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NO. 87740-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSH SANCHEZ,

Petitioner.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT, JUDGE

ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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A. ISSUES PRESENTED

RCW 4.24.550 requires that the Superior Court provide all relevant information regarding juvenile offenders allowed to remain in the community to local law enforcement officials. The Juvenile Sexual Behavior and Risk Assessment ("SSODA Evaluation") is highly relevant information regarding the juvenile offender. The Court of Appeals affirmed the Superior Court order authorizing the release of Mr. Sanchez's SSODA Evaluation to the King County Sheriff under RCW 4.24.550. The Court of Appeals decision does not conflict with any other decision of the Court of Appeals or of the Supreme Court. Petitioner does not raise a valid Constitutional question. This petition does not involve an issue of substantial public interest. Should the Supreme Court accept discretionary review of this Court of Appeals decision upholding RCW 4.24.550?

B. STATEMENT OF THE CASE

On August 4, 2011 the trial court lifted a temporary order prohibiting the release to the King County Sheriff of the juvenile SSODA Evaluation conducted regarding the Petitioner, Mr. Sanchez. CP 62. The Petitioner is a juvenile who has been allowed by the Superior Court to remain in the community on the basis of the SSODA Evaluation. The Sheriff is obligated to classify

sex offenders and to provide information about offenders living in the community pursuant to RCW 4.24.550. Pursuant to the same statute, the Superior Court regularly provides the Sheriff with copies of the juvenile SSODA Evaluation regarding juvenile offenders allowed to remain in the community in order to conduct the risk classification. CP 61.

The Sheriff's Office does not release SSODA Evaluations regarding juvenile offenders to the public in response to public disclosure requests. CP 61. It is the Sheriff's position that the Evaluations are exempt from disclosure pursuant to RCW 13.50.050(1). CP 61.

C. ARGUMENT

1. The Supreme Court should not accept review of the Court of Appeals decision because release of the SSODA Evaluation is mandated by RCW 4.24.550(6).

The Petitioner believes that there is no longer any statutory authority supporting the release of the SSODA Evaluation to the Sheriff. However, RCW 4.24.550(6) does provide such authorization. In fact, release of the Evaluation to the Sheriff is mandatory. The statute provides, in relevant part, "the juvenile court shall provide local law enforcement officials with all relevant

information on offenders allowed to remain in the community in a timely manner." RCW 4.24.550. The juvenile SSODA Evaluation is highly relevant to the risk classification. Indeed, it is the only evaluation available regarding an offender released into the community by the Superior Court.

There is no question that this statutory mandate applies to the juvenile SSODA Evaluation. The Evaluation is a record relating to the commission of a juvenile offense. RCW 12.50.050(1). This is because it was created and maintained in relation to the juvenile offense. All such records (other than the official juvenile court file) are confidential and may be released only as provided in RCW 13.50.050, RCW 13.50.010, RCW 13.40.215, and RCW 4.24.550. Because RCW 13.50.050 specifically identifies the mandate in RCW 4.24.550 there can be no doubt about the statutory requirement that the Sheriff be provided with the SSODA Evaluation.

The Petitioner contends that SB 5204 eliminated the statutory requirement in RCW 4.24.550. Section 5 of SB 5204 makes changes to way the End Sentence Review Committee conducts the risk classification of offenders being released from the custody of a State facility. The amendments are to RCW

72.09.345. There has been no amendment to RCW 4.24.550(6) regarding a local law enforcement official's responsibilities to classify offenders who are released by the Superior Court based upon a juvenile SSODA Evaluation. Accordingly, SB 5204 has no impact on the Petitioner's SSODA Evaluation or the requirement that the Superior Court release it to the Sheriff's Office for use in the mandatory risk classification.

2. The SSODA Evaluation is not subject to re-release to the public pursuant to RCW 13.50.050. *Koenig v. Thurston County*, ___ Wn.2d ___, 2012 WL 4458400 (2012), does not change this. Thus, the Court of Appeals decision does not conflict with a decision of the Supreme Court.

The Petitioner seeks review of the Court of Appeals decision on the grounds that his SSODA Evaluation could be released to the public once it is obtained by the Sheriff. However, the Supreme Court's recent decision in *Koenig*, ___ Wn.2d ___, 2012 WL 4458400 (2012), does not affect a juvenile offender SSODA Evaluation. This is because *Koenig* relates only to an adult evaluation.¹

¹ In *Koenig*, the Supreme Court held that an adult evaluation is not an "investigative record" pursuant to RCW 42.56.240.

Unlike *Koenig*, in the Petitioner's case there is specific statutory protection for the juvenile offender SSODA Evaluation. Release is authorized only to agencies with specific needs for access to the record. See RCW 13.50.050. Nor does RCW 4.24.550(6) permit the Sheriff to re-disclose the Evaluation pursuant to a public disclosure request. As a result, it is the policy of the Sheriff's Office that the Evaluation is not released to the public. CP 61.

Because the Court of Appeals decision does not conflict with the Supreme Court's decision in *Koenig* there is no basis under RAP 13.4(b)(1) to accept review in the Supreme Court.

3. Release of the SSODA Evaluation pursuant to RCW 4.24.550(6) does not violate Petitioner's right to privacy under state or federal statutes nor under the state or federal constitutions. Therefore, there is no constitutional question and no issue of substantial public interest that should be decided by the Supreme Court under RAP 13.4(b)(3) and (4).

Petitioner cites to RCW 42.56.050 as supporting a right to privacy in the SSODA Evaluation. RCW 42.50.050 is a provision of the Public Records Act. Its purpose is to make clear that the right to privacy in records held by the government exists only to the

extent that there are express exemptions contained in the Public Records Act. This Section does not create a generalized right to privacy. Nor does it apply to prevent the mandatory disclosure of the SSODA Evaluation to the Sheriff. This is because the Public Records Act specifically yields to other statutes governing the confidentiality or disclosure of other specific types of records. See RCW 42.56.070(1).

The Petitioner similarly asserts that GR 15 provides a basis for the Superior Court to withhold the Evaluation from local law enforcement. GR 15 is the general rule applicable to all courts of general jurisdiction of the State of Washington.

GR 15 is not the applicable rule in this case. The Supreme Court has promulgated other specific rules regarding access to juvenile court records and to balance such access against the reasonable expectation of privacy as provided by Article 1, Section 7 of the Washington State Constitution. The judiciary has engaged in that balancing with respect to juvenile court records and has adopted JuCR Title 10. Title 10 references RCW 13.50.010 through .250 as containing the rules applicable to juvenile court records. See JuCR 10.3 through 10.9. Thus, the judiciary has deferred to the very RCWs which mandate the disclosure of the

SSODA Evaluation to the Sheriff. Absent a showing by the Petitioner that JuCR 10.5 and RCW 13.50.050 are unconstitutional there is no basis for the claim that GR 15 supersedes them.

Petitioner has further contended that the state and federal statutes relating to the privacy of healthcare records preclude disclosure of the SSODA Evaluation to the Sheriff. Citing RCW 70.02.005, RCW 70.02.060, RCW 71.05.630 and HIPAA among others. Assuming that the Evaluation is a healthcare record or that the statute can be applied to the Superior Court, none of those statutes prohibit the disclosure where, as here, there is another specific statute mandating or authorizing the release. See RCW 70.02.050(2)(b), RCW 71.05.630(1), 45 CFR 164.512(f) (HIPAA). Moreover, the release in this case is not to the public, as asserted by the Petitioner, but to the Sheriff, who maintains a policy that the juvenile SSODA Evaluations are not re-disclosed to the public.²

² Petitioner claims it is "commonly understood" that the Sheriff releases SSODA Evaluations. However, there is no such evidence in the record. To the contrary, SSODA Evaluations are not released to the public because of RCW 13.50.050. See also Mahlum Declaration, CP 60-61.

The Petitioner cites to Article 1, Section 7 of the Washington Constitution as well as various provisions of the United States Constitution as providing a basis to prohibit disclosure of the SSODA Evaluation to the Sheriff. In this case, there is a statutory mandate for the release of the record to the Sheriff. See RCW 4.24.550(6). Such a statute is presumed to be constitutional. *State v. Coria*, 120 Wn.2d 156, 163 (1992); *In re Dependency of I.J.S.*, 128 Wn.App. 108, 115 (Div. 1 2005). The party challenging the constitutionality of a statute has the burden of proving it beyond a reasonable doubt. *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 563, 800 P.2d 367 (1990). Beyond raising the constitutional right to privacy issue, the Petitioner has not attempted to meet that burden of proof. Nor can the Petitioner do so here. This is because the right to confidentiality or nondisclosure of personal information has not been held to be a fundamental right under the Washington or U.S. Constitution. *O'Hartigan v. Department of Personnel*, 118 Wn.2d 111, 117 (1991). Instead, the rational basis test applies to such claims. *Id.* This requires only that the state demonstrate a legitimate governmental interest in obtaining the information. *Id.*, at 18. Here, there is such a legitimate governmental interest because the Sheriff needs the information contained in the SSODA

Evaluation to fulfill his statutory obligations to classify the Petitioner and provide community notice. This is explained in the declaration of Sergeant Paul Mahlum. CP 60-61.

There is no constitutional, statutory or public policy basis to prevent the Superior Court from complying with RCW 4.24.550 requiring release of a juvenile SSODA Evaluation to the Sheriff. As a result, RAP 13.4(b)(3) and (4) do not provide a basis to accept review of the Court of Appeals decision in this case.

D. CONCLUSION

RCW 4.24.550(6) mandates the release of the SSODA Evaluation to the Sheriff so that he may classify the Petitioner's risk level for the community. The release to the Sheriff does not entail a subsequent release of a juvenile SSODA Evaluation to the public. The Superior Court correctly applied the statute and authorized the release of Mr. Sanchez's SSODA Evaluation to the Sheriff. The Court of Appeals correctly affirmed the decision of the Superior Court. This decision is not in conflict with any decision of the Supreme Court, including *Koenig*. There are no questions of constitutional law and no issues of substantial public interest to be

decided by the Supreme Court. The Petition for Review should be denied.

DATED this 5th day of October, 2012.

RESPECTFULLY submitted,

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By:



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PROOF OF SERVICE

KCSC NO. 10-8-04493-2

KCSC NO. 10-7-03572-7

COA NO. 67461-7-1

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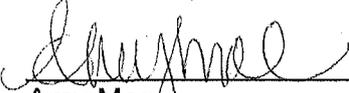
CERTIFICATE OF SERVICE

I, Amy Moe, hereby certify and declare under penalty of perjury under the laws of the State of Washington as follows:

1. I am a legal secretary employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.
2. On October 5, 2012, I caused to be filed via email to the Supreme Court of the State of Washington, the **ANSWER TO PETITION FOR REVIEW and this PROOF OF SERVICE**, in State v. Josh A. Sanchez, Cause No. 87740-8.
3. On October 5, 2012, I caused to be delivered via ABC Legal Messenger, a copy of said pleading to:

James W. Conroy
Society of Counsel Representing Accused Persons
1401 E Jefferson
Seattle, WA 98122

DATED this 5th day of October, 2012, at Seattle,
Washington.


Amy Moe

OFFICE RECEPTIONIST, CLERK

To: Moe, Amy
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Sent: Friday, October 05, 2012 11:03 AM
To: OFFICE RECEPTIONIST, CLERK
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Subject: State vs. Sanchez -No. 87740-8; Answer to Petition for Review

Attached please find the Answer to Petition for Review and Proof of Service for filing in the following case:

State of Washington vs. Josh Sanchez
Supreme Court No. 87740-8
Submitted by David Eldred, Senior Deputy Prosecuting Attorney, WSBA No. 26125
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