



**TABLE OF CONTENTS**

	Page
<b>I. ASSIGNMENT OF ERROR.....</b>	<b>1</b>
<b>1. THE TRIAL COURT ERRED WHEN IT DID NOT IMPOSE COMMUNITY CUSTODY AS REQUIRED UNDER RCW 9.94A.715 FOR A DEFENDANT WITH A FELONY CONVICTION FOR FAILURE TO REGISTER AS A SEX OFFENDER.....</b>	<b>1</b>
<b>II. ISSUE .....</b>	<b>1</b>
<b>1. IS COMMUNITY CUSTODY REQUIRED WHEN A DEFENDANT HAS A FELONY CONVICTION FOR FAILURE TO REGISTER AS A SEX OFFENDER? .....</b>	<b>1</b>
<b>III. SHORT ANSWER.....</b>	<b>1</b>
<b>1. YES. COMMUNITY CUSTODY IS REQUIRED WHEN A DEFENDANT HAS A FELONY CONVICTION FOR FAILURE TO REGISTER AS A SEX OFFENDER. ....</b>	<b>1</b>
<b>IV. FACTS .....</b>	<b>1</b>
<b>V. ARGUMENTS.....</b>	<b>2</b>
<b>VI. CONCLUSION .....</b>	<b>4</b>

**TABLE OF AUTHORITIES**

Page

**Cases**

*State v King*, 111 Wash.App. 430 (2002) ..... 3

**Statutes**

RCW 9.94A.030..... 2, 3  
RCW 9.94A.712..... 2, 3  
RCW 9.94A.715..... 2, 3  
RCW 9.94A.728(1) and (2) ..... 2  
RCW 9.94A.850..... 2  
RCW 9A.44.130..... 1, 2, 3

**I. ASSIGNMENT OF ERROR**

- 1. THE TRIAL COURT ERRED WHEN IT DID NOT IMPOSE COMMUNITY CUSTODY AS REQUIRED UNDER RCW 9.94A.715 FOR A DEFENDANT WITH A FELONY CONVICTION FOR FAILURE TO REGISTER AS A SEX OFFENDER.**

**II. ISSUE**

- 1. IS COMMUNITY CUSTODY REQUIRED WHEN A DEFENDANT HAS A FELONY CONVICTION FOR FAILURE TO REGISTER AS A SEX OFFENDER?**

**III. SHORT ANSWER**

- 1. YES. COMMUNITY CUSTODY IS REQUIRED WHEN A DEFENDANT HAS A FELONY CONVICTION FOR FAILURE TO REGISTER AS A SEX OFFENDER.**

**IV. FACTS**

On June 6, 2007, the respondent pleaded guilty to an amended felony charge of failure to register as a sex offender contrary to RCW 9A.44.130. The standard range for the charge was zero to twelve months in jail. Transcript, p. 1-2. This was the respondent's third felony conviction for failure to register as a sex offender. The parties agreed to treat the case as a first offense for failure to register as a sex offender due to the death of the respondent's daughter and the impact it had on the respondent's ability to register. The parties agreed to an exceptional sentence above the standard range for 17 months in prison. Transcript, p. 3-4 and 8. Cowlitz County Superior Court Judge, Stephen Warning,

presided over the plea and followed the joint recommendation. Transcript, p. 5. The respondent was sentenced to 17 months in prison and no community custody was ordered. Transcript, p. 4-5 and 8-11.

On March 26, 2008, Judge Warning presided over a hearing to determine whether community custody was required as part of the respondent's sentence. The respondent argued that community custody was not applicable in the respondent's case. The state argued that community custody was required as part of the respondent's sentence. Judge Warning did not order community custody as part of the respondent's sentence. Transcript, p. 8-11.

#### **V. ARGUMENTS**

Pursuant to RCW 9.94A.715, when a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer. Therefore, community custody is required for sex offenses not under RCW 9.94A.712.

Pursuant to RCW 9.94A.030(42)(a)(i), sex offense means a felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11).

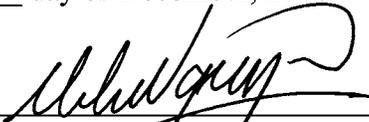
In *State v King*, 111 Wash.App. 430 (2002), the court was asked to determine whether the felony crime of failing to register as a sex offender was a sex offense. *Id.* at 430. The court analyzed the two pertinent statutes, RCW 9.94A.030 and RCW 9A.44.130, and concluded that the felony crime of failing to register as a sex offender is a sex offense. *Id.* at 436. Therefore, community custody is required for a felony conviction of failure to register as a sex offender as it is a sex offense not under RCW 9.94A.712.

The respondent was given an exceptional sentence above the standard range and ordered to serve 17 months in prison. No community custody was ordered as part of the respondent's sentence. The trial court's refusal to order community custody represents a conflicting exceptional sentence below the standard range and clearly violates RCW 9.94A.715 which requires community custody for a felony conviction of failure to register as a sex offender.

VI. CONCLUSION

The appellant's appeal should be granted and the case should be remanded to the trial court to impose the required community custody time.

Respectfully submitted this 4 day of December, 2008.

  
\_\_\_\_\_  
Mike K. Nguyen / WSBA 31641  
Deputy Prosecuting Attorney  
Representing Appellant