68826-0

68826-0

NO. 68826-0-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

Christopher Allen Miller,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Alan R. Hancock, Judge
Superior Court Cause No. 10-1-00037-3

BRIEF OF RESPONDENT

GREGORY M. BANKS
ISLAND COUNTY PROSECUTING ATTORNEY
WSBA # 22926
Island County Courthouse
P.O. Box 5000
Coupeville, WA 98239
(360) 679-7363

By: Eric M. Ohme
Deputy Prosecuting Attorney
WSBA # 28398
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

WASHINGTON SUPREME COURT CASES

WASHINGTON COURT OF APPEALS CASES

REVISED CODE OF WASHINGTON

I. STATEMENT OF THE ISSUES

A. Did the trial court violate the Defendant's due process rights when it revoked the Defendant's special sex offender sentence alternative (hereinafter SSOSA) only after the Court held a full evidentiary hearing where the Court found that the Defendant was not in compliance with the terms of the Judgment and Sentence because the Defendant was not enrolled in sexual deviancy treatment as ordered and had no prospects to begin treatment in the immediate future?

B. Did the Court violate the Defendant's due process rights when it revoked the Defendant's SSOSA for the Defendant's failure to be enrolled in sexual deviancy treatment without specifically finding the violation was willful when the Court found that the violation itself constituted a danger to the community?

C. Did the application of RCW 9.94A.670 violate the Defendant's right to Equal Protection in this case when the State has a legitimate objective to assure that convicted sex offenders living in the community subject to a SSOSA are undergoing sexual deviancy treatment?

II. STATEMENT OF THE CASE

On January 24, 2011, the Defendant entered a guilty plea to one count of rape of a child in the first degree for having sexual intercourse with his 6 year old niece. CP 63-72. The Defendant obtained a psychosexual evaluation and the Department of Corrections (hereinafter

DOC) completed a pre-sentence investigation (hereinafter PSI). CP 83 – 106, 107 – 120. The psychosexual evaluation described the Defendant as only a marginal candidate for a SSOSA, the evaluator having particular concerns regarding the Defendant's ability to become employed and also to pay for treatment.[1] CP 104. Sentencing was held March 25, 2011. CP 50 – 62, 3/25/11 RP 1 – 40. The Defendant requested a Special Sex Offender Sentencing Alternative (hereinafter SSOSA) 5/25/12 RP 7. The State did not specifically object, however, the DOC recommended against granting a SSOSA and instead recommended a standard range prison sentence based largely on the DOC's concern that the Defendant would not be able to obtain employment and therefore not be able to pay for treatment. CP 107-120. 3/25/11 RP 6 – 7.

At sentencing, the Court indicated concern regarding the Defendant's ability to gain employment, pay for treatment and to acquire transportation to treatment should the court grant a SSOSA. 3/25/11 RP 19 – 21. The Court questioned Ms. Lisa Hensley, the Island County Human Services Coordinator, regarding the process for the Defendant getting Social Security disability benefits so that the Defendant would

[1] The evaluator indicated employment was essential for the Defendant to cut down on idle time. CP 104.

have the ability to pay for treatment upon release from jail. 3/25/11 RP 26 – 33. The judge made the fact clear that should the SSOSA be granted, the Defendant had the responsibility to pay for treatment and that if the Defendant did not, "the Court will have no alternative but to revoke the SSOSA and impose the prison sentence." 3/25/11 RP 22.

The Court granted the Defendant's request for a SSOSA and imposed 12 months in jail and a 93 month suspended sentence contingent on the Defendant following a number of stringent conditions. CP 50-62. The Defendant was to begin sexual deviancy treatment within 90 days of release from jail (the State requested 60 days) and further, that "the Defendant must be making significant progress while in treatment." CP 56 – 62, 3/25/11 RP 33.

The Court admonished the Defendant regarding the 90 day deadline to be in sexual deviancy treatment:

> "I want to make it abundantly clear here in this case that I'll take a dim view of any situation where the 90 day deadline rolls around and Mr. Miller, for whatever reason, is telling the court, oh, I don't have my application in yet or, oh, I forgot to do this or I forgot to do that. That is unacceptable. This process has to start now. And we can't have this

> case dragging on interminably with these delays. This has to go forward immediately."
> 3/25/11 RP 33.

The Defendant served 12 months in the Island County Jail and was released on January 19, 2012. 1/27/12 RP 4. Upon his release, the Defendant's father would not allow the Defendant back home because of trailer park rules and the Defendant became essentially homeless, living on peoples' couches. 1-27-12 RP 6, 2-27-12 RP 3 – 4. The Defendant checked in with the DOC on workdays as instructed by the Court. 1-27-12 RP 2 – 7, 2/27/12 RP 4 – 5. The Defendant had not acquired sufficient benefits while in jail or secured employment in order to pay for sex offender treatment and was not enrolled in treatment. CP 35 – 39. On February 27, 2012, a hearing was held wherein the DOC requested the Court revoke the SSOSA based on the Defendant's lack of residence and though the State and the Defendant agreed to continue the hearing to allow the Defendant 30 more days to try and get in compliance with the conditions of the SSOSA. 2/27/12 RP 5. The Court agreed to give the Defendant 30 more days to get into compliance with the conditions of the SSOSA. 2/27/12 RP 7.

On May 8, 2012, more than two months after the initial hearing, and almost four months after the Defendant's release, the Court held the

hearing on the State's motion to revoke the Defendant's SSOSA. CP 40 – 42, CP 43 – 49, 5/8/12 RP 1.[2] The State's evidence consisted of a violation report of DOC Officer Lisa Lee and also her testimony. 5/8/12 RP 1 – 19. The evidence showed that the Defendant still lacked stable housing, was not employed, was not receiving adequate benefits to pay for treatment, and was not in sex offender treatment and was therefore not in compliance with the Judgment and Sentence. 5/8/12 RP 13 – 18. The Defendant called Lisa Hensley and himself. Ms. Hensley explained the enormous amount she had done for the Defendant. 5/8/12 RP 21. Hensley stated; "I meet with Mr. Miller every Tuesday and Thursday afternoon. I also give him rides to appointments, down to DSHS, over to Social Security. Boy, just about everywhere. To get him clothing, to get his hair cut. Any time he needs a ride, I'm there to give him a ride." 5/8/12 RP 21. Further, she testified that she took the Defendant to the Social Security office and helped him with the application, she set up a mental evaluation for the Defendant, she purchased the Defendant food cards, she purchased the Defendant a cell phone and also a phone card when he ran

[2] The Defendant had been released from the Island County Jail on January 19, 2012, making the May 8, 2012, hearing 110 days after the Defendant's release from jail.

the minutes down, she got the Defendant a food handlers permit and she tried to get the Defendant employment. *Id* at 21 – 24, 47, 50. Ms. Hensley admitted that without her assistance, the Defendant would be lost in his transition from jail to the community.[3] 5/8/12 RP 27. The one and only time the Defendant tried to take a bus to an appointment on his own, he got lost. 5/8/12 RP 16.

The evidence presented by the Defendant showed that he lacked any real prospect of employment and would continue to lack the ability to pay for treatment unless he was granted Social Security disability benefits. 5-27-12 RP 28 – 28. The evidence also showed that the earliest the Defendant would potentially qualify for Social Security disability benefits would be an additional nine months from the May 27, 2012, hearing date. 5-27-12 RP 28. There was no guarantee the Defendant would qualify for Social Security disability benefits. 5-27-12 RP 27 – 28. The evidence also showed that the Defendant did not have stable housing, was essentially couch surfing, and was currently sleeping on the futon of a residence without water or plumbing. 5-27-12 RP 13 – 14. Further, should anyone

[3] Ms. Hensley, a full-time County employee, admitted that the defendant had been consuming 20% of her time.

complain at the trailer park where the Defendant was currently staying, he would be evicted. 5-27-12 RP 18, CP 27 – 30.

The Court found that the Defendant had not complied with the Judgment and Sentence as he was not in sexual deviancy treatment within 90 days of release from jail and revoked the suspended sentence. CP 27 – 30. The Court further found that the Defendant lacked the financial ability to pay for sexual deviancy treatment within an acceptable period of time. CP 27 – 30. Lastly, the Court held that the State's interest in keeping the community and children safe outweighed any due process interest the Defendant may have in having his suspended sentence revoked only for a willful violation of the conditions of the Judgment and Sentence. CP 27 – 30.

III. ARGUMENT

A. Defendant Failed to Comply With the Terms of the Judgment and Sentence and No Due Process Violation Occurred as the Defendant Was Afforded Notice and a Full Hearing Prior to the Proper Revocation of the Suspended Sentence Under RCW 9.94A.670.

A SSOSA may be revoked at any time if there is sufficient proof to reasonably satisfy the Court that the offender has violated a condition of the suspended sentence or failed to make satisfactory progress in

treatment. RCW 9.94A.670, *State v. McCormick*, 166 Wn.2d 689, 213 P.3d 32 (2009).

RCW 9.94A.670(11) states: "The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment..."

The Defendant was ordered to commence sex offender treatment within 90 days of release. The Defendant was not in treatment 110 days after release and had no prospect of commencing sexual deviancy treatment in the near future. In fact, the evidence indicated that in a best-case scenario, the Defendant might be able to commence treatment in another nine months. The Court properly found that Defendant violated a condition of the suspended sentence by not commencing sexual deviancy treatment and revoked the suspended sentence under RCW 9.94A.670.

The Due Process clause of the Washington State Constitution does not afford broader protection than that given by the Fourteenth Amendment to the United States Constitution. *State v. McCormick*, 166 Wn.2d 689. Revocation of a suspended sentence is not a criminal proceeding but rather an extension of the original criminal conviction and

therefore the defendant facing revocation is afforded only minimal due process rights because the offender has already been found guilty beyond a reasonable doubt. *Id* at 699-700.[4]

In the context of SSOSA revocations, minimal due process entails:

> "(a) written notice of the claimed violations; (b) disclosure to the parolee of the evidence against him; (c) the opportunity to be heard; (d) the rights to confront and cross-examine witnesses (unless there is good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a statement by the court as to the evidence relied upon and the reasons for the revocation. *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). These requirements exist to ensure that the finding of a violation of a term of a suspended sentence will be based upon verified facts. *Id.* at 484, 92 S.Ct. 2593."
>
> *State v. Dahl*, 193 Wn.2d 678, 990 P.2d 396 (1999).

The Defendant does not argue that the minimal due process rights listed above were violated, instead, the Defendant cites *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), to argue that

---

[4] Sexual offenders who face SSOSA revocation are entitled to the same due process rights as those afforded during the revocation of probation or parole. *State v. Badger*, 64 Wn.App 904, 908-909, 827 P.2d 318 (1992).

the Court's decision to impose the suspended sentence was fundamentally unfair or arbitrary. The Defendant is incorrect, the Court in *Morrissey* held that all due process requires for parole revocation is "an informal hearing structured to assure that finding of parole violation will be based on verified facts and that exercise of discretion will be informed by accurate knowledge of parolee's behavior." *Id* at 484.

The Defendant was afforded the minimal due process required by *Morrissey*. The Court was fully informed based on verified facts and with an accurate knowledge of the Defendant's behavior before making its decision to revoke the suspended sentence. The decision did not violate due process.

B. The State Has Substantial Interest in Assuring That Convicted Sex Offenders are Complying With Sexual Deviancy Treatment and a Finding of Willfulness Was Not Required to Revoke the Defendant's Suspended Sentence.

Defendant argues that the Court erred in revoking the suspended SSOSA sentence without a finding specifically, that the violation was willful, citing *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). The Defendant is incorrect.

In *Bearden*, the Supreme Court explained that fundamental fairness required by the Fourteenth Amendment imposes on the State the

requirement to inquire as to the reasons for a failure to pay a fine prior to imposing jail for a failure to pay a fine, but it does not require a finding of willfulness. *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). The Washington State Supreme Court has explained the holding in *Bearden*: "[t]he *Bearden* Court merely held it unconstitutional to revoke *automatically* an indigent defendant's probation for failure to pay a fine, *without evaluating* whether the Defendant had made bona fide efforts or what alternative punishments might exist." *Madison*, 161 Wn.2d at 102, See, *McCormick*, 166 Wn.2d at 702.

McCormick did describe factors a court should consider in deciding whether a finding of willfulness is required in revoking a suspended sentence: 1) The nature of the individual interest; 2) The extent to which it is affected; 3) The rationality of the connections between the legislative means and purpose; and 4) The existence of alternative means for effecting the purpose . . . *Id*, at 700, *Bearden*, 666-667, *Williams v. Illinois*, 399 U.S. 235, 260, 90 S.Ct. 2018, 26 L.Ed 2d 586 (1970).

The State's interest in the case at bar is important. It is the identical interest of the State in *McCormick*, where the Court held; "[T]he government has an important interest in protecting society, particularly minors, from a person convicted of raping a child." *Id* at 702. That

important interest is rationally served by requiring the Defendant to be in sex offender treatment as ordered by the court. As in *McCormick*, the Defendant's "rights are already diminished significantly as he was convicted of a sex crime and only by the grace of the trial court, allowed to live in the community subject to stringent conditions." *Id* at 702. As in *McCormick*, the strength of the State's interest combined with the Defendant's "diminished rights as someone on a suspended sentence, the balance tips heavily in favor of not requiring a finding of willfulness." *Id* at 703. In *McCormick*, the Court stated "here, it would be concerning to allow a convicted sex offender to frequent a food bank located in a church elementary school, where there is an opportunity to harm a minor. The State's interest is sufficiently strong not to require a finding of willfulness." *Id* at 703-704.

In the case at bar, no finding of willfulness was necessary. The Defendant was an untreated, convicted child rapist. That fact created a threat to the safety or welfare of society, and no finding of willfulness was required. See, *Id* at 701-702. It is also of note that the Court did not revoke probation automatically but continued the hearing several times in order to allow the Defendant more time to get in compliance.

In the case *In re Wrathall*, 156 Wn.App 1, 232 P.3d 569 (2010), this Court decided whether due process required a finding of willfulness prior to revocation of a sexually violent predator's Less Restrictive Alternative (LRP) placement when the Defendant was not in compliance with his ordered sex offender treatment. This court held that because the violation itself, lack of treatment and lack of secure housing, created a threat to society, no finding of willfulness was required. *Id* at 8-9.

The Defendant here, as in *Wrathall*, is a convicted child rapist, and was not in compliance with his ordered sex offender treatment and was in unstable housing. The violation itself in the Defendant's case created a threat to society and no finding of willfulness was required.

The Defendant argues that there was no evidence that the Defendant was a danger to the community. That is incorrect. The Defendant was diagnosed as a pedophile with primary arousal to non-physical coercion of minor females, rape of female adult and rape of female child. CP 101 – 102. The Defendant was noted as having a "high level of deviant arousal as measured by his penile plethysmograph." CP 104. The psychosexual examination describes the Defendant's threat to re-offend as low moderate but assumes the Defendant is gainfully employed, dutifully participating in sex offender treatment and following

each of the other stringent conditions imposed by the Court, the DOC, and the treatment provider. CP 105.

C. The State Has a Legitimate Obligation to Assume Convicted Sex Offenders Living in the Community Have or Are Undergoing Sexual Deviancy Treatment and the Defendant Has Not Proven Beyond a Reasonable Doubt That RCW 9.94A.670 is Unconstitutional.

"(A) statute is presumed to be constitutional and the party challenging it has the burden to prove it is unconstitutional beyond a reasonable doubt. *State v. Ward,* 123 Wn.2d 488, 496, 869 P.2d 1062 (1994). The one "challenging a statute must, by argument and research, convince the Court that there is no reasonable doubt that the statute violates the Constitution. *Island County v. State*, 135 Wn.2d 141, 146, 955 P.2d 377 (1998) (citations omitted). Courts must assume the legislature considered the constitutionality of its enactments and afford some deference to that judgment. *Id* at 147.

The Defendant cites to *Williams v. Illinois,* 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970), in support of his argument that RCW 9.94A.670 is unconstitutional as applied to the Defendant. *Williams* is not on point.

In *Williams*, the court considered the constitutionality of keeping a defendant incarcerated beyond the statutory maximum for the crime he committed in order to "work off" the unpaid portion of his fine. *Williams,* 399 U.S. 235. The Court, describing the issue as "narrow," held: "Once the State has defined the outer limits of incarceration to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency." *Id* at 242. The key to the Court's holding was that, because an indigent defendant could be held beyond the statutory maximum solely for failure to pay a fine, the court was accomplishing indirectly what it could not do directly. *Id* at 342. The decision was narrowly tailored as the Court explained; "[I]t bears emphasis that our holding does not deal with a judgment of confinement for non-payment of a fine in the familiar pattern of alternative sentence of $30 or 30 days." *Id* at 243. The court was in no way holding that financial standing can never have an effect on how much incarceration a person serves.

The Defendant cites to equal protection but fails to develop his argument regarding any alleged equal protection violation. The Defendant does not even state what test the Defendant believes is applicable to his

equal protection claim. "Naked casting into the constitutional seas are not sufficient to command judicial consideration and discussion." *State v. Bradshaw*, 152 Wn.2d 528, 539, 98 P.3d 1190 (2004). This Court should not consider the Defendant's undeveloped argument.

If the Court does consider the Defendant's equal protections claim, the first step is to decide what standard of review applies.

> "One of three standards of review has been employed when analyzing equal protection claims. *Strict scrutiny* applies when a classification affects a suspect class or threatens a fundamental right. *Intermediate or heightened scrutiny,* used by this court in limited circumstances, applies when important rights or semisuspect classifications are affected. The most relaxed level of scrutiny, commonly referred to as the *rational basis or rational relationship test,* applies when a statutory classification does not involve a suspect or semisuspect class and does not threaten a fundamental right." (emphasis in original)
> *State v. Manussier*, 129 Wn.2d 652, 672-73, 921 P.2d 573, 482-83 (1996).

The Defendant is not a member of a suspect class, nor does the classification affect a fundamental right. Strict scrutiny does not apply.

"Sex offenders are not a suspect class for purposes of equal protection review." *State v. Ward*, 123 Wn.2d 488, 869 P.2d 1062 (1994). Freedom from incarceration is not a fundamental right once a defendant is convicted. See, *In Re Bordens*, 114 Wn.2d 171, 786 P.2d 789 (1990).

The rational basis test is the applicable test here. Under the rational basis review a court "must uphold a law establishing classifications unless 'classification rests on ground wholly irrelevant to the achievement of legitimate State objectives.' " *Id* at 104 (quoting *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 414, 120 P.3d 56 (2005) (quoting *State v. Harner*, 153 Wn.2d 228, 235-36, 103 P.3d 738 (2004)).

In *Madison v. State*, 161 Wn.2d 85, 163 P.3d 757 (2007), the Court considered a claim made by convicted felons that the State's felon disenfranchisement scheme violated the equal protection clause of the United State's Constitution as felons with higher financial status could pay off their legal financial obligations (and thus seek a certificate of discharge) quicker than a felon with a lower financial status.

The Court used a rational basis analysis and explained;

> "[R]espondents have failed to establish that felons' right to vote qualifies as an important right under federal case law. Additionally, even though low income felons may not be accountable for their

> wealth status, they have been adjudicated responsible for their status as felons, which is the classification at issue. Therefore, we do not apply intermediate scrutiny, and we examine Washington's disenfranchisement scheme using rational basis review."
> *Id* at 104.

The Court explained that requiring all felons to pay their legal financial obligations in full may impact felons disparately depending on their different levels of wealth, but "this alone does not establish an equal protection violation." *Id* at 104. Further, equal protection has no requirement that all inequalities between rich and poor be eliminated. *Id* at 104, (quoting *In re Personal Restraint of Runyan*, 121 Wn.2d 432, 449, 853 P.2d 424 (1993).[5]

The court in *Madison* held that even though Washington's disenfranchisement law impacted felons of different economic circumstances differently, the law did not distinguish between rich and

[5] In *Runyan*, prisoners challenged the constitutionality of a time-bar statute, arguing that the statute violated "the equal protections rights of indigent prisoners because they are unable to acquire legal representation quickly enough to collaterally attack their convictions." *Id* at 448. The statute was upheld because the statute made "no distinction among rich or poor prisoners and applie[d] equally to both." *Madison*, 161 Wn.2d 104 (quoting *Runyon*, 121 Wn.2d at 448).

poor felons but instead requires all felons to complete all terms of their sanctions before they may seek reinstatement of their civil rights. *Madison*, 166 Wn.2d at 104. "Thus we conclude that Washington's disenfranchisement scheme does not classify based on wealth." *Id* at 104.

The proper test in the Defendant's case is the rational basis test. As in *Madison*, RCW 9.94A.670 does not distinguish between rich and poor sex offenders but does require all convicted sex offenders granted a SSOSA to comply with the court's requirements of obtaining sexual deviancy treatment as ordered by the Superior Court and to make satisfactory progress therein. The classification at issue is between SSOSA defendants who are in compliance with ordered sexual deviancy treatment and those who are not. A legitimate State objective exists to assure that convicted sex offenders who have been granted a SSOSA, and who are living in the community, are in full compliance with sexual deviancy treatment as ordered. The safety of the community would be placed in grave risk should convicted sex offenders granted SSOSA's not be required to comply with treatment.

Even if the Court were to apply the intermediate scrutiny analysis to the Defendant's claim, the State prevails. Under intermediate scrutiny there is no equal protection violation as long as the challenged law 'may

fairly be viewed as furthering a substantial interest of the State.' " *In re Detention of Skinner*, 122 Wn.App 620, 631, 94 P.3d 981 (2004) (quoting, *State v. Phelan*, 100 Wn.2d 508, 514, 671 P.2d 1212 (1983).

In *Skinner*, the Defendant challenged former RCW 71.09.094 that permitted a judgment as a matter of law regarding less restrictive alternatives in commitment proceedings regarding sexually violent predators when they are not allowed in mental health civil commitment proceedings. *Skinner*, 122 Wn.App at 631. *Skinner* argued that RCW 71.09.094 unlawfully discriminated against indigent sexually violent predators because RCW 71.05 (civil commitment hearings) does not require an individual to obtain treatment and housing in advance where as former RCW 71.29.194 did.

The Court used the intermediate scrutiny analysis and held that the challenged law furthered a substantial State interest, to wit: "assuring that necessary treatment will continue and that the sexually violent predator has a confirmed residence that is safe both for the individual as well as the community." *Skinner*, 122 Wn.App 631, 632.[6] "We conclude there is no equal protection violation based on indigency." *Id* at 632.

---

[6] "We further note that equal protections analysis requires intermediate scrutiny when considering a claim that a law discriminates against that person." *Id* at 631, citing *State v. Phelan*, 100 Wn.2d 508, 514, 671 P.2d 1212 (1983).

The State's interest in assuring that convicted sex offenders are in treatment or have completed treatment, when they are in the community, is powerful and legitimate. As in *Skinner*, the action by the State here furthered that substantial intent. Under either rational basis or intermediate scrutiny, the Defendant's equal protection challenge fails.

IV. CONCLUSION

There was no violation of the Defendant's due process rights or equal protection rights and the Court did not err in revoking the Defendant's suspended prison sentence ordered as part of the Defendant's SSOSA. The Defendant was provided more than the minimal due process required prior to revocation. The trial court carefully considered the State's compelling interest in assuring that convicted sex offenders acquire treatment when they are free in society. Also, the Court was correct in finding that the Defendant's failure to be in treatment created danger to the community which negated any necessity for the Court to find the violation was willful. Lastly, the Defendant failed to prove RCW 9.94A.670 is unconstitutional beyond a reasonable doubt.

Respectfully submitted this 3rd day of March, 2013.

GREGORY M. BANKS
ISLAND COUNTY PROSECUTING ATTORNEY

By: _____
ERIC M. OHME
DEPUTY PROSECUTING ATTORNEY
WSBA # 28398