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NO. 71262-4-1

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

STATE OF WASHINGTON,

Respondent,

v.

E.L.-D.,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN 30 AM 11:09

BRIEF OF RESPONDENT

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I. ISSUE

Is a charging document that contains all the essential elements of the crime charged sufficient, or must it also include crime related definitions?

II. STATEMENT OF THE CASE

On March 30, 2011, the defendant was convicted of one count of rape of a child in the first degree. Based on that conviction, the defendant had a duty to register as a sex offender pursuant to RCW 9A.44.130. The defendant was put on notice of his duty to register with the Snohomish County Sheriff's Office. On April 17, 2012, the defendant was orally informed of and signed a "Sex and Kidnapping Offender Notification of Registration Requirements (Revised 07/22/2011). The defendant registered as a sex offender with the Snohomish County Sheriff's Office on April 17, 2012, providing the address of "the Tamarack House. As of May 24, 2013, the defendant did not reside at the Tamarack House. After May 24, 2013, the defendant never returned to the Tamarack House at: 9707 Turk Drive, Marysville, WA. Between May 24, 2013 and July 2, 2013, the defendant did reside in Snohomish County. After his initial registration with the Snohomish County Sheriff's Office on April 17, 2012, the defendant never returned to re-register

and never mailed a letter to the Snohomish County Sheriff's Office to indicating a change of address/residence as required pursuant to RCW 9A.44.130. On June 21, 2013, during a telephone conversation with his probation officer, the probation officer asked the defendant if he had registered at his new address. The defendant responded that he "didn't think [he] should have to." On July 1, 2013, the defendant left a message for his probation officer indicating he was driving around with his mom in her Jeep. On July 2, 2013, the defendant told his probation officer he "hadn't gotten around to" registering. RP 10/22/13 10-13, 29, 32-35; CP 3-5, 33-34.

The state charged E.L.-D., a juvenile, with one count of failure to register as a sex offender. CP 1. On October 22, 2014, the matter proceeded to bench trial on the original charge. On October 23, 2014, the court found the defendant guilty as charged. The defendant was sentenced on November 21, 2013. CP 3-7; 8-22.

III. ARGUMENT

A. THE INFORMATION SUFFICIENTLY INFORMED THE DEFENDANT OF THE ELEMENTS OF THE CRIME FOR THE DEFENDANT TO ADEQUATELY PREPARE A DEFENSE.

The defendant challenges the sufficiency of the charging documents for the first time on appeal. A challenge to the sufficiency of a charging document is of constitutional magnitude and may be raised for the first time on appeal. State v. Campbell, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995). However, when a defendant challenges a charging document for the first time on appeal, the court has adopted a liberal construction rule, construing the document in favor of its validity. State v. Kjorsvik, 117 Wn.2d 93, 103, 812 P.2d 86 (1991); State v. Locke, 175 Wn. App. 800, 307 P.3d 771 (2013). “When a defendant challenges the information for the first time on appeal, we determine if the elements appear in any form, or by fair construction can they be found, in the charging document. We read the information as a whole, according to common sense and including facts that are implied, to see if it reasonably apprises an accused of the elements of the crime charged. If it does, the defendant may prevail only if he can show that the unartful charging language actually prejudiced

him.” State v. Nonog, 169 Wn.2d 220, 227, 237 P.3d 250, 254 (2010).

In the case at bar, the defendant was charged with failure to register under RCW 9A.44.132(1)(a)(i) as follows:

FAILURE TO REGISTER, committed as follows: That the respondent, having been convicted on or about the 30th day of March, 2011, of a sex offense, to wit: Rape of a Child in the First Degree, being required to register pursuant to RCW 9A.44.130, and having registered as residing at a fixed residence, did, on or about the 2nd day of July, 2013, cease to reside at that residence and did knowingly fail to provide timely written notice to the county sheriff’s office; proscribed by RCW 9A.44.132, a felony.

CP 1.

The defendant now asserts that the information was constitutionally deficient because it lacked a statement regarding the reporting deadline for registering. The defendant contends the reporting deadline for registering is an element of the crime of failure to register which the state must prove beyond a reasonable doubt to obtain a conviction. Appellant’s brief 1. This assertion is contrary to the holdings in State v. Peterson, 168 Wn.2d 763, 230 P.3d 588 (2010) and State v. Bennett, 154 Wn. App. 202, 207, 224 P.3d 849, 851 (2010).

The statutory deadline for registration is not an essential element of the case. “The sex offender registration statute establishes one punishable offense and imposes only one duty: to

register with the sheriff.” State v. Peterson, 168 Wn.2d 763, 768, 230 P.3d 588 (2010). The Supreme Court affirmed Division One’s opinion in Peterson, holding that residential status, which determines the deadline for registration, is not an element of the crime of failure to register. Peterson, 168 Wn.2d at 774. “...charging documents need contain only essential elements of a crime, not related definitions.” State v. Johnson, ___ Wn.2d ___, 325 P.3d 135, 136 (May 1, 2014). If the residential status, which establishes the deadline for registration, is not an essential element, it reasonably follows the deadline for registration is also not an essential element.

The court has held the additional portions of the failure to register statute are not elements of the crime and do not need to be included in the ‘to convict’ instruction to a jury.

As we recognized, [t]he statute imposes one duty: to register with the sheriff. We noted that the definition of registration and procedure for registration are set forth in the remaining subsections of the statute and that [t]hese subsections merely articulate the definition of continuing compliance. They do not define the elements or create alternative means of committing the crime of failure to register as a sex offender.

State v. Bennett, 154 Wn. App. 202, 207, 224 P.3d 849, 851 (2010)(internal quotations omitted).

The court in Bennett was discussing elements that must be included in the 'to convict' jury instruction. Jury instructions must be more complete than charging documents. "[B]ecause the purpose of jury instructions is to instruct the jury on the applicable law, they 'must necessarily contain more complete and precise statements of the law than are required in an information' or charging document." State v. Benitez, 175 Wn. App. 116, 124-25, 302 P.3d 877, 882 (2013).

The defendant argues the deadline for registration is an element of the offense as it is something the state needs to prove to the jury beyond a reasonable doubt. (Appellant's brief 4). However, this is not the definition of an essential element. In Allen, the court held that the "true threat" concept is not an element of the offense of felony harassment, notwithstanding the fact that the state must prove that the threat constituted a "true threat" in order to obtain a conviction. State v. Allen, 176 Wn.2d 611, 628-30, 294 P.3d 679 (2013). Similarly, statutes defining and limiting essential elements do not constitute essential elements. In Johnson, the court rejected a claim that the statutory definition of "restrain" is an essential element that must be alleged in the information. "We have never held that the information must also include definitions of

essential elements. In fact, we have rejected similar arguments before.” Johnson, ___ Wn.2d ___, 325 P.3d 135, 138 (May 1, 2014). The court has specifically rejected this argument with regard to including definitional portions of the statute in the essential elements of failure to register. “We reject this argument and hold that residential status is not an element of the crime of failure to register.” State v. Peterson, 168 Wn.2d 774, 230 P.3d 588, 593 (2010).

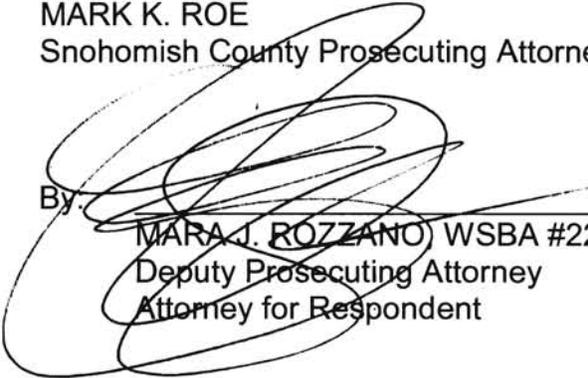
IV. CONCLUSION

For the reasons stated above, the conviction should be affirmed.

Respectfully submitted on June 27, 2014.

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