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NO. 41081-8-II
Cowlitz Co. Cause NO. 10-8-00130-4

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

A.G.S.,

Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ADDITIONAL STATEMENT OF CASE

On March 16, 2011 the Appellant filed his brief alleging the trial court erred in releasing the SSODA evaluation to the victim's parents. The State filed its response on May 16, 2011 and the Appellant his reply on July 6, 2011. The Court of Appeals, Division Two, stayed the matter on June 30, 2011 pending the Supreme Court's resolution of State v. Koenig, No 84940-4 and instructing the parties to move to file supplemental briefing after its resolution.

The Supreme Court decided State v. Koenig and finalized its opinion on December 18, 2012 after denying reconsideration. Appellant filed his motion to lift stay and file supplemental briefing on February 19, 2013. The court granted the motion and ordered the parties to file supplemental briefing by March 29, 2013.

II. ARGUMENT

In Koenig v. Thurston County, 175 Wn.2d 837, 287 P.3d 523 (2012), the Supreme Court overturned Division Two's decision that a SSOSA evaluation was a law enforcement investigative record subject to exemption under the Public Records Act (PRA).¹ The Supreme Court

¹ The Court did not analyze or refer to RCW 4.24.550 in their argument. Contrary to Appellant's argument, Division Two did not determine RCW 4.24.550 authorized release of the SSOSA evaluation, but merely referred to the statute to glean the Legislature's preference towards release of information about sex offenders. Koenig v. Thurston County, 155 Wn. App. 398, 414-15, 229P.3d 910 (2010), App. Brf. at 5.

concluded a SSOSA evaluation is not a law enforcement record because it is not prepared in an effort to “ferret out criminal activity or to shed light on some other allegation of malfeasance” but principally to provide a basis for the court to impose sentencing alternatives.” Id. at 848-49. The court issued a bright-line rule that documents created to aid a court in its sentencing decision are not exemptions to public disclosure and could and should be released to the public. Id. at 849-850.

The State does not argue the victims’ request was made under the public records act, and still relies on its original response brief. However, the policies in Koenig indicate sex offender evaluations are not given special status under the law. Applying the policies in Koenig to the present case, the trial court did not err in releasing the redacted version of the SSODA evaluation as its counterpart SSOSA is a public record that contrary to the trial court’s finding of fact six was releasable.

In looking at the PRA and RCW 13.50.050, an official juvenile court file shall be open to public inspection. RCW 13.50.050(2) (2012). The official juvenile court file means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders. RCW 13.50.010(1)(b) (2012). In the present case, S.A. waived any claim to confidentiality by presenting his SSODA evaluation to the trial court for consideration in open court.

RP (June 22, 2010) at 3. A.S. intentionally made the evaluation part of the official juvenile court file by asking the trial court to consider it for sentencing. Since records for a class A offense cannot be sealed prior to five consecutive years without a conviction and for which a person must still register as a sex offender, A.S. cannot argue the SSODA could be sealed. Hence under the PRA, RCW 13.50.050 and Koenig, the SSODA evaluation was a public record not subject to exemption and releasable to the public.

The Appellant's arguments that the trial court did not have authority to release the records are now incorrect as a matter of law and his appeal should be denied.

III. CONCLUSION

The Court should deny the appeal as the Washington Supreme Court's decision in Koenig negates Appellant's arguments.

Respectfully submitted this 12th day of March, 2013.

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CERTIFICATE OF SERVICE

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on March 13th, 2013.



Michelle Sasser

COWLITZ COUNTY PROSECUTOR

March 13, 2013 - 10:21 AM

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