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SUPREME COURT NO. \_\_\_\_\_  
COURT OF APPEALS NO. 59722-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

**FILED**  
SEP - 9 2008

CLERK OF SUPREME COURT  
STATE OF WASHINGTON  
*[Signature]*

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL PETERSON,

Petitioner.

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2008 AUG - 6 PM 4: 15

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Anita L. Farris, Judge

PETITION FOR REVIEW

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Today I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to attorneys of record of ~~respondent~~ ~~appellant~~ ~~plaintiff~~ containing a copy of the document to which this declaration is attached.

*Snohomish County Prosecutor*  
I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

*P. Magorsky*      *8.6.2008*  
Name                      Done in Seattle, WA      Date

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A. IDENTITY OF PETITIONER

Petitioner Michael Peterson, the appellant below, asks this Court to review the Court of Appeals decision referred to in Section B.

B. COURT OF APPEALS DECISION

Peterson requests review of the published Court of Appeals decision in State v. Michael Peterson, Court of Appeals No. 59722-1-I, filed July 7, 2008. The decision is attached as appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Must Peterson's conviction for failure to register as a sex offender be reversed and dismissed with prejudice because the state failed to prove each element of the crime as specified by statute?

2. Was defense counsel ineffective in agreeing to a "to convict" instruction that omitted elements of the crime?

3. Is reversal required because substantial evidence did not support each alternate means of proving Peterson failed to properly register as a sex offender?

D. STATEMENT OF THE CASE

1. Trial Court

In 1988, Peterson was convicted of third degree rape. 3RP 41. Upon release from custody in 1991, Peterson was told to register as a sex

offender. 3RP 69. Peterson registered numerous times between 1991 and 2005, either as having an address or as homeless. 3RP 44-45, 69-74. He registered as "homeless" on September 6, 2005. 3RP 44-45, 69-70. Peterson subsequently moved into an Everett apartment and registered the address with the Snohomish County Sheriff's Office on September 12. 3RP 18-19, 45-46, 61.

On November 2, an Everett police detective went to the apartment to verify Peterson still lived there. 3RP 31-32. The landlord told the detective that Peterson moved out four days earlier. 3RP 32-33. On December 6, Peterson registered as homeless with the Snohomish County Sheriff's Office. 3RP 63.

The state charged Peterson with failure to register as a sex offender. CP 41-42. Peterson received a standard range sentence of 15 days confinement after a jury found him guilty. CP 4-17, 21.

## 2. Court of Appeals

On appeal, Peterson argued reversal was required because (1) the state failed to prove every element of the crime beyond a reasonable doubt; (2) defense counsel was ineffective in agreeing to a "to convict" instruction that omitted elements of the crime; (3) Peterson's right to jury unanimity was violated because substantial evidence did not support an alternative

means of committing the crime; and (4) the information omitted the knowledge element of the crime. The Court of Appeals reversed conviction without prejudice because the information omitted the knowledge element of the offense. Peterson, 186 P.3d at 1181.

However, the Court of Appeals further held failure to register is not an alternative means crime. Id. at 1182. Instead, "there is only one means of committing the crime -- knowingly failing to register as required by RCW 9A.44.130(1)(a)." Id. From this premise, the Court of Appeals rejected Peterson's arguments that the "to convict" instruction omitted elements of the crime and that there was insufficient evidence to prove all the elements. Id. at 1180-82.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court of Appeals decision conflicts with precedent from this Court and the Court of Appeals and also presents an issue of substantial public interest. Review is appropriate under RAP 13.4(b)(1), (b)(2) and (b)(4).

THE COURT OF APPEALS MISCONSTRUED THE ELEMENTS OF THE CRIME OF FAILING TO REGISTER DUE TO A FAULTY INTERPRETATION OF THE REGISTRATION STATUTE.

The underlying issue in this case is what constitutes the elements of the crime of failure to register as a sex offender. Peterson's arguments

involving insufficient evidence, a defective "to convict" instruction, and alternate means of committing the crime all inform the answer to this question. The Court of Appeals decision on this issue is flawed because it does not give proper effect to the language of the registration statute.

1. The Statute Elaborately Specifies The Different Conditions Under Which One Has An Obligation To Register, The Different Deadlines For When Registration Must Occur, And The Different Law Enforcement Entities That Must Be Notified.

Not one of the three charging documents specifies which section of the registration statute Peterson allegedly violated. CP 41-42, 43-44, 47-48. The state's theory of the case was that Peterson left his fixed residence and did not report where he was residing within 72 hours. 3RP 13, 95. The state did not know whether Peterson became homeless or moved to another fixed address. 3RP 13.

Former RCW 9A.44.130(1)<sup>1</sup> provides:

Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence,

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<sup>1</sup> Former RCW 9A.44.130, Laws of 2003, ch. 215 § 1, was the version in effect at the time of Peterson's alleged offense. All references to the registration statute are to this former version.

or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section.

RCW 9A.44.130(4)(a) specifies offenders "shall register with the county sheriff within the following deadlines." The statute then goes on to describe a number of differing classes of people who have the obligation to register with the county sheriff within a particular deadline. RCW 9A.44.130(4)(a)(i) through (vii).

RCW 9A.44.130(4)(b) states "Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section."

RCW 9A.44.130(10) provides "A person who knowingly fails to register with the county sheriff or notify the county sheriff . . . *as required by this section* is guilty of a class C felony." (emphasis added).

Under the state's dual theory of the case, Peterson violated his obligations under either RCW 9A.44.130(5)(a) or (6)(a). RCW 9A.44.130-(6)(a) states in relevant part:

Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence.

RCW 9A.44.130(5)(a), in contrast, provides:

If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered.

2. The Evidence Was Insufficient To Convict Peterson Of Failure To Register.

Due process under the Fourteenth Amendment of the United States Constitution requires the state to prove every element of the charged crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). Evidence is insufficient to support a conviction unless, viewed in the light most favorable to the state, a rational trier of fact could find each element of the crime beyond a reasonable doubt. Id.

Peterson did not have a legal obligation to register under RCW 9A.44.130(6)(a) unless he lacked a fixed residence. He did not have an obligation to register under RCW 9A.44.130(5)(a) unless he moved from one residence to another. The state did not prove Peterson lacked a fixed residence or moved from one residence to another, and therefore failed to prove Peterson had an obligation to register under either subsection.

In claiming the evidence was sufficient to convict, the Court of Appeals nevertheless held it does not matter how or where Peterson lived because subsections (5)(a) and (6)(a) are merely definitional and therefore do not set forth elements of the crime that the state needs to prove beyond a reasonable doubt. Peterson, 186 P.3d at 1181-82.

Questions of statutory interpretation are reviewed de novo. State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). The goal of statutory construction is to carry out legislative intent. Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal and strict interpretation. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). "[C]ourts are to give effect to that plain meaning as an expression of legislative intent." State v. Thompson, 151 Wn.2d 793, 801, 92 P.3d 228 (2004).

Peterson's argument is that RCW 9A.44.130 means exactly what it says. Under RCW 9A.44.130(6)(a), the state needed to prove Peterson was homeless. See State v. Stratton, 130 Wn. App. 760, 766-67, 124 P.3d 660 (2005) (conviction reversed for insufficient evidence where state failed to prove defendant lacked a fixed residence but convicted for failure to register as transient under RCW 9A.44.130(6)(a)). Under RCW

9A.44.130(5)(a), the state needed to prove Peterson moved to a residential address without properly notifying authorities. See State v. Pickett, 95 Wn. App. 475, 478-80, 975 P.2d 584 (1999) (conviction reversed for insufficient evidence where state charged homeless sex offender with failing to register a residential address). Reversal and dismissal of the charge with prejudice is required because the state proved neither.

The Court of Appeals did not address Stratton and Pickett. This telltale omission may be the result of an inability to reconcile those holdings with the approach employed in Peterson's case. If, as the Court of Appeals contends, residential status is not an element of the crime under subsections (5)(a) and (6)(a), then Stratton and Pickett should not have reversed for insufficient evidence where the state failed to prove the requisite residential status under either subsection.

"In determining the elements of a statutorily defined crime, principles of statutory construction require the court to give effect to all statutory language if possible." Smith, 155 Wn.2d at 502. In determining the elements of the failure to register crime, the Court of Appeals disregarded its duty to give effect to all statutory language. It was certainly possible for it do so, as the decisions in Stratton and Pickett demonstrate.

The Court of Appeals sidestepped this mandate by proclaiming RCW 9A.44.130(5)(a) and (6)(a) merely define the crime of failing to register; they do not set forth any elements of the crime. The Court of Appeals reached this conclusion by attacking Peterson's argument that those statutory subsections constitute alternative means of committing the crime. Its flawed alternative means analysis resulted in its erroneous conclusion regarding what constitutes the elements of the crime.

"Alternative means crimes are ones that provide that the proscribed criminal conduct may be proved in a variety of ways. As a general rule, such crimes are set forth in a statute stating a single offense, under which are set forth more than one means by which the offense may be committed." State v. Smith, 159 Wn.2d 778, 784, 154 P.3d 873 (2007). The registration statute articulates a single criminal offense: failure to register as a sex offender. Numerous subsections detail the means by which the offense may be committed. Subsections (5)(a) and (6)(a) represent alternative means of committing the offense. See Smith, 159 Wn.2d at 784-85 (in construing assault statute, recognizing separate subsections within a statutory section proscribing an offense represent alternative ways to commit the same offense).

Statutes that merely define statutory terms do not create alternative means of committing the crime. State v. Linehan, 147 Wn.2d 638, 646, 648, 56 P.3d 542 (2002). But the registration statute is "different in kind from those definition statutes that merely elaborate upon various terms or words." Id. at 648 (construing theft statutes). Division Three recognizes subsection (5)(a) creates distinct legal duties depending on whether residence remains within the county, and that the failure to comply with any one duty is a violation of the registration statute. State v. Vanderpool, 99 Wn. App. 709, 713, 995 P.2d 104 (2000). That would not be the case if the subsections were merely definitional.

A person's residential status determines that person's legal obligations to register under the statute. Broadly speaking, those obligations include what must be done and the deadline for when it must be done. Residential status is a factual predicate underlying these legal obligations. If the state cannot prove residential status, it cannot prove an obligation to register within a certain deadline with certain authorities. This is the way the statute is written.

What is missing from the statute is a subsection that makes it a crime for failure to register after a person stops living at a certain address regardless of whether the person subsequently becomes homeless or moves

to a new address. Such a subsection would capture Peterson's situation. But the statute does not provide for this scenario and the Court of Appeals cannot create a means of committing a crime that the Legislature failed to specify. Because the plain language of a statute is deemed an expression of legislative intent, the courts "may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute." Kilian, 147 Wn.2d at 21.

The Court of Appeals claimed it would be absurd to read (5)(a) and (6)(a) as anything more than definitional,<sup>2</sup> but the courts will not "arrogate to [themselves] the power to make legislative schemes more perfect, more comprehensive and more consistent." State v. Taylor, 97 Wn.2d 724, 729, 649 P.2d 633 (1982). As long as the statute remains rational on the whole, the courts will not correct omissions or perceived errors in particular provisions. Delgado, 148 Wn.2d at 730.

3. The "To Convict" Instruction Omitted Elements Of The Crime And Counsel Was Ineffective In Agreeing To The Defective Instruction.

Reversal is required because the "to convict" instruction failed to set forth all the elements of the crime. Although Peterson's trial counsel

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<sup>2</sup> Peterson, 186 P.3d at 1182.

agreed to the instruction,<sup>3</sup> the invited error doctrine does not preclude review where, as here, defense counsel was ineffective in agreeing to the defective instruction. State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999).

a. The "To Convict" Instruction Omits Elements Under Each Of The Statutory Subsections Relied Upon For Conviction.

The "to convict" instruction states:

To convict the defendant of the crime of Failure to Register as charged, each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about February 5, 1988, the defendant was convicted of a sex offense;
2. That the defendant was required to register as a sex offender to the county sheriff;
3. That on or about the week of November 2, 2005 to the week of November 22, 2005, he did cease to reside at that residence where he had registered with the county sheriff;
4. That the defendant did knowingly fail to provide written notice to the county sheriff within 72 hours after ceasing to reside there; and
5. That these acts occurred in the State of Washington.

CP 33 (Instruction 7).

A conviction cannot stand if the jury instructions relieve the state of its burden of proving every element of the crime beyond a reasonable doubt. State v. Cronin, 142 Wn.2d 568, 580, 14 P.3d 752 (2000). Where

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<sup>3</sup> 3RP 7.

the court issues a summary instruction setting forth each element of the crime necessary to convict, the instruction "must contain all of the elements of the crime because it serves as a 'yardstick' by which the jury measures the evidence to determine guilt or innocence." State v. DeRyke, 149 Wn.2d 906, 910, 73 P.3d 1000 (2003).

The Court of Appeals determined those portions of the statute addressing residential status and registration deadlines only define the crime; they do not constitute elements of the crime. Peterson, 186 P.3d at 1180. It held "there is only one means of committing the crime - knowingly failing to register as required by RCW 9A.44.130(1)(a)." Id. at 1182.

But this statute may be violated in any number of ways. Indeed, a person can register with the county sheriff and *still* violate the statute. Recognition of this basic fact exposes the flaw in any analysis that reduces the crime to a simple failure to register.

RCW 9A.44.130(10) provides "A person who knowingly fails to register with the county sheriff or notify the county sheriff . . . *as required by this section* is guilty of a class C felony." (emphasis added).

One of the things required by this section is that those obligated to register must do so within a certain deadline and that the failure to do so constitutes a per se violation. RCW 9A.44.130(4)(a) and (b). Yet the

Court of Appeals claims the deadline is not an element of the crime. Peterson, 186 P.3d at 1180. This leads to the absurd result that one could register before the statutory deadline and still be guilty of failure to register. Such a result necessarily follows from the premise that the deadline is not an element of the crime that must be proven in order to convict. Even the state concedes the registration deadline is an element of the crime.<sup>4</sup> Brief of Respondent at 9.

There are several potentially applicable deadlines in Peterson's case. The deadline differs depending on Peterson's residential status (homeless or fixed residence) and whether he moved to a new county. Under RCW 9A.44.130(5)(a), Peterson needed to send "written notice" of the change

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<sup>4</sup> The state made this concession in recognizing the information was defective in omitting the deadline element. Reflection on what must be included in the charging document illustrates the peril of the Court of Appeals' analysis. According to the logic of its decision, the information need not specify the deadline that has supposedly been violated or the identity of the law enforcement body that the person failed to notify. Indeed, the information need not even specify the statutory subsection at issue because the subsections are merely definitional. A charging document is constitutionally defective if it fails to include all "essential elements" of the crime. State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). The purpose of the rule is to apprise the defendant of the charges against him and allow preparation of a defense. Id. The registration statute is complex and those accused of violating it deserve adequate notice of what in particular they did wrong. The approach used by the Court of Appeals neuters the notice requirement, reducing the crime to a cipher and leaving the accused to guess at what particular requirement of the statute he violated.

of address to the county sheriff within 72 hours if he remained in the same county. The "to convict" instruction indicates the jury must find Peterson failed to send written notice to the sheriff's office within 72 hours, but omits the element that the notification pertain to a "change of address." The instruction is silent on what information Peterson must give to the sheriff.

If Peterson moved to a new county, then the state needed to prove under RCW 9A.44.130(5)(a) that Peterson either (1) failed to send written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence; or (2) failed to send written notice within 10 days of the change of address in the new county to the county sheriff with whom he last registered. The "to convict" instruction does not include any of these elements.

As RCW 9A.44.130(5)(a) demonstrates, the law enforcement entity (sheriff in same county of residence or sheriff in new county of residence) that must be notified differs depending on whether a person remains in the county or moves to a different county. Under the plain language of the statute, failure to notify the correct law enforcement entity is a violation of the statute and a punishable offense. For example, a person could move to a new county, notify the sheriff in the new county, but fail to notify the

sheriff in the old county of residence. Such failure violates the registration statute. It follows the identity of who must be notified is an element of the offense as well. But the "to convict" instruction in Peterson's case does not specify whether Peterson failed to give written notice to the sheriff within the same county, the sheriff within a new county, or both.

The instruction is also defective under RCW 9A.44.130(6)(a). It omits the elements that Peterson did not provide written notice to (1) the sheriff of the county where he last registered; (2) within 48 hours; (3) of ceasing to have a "fixed" residence.

Indeed, the instruction fails to set forth Peterson's current residential status under either subsection, which triggers the obligation to comply with required notification procedures in the first place. Overall, the instruction is hopelessly muddled because it attempts to encompass a violation of subsections (5)(a) or (6)(a) but does neither.

b. Counsel's Agreement To The Defective "To Convict" Instruction Was Unreasonable and Prejudicial.

Criminal defendants have the right to effective assistance of counsel under the Sixth Amendment of the United States Constitution. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Reversal is required once Peterson shows (1) his attorney's

performance was deficient and (2) he was prejudiced by the deficiency. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987).

Counsel agreed to a "to convict" instruction that relieved the state of its burden of proving each element of the crime. No legitimate strategy justified agreement. See Aho, 137 Wn.2d at 745-46 (only legitimate trial tactics constitute competent performance). An erroneous "to convict" instruction is presumed prejudicial and that presumption is overcome only if the error could not have rationally affected the verdict beyond a reasonable doubt. DeRyke, 149 Wn.2d at 912.

As set forth in the preceding sufficiency of evidence argument, the state did not produce sufficient evidence of Peterson's residential status under either RCW 9A.44.130(5)(a) or (6)(a). Reversal is required for this reason. Even assuming omission of other elements is harmless under the facts of this case, that does not mean they are not elements. The Court of Appeals failed to recognize this.

4. Peterson's Right To Jury Unanimity Was Violated Because Substantial Evidence Did Not Support Each Alternate Means Of Proving He Failed To Register.

In an alternative means case, jury unanimity on the means is not required "so long as substantial evidence supports each alternate means." State v. Kitchen, 110 Wn.2d 403, 410, 756 P.2d 105 (1988). But reversal

is required where substantial evidence does not support each of the alternative means. State v. Ortega-Martinez, 124 Wn.2d 702, 708, 717, 881 P.2d 231 (1994). The substantial evidence test is not satisfied unless the reviewing court is convinced "a rational trier of fact could have found each means of committing the crime proved beyond a reasonable doubt." Kitchen, 110 Wn.2d at 411.

As set forth above, this is an alternative means case. The state's theory was that Peterson either failed to register a new residence as required by RCW 9A.44.130(5)(a) or failed to register as homeless as required by RCW 9A.44.130(6)(a). Substantial evidence did not prove Peterson violated either one of these subsections by means of failing to register a new residential address or by means of failing to register as homeless after ceasing to have a fixed residence. Reversal is required because there was no expression of jury unanimity on each of the alternative means of proving Peterson unlawfully failed to register.

5. The Insufficiency Of Evidence Claim Is Not Moot And The Additional Issues, While Moot, Should Still Be Reviewed Because They Are Of Continuing And Substantial Public Interest.

The Court of Appeals described the "statutory issues" raised by Peterson as "moot" because it reversed on defective information grounds. Peterson, 186 P.3d at 1181. It reached them anyway because it had the

power "to resolve issues of 'continuing and substantial public interest' if guidance would be helpful to public officers and the issue is likely to recur." Id. (quoting In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 819-20, 177 P.3d 675 (2008)).

An issue is not moot if the court can still provide effective relief. State v. Turner, 98 Wn.2d 731, 733, 658 P.2d 658 (1983). The Court of Appeals reversed Peterson's conviction without prejudice on defective information grounds. But conviction must be reversed and the charge dismissed *with prejudice* if there is insufficient evidence to prove each element of the crime. State v. DeVries, 149 Wn.2d 842, 853, 72 P.3d 748 (2003). The insufficiency of evidence argument is not moot because meaningful relief of a different magnitude can still be given to Peterson.

Additional issues regarding the elements of the crime omitted in the "to convict" instruction and violation of Peterson's right to jury unanimity are moot because the remedy stemming from those errors would be a new trial, which Peterson has already obtained. This Court should nevertheless review these issues because they are intertwined with Peterson's sufficiency argument and, as the Court of Appeals recognized, they are of substantial public interest, they are likely to recur, and their resolution would provide

helpful guidance to courts, litigants and law enforcement officers in the future.

F. CONCLUSION

For the reasons stated, Peterson requests that this Court grant review and reverse the decision of the Court of Appeals on insufficient evidence, instructional error, and lack of jury unanimity grounds.

DATED this 6th day of August, 2008.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

  
\_\_\_\_\_  
CASEY GRANNIS  
WSBA No. 37301  
Office ID No. 91051

Attorneys for Petitioner

# APPENDIX A

186 P.3d 1179

Court of Appeals of Washington,  
Division 1.  
STATE of Washington, Respondent,  
v.  
Michael Eugene PETERSON, Appellant.  
No. 59722-1-I.  
July 7, 2008.

Background: Defendant was convicted in the Superior Court, Snohomish County, Anita L. Farris, J., of failure to register as sex offender. Defendant appealed.

Holdings: The Court of Appeals, Appelwick, J., held that:  
(1) indictment was fatally deficient for failure to allege that defendant "knowingly" failed to register, and  
(2) failure to register as sex offender did not require State to prove whether defendant moved to fixed address or was homeless.

Reversed without prejudice.

\*1180 Casey Grannis, Nielsen Broman & Koch, PLLC, Seattle, WA, for Appellant.

Michael Eugene Peterson, pro se.

Seth Aaron Fine, Attorney at Law, Snohomish Co. Pros. Office, Everett, WA, for Respondent.

APPELWICK, J.

¶ 1 Michael Peterson is required to register as a sex offender under RCW 9A.44.130. He had registered, but moved from the registered address and did not re-register for more than 30 days. The statute requires re-registration within 48 hours if the offender is homeless, 72 hours if the offender has a new fixed address, or 10 days if the offender had moved to an address outside the county. This section of the statute is merely definition-it does not establish the elements or alternative means of committing the crime of failure to register. Because the State's information was defective, we reverse without prejudice.

*Facts*

¶ 2 As a result of a 1988 conviction for third degree rape, Michael Peterson is required to register as a sex offender. Since his release from prison, he registered numerous times as either homeless or having an address. On September 12, 2005, Peterson registered as

residing at an apartment in Everett. An Everett police detective conducted a routine verification of his registered address on November 2, 2005, but found nobody at home. The detective contacted the landlord, who informed her that Peterson had moved out four days before. Peterson did not register again until December 6, when he registered as homeless.

¶ 3 Peterson was charged with failure to register as a sex offender. The State could not determine Peterson's whereabouts during the weeks after he left the Everett address. "We don't really know where he was. He may have been homeless, he may have gone and lived at another fixed residence, we don't know. He just failed to report within 72 hours." As a result, Peterson was charged with a general violation of RCW 9A.44.130-the State did not specify whether Peterson moved to a new fixed address or became homeless. The second amended information alleges that Peterson "having registered as residing at a fixed residence, did, on or about the week of November 2, 2005 to the week of November 22, 2005, cease to reside at that residence and did fail to provide written notice to the county sheriff's office within 72 hours after ceasing to reside there; proscribed by RCW 9A.44.130, a felony."

¶ 4 A jury found Peterson guilty of failure to register. The court sentenced him to 15 days confinement. He appeals.

#### \*1181 *Discussion*

##### *I. Defective Information*

[1] [2] [3] ¶ 5 "[A] charging document is constitutionally adequate only if all essential elements of a crime, statutory and nonstatutory, are included in the document so as to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense." *State v. Vangerpen*, 125 Wash.2d 782, 787, 888 P.2d 1177 (1995). The State properly concedes that the information is defective because it omits the essential element that the crime was committed "knowingly." An insufficient charging document requires reversal and dismissal of charges without prejudice. *Id.* at 792-93, 888 P.2d 1177.

¶ 6 We vacate the conviction and dismiss without prejudice.

[4] ¶ 7 Given this determination, the statutory issues raised by the parties are now moot. But, "we have the power to decide a moot case to resolve issues of 'continuing and substantial public interest' if guidance would be helpful to public officers and the issue is likely to recur." *In re Pers. Restraint of Dalluge*, 162 Wash.2d 814, 819-20, 177 P.3d 675 (2008) (quoting *Sorenson v. City of Bellingham*, 80 Wash.2d 547, 558, 496 P.2d 512 (1972)). Because the arguments advanced by the parties are likely to be raised again if this case is retried, or likely to appear in similar cases, we consider them here.

##### *II. The Crime of Failure to Register as a Sex Offender*

[5] ¶ 8 A sex offender has a statutory duty to register with the sheriff of the county of residence. RCW 9A.44.130(1)(a). The offender must keep that registration current as to his/her whereabouts. The statute establishes different timelines for changing registration if the offender has a fixed address or is homeless. If residing at a fixed address, an offender who changes addresses within the same county must register with the county sheriff within 72 hours of moving. RCW 9A.44.130(5)(a). If moving to a different county, the offender must notify the sheriff of the new county 14 days before moving and the sheriff of the previous county of registration within ten days of the change of address. RCW 9A.44.130(5)(a). Anyone lacking a fixed residence "shall provide signed written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence." RCW 9A.44.130(6)(a). Violation of these requirements leads to the charge of failure to register, a class C felony. RCW 9A.44.130(11)(a).

[6] ¶ 9 Peterson contends that the timelines and residential status are elements of the crime of failure to register, which the State must prove for conviction. He claims that the State failed to prove his residence status beyond a reasonable doubt. "[D]ue process requires the State to prove every element of the charged crime beyond a reasonable doubt." *State v. Smith*, 155 Wash.2d 496, 502, 120 P.3d 559 (2005). We will reverse a conviction for insufficient evidence only if no rational trier of fact could find that all the elements were proved beyond a reasonable doubt. *State v. Hickman* 135 Wash.2d 97, 103, 954 P.2d 900 (1998).

¶ 10 The State charged Peterson with a violation of the registration statute, RCW 9A.44.130. Peterson claims that we must determine which subsection of the statute is at issue, either the section pertaining to homeless offenders or those with fixed addresses. This implies that the subsections of RCW 9A.44.130 create alternative means to commit the crime of failure to register and have different elements, which the State must specifically charge and prove. Under Peterson's construction, the State can charge three alternatives: 1) failure to register a change of fixed address in the same county, which requires proof that the offender moved to a new residence, within the county, but did not register within 72 hours; 2) failure to register after a move to a fixed residence in a different county, requiring proof of a move to a fixed residence, in a different county, and failure to notify to the sheriff of the new county 14 days prior to move or the sheriff of the former county within 10 days; or 3) failure to register after becoming homeless, necessitating a showing of homelessness and no registration within 48 hours.

\*1182 ¶ 11 Construing the subsections as alternative means of violating this statute creates the strange scenario presented in this case. The State has no evidence that Peterson moved to a fixed address, stayed in the county, moved out of the county, or was homeless during the lapse in his registration. Because the State cannot account for Peterson's whereabouts between the time he left his Everett apartment and registered as homeless, the State cannot prove *any* of the options. Since Peterson failed to register for more than 30 days, he clearly violated his duty to keep his registration current under all options in the statute. Yet, under Peterson's theory he could not be convicted of violating

any one of them. No doubt the legislature did not intend such an absurd result. And, we will not construe statutes in a way that leads to unlikely, absurd, or strained results. *State v. Ammons*, 136 Wash.2d 453, 457, 963 P.2d 812 (1998).

¶ 12 The statute imposes one duty: to register with the sheriff. RCW 9A.44.130. This section establishes the only punishable offense:

A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her 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. RCW 9A.44.130 (11)(a).

The definition of registration and procedure for registration are set forth in the remaining subsections. For example, the subsections of RCW 9A.44.130(3)(a) list the information required for registration-name, address, date and place of birth, place of employment, crime, date and place of conviction, aliases, social security number, photograph and fingerprints. Similarly, RCW 9A.44.130(3)(b) specifies the information required of a person who lacks a fixed address. RCW 9A.44.130(5)(a) defines the requirements for amending the registration after a change of address. RCW 9A.44.130(6)(a) defines the requirements for amending the registration for offenders who lack a fixed residence. These subsections merely articulate the definition of continuing compliance. They do not define the elements or create alternative means of committing the crime of failure to register as a sex offender. For a sex offender, like Peterson, there is only one means of committing a crime-knowingly failing to register as required by RCW 9A.44.130(1)(a). We reject Peterson's alternative means analysis.

¶ 13 We reverse Peterson's conviction without prejudice.

WE CONCUR: LEACH, J., and DWYER, A.C.J.

Wash.App. Div. 1,2008.  
State v. Peterson  
186 P.3d 1179

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

STATE OF WASHINGTON,	)	
	)	No. 59722-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	PUBLISHED OPINION
MICHAEL EUGENE PETERSON,	)	
	)	
Appellant.	)	FILED: July 7, 2008
	)	

APPELWICK, J. — Michael Peterson is required to register as a sex offender under RCW 9A.44.130. He had registered, but moved from the registered address and did not re-register for more than 30 days. The statute requires re-registration within 48 hours if the offender is homeless, 72 hours if the offender has a new fixed address, or 10 days if the offender had moved to an address outside the county. This section of the statute is merely definition—it does not establish the elements or alternative means of committing the crime of failure to register. Because the State’s information was defective, we reverse without prejudice.

Facts —

As a result of a 1988 conviction for third degree rape, Michael Peterson is required to register as a sex offender. Since his release from prison, he

registered numerous times as either homeless or having an address. On September 12, 2005, Peterson registered as residing at an apartment in Everett. An Everett police detective conducted a routine verification of his registered address on November 2, 2005, but found nobody at home. The detective contacted the landlord, who informed her that Peterson had moved out four days before. Peterson did not register again until December 6, when he registered as homeless.

Peterson was charged with failure to register as a sex offender. The State could not determine Peterson's whereabouts during the weeks after he left the Everett address. "We don't really know where he was. He may have been homeless, he may have gone and lived at another fixed residence, we don't know. He just failed to report within 72 hours." As a result, Peterson was charged with a general violation of RCW 9A.44.130—the State did not specify whether Peterson moved to a new fixed address or became homeless. The second amended information alleges that Peterson "having registered as residing at a fixed residence, did, on or about the week of November 2, 2005 to the week of November 22, 2005, cease to reside at that residence and did fail to provide written notice to the county sheriff's office within 72 hours after ceasing to reside there; proscribed by RCW 9A.44.130, a felony."

A jury found Peterson guilty of failure to register. The court sentenced him to 15 days confinement. He appeals.

## Discussion

### I. Defective Information

“[A] charging document is constitutionally adequate only if all essential elements of a crime, statutory and nonstatutory, are included in the document so as to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense.” State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). The State properly concedes that the information is defective because it omits the essential element that the crime was committed “knowingly.” An insufficient charging document requires reversal and dismissal of charges without prejudice. Id. at 792-93.

We vacate the conviction and dismiss without prejudice.

Given this determination, the statutory issues raised by the parties are now moot. But, “we have the power to decide a moot case to resolve issues of ‘continuing and substantial public interest’ if guidance would be helpful to public officers and the issue is likely to recur.” In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 819-20, 177 P.3d 675 (2008) (quoting Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)). Because the arguments advanced by the parties are likely to be raised again if this case is retried, or likely to appear in similar cases, we consider them here.

### II. The Crime of Failure to Register as a Sex Offender

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changing registration if the offender has a fixed address or is homeless. If residing at a fixed address, an offender who changes addresses within the same county must register with the county sheriff within 72 hours of moving. RCW 9A.44.130(5)(a). If moving to a different county, the offender must notify the sheriff of the new county 14 days before moving and the sheriff of the previous county of registration within ten days of the change of address. RCW 9A.44.130(5)(a). Anyone lacking a fixed residence "shall provide signed written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence." RCW 9A.44.130(6)(a). Violation of these requirements leads to the charge of failure to register, a class C felony. RCW 9A.44.130(11)(a).

Peterson contends that the timelines and residential status are elements of the crime of failure to register, which the State must prove for conviction. He claims that the State failed to prove his residence status beyond a reasonable doubt. "[D]ue process requires the State to prove every element of the charged crime beyond a reasonable doubt." State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). We will reverse a conviction for insufficient evidence only if no rational trier of fact could find that all the elements were proved beyond a reasonable doubt. State v. Hickman 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

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create alternative means to commit the crime of failure to register and have different elements, which the State must specifically charge and prove. Under Peterson's construction, the State can charge three alternatives: 1) failure to register a change of fixed address in the same county, which requires proof that the offender moved to a new residence, within the county, but did not register within 72 hours; 2) failure to register after a move to a fixed residence in a different county, requiring proof of a move to a fixed residence, in a different county, and failure to notify to the sheriff of the new county 14 days prior to move or the sheriff of the former county within 10 days; or 3) failure to register after becoming homeless, necessitating a showing of homelessness and no registration within 48 hours.

Construing the subsections as alternative means of violating this statute creates the strange scenario presented in this case. The State has no evidence that Peterson moved to a fixed address, stayed in the county, moved out of the county, or was homeless during the lapse in his registration. Because the State cannot account for Peterson's whereabouts between the time he left his Everett apartment and registered as homeless, the State cannot prove any of the options. Since Peterson failed to register for more than 30 days, he clearly violated his duty to keep his registration current under all options in the statute. Yet, under Peterson's theory he could not be convicted of violating any one of them. No doubt the legislature did not intend such an absurd result. And, we will not construe statutes in a way that leads to unlikely, absurd, or strained results. State v. Ammons, 136 Wn.2d 453, 457, 963 P.2d 812 (1998).

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The definition of registration and procedure for registration are set forth in the remaining subsections. For example, the subsections of RCW 9A.44.130(3)(a) list the information required for registration—name, address, date and place of birth, place of employment, crime, date and place of conviction, aliases, social security number, photograph and fingerprints. Similarly, RCW 9A.44.130(3)(b) specifies the information required of a person who lacks a fixed address. RCW 9A.44.130(5)(a) defines the requirements for amending the registration after a change of address. RCW 9A.44.130(6)(a) defines the requirements for amending the registration for offenders who lack a fixed residence. These subsections merely articulate the definition of continuing compliance. They do not define the elements or create alternative means of committing the crime of failure to register as a sex offender. For a sex offender, like Peterson, there is only one means of committing a crime—knowingly failing

to register as required by RCW 9A.44.130(1)(a). We reject Peterson's alternative means analysis.

We reverse Peterson's conviction without prejudice.

*Appelwick, J.*

WE CONCUR:

*Leach, J.*

*Dwyer, A.C.J.*