

70613-6

70613-6

NO. 70613-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL THOMAS THRASHER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE LAURA GENE MIDDAUGH

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

DENNIS J. McCURDY  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

2016 JUN 30 PM 3:03  
STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION I  
RECEIVED

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	5
THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE DEFENDANT'S PETITION TO BE RELIEVED FROM THE REQUIREMENT THAT HE REGISTER AS A SEX OFFENDER OR FOR FAILING TO HOLD AN EVIDENTIARY HEARING .....	5
D. <u>CONCLUSION</u> .....	10

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Gossage, 138 Wn. App. 298,  
156 P.3d 951 (2007)..... 8, 9

State v. Gossage, 165 Wn.2d 1,  
195 P.3d 525 (2008)..... 8

State v. Heiskell, 129 Wn.2d 113,  
916 P.2d 366 (1996)..... 6

State v. Hooper, 154 Wn. App. 428,  
225 P.3d 446 (2010)..... 8

State v. Robtoy, 98 Wn.2d 30,  
653 P.2d 284 (1982)..... 8

State v. Willis, 151 Wn.2d 255,  
87 P.3d 1164 (2004)..... 8

Statutes

Washington State:

Laws of 1990, ch. 3, § 401 ..... 6

RCW 9.68A.103 ..... 7

RCW 9.94.127 ..... 4

RCW 9.94A.030 ..... 6

RCW 9.94A.411 ..... 6

RCW 9A.130 ..... 6

RCW 9A.36.021 ..... 6

RCW 9A.44.128 .....	6, 7
RCW 9A.44.130 .....	4
RCW 9A.44.142 .....	6, 7
RCW 9A.88 .....	7
RCW 10.10.200.....	4
RCW 10.99.020.....	7
RCW 43.43.540.....	4
RCW 43.43.830.....	6
RCW 46.20.187.....	4
RCW 70.48.470.....	4
RCW 72.09.330.....	4

**A. ISSUES PRESENTED**

In 1992, career criminal Michael Thomas Thrasher was convicted of second-degree assault with sexual motivations, and thus, he is required to register as a sex offender. In 2013, the defendant sent a petition to the trial court asking that he be relieved of the requirement that he register as a sex offender. The trial court denied the petition. Should this Court reject the defendant's claim that the trial court erred in failing to grant the defendant's petition or in failing to hold an evidentiary hearing?

**B. STATEMENT OF THE CASE**

On May 18, 1992, the defendant pled guilty to a charge of assault in the second degree with sexual motivations. CP 4-17. The certification for determination of probable cause indicates that the defendant committed acts of sexual intercourse on a 14 year old girl on multiple occasions and that the victim contracted a sexually transmitted disease from the defendant. CP 1-3.<sup>1</sup>

On June 26, 1992, the defendant was sentenced to a standard range sentence of nine months. CP 18-22, 29-30. His

---

<sup>1</sup> For an unknown reason, the clerk's office gave the CP number "1" to two different documents, sub # 1, the Information, and sub # 53, the Order Terminating Supervision, both from cause number 91-1-07228-7. The reference here is to sub # 1.

sentence required that he complete a term of 12 months of community supervision, that he register as a sex offender, that he submit to DNA testing, that he submit to HIV testing, and that he pay certain legal financial obligations (LFO's). Id.

On November 11, 1992, the defendant received an additional 45 days confinement because he failed to report to jail to complete his sentence, he failed to report to his CCO as directed, he failed to submit to DNA testing and he failed to submit to HIV testing. CP 24. A portion of this additional term of confinement was converted to community service hours. CP 26.

On December 17, 1993, the defendant received an additional 30 days of confinement because he failed to report to his CCO as directed, he failed to pay his legal financial obligations, and he failed to obtain permission of his CCO before changing addresses. CP 27.

On May 10, 1995, the trial court signed an order terminating supervision even though the defendant had failed to pay his LFO's or complete his community supervision. CP 1.<sup>2</sup> The court order indicated that the cost of trying to enforce the judgment and

---

<sup>2</sup> Referring to the Order Terminating Supervision, sub # 53.

sentence was not justified, and that the defendant was ineligible to obtain a discharge or have his civil rights restored. Id.

In early 2009, the defendant noted a motion to vacate his conviction — although no reason was provided for doing so. CP 46-47. Unclear as to the basis for the defendant's motion, the trial court denied the defendant's request. CP 48-52.

In July of 2009, the defendant filed a motion to have the court terminate his LFO's on a whole list of criminal cases, and to close the file on each case. CP 53-78. The defendant claimed that he had cancer, had been in a car accident, had fallen down a flight of stairs, had been incarcerated for the past decade,<sup>3</sup> and that paying his LFO's was a hardship and his cases should be closed. Id. The court denied the defendant's motion without prejudice, stating that if the State sought punishment for the defendant's failure to pay, the court would consider the defendant's motion. CP 79-80.

In April of 2013, the defendant sent a "petition for Relief of Duty to Register as a Sex Offender" to the trial court seeking to have the court relieve him of the requirement that he register as a

---

<sup>3</sup> A review of just one of the defendant's cases, a 2008/2009 failure to register as a sex offender conviction, shows the defendant has at least 12 prior felony convictions and 35 prior misdemeanor convictions spanning decades. CP 122-46 (08-1-05587-2).

sex offender. CP 38-44. The full extent of the petition reads as follows:

Here comes now, Michael Thrasher, with a petition for relief of duty to register as a sex offender under RCW 9.94.127. There is clear and convincing evidence that future registration will not serve the purpose of RCW 9A.44.130, 10.10.200, 43.43.540, 46.20.187, 70.48.470 and 72.09.330. I have served 167 months past my release date of probation, fines sentences that far exceeding (sic) the standard sentencing for a second degree assault w/a finding of sexual motivation on May 18<sup>th</sup> 1992. I served my whole sentence of my sentencing range of 0-12 months in the King County Jail work release program. Successful (sic) was able to volunteer (sic) for the King County Park Services doing janitorial type work. I was also employed full time as a dish washer and waiter at the pancake house and Café Minnies working for merchant Dick Wright business man and mentor. I was released from my incarceration with excellent reviews and thanks for all my help and volunteer (sic) work at the King County Court House waxing floors on my days off. I also completed my 12 months of probation that was a requirement of my J & S on an Alfred (sic) plea agreement and first time offender qualification since I had no criminal history until (sic) I took the prosecutor's offer of a no-contest agreement.

CP 39.<sup>4</sup>

After reviewing the material provided, by written order, the court denied the defendant's motion without prejudice. CP 31-32. The court indicated that "the defendant has failed to provide sufficient information so that the Court can make a determination as

---

<sup>4</sup> There is one additional sentence/line at the bottom of the defendant's petition. However, in the scanned document, the sentence is not legible. See CP 39.

to whether the defendant should be relieved from his obligation to register...” Id. It is this order that the defendant now contests.

The defendant is currently pending trial for violation of the uniform controlled substances act, harassment – threats to cause bodily harm, and failing to register as a sex offender. CP 101-06 (12-1-04629-4); CP 82-87 (12-1-05113-1). The trials have been delayed due to the fact that the defendant is being evaluated to determine whether he is competent to stand trial. CP 107-12 (12-1-04629-4); CP 88-93 (12-1-05113-1). According to the Western State Evaluation Report, the defendant suffers from a personality disorder not otherwise specified (NOS), adult antisocial behavior, and substance abuse issues with sexual deviancy diagnosis being deferred. CP 113-19 (12-1-04629-4); CP 94-100 (12-1-05113-1).

**C. ARGUMENT**

**THE TRIAL COURT DID NOT ABUSE ITS DISCRETION  
IN DENYING THE DEFENDANT’S PETITION TO BE  
RELIEVED FROM THE REQUIREMENT THAT HE  
REGISTER AS A SEX OFFENDER OR FOR FAILING TO  
HOLD AN EVIDENTIARY HEARING.**

Any person who resides, is employed, is a student, or carries on a vocation in the State of Washington, and who has been

convicted of any sex offense, has a duty to register as a sex offender with the county sheriff. RCW 9A.130(1)(a). The purpose of sex offender registration requirement is to assist law enforcement's effort to protect the community, investigate sex crimes and apprehend sex offenders. State v. Heiskell, 129 Wn.2d 113, 117, 916 P.2d 366 (1996) (citing Laws of 1990, ch. 3, § 401). Second-degree assault with sexual motivations is a "sex offense" for registration purposes. RCW 9A.44.128(10)(a); RCW 9.94A.030(46)(c) & (47); RCW 9A.36.021. Thus, the defendant is required to register as a sex offender.

Under RCW 9A.44.142, if a convicted sex offender can meet certain prerequisites, the person can petition the superior court to be relieved of the duty to register as a sex offender. See RCW 9A.44.142(1) and (2). Included in these prerequisites is the requirement that the offender "has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period." RCW 9A.44.142(1)(b). A "disqualifying offense" "means a conviction for: **Any offense that is a felony**; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(7) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in

RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.” RCW 9A.44.128(3) (emphasis added).

When a petition has been filed, the “court may relieve a petitioner of the duty to register only if the petitioner shows by **clear and convincing evidence** that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.” RCW 9A.44.142(4)(a) (emphasis added). “In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry,” the statute provides a non-exclusive list of factors the court may consider in making its determination. RCW 9A.44.142(4)(b). This list includes, among other things, the nature of the registrable offense, any subsequent criminal history, the petitioner’s compliance with supervision requirements, whether the petitioner received sex offender treatment, other treatment and rehabilitative programs, the offender’s employment and housing stability, any risk assessments or evaluations prepared by a qualified professional, and victim input. RCW 9A.44.142(4)(b).

The statute contains no requirement that a trial court hold an evidentiary hearing in order to make a determination as to whether

an offender should be relieved of registration obligations. State v. Gossage, 138 Wn. App. 298, 304-06, 156 P.3d 951 (2007), aff'd in part, reversed in part on other grounds by State v. Gossage, 165 Wn.2d 1, 8-9, 195 P.3d 525 (2008). It is within the trial court's sound discretion whether or not to hold an evidentiary hearing when considering a petition for relief from registration. State v. Hooper, 154 Wn. App. 428, 432, 225 P.3d 446 (2010). It is also within the trial court's sound discretion whether or not to grant a defendant's petition. Hooper, 154 Wn. App. at 430 (citing Gossage, 138 Wn. App. at 306). Thus, both decisions are reviewed only for an abuse of discretion. Id.

While the defendant may argue that reasonable minds might disagree with the trial court's ruling here, that is not the standard that must be met on appeal. State v. Willis, 151 Wn.2d 255, 264, 87 P.3d 1164 (2004). In order to prevail here, the defendant must prove that "no reasonable person would have taken the position adopted by the trial court." State v. Robtoy, 98 Wn.2d 30, 42, 653 P.2d 284 (1982). That burden has not been met.

In Gossage, the defendant made the same arguments as made here. Gossage's petition documented that his offense was a class B felony and that he had been crime-free for 10 years

following his release from custody. He demonstrated in his petition, the court noted, that he met the threshold requirements needed to file a petition. Gossage, 138 Wn. App. at 305. Here, the defendant does not even allege that he meets the threshold requirements to file a petition. Further, his long felony criminal history shows that he is not eligible to file a petition, i.e., that he has not spent ten years in the community felony free.

Although Gossage was able to show that he met the threshold requirements for filing a petition, similar to the defendant here, Gossage “offered nothing to indicate why he should be excused from registration, and did not even allege that the purposes of the registration statutes would not be served by his continued registration.” Id. The court ruled that in such a situation, “an evidentiary hearing is unwarranted absent some indication of a triable issue.” Id. at 306. “Unless the petitioner makes at least some minimal showing that he can satisfy the statutory standard, we see no reason to require the court to convene a hearing.” Id.

The defendant here has shown nothing. He completely fails to address any of the factors listed in the statute and completely fails to argue or allege why the purposes of the registration statute would not be served by his continued registration. Key factors the

defendant fails to address include his failure to address his criminal history or whether he has received treatment of any kind, including mental health treatment, sex offender treatment, and drug or alcohol treatment. Further, he mentions nothing about housing stability, victim input or any type of support network. Under such circumstances, the defendant has provided nothing that requires a hearing and nothing that supports a claim that no reasonable judge would have denied his petition or failed to hold an evidentiary hearing. The defendant's claim is wholly without merit.

**D. CONCLUSION**

For the reasons cited above, this Court should reject the defendant's arguments that the trial court erred in denying his petition or failing to hold an evidentiary hearing.

DATED this 30 day of January, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
DENNIS J. McCURDY, WSBA #21975  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

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 Thomas Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent in STATE V. THRASHER, Cause No. 70613-6 -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.

Dated this 30 day of January, 2014

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

\_\_\_\_\_  
Name

Done in Seattle, Washington