

No. 40877-II⁵⁻

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

TERRY A. PETERSON

REPLY BRIEF OF APPELLANT

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

ORIGINAL

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review granted, 165 Wn.2d 1027 (2009), affirmed, 168 Wn.2d 763, 230
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A. Argument in Reply

Mr. Peterson argues in his first Assignment of Error that the Information charging him with Failure to Register fails to include all the essential elements of the offense. In his Brief of Appellant, Mr. Peterson noted the case of State v. Michael Peterson, 145 Wn.App 672, 186 P.3d 1179 (2008), review granted, 165 Wn.2d 1027 (2009), affirmed, 168 Wn.2d 763, 230 P.3d 588 (2010). According to Division I of the Court of Appeals, the essential elements of the offense of Failure to Register are “knowingly fail to register as required by RCW 9A.44.130(1)(a).” As the State correctly points out in its Brief of Respondent, the Washington Supreme Court has since issued its decision affirming Division I. As the Court itself noted, however, the Supreme Court’s “analysis differs from the Court of Appeals.” Michael Peterson at 770. Therefore, a detailed discussion of the Supreme Court’s decision is appropriate.

Preliminarily, it is worth noting that the Michael Peterson case reached the Supreme Court in a procedurally unique manner. The Court of Appeals reversed the conviction because the charging document omitted the mens rea element of “knowing” and ordered the case dismissed without prejudice. The Supreme Court granted review of whether the evidence was sufficient to sustain the conviction. Although the Supreme Court was not directly reviewing the charging document

under the essential elements rule, in reviewing the sufficiency of the evidence, the Court commented several times on the essential elements of the offense.

In Michael Peterson, the charging document alleged that the defendant failed to register within 72 hours of ceasing to reside at his Everett apartment. As noted above, the information failed to allege that the failure was “knowing.” The defendant argued that the registration statute is an alternative means statute that can be committed at least three different ways. The Supreme Court disagreed and said,

[T]he failure to register statute contemplates a single act that amounts to failure to register: the offender moves without alerting the appropriate authority. His conduct is the same – he either moves without notice or he does not. The fact that different deadlines apply, depending on the offender’s residential status, does not change the nature of the criminal act: *moving without registering*.

Michael Peterson at 770 (emphasis added). Later the Supreme Court said the following:

For the purposes of this case, we need not examine every deadline and residential scenario potentially at issue under RCW 9A.44.130. We need decide only whether residential status is an element because this is the element that Peterson primarily claims the State failed to prove. The State charged, instructed, and provided evidence of the 72-hour deadline.

Michael Peterson at 771. In footnote 7, the Court added, “Common sense suggests the statutory deadline is part of the State’s burden of proof. It

would not be sufficient for the State to prove failure to register within 24 hours, for example.” Michael Peterson at footnote 7.

Analyzing these various quotations from Michael Peterson, it is clear that the essential elements of failure to register are (1) knowingly (2) moved¹ (3) without registering (4) within the time required by law. The State does not need to allege any specific time frame² or residential status, but it must allege that the defendant has moved, thus triggering the requirement that he re-register.

Under this analysis, Mr. Peterson’s charging document is defective. The information alleged that he “knowingly fail[ed] to register or notify the county sheriff.” The information fails to allege that Mr. Peterson moved. This is an essential element of the offense. Mr. Peterson’s case should be dismissed without prejudice.

¹ Although both the instant case and Michael Peterson’s case deal with a defendant who is alleged to have moved without registering, logic dictates that various triggering events are possible for this second element. Other possible triggering events include changing employment, changing schools, and changing one’s legal name. In fact, the charging document in Mr. Peterson’s case alleges an alternative triggering event of a name change. Whether it is sufficient to allege a generic triggering event, or whether the specific triggering event must be alleged, is an issue best left for a future case. In any event, Mr. Peterson’s Information fails to allege any triggering event and more specifically fails to allege that he moved, the specific triggering event supported by the evidence at trial.

² The issue of the applicable time frame has been rendered significantly easier by a recent amendment to RCW 9A.44.130, which creates a uniform time frame of 3 business days. But Mr. Peterson’s case pre-dates the amendment.

B. Conclusion

The case should be dismissed without prejudice.

Dated this 14th day of April, 2011

A handwritten signature in black ink, consisting of a large, sweeping loop followed by several smaller, connected strokes.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

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

STATE OF WASHINGTON,) Case No.: 10-1-00233-1
) Court of Appeals No.: 40877-5-II
Respondent,)
)
vs.) AFFIDAVIT OF SERVICE
)
TERRY A. PETERSON,)
)
Defendant.)

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

REBECCA BROWN, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action,
and competent to be a witness.

On April 14, 2011, I sent an original, postage prepaid, of the REPLY BRIEF OF
APPELANT and a copy, postage prepaid, to the Washington State Court of Appeals, Division
Two, 950 Broadway, Suite 300, Tacoma, WA 98402.

ORIGINAL

1 On April 14, 2011, I sent a copy, postage prepaid, of the REPLY BRIEF OF
2 APPELLANT, via legal messenger to the Kitsap County Prosecutor's Office, 614 Division St.,
3 MS 35, Port Orchard, and WA 98366-4683.

4 On January 21, 2011 I sent a copy, postage prepaid, of the REPLY BRIEF OF
5 APPELLANT, to Mr. Terry A. Peterson, LEGAL MAIL, DOC # 930854, Coyote Ridge
6 Correction Center, PO Box 769 Connell, WA 99326

7
8 Dated this 14th day of April, 2011.

9 

10 Rebecca Brown
11 Legal Assistant for Thomas E. Weaver
12 WSBA #22488
13 Attorney for Defendant
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