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68042-1

NO. 68042-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

BENNETT REEDY,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE THERESA B. DOYLE

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

A court may provide an equitable remedy in order to do substantial justice. However, a court should not exercise its equitable powers in contravention of a statute. The sex-offender registration law requires a defendant convicted of a Class C sex offense to register unless he has spent ten consecutive crime-free years in the community. Reedy almost met this requirement. He asks this Court to grant him equitable relief from his duty to register because he claims he would have been released from incarceration earlier but for an illegal sentence. But, even if his sentence was illegal, Reedy was not held in custody erroneously, no State actor acted negligently or with bad faith, and Reedy received a remedy back in 1995 when his sentence was amended and he was credited with the extra time served in custody. Should this Court refuse to exercise its equitable powers to contravene the plain language of the law, and decline to allow Reedy relief from his duty to register?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On October 26, 1993, the State charged the defendant, Bennett Reedy, with one count of Rape in the Second Degree. CP 1. After a delay during which his competency to stand trial was addressed, CP 49, Reedy pled guilty to reduced charges: one count of Rape in the Third Degree and

one count of Unlawful Imprisonment. CP 50-68. At sentencing on August 26, 1994, the Honorable Faith Ireland imposed a standard range sentence of 14 months in custody. CP 69-78. The court also imposed a requirement that Reedy spend his 24 months of community custody in a “congregate care facility,” and ordered that Reedy not be released from custody until such housing arrangements were in place. CP 71, 74. Reedy was also required to register as a sex offender. CP 78.

Based solely on the 14-month period of incarceration ordered, Reedy’s expected release date was December 24, 1994.¹ On October 21, 1994, Reedy’s attorney brought a motion to modify the Judgment and Sentence and to release Reedy, because congregate care could not be arranged by December 24, 1994. CP 24-26. The sentencing court initially granted that motion and ordered Reedy’s release, but later vacated that order after it learned that Reedy was in the custody of the Department of Corrections (“DOC”) rather than the King County Jail. CP 28, 30. Reedy was in fact released for a two-day period. CP 134. He was then re-incarcerated at DOC, and not released by December 24, 1994. CP 134.

¹ The State accepts Reedy’s calculations on this issue, as explained in his brief. The December 24, 1994, date was Reedy’s “maximum” release date, meaning his release date if he was not awarded any earned early release credits. As discussed *infra*, the date does not take into account the condition that Reedy be released only to a congregate care facility.

The sentencing court then temporarily released Reedy into the care of DOC officers in order to facilitate arranging housing. CP 80. When placement at a congregate care facility could not be arranged, Judge Ireland treated Reedy's inability to arrange housing at a congregate care facility as a non-willful violation of the terms of community placement. CP 83-84. On March 1, 1995, the court modified the Judgment and Sentence to permit Reedy's immediate release, but required him to report daily to DOC and to reside at a congregate care facility when space became available. CP 82-84. The court gave Reedy credit against his 24 months of community custody for the 68 days he had been in custody past December 24, 1994. CP 82-84. Reedy was released from custody on March 1, 1995. CP 134.

Just short of ten years later, on February 16, 2005, Reedy committed the crime of Assault in the Fourth Degree, Domestic Violence. CP 137. He was convicted of that offense on March 9, 2005. CP 114-20. He was sentenced to 30 days in jail, and was sanctioned another 120 days for failure to comply with a treatment requirement. CP 114-20. Later, Reedy was convicted of the additional crimes of Felony Violation of a Protection Order, Domestic Violence (May 17, 2005); Failure to Register as a Sex Offender (May 7, 2008); and Assault in the Fourth Degree,

Domestic Violence (May 5, 2011). CP 137-39. In 2006 or 2007, he was also designated a “Dangerous Mentally Ill Offender” by DOC. CP 34-35.

On March 3, 2008, Reedy moved in King County Superior Court for relief from his sex offender registration requirement. CP 86-107. It appears no action was taken on his request.² On November 1, 2011, Reedy renewed his motion. CP 4-44. The State opposed Reedy’s request. CP 108-54. The court denied Reedy’s motion, finding that he was ineligible for relief from registration because he had not yet spent ten consecutive years in the community without being convicted of a disqualifying offense. CP 45. This appeal timely followed. CP 46-48.

2. SUBSTANTIVE FACTS

On October 23, 1993, Reedy met JR at an Alcoholics Anonymous meeting.³ Because Reedy did not have a place to stay, JR allowed him to come to her house. The two stayed up late drinking, talking, and watching television. After several hours, Reedy said that JR must have a lot of money, demanded the keys to her car, and asked her to tell him that she

² It is likely that Reedy did not pursue his original motion because his conviction for Failure to Register as a Sex Offender only two months later independently required him to register as a sex offender. Former RCW 9A.44.130(1)(a), (10)(a)(i), (11) (2009); former RCW 9.94A.030(42)(a)(i) (2010). In 2010, however, the legislature removed first convictions for Failure to Register as a Sex Offender from the list of offenses requiring registration. See 2010 Wash. Laws 267 §§ 3(1), 9(42)(a)(i), codified at RCW 9A.44.132, 9.94A.030(46)(a)(i).

³ Because the case did not proceed to trial, the substantive facts are drawn entirely from the Certification for Determination of Probable Cause. CP 2-3.

loved him. JR declined. Reedy then became violent, pulled off JR's clothes, and vaginally raped her with his fingers. He put his entire hand into JR's vagina, and said things like, "This is your father fucking you." JR got away by breaking a window in her bedroom and screaming for help. A neighbor saw her naked, screaming, and bleeding, and called 911. Reedy was arrested at the scene; JR was taken to the hospital for treatment.

C. ARGUMENT

Because he was convicted of Rape in the Third Degree, a sex offense and Class C felony, Reedy is required to register as a sex offender. He may be relieved from the duty to register after he spends ten consecutive years in the community without committing a disqualifying offense. In 2005, two weeks shy of ten consecutive crime-free years in the community, Reedy committed the disqualifying offense of Assault in the Fourth Degree, Domestic Violence. Reedy nonetheless asks this court to relieve him of the obligation to register.

In support of his request, he claims that he was illegally held in custody longer than permitted by the Judgment and Sentence, and thus should be deemed to have been released on the date he argues was the last date he could legally have been held in custody. In inviting this Court to create a new equitable doctrine of a constructive release date, Reedy offers

no basis for this Court to ignore plain statutory language, no guidelines for this Court to follow in recognizing a basis for equitable relief, and no standards for application of such a doctrine to an individual case. Nor does Reedy acknowledge that he has already obtained relief from any illegal detention – the Judgment and Sentence was modified to change his conditions of community custody, and he received credit against his community custody for the extra days he spent in detention. This Court should decline Reedy’s invitation, and affirm the Superior Court’s order denying him relief from the duty to register.

1. REEDY IS REQUIRED TO REGISTER AS A SEX OFFENDER.

An individual who is convicted of a “sex offense” is required to register as a sex offender. Former RCW 9A.44.130(1)(a) (2009).⁴ A sex offense for purposes of the registration statute includes “[a]ny offense defined as a sex offense by RCW 9.94A.030.” Former RCW 9A.44.130(10)(a) (2009). Former RCW 9.94A.030(42)(a)(i) (2009), in turn, defines “sex offense” to include “[a] felony that is a violation of chapter 9A.44 RCW.” Reedy was convicted of Rape in the Third Degree.

⁴ Numerous substantive revisions to the sex offender registration laws have been made over the last 20 years. Because none of the statutory revisions appear to be pertinent to the issue in this appeal, this brief will primarily cite to the laws in effect in 2005, when Reedy claims he became eligible for relief from registration. The duty to register as a sex offender for a conviction for Rape in the Third Degree has not changed during the period of time relevant to this case.

CP 69-78. The crime of Rape in the Third Degree is a Class C felony and a violation of RCW 9A.44.060. Accordingly, Reedy was convicted of a sex offense that requires registration.

The duty to register continues until certain criteria are met, or until the superior court grants the offender's petition for relief from registration. Specifically, the duty of a sex offender who committed a Class C felony automatically ends "[t]en years after the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction, or entry of the judgment and sentence, if the person has spent ten consecutive years in the community without being convicted of any new offenses." Former RCW 9A.44.140(1)(c) (2009).⁵ Alternatively, a superior court may grant a petition to relieve an offender of the duty to register if, among other criteria, "the person has spent ten consecutive years in the community without being convicted of any new offenses." Former RCW 9A.44.140(3)(a) (2009).⁶

Under either provision, a person convicted of a Class C sex offense cannot be relieved of his duty to register as a sex offender until he has

⁵ This subsection now appears at RCW 9A.44.140(3); the only relevant change, effective June 10, 2010, is that the new conviction must be for a "disqualifying offense," rather than "any new offense." Compare RCW 9A.44.140(3) with former RCW 9A.44.140(1)(c) (2009). Reedy's 2005 conviction for Assault in the Fourth Degree, Domestic Violence, is both a "disqualifying offense" and a "new offense." RCW 9A.44.128(3).

⁶ This subsection now appears in somewhat revised form at RCW 9A.44.142(1)(b).

spent ten crime-free years in the community. Reedy was released from custody after serving his sentence for Rape in the Third Degree on March 1, 1995. CP 81-82, 134. He committed his new crime of Assault in the Fourth Degree, Domestic Violence, on or before February 16, 2005. CP 114, 137. Ten years had not yet elapsed. Accordingly, Reedy is not eligible either for automatic deregistration under former RCW 9A.44.140(1)(c) or relief from registration under former RCW 9A.44.140(3)(a).

2. REEDY SHOULD NOT BE JUDICIALLY RELIEVED FROM THE DUTY TO REGISTER.

In acknowledgement of the plain language of the registration statutes, Reedy asks this court to instead use its equitable powers to provide him relief from the duty to register. Specifically, he argues that, because he was illegally detained in custody beyond his release date, this court should provide equitable relief by establishing as a “constructive release date” the date on which he believes he should have been released from custody. Reedy’s invitation to ignore the plain language of the statute should be rejected.

First, in claiming that, “as a matter of equity,” the sentencing court “had the authority to establish a constructive release date” in December of 1994, Reedy cites to no authority. Appellant’s Brief at 14. While he later

cites examples of courts recognizing equitable doctrines, he offers no suggestions as to what principles a court should employ before exercising its equitable powers or establishing a new equitable doctrine. Similarly, Reedy does not propose the contours of the equitable doctrine he asks this court to recognize and apply to him.

Although “equity’s goal is to do substantial justice,”⁷ some standards exist for when courts may exercise their equitable powers. At a minimum, courts have generally not exercised their equitable powers when the legislature has provided statutory guidance. For example, in In re Roach, 150 Wn.2d 29, 36-37, 74 P.3d 134 (2003), the primary case Reedy relies on, the court recognized the equitable doctrine of credit for time spent at liberty. But, “[i]t justified its adoption of this equitable doctrine, in part, because there was not a contrary statute on point.” State v. Jones, 172 Wn.2d 236, 247 n.7, 257 P.3d 616 (2011); see also State v. Donaghe, 172 Wn.2d 253, 268 n.15, 256 P.3d 1171 (2011).⁸

⁷ Franklin Co. Sheriff’s Office v. Parmelee, 162 Wn. App. 289, 295, 253 P.3d 1131 (2011), rev’d on other grounds, 285 P.3d 67, 2012 WL 4125889 (Sept. 20, 2012).

⁸ Counsel for Reedy was also appellate counsel for Donaghe in the Supreme Court. There, she advanced a nearly identical equitable argument to the argument she makes before this Court. Supplemental Brief of Petitioner at 14-15, Donaghe, (No. 83738-4) (available at <http://www.courts.wa.gov/content/Briefs/A08/834512%20supp%20br%20of%20petitioner%20in%20Donaghe.pdf>). That argument, though not detailed in the court’s opinion, was considered by the Supreme Court and rejected. Donaghe, 172 Wn.2d at 268 n.15.

Here, there is a statute on point. RCW 9A.44.130(1)(a) (“Any adult . . . who . . . has been convicted of any sex offense . . . shall register” (emphasis added)); former RCW 9.94A.140(1)(c) (“The duty to register . . . shall end . . . [t]en years after the last date of release from confinement.”). This Court should, like the courts in Jones and Donaghe, decline to exercise its equitable powers to contravene a clear statutory directive. See also Parmelee, 162 Wn. App. at 295 (“While the court’s common law equitable powers are broad, it may not venture into areas precluded by statute.”); Kingery v. Department of Labor & Indus., 132 Wn.2d 162, 178, 937 P.2d 565 (1997) (declining to exercise equitable powers to avoid the requirements of a statute because “it is difficult to envision a principled limit on the exercise of” such power).

Not only has Reedy failed to provide this Court any guidance on when to exercise its equitable powers, he also has not offered any standards to govern the application of the equitable doctrine he proposes. By contrast, when the Supreme Court in Roach adopted the equitable doctrine of credit for time spent at liberty, it supplied guidelines for its application. Specifically, a defendant can seek to benefit from that doctrine only if he shows that (1) he was erroneously at liberty (2) due to the State’s negligence, and he (3) has not contributed to his release, (4) has not absconded legal obligations while at liberty, and (5) has had no further

criminal convictions. Roach, 150 Wn.2d at 37; see also State v. Dalseg, 132 Wn. App. 854, 865, 134 P.3d 261 (2006). It is no accident that Reedy has not proposed adoption of criteria similar to those in Roach; it is unlikely he could meet any reasonable guidelines this Court might adopt.

For instance, although Reedy argues his sentence was illegal,⁹ he cannot show that he was held in custody longer than allowed due to negligence or bad faith on the part of the State. The Judgment and Sentence provided that Reedy should serve 14 months in custody, and that “[c]ongregate care facility placement is a condition of release.” CP 74. To the extent that the latter provision of the sentence was illegal, the error was made by the sentencing court. There is no evidence in the record that the State urged the court to impose such a condition¹⁰; the State’s sentence recommendation did not contain the provision Reedy now complains of. CP 65.

⁹ Reedy’s contention that his sentence was illegal – because it is indeterminate or because it is an exceptional sentence unsupported by required findings – has merit. However, Reedy never appealed his sentence, nor does he assign error to it now. Moreover, even if this Court assumes the illegality of Reedy’s sentence, the relief he requests must be denied. Accordingly, this brief will not further address this argument.

¹⁰ Reedy did not provide, and the State does not have, a copy of the Report of Proceedings from the sentencing hearing.

Likewise, he cannot demonstrate that he was held in custody “erroneously.” When the 14-month period of incarceration ended yet no congregate care facility placement was available, CP 24-26, the Judgment and Sentence barred DOC from releasing Reedy. CP 74. Assuming this provision of the sentence was illegal, DOC was without authority to correct it on its own. Dress v. Washington State Dep’t of Corr., 168 Wn. App. 319, 325-27, 279 P.3d 875 (2012).

Finally, Reedy has already obtained a large measure of relief. In December 1994, as the time for his release approached but no congregate care bed was available, his attorney moved to modify the Judgment and Sentence and to release Reedy. CP 24-26. The sentencing court ultimately did so. CP 81-84. It modified the Judgment and Sentence by directing Reedy to report to a congregate care facility as soon as space became available, rather than as a condition of release. CP 84.

The significance of this alteration cannot be overstated; instead of being required to “remain in a congregate care facility throughout [the] 24 month period” of community custody, as originally ordered, CP 74, Reedy had only to live in such supervised housing if it was available. CP 84. It appears such housing never became available. CP 85, 134-35. Had Reedy been in such housing, he likely would not have become eligible for

deregistration until 2007. Former RCW 9A.44.140(1)(c) (permitting deregistration only after ten years from “the last date of release from confinement, if any, (including full-time residential treatment) pursuant to the conviction” (emphasis added)). And, in addition to modifying substantive terms of the Judgment and Sentence, the sentencing court gave Reedy credit against his community custody for the 68 days served in custody from December 24, 1994, through March 1, 1995.¹¹ CP 81-84. If equity’s goal is to do substantial justice, such justice was done in 1995. Further relief is unnecessary and unwarranted.

In short, this Court should not adopt a new equitable doctrine in the face of statutory language to the contrary. Further, even if it did, any reasonable standards this Court adopted to guide the application of such a doctrine would preclude its application to Reedy. State action was neither negligent nor erroneous, and Reedy obtained substantial relief from any legal error made by the sentencing court over seventeen years ago. Reedy’s plea for this Court to exercise its equitable powers to relieve him from his duty to register as a sex offender should be rejected.

¹¹ This relief would not be available now. Jones, 172 Wn.2d 236.

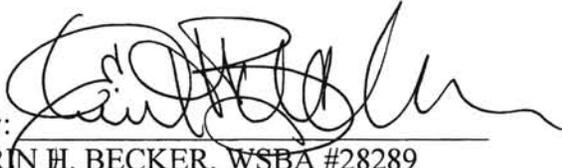
D. CONCLUSION

For all of the foregoing reasons, the trial court's denial of Reedy's petition to be relieved of his duty to register as a sex offender should be affirmed.

DATED this 26th day of September, 2012.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana M. Nelson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. REEDY, Cause No. 68042-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

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