

67461-7

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NO. 67461-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOSH SANCHEZ,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JAN 26 PM 3:22

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT, JUDGE

BRIEF OF RESPONDENT

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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. 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 Appellant, Mr. Sanchez. CP 62. The Appellant 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. 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 pursuant 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 Court of Appeals should affirm the Superior Court Order because release of the SSODA evaluation is mandated by RCW 4.24.550(6).

The Appellant 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*, 155 Wn.App. 398, 229 P.3d 910 (2010).

The Appellant seeks to reverse the Superior Court Order on the grounds that his SSODA evaluation could be released to the public once it is obtained by the Sheriff pursuant to the *Koenig* decision. However, the *Koenig* decision, which is on appeal to the Washington Supreme Court, does not affect a juvenile offender SSODA evaluation. This is because *Koenig* relates only to an adult offender evaluation.

Unlike *Koenig*, in the Appellant'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. 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 decision and pending appeal in *Koenig* do not apply to the Appellant's Evaluation, there is no reason for this Court to reverse the Superior Court Order.

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 Appellant contends that the Superior Court Order should be stayed because that Court erroneously determined that SSB 5204 is not relevant to the Appellant. However, the Superior Court 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. 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 SSODA Evaluation.

4. Release of the SSODA Evaluation pursuant to RCW 4.24.550(6) does not violate respondent's right to privacy under state or federal statutes nor under the state or federal constitutions.

The Appellant 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 Appellant 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 Appellant 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 the Courts of general jurisdiction of the State of Washington.

Neither CrR 4.7 nor GR 15 is the applicable rules in this case. The 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 respondent that JuCR 10.5 and RCW 13.50.050 are unconstitutional there is no basis for the claim that the discovery rules contained in CrR 4.7 supersede them.

Appellant 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 Appellant, but to the Sheriff, who maintains a policy that the Evaluations are not re-disclosed to the public.

There is some reference in the Appellant's brief 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 respondent has not attempted to meet that burden of proof. Nor can the Appellant 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 her statutory obligations to classify the respondent 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 Appellant'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 Appellant 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 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 she may classify the Appellant'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 should affirm the decision of the Superior Court.

DATED this 25th day of January, 2012.

RESPECTFULLY submitted,

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