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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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No. 40207-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Amanda Phillips,**

Appellant.

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Lewis County Superior Court Cause No. 08-1-00235-1

The Honorable Judge Nelson Hunt

**Appellant's Reply Brief**

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## ARGUMENT

### **I. THE PROSECUTION FAILED TO PROVE THE CONSTITUTIONAL VALIDITY OF MS. PHILLIPS'S PREDICATE CONVICTION.**

A criminal charge which requires proof of a prior conviction may not be based on a constitutionally invalid predicate conviction. *See, e.g., State v. Summers*, 120 Wn.2d 801, 846 P.2d 490 (1993) (reversing UPF conviction based on invalid predicate felony); *State v. Gore*, 101 Wash. 2d 481, 681 P.2d 227 (1984) (same); *State v. Swindell*, 93 Wn.2d 192, 607 P.2d 852 (1980) (same). Where an accused person disputes the constitutional validity of a predicate conviction, the burden is on the prosecution to prove beyond a reasonable doubt that it was constitutionally obtained.<sup>1</sup> *Swindell*, at 199.

Here, Ms. Phillips's Failure to Register was predicated on a constitutionally invalid prior conviction. Her 2006 guilty plea in Utah was entered pursuant to a regime subsequently found constitutionally inadequate by the Utah Supreme Court.<sup>2</sup> *State ex rel. K.M.*, 173 P.3d 1279 (UT, 2007). The prosecutor did not submit any evidence to rebut Ms. Phillips's argument.

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<sup>1</sup> Respondent implies (without explicitly arguing) that a constitutionally valid predicate conviction is not required in failure to register cases. Brief of Respondent, pp. 7-8. Respondent offers no principled basis for this implied argument.

<sup>2</sup> The rule has since been amended. *See* Utah Juvenile Procedure Rule 25.

Respondent suggests that the burden of establishing a constitutionally valid predicate conviction would be one that is “*impossible...for the State to meet.*” Brief of Respondent, p. 7 (emphasis in original). This somewhat overwrought argument lacks merit. First, a criminal conviction cannot be based on a constitutionally invalid predicate. *Summers, supra*. This is so regardless of the difficulty of proving validity.<sup>3</sup> *Id.*

Second, the difficulties in obtaining a transcript or other record of a plea hearing are not insurmountable. *See, e.g., Swindell, at 197* (transcript of 1969 plea hearing submitted to court); *U.S. v. Hartsock*, 347 F.3d 1, 3 (1st Cir. 2003) (in absence of transcript, government provided deposition of judge who heard defendant’s 1992 plea); *U.S. v. Wilder*, 621 F.2d 1077, 1078 (10th Cir. 1980) (“No transcript of the Indiana state court plea proceedings is available. However, docket entries from that proceedings [sic] reflect that Wilder's constitutional rights were explained to him, and that he acknowledged them. He specifically waived his right to be represented by counsel.”)

The record does not affirmatively establish beyond a reasonable doubt that Ms. Phillips’s predicate conviction was constitutionally valid.

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<sup>3</sup> The record here does not establish what lengths the prosecutor went to, if any, in its attempt to establish that Ms. Phillips’s prior conviction was valid.

Accordingly, her guilty plea cannot stand. *Swindell, supra*. The conviction for Failure to Register must be reversed and the case dismissed with prejudice. *Id*.

**II. MS. PHILLIPS MUST BE ALLOWED TO WITHDRAW HER GUILTY PLEA BECAUSE HER UTAH CONVICTION IS NOT A "SEX OFFENSE" WITHIN THE MEANING OF RCW 9A.44.130.**

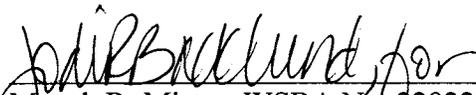
Ms. Phillips stands on the argument set forth in her Opening Brief.

**CONCLUSION**

Ms. Phillips must be allowed to withdraw her guilty plea. Her conviction must be reversed, and the case must be dismissed with prejudice.

Respectfully submitted on September 10, 2010.

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CERTIFICATE OF MAILING

STATE OF WASHINGTON

I certify that I mailed a copy of Appellant's Reply Brief to BY  DEPUTY

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And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on September 10, 2010.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on September 10, 2010.

  
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