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STATE OF WASHINGTON

**No. 40364-1-II**

**COURT OF APPEALS < DIVISION II  
STATE OF WASHINGTON**

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**STATE OF WASHINGTON**

**Respondent,**

**vs.**

**GERALD DUAINE ENQUIST,**

**Appellant.**

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COURT OF APPEALS  
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STATE OF WASHINGTON  
BY \_\_\_\_\_

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**On Appeal from the Pierce County Superior Court  
Cause No. 09-1-02964-6  
The Honorable Katherine Stolz, Judge**

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**STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW**

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## **I. ADDITIONAL ASSIGNMENT OF ERROR**

- 1.** The trial court erred when it did not find that the sex offender registration statute (RCW 9A.44.130) did not apply to Enquist because he had served his entire maximum sentence and all his civil rights, saved the right to bear firearms, had been restored to him (RCW 9.96.050(c) and RCW 9.94A.637(4)).
- 2.** The trial court erred when it did not find that Enquist was not sufficiently and adequately informed of the registration requirements (RCW 9A.44.130).

## **II. ISSUES PERTAINING TO ERROR**

- 1.** Does the statute requiring someone who has been convicted of a sex offense to register *override statutes that restore all civil rights*, saved the right to bear firearms, to that person (Error 1)?
- 2.** Does the statute requiring someone who has been convicted of a sex offense to register apply to *someone who has served all their maximum sentence* and who has had all their civil rights, saved the right to bear arms, restored (Error 1)?
- 3.** Does notification of the registration requirements done through a solid metal door, yelling through that door and in a room with no

acoustics, showing only the bottom section of the last page to sign, *sufficiently and adequately inform* the registration requirements (Error 2)?

### III. ARGUMENT AND AUTHORITIES

#### A. Restored Civil Rights:

On one hand is a statute requiring someone who has been convicted of a sex offense to register, RCW 9A.44.130.

On the other hand, there are statutes all stating once a person has completed all of his requirements of the sentence they are entitled to a Certificate of Discharge, *which shall have the effect of restoring all civil rights lost by operation of law upon conviction*. RCW 9.96.050(c) and RCW 9.94A.637(4).

See also, State v. Minikin, 100 Wn.App. 925, 927 (2000) ("A certificate of discharge has the effect of restoring all civil rights lost by operation of law as the result of conviction...."); State v. Swanson, 116 Wn.App. 67, 74 (2003) ("The discharge restores all civil rights lost by operation of law upon conviction...."); In re Quackenbush, 142 Wn.2d 928, 941 (2001)(dissenting opinion); Madison v. State, 161 Wn.2d 85, 91 (1007) and AGO 1969 No. 5 (1969 WL 98522 (Wash.A.G.)), pgs 6-7, 11.

Enquist loss by *operation of law upon conviction* his civil rights **to be left alone**, a recognized fundamental and personal right, and the

constitutionally protected **right to privacy**. See e.g., State v. Meacham, 93 Wn.2d 735, 738 (1980); Myrick v. Pierce County Commissioners, 102 Wn.2d 698, 703 (1984); City of Seattle v. McConahy, 86 Wn.App. 557, 566 (1997); and Seattle v. Drew, 70 Wn.2d 406, 408 (1967).

See also, State v. Jones, 146 Wn.2d 328, 332 (2002) ("Article I, section 7 provides that '[n]o person shall be disturbed in his private affairs, or his home, without authority of law.' This provision is violated when the State unreasonably intrudes upon a person's private affairs.").

Courts have said that the registration act does not inhibit or restrain a person's movements or activities, State v. Taylor, 67 Wn.App. 350, 356-57 (1992); and that the physical act of registration creates no disability or restraint, State v. Ward, 123 Wn.2d 488, 500 (1994). HOWEVER, these cases were decided PRIOR to the 1999 amendment to RCW 9A.44.130, under (6)(b) addressing those who do not have a fixed address (who are homeless) and in this case applies to Enquist.

RCW 9A.44.130 (6)(b). A person who lacks a fixed residence must report weekly, in perso, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours, The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of

a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

Enquist, who is homeless (Court Record page 15, lines 1-5; page 16, lines 5-10; pages 34-35, lines 23-25, 1-5), in fact is severely restricted in his movement (liberty) in that he cannot travel out of state or even beyond a few miles that does not guarantee he will be able to report weekly, and the questioning relating to weekly events denies him the right to be left alone.

Additionally, the restrictions caused by the weekly registration denies Enquist his **fundamental right to work**. Enquist had employment, but the registration requirements took that employment from him (CR page 18, pgs 17-21, lines 25 (17) -22 (21)).

These civil rights, the right to be left alone, the right to privacy, the right to travel, the right to work and others, Enquist originally lost by operation of law upon conviction (when he was convicted) but upon serving his maximum statutory sentence with no additional conditions (CR pgs 15-16, lines 20-25 (15) and 1-5 (16)) were returned to him pursuant to RCW 9.96.050(c) and RCW 9.94A.637(4).

See also, Williamson v. Gregoire, 151 F.3d 1180, 1183 (9th Cir. 1998)("The precedents that have found a

restraint on liberty rely heavily on the notion of a physical sense of liberty--that is, whether the legal disability in question somehow limits the [person's] movement.").

The above court, which was deciding whether a person was under restraint for purpose of filing a habeas petition, went on to give examples of restraint (citing U.S. Supreme Court decisions). For example, someone on probation or parole, or whose attendance somewhere was mandatory by state officials (as with the weekly reporting to register), is under restraint, i.e., their liberty restrained (1183-84).

RCW 9A.44.130(6)(b) makes it mandatory that Enquist (1) report weekly, (2) report in person, (3) report at a time and place designated by officials, (4) answer specific questions about his daily movements, and (5) ~~by~~ subject to additional scrutiny.

Enquist loss the above civil right to be left alone, to privacy, to travel, to work and others, by operation of law upon conviction. But after serving all his statutory maximum sentence these rights were restored to him. See, RCW 9.96,050(c) and RCW 9.94A.637(4). Restored "civil rights" that in fact the registration statutes as applied to Enquist deny him.

B. Expressio unius est exclusio Alterius:

Both, RCW 9.96.050(c) and RCW 9.94A.637(4), restore all civil rights making only one exception. That one specified exception is the right to bear arms, the one and only right not automatically restored to a person after serving his statutory maximum sentences.

Since RCW 9.96.050(c) and RCW 9.94A.637(4) specifically make the one exception for firearms and no other exception, anything else must be regarded as intentionally omitted by the legislation (which has declined to amend these statutes to include any other exceptions to restoring all civil rights). See State v. Swanson, 116 Wn.App. at 75-76; also Woodson v. State, 95 Wn.2d 257, 261-62 (1980)("the legislature is presumed to know existing law in those areas in which it is legislating").

Express exceptions in a statute indicates the Legislature's intention to exclude other exceptions. Elec. Contractors Ass'n v. DOC Secretary Riveland, 138 Wn.2d 9, 17-18 (1999), citing Weyerhaeuser Co. v. Tri, 117 Wn.2d 128, 133-34 (1991).

Expressio unius est exclusio alterius commands that there are no other exceptions. See State v. Swanson, 116 Wn.App. at 77.

C. Registration Requirement Notification:

Enquist prior to his release from prison was housed in the Intensive

Management Unit (IMU), in a hostile environment in a cell with a **solid metal door** except for a small thick glass window and concret walls, with no acousics whatsoever (CR pg 11, lines 2-10). It was at this cell with Enquist inside and prison officials standing outside, that the Department of Corrections (DOC) conducted the registration requirement notification. Literally yelling at Enquist through the locked, closed solid metal door, no acoustics and all sounds (including the others screaming going on inside the unit) bouncing off the walls both outside and inside the cell (CR pgs 10-12, lines 10-25 (10), 1-25 (11) and 1-14 (12)).

Prison officials then took only the last page of each document and slid it under the door, never letting off their grip, for Enquist to sign, never letting him read it or providing him with a copy (CR pg 11, lines 5-11; pg 27, lines 2-7; pg 28, lines 13-20; pg 29, lines 1-2).

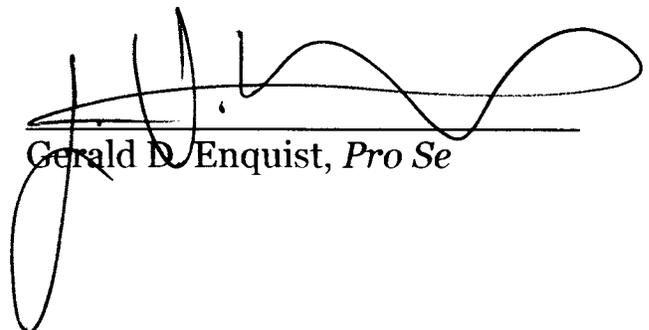
It was very difficult for Enquist to hear anything that was being said to him and clearly he did not understand all that was being said. The notice DOC says it gave to him was not sufficent or adequate enough to notify Enquist as would be required by RCW 9A.44.130.

#### **IV. CONCLUSION**

Because of the fact that Enquist served his entire statutory maximum

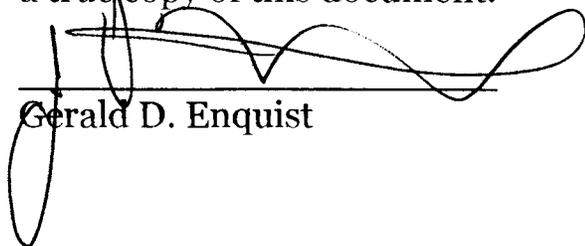
sentence with no other condition or supervision, and the fact that all his civil rights except to bear firearms were restored to him, and the additional fact that he was not sufficiently or adequately notified of the registration requirements, his conviction for failure to register must be reverse with prejudice and no requirement to register.

SIGNED THIS 22<sup>nd</sup> day of July, 2010.

  
Gerald D. Enquist, *Pro Se*

CETIFICATE OF MAILING

I certify that on this 22<sup>nd</sup> day of July, 2010, I placed in the mail addressed Kathleen Proctor, Pierce County Prosecuting Attorney Office, 930 Tacoma Ave. S., Rm. 946, Tacoma, WA 98402, a true copy of this document.

  
Gerald D. Enquist

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