

No. 48717-9-II

94485-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRYAN MACKER,

Petitioner.

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

The Honorable James Orlando

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

1. Brian Macker was the appellant in COA No. 48717-9-II.

B. COURT OF APPEALS DECISION

1. Mr. Macker seeks review of the decision issued May 2, 2017, affirming his conviction for failure to register. Appendix A.

C. ISSUES PRESENTED ON REVIEW

1. In Mr. Bryan Macker's short, one-day bench trial, there was evidence that Mr. Macker had not been living for some months at his last registered address in Pierce County, but, due to oversight by the prosecutor, *no evidence whatsoever* was adduced at trial as to where he was during that time, or where he was later found. If he was moving to a new state or had moved to a new state, he would be required to register "with the new state" within three days after "establishing residence" there, but as to Pierce County, he would be required only to "provide notice" of the move within three days. The Pierce County sex offender unit employee who testified at trial was asked if the defendant had registered a new Pierce County address (she said no), but this witness was never asked if she knew if Mr. Macker had or had not registered with a new county, or a new state, and she was never asked if Mr. Macker had or had not provided "notice" of a move to a new state,

which would be all that is required if he did so – because moving to a new state does not require that Pierce County be told that the defendant has registered in the new state.

Did the State fail to prove that Mr. Bryan Macker committed the offense of failure to register as a sex offender as proscribed by RCW 9A.44.130 and 132(1)(b)?

2. Whether the Court of Appeals decision is in conflict with State v. Roggenkamp, 153 Wn.2d 614, 625–26, 106 P.3d 196 (2005), which states the rule of statutory construction that the Legislature’s use of different terms indicates different meanings, requiring review under RAP 13.4(b(1)).

D. STATEMENT OF THE CASE

1. Procedural history. Mr. Bryan Macker was charged with failure to register – third offense, pursuant to RCW 9A.44.132(1)(b) and “RCW 9A.44.130.” CP 2 (information). He appealed the bench trial court’s verdict of guilt to this class B felony,¹ which was based on the court’s finding that Bryan could not be located at the Graham address of his mother where he had registered last, in March of 2015. CP 4-11 (Findings of Fact); CP 26 (notice of appeal).

¹ Pursuant to section .132(1)(b), the crime of violating section .130 is a Class B felony if the person has twice previously been convicted of failure to register as a sex offender. RCW 9A.44.132(1)(b).

2. Facts. Detective Ray Shaviri performs offender checks as part of his duties with the Pierce County Sheriff's Office. On July 8, 2015, he went to the Graham, Washington address listed in Mr. Macker's sex offender registration paperwork, and no one answered the door. 1/28/16RP at 89. He also telephoned Mr. Macker on the cell number listed, and heard his voice message, but the detective did not receive a call back. 1/28/16RP at 89-90.

The next day, July 9, Detective Shaviri went to the house at the 25101 52ND Ave. East address again, and spoke with an apparent tenant named Akeem, who stated that Mr. Macker was not around, and that Gwendolyn Williams, Mr. Macker's mother, was sleeping. 1/28/16RP at 90-91. Later that morning, Detective Shaviri returned to the house and spoke with Williams, who indicated her son had not been around for two months. 1/28/16RP at 91. Later, the detective did not locate Mr. Macker after conducting a "JBRS" check of persons in law enforcement custody. 1/28/16RP at 92-94.

Mr. Macker's mother, Gwendolyn Williams, testified that her son Bryan had keys and this was his home at the time when the Detective came by in early July, in addition to having mail and clothes there. Although Williams had not actually seen Bryan, this

did not signify anything because she was often sleeping as a result of her medication. 1/28/16RP at 59-60, 63-64.

Pierce County Sheriff's Office employee Andrea Conger, a custodian of records with the Office's sex offender registration unit, testified that Mr. Macker had a duty to register based on a 2004 Washington conviction for a sex offense. 1/28/16RP at 20-24, 32-33; State's Exhibits 5, 1. Conger also identified certified judgments indicating Mr. Macker had subsequent Washington convictions for failure to register. 1/28/16RP at 26-32; Exhibits 6, 7, 8.

Conger further testified that Mr. Macker registered an address with Pierce County on March 18, 2015, of 25101 52ND Avenue East, in Graham, Washington, the address the detective went to. 1/28/16RP at 43-45; Exhibit 4.

At the conclusion of her direct examination, Ms. Conger was asked if, between May 1, 2015, and August 5, 2015, "did Mr. Macker attempt to register another address other than the 25101 – 52ND Avenue East Address [sic]? She stated he did not. 1/28/16RP at 46.

The Court of Appeals held that it was enough that Ms. Conger was asked if the defendant did or did not "register any address" (emphasis in original) during the charging period. By so

ruling, the Court ignored the statutory difference in language between registering a new Washington address, and providing notice of a move to another state, the latter of which the witness was not asked about. Review is required under RAP 13.4(b)(1).

D. ARGUMENT

THE STATE DID NOT PROVE THAT MR. MACKER HAD NOT MOVED TO ANOTHER STATE, AND EITHER FAILED TO TIMELY REGISTER WITH THE NEW STATE WITHIN THREE DAYS OF ESTABLISHING RESIDENCE, OR FAILED TO PROVIDE NOTICE OF THE MOVE TO PIERCE COUNTY.

(1). The State must prove a failure to comply with RCW

9A.44.130, which may often require the State to prove a

negative. The charging information, as permitted by State v.

Peterson's determination that the elements of the crime are solely

the failure to comply with any requirement of RCW 9A.44.130 while

under a duty to do so, did not specify the particular subsection or

subsections of that wide-ranging statute that Mr. Macker was being

accused of failing to comply with. CP 2; State v. Peterson, 168

Wn.2d 763, 770-74, 230 P.3d 588 (2010); see State v. Kjorsvik,

117 Wn.2d 93, 97, 812 P.2d 86 (1991).

The crime of failure to register as a sex offender is

committed when a person fails to satisfy any of the requirements of

RCW 9A.44.130.

A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

RCW 9A.44.132(1). The evidence must be sufficient to convict.

U.S. Const., amend. 14; In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

Proving an accused's failure to comply with section .130 may, in some circumstances, require the prosecution to prove a negative. State v. Batson, No. 72158-5-I, 2016 WL 3190501, at *2 (Wash. Ct. App. June 6, 2016).

In some circumstances, this requires that the State prove a negative. For example, in State v. Prestegard, the State alleged that Keith Prestegard violated RCW 9A.44.130 by failing to register his change of address. Thus, "the State had to prove a negative: that Prestegard did not reregister after he moved."

State v. Batson, No. 72158-5-I, at *2 (footnotes to State v. Prestegard, 108 Wn. App. 14, 18-19, 28 P.3d 817 (2001) omitted).²

² In Prestegard, the State was required to prove that the defendant failed to re-register his new address with the county sheriff after moving from one address to another within Wahkiakum County, Washington and, as usual in such cases, also prove that the sheriff's office had a reliable system for taking registrations such that it would have Prestegard's re-registration if he had submitted one. Prestegard, 108 Wn. App. at 17-19 (reversing because trial court erroneously precluded

(2). The State did not prove that Mr. Macker had not moved to another state and failed to register his new address with that new state, or failed to “provide notice” to Pierce County of the move to the new state.

If a person moves from a Washington county to another state different than Washington, the person has a duty to register his address with the new state, and the duty to “provide notice” of the move to the Washington county he was last registered in. RCW 9A.44.130(4)(a)(viii).

In this case, the trier of fact was presented with evidence that Detective Shaviri, in July, was unable to locate Mr. Macker at the Graham address of his mother, where he had registered in March. The prosecutor asked the sex offender unit records custodian from the Pierce County Sheriff’s Office if Mr. Macker had registered a new address with her office, and she said he had not. 1/28/16RP at 46.

But the defendant had no duty to register in Pierce County or indeed in Washington if he moved to another state or was moving to another state and had yet to establish residency there. He would be required to register only with the new state, and to provide

defendant from presenting evidence that the sheriff’s office regularly lost such documents that were properly delivered to the sex offender unit).

notice to Pierce County of having moved to the new state.

Although Ms. Conger, in her initial testimony, discussed “Offender Watch,” which she explained is a “national database . . . to keep track of where offenders are living,” she did not testify that Offender Watch contains information, or timely information, as to whether, or when, any sex offender has officially registered an address in other state(s) with the appropriate government authority. She also did not testify that she checked Offender Watch for such information, even if that website did contain it. The party plaintiff in this case simply did not address the matter, likely because it never occurred to it that it needed to.

But the requirements of proof remain. The plain language of RCW 9A.44.130(4)(viii) as in effect until July 24, 2015 and thereafter (with no change) specifically indicates that moving to a new state does not require advance notice to the departure county of registration (compare the provisions regarding travel out of the United States, at section .130(5)), and would not result in the registration with Pierce county of a new address in that new state.

To the contrary, the person need only “provide notice” to the county of departure, which is different from registering an address, and Conger, the records custodian, was never asked about notice

or the notice acceptance procedure of her department, if any:

(viii) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state **shall register** a new address, fingerprints, and photograph **with the new state** within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. **The person must also send written notice** within three business days of moving to the new state or to a foreign country **to the county sheriff with whom the person last registered in Washington state.** The county sheriff shall promptly forward this information to the Washington state patrol.

(Emphasis added.) RCW 9A.44.130(4)(a)(vii). The State failed to prove that this is not what occurred. Cf. State v. Peterson, supra, 168 Wn.2d at 766-67 (where trial evidence showed defendant moved from registered Everett address in November and registered as homeless with the County in December, State did not have to prove whether 48 hour transience deadline, 72-hour in-county move deadline, or 10-day deadline for in-State move applied, because all were missed).

The State took advantage of its ability to sufficiently give notice of the charge merely by broadly alleging a violation of “RCW 9A.44.130,” thus precluding any Kjorsvik challenge to the information. See CP 2. However, for guilt, the State was required

under Due Process to prove, but failed to prove, that Mr. Macker had not moved to a new state. Mr. Macker, of course, need not prove anything, except affirmative defenses, of which there is one in .130 which is not pertinent here. U.S. Const. amend. 14; see State v. Deer, 175 Wn. 2d 725, 287 P.3d 539 (2012); see RCW 9A.44.130(6)(c) (involving homeless persons who lack a fixed residence).

Plain language dictates meaning, and when the Legislature uses different language, it means different things. State v. Roggenkamp, 153 Wn.2d 614, 625–26, 106 P.3d 196 (2005). The prosecution asked Ms. Conger if the defendant had or had not done something – registered or attempted to register a new address with Pierce County – that he actually had no duty under the statute to do if he moved to another state. 1/28/16RP at 46. Conger was not asked whether Mr. Macker did or did not do the things he would be required to do if he had moved to another state, namely, register “with the new state”, and “provide notice” to Pierce County. RCW 9A.44.130(4)(a)(viii). These latter statutory terms, of course, are two different things. Mr. Macker had no duty to register his new address with Pierce County, only to “provide notice” to Pierce County of the move. It was never shown that he did not do either.

(3). The State failed to present sufficient evidence to convict, requiring reversal with prejudice. The test for sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.” State v. Gentry, 125 Wn.2d 570, 596–97, 888 P.2d 1105 (1995). The appellate courts defer to the fact finder on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. State v. Emery, 161 Wn. App. 172, 199, 253 P.3d 413 (2011). This case presents no issues of credibility, conflicting testimony, or persuasiveness. The Court of Appeals decision was in error.

Here, because the evidence was insufficient to convict as charged, Mr. Macker’s remedy is dismissal of the information, with prejudice. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

F. CONCLUSION

Based on the foregoing, the petitioner, Mr. Macker, requests that this Court accept review under RAP 13.4(b)(3) of the Court of Appeals decision, and reverse his conviction, as argued herein.

DATED this 10th day of May, 2017.

Respectfully submitted,

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May 2, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BRYAN WADE MACKER,

Appellant.

No. 48717-9-II

UNPUBLISHED OPINION

WORSWICK, J. — Following a bench trial, the trial court found Bryan Macker guilty of failure to register as a sex offender. Macker appeals his conviction, asserting that the State failed to prove that he did not comply with RCW 9A.44.130's registration requirements. Specifically, Macker argues that the State did not present any evidence showing that he failed to comply with RCW 9A.44.130(4)(a)(viii), the registration provision applicable to individuals convicted of a qualifying sex offense who move to another state.¹ We affirm Macker's conviction.

FACTS

Macker has previously been convicted of third degree assault of a child with sexual motivation, which conviction required him to register as a sex offender under RCW 9A.44.130.

¹ Macker also requests that we exercise our discretion to waive appellate fees in this matter. Because Macker's current or likely future ability to pay appellate costs may be addressed by a commissioner of this court under recently amended RAP 14.2, we defer this matter to our commissioner in the event the State files a cost bill.

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RCW 9A.44.128(10)(a); former RCW 9.94A.030(47)(c) (2015). On March 18, 2015, Macker registered his address as a house on 52nd Avenue in Graham. Macker's mother, Gwendolyn Williams, resided at the 52nd Avenue house. Williams's nephew, Akeem Tate, also lived at the home with Tate's wife and son.

On July 8, Pierce County Sheriff's Detective Raymond Shaviri went to the 52nd Avenue house to verify that Macker was residing there, but no one was there. Shaviri returned to the house on the following day and spoke with Williams, who said that Macker had not lived at the house for two months. After determining that Macker was not being held in custody, Shaviri changed Macker's verification status to "absconded." Report of Proceedings (RP) at 94.

On August 5, the State charged Macker with failure to register as a sex offender. The matter proceeded to a bench trial.

At trial, Shaviri testified consistently with the facts as stated above. Williams testified that she had provided Shaviri with a written statement stating that Macker had not lived at her house for over two months. But on cross-examination Williams testified that, although she had not personally seen Macker at her house during that time period, she believed he had been living there.

Andrea Conger testified that she works as a records custodian in the Pierce County Sheriff's Office sex offender registration unit. Through Conger's testimony, the State introduced a judgment and sentence showing that Macker had been convicted of an offense requiring him to register as a sex offender. Conger also identified certified judgment and sentence documents showing that Macker had previously been convicted of failure to register as a sex offender in 2004, 2007, and 2010. Conger stated that Macker had registered the 52nd Avenue house as his

resident address on March 18, 2015. Conger further stated that Macker had not registered a different address after March 18. The State asked Conger, “Between May 1, 2015 and August 5, 2015, based on your review of Mr. Macker’s file, did Mr. Macker attempt to register another address other than the . . . 52nd Avenue East Address?” RP at 46. Conger replied, “No, he did not.” RP at 46.

The trial court found Macker guilty of failure to register as a sex offender and thereafter entered the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That Bryan Wade Macker, the responded [sic], on the 5th day of August, 2015, was charged by information with the crime of Failure to Register as a Sex Offender–Third or Subsequent Offense. The respondent pleaded not guilty. The matter was set for trial on the 25th of January, 2016, before the Honorable James Orlando, Judge.

II.

That all relevant events occurred in Pierce County, Washington at the respondent’s registered address in Graham.

III.

The Court found, based on the testimony of Andrea Conger of the Pierce County Sheriff’s Department, that Bryan Macker was convicted on the 28th day of May, 2004, of the crime of Assault of a Child in the Third Degree with Sexual Motivation. The Judgement [sic] and Sentence carries Mr. Macker’s signature, date of birth, and a unique State Identification Number (SID).

IV.

The Court found, based upon the credible testimony of Mrs. Conger, that on the 5th day of October, 2004, 5th day of July, 2007, and the 1st day of February, 2010, Mr. Macker was convicted of Failing to Register as a Sex Offender.

V.

The Court found that Mr. Macker had been registering with the Pierce County Sheriff’s Department beginning on the 8th day of September, 2011. He

had completed a full registration packet, had his photo taken, which matched the appearance of Mr. Macker during the course of the trial, and Mr. Macker signed the registration packet acknowledging his rights and duties.

VI.

The Court found that Mr. Macker's signature on the registration packets match all of the Judgement [sic] and Sentences presented at trial.

VII.

The Court found, based on Mrs. Conger's testimony, that Mr. Macker registered himself as transient on the 25th day of February, 2015, and on the 18th day of March, 2015, Mr. Macker sent a letter to the Pierce County Sheriff's Department updating his registered address to [address number] 52nd Avenue, Graham, Washington. In that letter, he stated that he was moving in with his mother, Gwendolyn Williams, in order to help her care for his grandmother.

VIII.

The Court found, based on the creditable [sic] testimony of Detective Shaviri of the Pierce County Sherriff's [sic] Department Sex Offender Unit, that he attempted to contact Mr. Macker at his registered address on the 8th day of July, 2015, without success.

IX.

The Court found, based on the creditable [sic] testimony of Detective Shaviri that he again attempted to contact Mr. Macker at his registered address on the 9th day of July, 2015, but without success. On this day, Detective Shaviri spoke to Gwendolyn Williams, who stated that Mr. Macker had not lived at the residence for two months. She wrote a statement stating the same. Mrs. Williams did not know that Mr. Macker had been homeless in the past seven years.

X.

The Court found that the [sic] Mr. Macker had in fact kept some belongings in the house, such as his computer and X-Box console. These items, based on Mrs. Williams['] testimony, had been moved and she believed they had been moved by Mr. Macker coming and going. However, Mrs. Williams never saw Mr. Macker come or go during the two months prior, and Mr. Akeem Tate, nephew of Mrs. Williams lived at the residence at the same time with his family and may have been responsible for moving or using Mr. Macker's personal belongings.

XI.

The Court found, based on the testimony of Mrs. Williams that she was surprised Mr. Macker had stated he was moving home to help out with his ill

grandmother because he did not assist in the care of his grandmother. Furthermore, Mr. Macker did not attend the funeral of his grandmother once she passed. Lastly, Mr. [sic] Williams could not remember a single day that Mr. Macker was at the residence during the two months prior to the 9th day of July, 2015.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction of the parties and subject matter.

II.

Bryan Macker had a duty to register as a sex offender in Pierce County, Washington.

III.

Mr. Macker was not habitually using the registered address as his place of residence.

IV.

Mr. Macker has three prior convictions for Failing to Register as a Sex Offender.

V.

Bryan Macker is guilty, beyond a reasonable doubt, of the crime of Failing to Register as a Sex offender between the 1st day of May, 2015, through the 5th day of August, 2015. The acts occurred in Pierce County, Washington.

Clerk's Papers (CP) at 5-8. Macker appeals from his conviction.

ANALYSIS

SUFFICIENCY OF THE EVIDENCE

Macker argues that the State did not present sufficient evidence to support his failure to register as a sex offender conviction because it failed to present any evidence that he had not

moved to another state and failed to notify Pierce County of his move to the other state. We disagree.

A. *Legal Principles*

When reviewing the sufficiency of evidence supporting a conviction following a bench trial, we determine whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court's conclusions of law. *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244, *review denied*, 183 Wn.2d 1011 (2015). Substantial evidence is evidence that is sufficient to persuade a fair-minded, rational person that the findings are true. *Smith*, 185 Wn. App. at 956. The party challenging a factual finding bears the burden of demonstrating that the finding is not supported by substantial evidence. *Smith*, 185 Wn. App. at 957. When evaluating the sufficiency of evidence in support of a conviction, we view all the evidence in the light most favorable to the State. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). We do not consider circumstantial evidence to be any less reliable than direct evidence. *Smith*, 185 Wn. App. at 957.

To convict Macker of failure to register as a sex offender, the State had to prove beyond a reasonable doubt that he (1) had a duty to register for a felony sex offense and (2) knowingly failed to comply with any of RCW 9A.44.130's registration requirements. RCW 9A.44.132. RCW 9A.44.130(4)(a) "sets forth various time limits for reregistration, depending on the offender's residential status." *State v. Peterson*, 168 Wn.2d 763, 768, 230 P.3d 588 (2010). Relevant to Macker's argument on appeal, RCW 9A.44.130(4)(a)(viii) provides:

OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend

school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

Although an offender's residential status determines his or her registration deadlines, residential status is not an element of the crime that the State need prove beyond a reasonable doubt.

Peterson, 168 Wn.2d at 771-74. Rather, the State may meet its burden of proof by presenting evidence that the accused had "failed to provide timely notice of his whereabouts under any of the statutorily defined deadlines after vacating his registered address." *Peterson*, 168 Wn.2d at 772.

B. *Challenged Finding of Fact*

Macker challenges only the finding that "all relevant events occurred in Pierce County, Washington at the respondent's registered address in Graham." CP at 5. He appears to contend that substantial evidence does not support this finding because the State did not present any evidence showing that he did not move to another state and failed to notify Pierce County of his move to the other state. But, as discussed above, the State was not required to prove that Macker had not moved to another state to convict him of failure to register as a sex offender if it presented substantial evidence that he had both (1) vacated his registered address and (2) failed to comply with any of RCW 9A.44.130(4)(a)'s registration deadlines.²

² Macker does not contest that he had a duty to register.

Here, Conger testified that Macker had registered the 52nd Avenue house as his resident address and did not attempt to register any other resident address between the dates of May 1, 2015 and August 5, 2015. This was substantial evidence supporting the trial court's finding that Macker's registered address during the charging period was the 52nd Avenue house in Graham and that all relevant events occurred in Pierce County.³

Contrary to Macker's argument on appeal, the State was not required to present direct testimony that he had failed to provide notice of moving to another state to prove that his current registered address remained in Pierce County. Instead, because compliance with RCW 9A.44.130(4)(a)(viii) would require Macker to *both* provide notice to Pierce County of his move to another state *and* to actually register his address with the new state within three business days of moving there, Conger's testimony that Macker had not attempted to register *any* address during the charging period was sufficient to prove that he did not comply with RCW 9A.44.130(4)(a)(viii). Had Macker moved to another state and complied with *all* the registration requirements under RCW 9A.44.130(4)(a)(viii), Conger, as a records custodian in the Pierce County Sheriff's Office sex offender registration unit, would have been made aware that he no longer resided at the 52nd Avenue house through RCW 9A.44.130(4)(a)(viii)'s 3-day notice provision. Accordingly, we hold that substantial evidence supports the trial court's finding "[t]hat all relevant events occurred in Pierce County, Washington at the respondent's registered address in Graham." CP at 5.

³ Macker does not challenge the finding that he had not lived at the 52nd Avenue house in the two months prior to July 9, 2015.

C. *Challenged Conclusion of Law*

Next, Macker assigns error to the trial court's conclusion of law 2, which states, "Bryan Macker had a duty to register as a sex offender in Pierce County, Washington." CP at 8. Again Macker argues that, absent evidence that he did not move to another state and failed to notify Pierce County of the move, the State could not prove that he had any duty to register as a sex offender in Pierce County. We have rejected this argument above, and the trial court's finding that Macker's registered address was in Pierce County clearly supports the conclusion that his duty to register as a sex offender remained in Pierce County.


Moreover, the trial court's unchallenged findings of fact 7 and 9 also support the conclusion that Macker had a duty to register in Pierce County, as well as the conclusion that Macker was guilty of failure to register as a sex offender. Finding of fact 7 states that Macker had registered his address as the 52nd Avenue house in Graham on March 18, 2015. And finding of fact 9 states that Shaviri went to the 52nd Avenue house on July 9 and spoke with Williams, who stated that Macker had not lived there for two months. Taken together, these findings show that Macker's registered address was at the 52nd Avenue house and that he had vacated from the house two months prior to July 9. Therefore, the trial court's unchallenged findings support the conclusion that Macker had a duty to register in Pierce County. And, because these findings show that Macker "failed to provide timely notice of his whereabouts under any of the statutorily defined deadlines after vacating his registered address," they further support the conclusion that he was guilty of failure to register as a sex offender. *Peterson*, 168 Wn.2d at 772. Accordingly, we affirm Macker's conviction for failure to register as a sex offender.

No. 48717-9-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, J.

We concur:


Borg, C.J.


Lee, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 48717-9-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

- respondent Michelle Hyer, DPA
[PCpatcecf@co.pierce.wa.us]
Pierce County Prosecutor's Office
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

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