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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 

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Court of Appeals No. 40422-2-II

Lewis County No. 09-1-00362-3

STATE OF WASHINGTON,

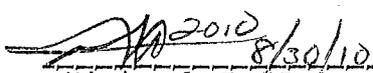
Respondent,

vs.

MICHAEL EDWARD CATON.

Appellant.

STATEMENT OF ADDITIONAL
GROUNDS OF APPELLANT


2010 8/30/10
Michael E. Caton
Pro Se Appellant

Mr. Michael Edward Caton, DOC#829354
Monroe Corrections Center
P.O. Box 777, Monroe, WA 98272

ADDITIONAL GROUNDS No. 1

Under the legal term "Sex Offense" in the Blacks law dictionary additions 7, 8, and 9, all have the same definition for sexual offense and that definition is; Sexual Offense. (1885) An offense involving unlawfull sexual conduct, such as prostitution, indecent exposure, incest, pederasty, and bestiality.

Failure to register does not meet any of that criteria. Nor is there any sexual motivation, kidnapping etc... To classify Failure to Register as a sex offense is invalid.

In my case the prosecution used Failure to Register against me as a "Sex Offense", making my original charge of Rape of a child 3rd count as 3 points against me on my offender score. In doing so the court erred by sentencing me in the wrong point scale. During sentencing I asked the Judge if this crime was going to stop me from seeing my children and he responded saying that I was not being sentenced to a sex offense. I should have been sentenced in a 8 and half point range and with no community custody.

"Failure to Register" does not meet the rules for superior court CrR 4.2 (f) For crimes committed on or after July 2000: In addition to sentencing me to confinement, under certain circumstances the Judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more then twelve months. If the crime I have been convicted of falls in to one of the offense types listed in the following chart, the court will sentence me to the community custody for the

community custody range for that offense type unless the Judge finds substantial and compelling reason not to do so.

OFFENSE TYPE.....COMMUNITY CUSTODY RANGE

Serious Violent 24 to 48 months or up to
the period of earned
release, whichever
is greater

Violent Offense) 18 to 36 months or up to
the period of earned
release, whichever
is greater

Crimes Against Persons 9 to 18 months or up to
as defined in RCW 9.94A.411(2) the period of earned
release, whichever
is greater

Offenses Under Chapter 9 to 12 months or up to
69.50 or 69.52 RCW (not the period of earned
sentenced under RCW 9.94A.660) release, whichever
is greater

My charge does not fall under any of these offense types for community custody. So if the court decides to affirm my Judgement after reviewing my attorney Ms. Anne Cruser/WSBA #27944, brief. Then I ask to have my judgement and Sentence to be amended to read "No Community Custody", and that "Failure to Register" is not a sex offense. Further more I ask to be re-sentenced in the proper sentencing range.

ADDITIONAL GROUNDS NO. 2

Arguing the ex-post facto law: My Judgement and Sentence

from my sex offense in 2001, (which was used against me in sentencing as 3 points) says that I am required to register and that if I fail to do so I will be charge and sentence accordingly to the law that stood at that time. Never was my judgment and sentence amended to read that i would be sentenced under a more stringent set of laws, if I failed to register.

* The ex-post facto law prohibition of U.S. Const. art. I, § 10 bars, application of a law that inflicts a greater punishment for a offense than the law annexed to the offense at the time it was committed.

* For purposes of the ex-post facto law prohibition of U.S. Const. art I, § 10, a person is disadvantaged by the retroactive application of a statute if the statute increases the punishment that existed under prior law.

* A new law constitutes an ex-post facto law prohibited by U.S. const. art. I, § 10, if it (1) is substantive, as opposed to merely procedural; (2) is retrospective (in that it applies to events that occurred before its enactment); and (3) disadvantages the person effected by it.

In 2001 "Failure to Register", was not a class C Felony nor was it classified as a sex offense. In fact it was an unranked felony carrying 0 - 12 months county time. I should have been sentenced under those guidelines of 2001, that were annexed to my crime. If the Court affirms my charge of failure to register after review of my attorney Ms. Cruser's brief. I ask to be taken back for re-sentencing under the law that was annexed to me at the time of my sex offense that required registration.

ADDITIONAL GROUNDS NO. 3

My Superior Court attorney questioned Detective Borden about the date of June 10th during trial. On June 9th 2009, I went to jail for an unrelated offense. On June 10th 2009, I bailed out of jail. Upon my release from any confinement I have 24 hours to register as set forth in the Registration Requirements.

So I went in to register with Detective Brad Borden of the Lewis County Sheriff's Office. Detective Borden did not follow proper registration requirements as set forth by former RCW 9A.44.130 (3)(a):

"The person shall provide the following information when registering: (i) Name; (ii) Complete residential address; (iii) Date and place of birth; (iv) Date and place of conviction; (vii) Aliases used; (viii) Social security number; (ix) photograph; and (x) finger prints..."

Nor did Detective Borden give me any Registration Requirements. In doing so he failed to do his job.

If Detective Borden had done his job and given me "his" arbitrarily set registration date of June 16, 2009. Then by his standard I would have been required to register within 6 days of my last registration for a 90 day registration requirement.

Former RCW 9A.44.130 does not state a person that is Level II or III sex offender has to come in every 6 days, 27 days or any less than 90 days from the last time of registration. The former RCW plainly says every 90 days. Yes, the RCW does say that the date is to be set on a day specified by the county sheriff where he or she is registered, and reporting shall occur during normal

business hours. Meaning to people of common understanding that a person Risk Level II or III has to report every 90 days from the time of registration on a business day during working hours.

I registered in not only Lewis County during 2009, but Pierce, and Thurston County also. Pierce county counts 90 days from the time you are registering and sets your registration date on a working day during normal business hours. Thurston County did not even have 90 days registrations anymore. So my question is where does the law give power to the Lewis County Sheriff to set a date that is not 90 days from my registration? There are many more questions here, however my appellant attorney Ms. Cruser, has raised most of those.

CONCLUSION

I ask to be remanded with instructions to dismiss.

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Pro Se Appellant

CERTIFICATE OF MAILING

I certify that on 08/30/10, I caused to be place in the (Department of Corrections) mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) David Ponzoha, Clerk, Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA 98402; (2) Lori Smith, Lewis County Prosecutor's Office, 345 W. 1Main St., Fl. 2, Chehalis, WA 98532; (3) Anne M. Cruser, Attorney at law, P.O. Box 1670, Kalama, WA 98625