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STATE OF WASHINGTON
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NO. 87740-8

SUPREME COURT OF THE STATE OF WASHINGTON RECEIVED BY E-MAIL

STATE OF WASHINGTON,

Respondent,

v.

JOSH SANCHEZ,

Petitioner.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT, JUDGE

**SUPPLEMENTAL BRIEF OF RESPONDENT STATE OF
WASHINGTON**

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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. Did the Superior Court err in ordering the release of Mr. Sanchez's SSODA Evaluation to the King County Sheriff?

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 SSODA evaluation conducted regarding the Petitioner, Mr. Sanchez. CP 62. On July 9, 2012, the Court of Appeals affirmed the decision of the Superior Court. The Petitioner is a juvenile who had 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 released to the community pursuant to a SSODA evaluation. RCW 4.24.550. The Sheriff regularly receives copies of the 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. CP 61.

C. ARGUMENT

1. The Supreme Court should affirm the Court of Appeals because release of the SSODA evaluation is mandated by RCW 4.24.550(6).

The Petitioner is concerned that there is no 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 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 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.

2. The SSODA evaluation is not subject to re-release to the public pursuant to *Koenig v. Thurston County*, ___ Wn.2d ___, 2012 WL 4458400 (2012).

The Petitioner seeks to reverse the Court of Appeals on the grounds that, pursuant to the *Koenig* decision, his SSODA evaluation could be released to the public once it is obtained by the Sheriff. In essence, Petitioner believes that the Sheriff should not be allowed to obtain the SSODA evaluation if it is subject to re-release once in the Sheriff's hands. This argument fails for two reasons. First, regardless of whether the evaluation becomes disclosable once it is in the hands of the Sheriff, RCW 4.24.550 still mandates that it be provided to the Sheriff.

Second, the *Koenig* decision does not apply to a juvenile offender SSODA evaluation. In *Koenig* this Court held that an adult SSOSA evaluation is not an "investigative record" exempt from disclosure pursuant to RCW 42.56.240. Protection of a juvenile offender SSODA evaluation is not based upon the investigative records exemption analyzed in *Koenig*. Instead, the Legislature has authorized release of a juvenile SSODA evaluation only to agencies with specific needs for access to the record. RCW 13.50.050. In all other cases, any records related to the commission of a juvenile offense are confidential and are not subject to disclosure. RCW 13.50.050. This specific, applicable exemption from public disclosure sharply distinguishes the Petitioner's juvenile evaluation from the adult evaluations at issue in *Koenig*. 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 decision in *Koenig* neither affects the Superior Court's statutory obligation under RCW 4.24.550 to provide the juvenile SSODA evaluation to the Sheriff nor the exemption from public disclosure provided in RCW 13.50.050, there is no reason for this Court to reverse the Court of Appeals.

3. SSB 5204 relates only to risk assessments made by the End Sentence Review Committee and has no impact on RCW 4.24.550(6) which applies to the Sheriff and is the only statute relevant here.

The Petitioner contends that the Court of Appeals should be reversed because that Court erroneously determined that SSB 5204 is not relevant to the Petitioner. However, the Court of Appeals was correct. Section 5 makes changes to way the End Sentence Review Committee conducts the risk classification of offenders being released from the custody of a State facility. Risk Classification for those juveniles is conducted by the ESRC. The relevant amendments contained in SSB 5204 are thus to RCW 72.09.345 only. 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 SSODA Evaluation.¹

¹ SSB 5204 concerns juveniles who have been adjudicated of a sex offense. Juveniles have the same duty to register as sex offenders as adults do. This bill provides relief to juveniles of that duty to register and for the sealing of records under certain conditions. If the juvenile is under the custody of the juvenile rehabilitation administration, the end-of-sentence review committee with the department of corrections review the juvenile's file and assign an initial risk classification. If the juvenile is on probation at the county level or serving a sentence under a SSODA, the juvenile's initial risk classification is assigned to the county sheriff. See Final B. Report, on Substitute, SB 5204, 62 Leg., Reg. Sess. (Wash 2011).

4. 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.

The 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 also references CrR 4.7(d) and CrR 4.7(h)(3) in support of his invasion of privacy theory. These Rules identify the judicial policy regulating the exchange of discovery in criminal cases. However, the SSODA Evaluation is not being exchanged in discovery in this context, but rather the Court is providing it to the Sheriff pursuant to a specific statute.

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 the Courts of general jurisdiction of the State of Washington.

Neither CrR 4.7 nor GR 15 is the applicable rule in this case. The Court has promulgated other specific rules regarding access to juvenile court records. These rules balance such access against the reasonable expectation of privacy as provided by Article 1, Section 7 of the Washington 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 they do not apply to the Petitioner. In his Reply to Respondent's Answer to the Petition for Review in this matter, Mr. Sanchez asserts that the Supreme Court's opinion in *Koenig* "calls into question the continuing constitutionality of RCW 13.50.050." See, Reply at 8. However,

Koenig is not a decision based upon constitutional principles. Instead, the *Koenig* decision interprets a statute identifying certain investigative records as exempt from public disclosure. RCW 13.50.050 is a distinguishable statutory provision which operates to prevent disclosure of the very records Petitioner is concerned about being released to the public. Petitioner fails to identify any aspect of the *Koenig* decision which would make the privacy provisions in RCW 13.50.050 unconstitutional.

Petitioner also contends 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. The evaluations are not re-disclosed to the public.

There is some reference in the Petitioner's materials to Article 1, Section 7 of the Washington Constitution as well as various provisions of the United States Constitution 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. *In re Custody of Osborne*, 119 Wn.App 133, 147 (2003); *Id.*, at 115. 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.

5. Release of the SSODA Evaluation to local law enforcement does not violate the Petitioner's right to a fair trial in the future. Mr. Sanchez theorizes that those accused of juvenile offense will be less likely to agree to a SSODA evaluation in the future if they know that the evaluation will be provided to local law enforcement. If this should come to pass, he further speculates that he may be unable to recall the information that would have been contained in the SSODA evaluation and that this will prejudice him in his defense.

This theory is extremely speculative. First, the statutory requirement for release of the records is not new. In spite of this, the Petitioner has produced no evidence that there is any tendency to hesitate to participate in the SSODA evaluation process. To the contrary, there is strong incentive to do so as they are a necessary predicate to the Superior Court's ability to allow an offender to remain in the community. Even assuming that there was some tendency to avoid participation in these evaluations, there are

myriad alternative methods to record information about the offender or to recall that information at a later date in the event of a further offense. This theory is highly speculative and unsupported by any authority and does not form the basis for overturning RCW 4.24.550(6) or the Court of Appeals affirmance of the Superior Court's order in this case.

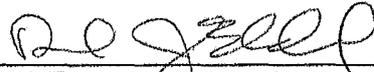
D. CONCLUSION

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 the 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. The Supreme Court should affirm the decision of the Court of Appeals.

DATED this 3rd day of January, 2013.

RESPECTFULLY submitted,

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By: 

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To: Moe, Amy
Cc: Eldred, David; Hohl, Robin; Mohandeson, Mike
Subject: RE: State vs. Sanchez- No. 87740-8- Supplemental Brief of Respondent State of WA

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Sent: Thursday, January 03, 2013 1:37 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Eldred, David; Hohl, Robin; Mohandeson, Mike
Subject: State vs. Sanchez- No. 87740-8- Supplemental Brief of Respondent State of WA

Good Afternoon,

Attached please find the Supplemental Brief of Respondent State of Washington 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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Thank you!

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