE..... 2

 B. THE COURT SHOULD NOT REVIEW WHAT INSTRUCTIONS
 WOULD BE PROPER UNDER A NEW INFORMATION THAT HAS
 NOT BEEN FILED. 6

IV. CONCLUSION..... 7

TABLE OF AUTHORITIES

WASHINGTON CASES

<u>State v. Heiskell</u> , 129 Wn.2d 113, 916 P.2d 366 (1996)	3
<u>State v. J.P.</u> , 149 Wn.2d 444, 69 P.3d 318 (2003).....	4
<u>State v. Laramie</u> , 141 Wn. App. 332, 169 P.3d 859 (2007).....	6
<u>State v. Pickett</u> , 95 Wn. App. 475, 975 P.2d 584 (1999).....	4, 5
<u>State v. Stratton</u> , 130 Wn. App. 760, 124 P.3d 660 (2005)	4, 5

WASHINGTON STATUTES

Laws of 1990, ch. 3, § 401	3
Laws of 2003, ch. 215, § 1	3
Laws of 2006, ch. 126, § 2	3
RCW 9A.44.130	2, 3
RCW 9A.44.130(10).....	3
RCW 9A.44.130(11).....	3

I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The petitioner, Michael Peterson, was convicted in 1988 of third degree rape. 1 RP 41-42. As a result, he was required to register as a sex offender. On September 12, 2005, the petitioner registered as residing at a particular apartment in Everett. RP 45. Around November 2, he moved out because he lacked the money to pay his rent. RP 22. He did not notify the Snohomish County Sheriff at that time. On December 6, he registered with the Sheriff as homeless. RP 63-65.

The petitioner was charged with failing to register as a sex offender. 1 CP 41-42. He was convicted at a jury trial. 1 CP 21. The court sentenced him to 15 days' confinement. 1 CP 10.

On appeal, the petitioner argued that the information was insufficient. The State conceded this. The Court of Appeals accordingly reversed the conviction and ordered the charges dismissed without prejudice.

The petitioner asked that the charges be dismissed with prejudice, claiming that the evidence was insufficient to support a

conviction. He argued that the State needed to prove which specific registration requirement he violated. The Court held that the State was only required to prove that the defendant knowingly failed to register as required. It therefore held that the evidence was sufficient.

III. ARGUMENT

A. THE COURT OF APPEALS' INTERPRETATION OF THE SEX OFFENDER REGISTRATION STATUTE COMPLIES WITH BOTH THE STATUTE'S LANGUAGE AND ITS PURPOSE.

Under RCW 9A.44.130, a person who moves from his registered address must notify the Sheriff. Depending on the circumstances, the time allowed for notification can vary between 48 hours and 10 days. The State's evidence showed that the defendant moved and did not notify the Sheriff for over a month. RP 22, 63-65. The petitioner nevertheless contends that the evidence was insufficient, because the State was required to prove which specific registration provision governed his situation.

In rejecting this argument, the Court of Appeals properly applied both the language and the policy of the statute. As the

court pointed out, the sole relevant penal provision of the registration statute was set out in RCW 9A.44.130(10)¹:

A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense. . .

This provision requires the State to prove that the defendant “knowingly fail[ed] to register with the county sheriff ... as required by this section.” It does not require proof of which specific registration requirement was applicable.

The purpose of the 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 petitioner’s interpretation of the statute would frustrate this purpose. Under the petitioner’s theory, a sex offender could move from his registered address with no notice to anyone. As long as he succeeded in concealing the existence and location of his new residence, he

¹ The version of the statute relevant to the present case was enacted by Laws of 2003, ch. 215, § 1. The statute was amended in 2006. It now penalizes “[a] person who knowingly fails to comply with any of the provisions of this section.” Laws of 2006, ch. 126, § 2. It has also been recodified as RCW 9A.44.130(11).

could not be prosecuted for any crime. No rational legislature would enact such a statute. Courts should avoid interpreting statutes in ways that produce absurd results. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

The petitioner claims that the Court of Appeals decision is inconsistent with State v. Stratton, 130 Wn. App. 760, 124 P.3d 660 (2005); and State v. Pickett, 95 Wn. App. 475, 975 P.2d 584 (1999). It is not. Neither case involved a lack of proof as to the applicable registration requirement. Rather, in both cases, the undisputed facts showed that the defendant had complied with all applicable registration requirements.

In Stratton, the defendant was living in a car outside his registered residence. The court held that this address was still his "residence." Stratton, 130 Wn. App. at 165. Since he had not changed his residence, he was not required to report such a change. Since he still had a "fixed residence," he was not required to report as a homeless person (i.e., a person who lacked a fixed residence). The State had therefore failed to prove that the defendant had not complied with registration requirements.

In Pickett, the defendant was homeless. The court held that the defendant was not required to register his "residence" when he

did not have one. Pickett, 95 Wn. App. at 478. Since there was at the time no statutory provision governing registration of persons who lacked a fixed residence, the defendant had complied with all applicable registration requirements.

In each of these cases, the State failed to prove that the defendant violated *any* of the statutory registration provisions. Since there was no proof that the defendants had “failed to register ... as required,” the convictions had to be reversed. This is entirely different from the situation in the present case, where the evidence did show that the defendant failed to register as required. The Court of Appeals decision here is consistent with the decision in Stratton and Pickett.

Contrary to the petitioner’s argument, the Court of Appeals did not re-write the statute. He is the one who wants to re-write it, by turning the definitions of the registration requirements into penal provisions. Such an “interpretation” would be inconsistent with both the language and purpose of the statute. The Court of Appeals rejection of this argument does not create an issue warranting review by this court.

B. THE COURT SHOULD NOT REVIEW WHAT INSTRUCTIONS WOULD BE PROPER UNDER A NEW INFORMATION THAT HAS NOT BEEN FILED.

The petitioner also asks this court to review the jury instructions. He contends that the instructions did not set out the elements of the crime. He also contends that the instructions should have required the jury to be unanimous as to some means of committing the offense. These issues are not ripe for consideration, given the absence of any valid charging document.

Jury instructions must be limited to the alternatives charged in the information. State v. Laramie, 141 Wn. App. 332, 342-43 ¶ 17, 169 P.3d 859 (2007). In the present case, there is no information on which jury instructions can be based. The Court of Appeals dismissed the case because the information was inadequate. Neither party has challenged this ruling. At this point, the court cannot know what allegations will be set out in a new information (assuming that one is filed at all). The petitioner is asking this court to give a hypothetical opinion on what jury instructions would be appropriate under an information that has not yet been filed. The court should decline this invitation.

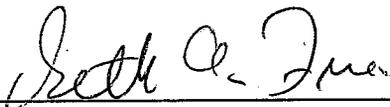
IV. CONCLUSION

The Court of Appeals correctly decided that the evidence was sufficient. No other issues are ripe for review. The petition for review should therefore be denied.

Respectfully submitted on September 9, 2008.

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By:



SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney
Attorney for Respondent