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STATEMENT OF THE CASE

The State basically agrees with the facts and procedure as presented in the Brief of Appellant.

ARGUMENT

A conviction for Statutory Rape in the Third Degree under former RCW 9A.44.090 constitutes a “sex offense” for purposes of sex offender registration.

The appellant’s argument hinges on a single issue. Whether or not his conviction for Statutory Rape in the Third Degree under former RCW 9A.44.090 constitutes a “sex offense” in relation to the sex offender registration statute. In order to make this analysis, the appellant refers to RCW 9A.44.128(6); while the substance remains the same, this statute was not enacted until approximately one year after the appellant’s offense date and would not apply. This is also true of the reference to the definition of “sex offense” contained in RCW 9.94A.030(45)(a)(I). At the time of the offense, this was located at RCW 9.94A.030(42).

At the time of the appellant’s offense, a person was required to register if “...found to have committed or has been convicted of any sex offense...” RCW 9A.44.130. For registration purposes, a “sex offense” was defined, in pertinent part, as: “Any offense defined as a sex offense by RCW 9.94A.030.” RCW 9A.44.130(10)(a)(I).

RCW 9.94A.030(42)(a)(I), again in relevant part, defines a “sex offense” as “A felony that is a violation of chapter 9A.44 RCW other than

RCW 9A.44.130(12).” The appellant argues that “[h]ad the legislature intended the registration requirement to cover repealed sections of RCW 9A.44, it would have said so.” Appellant’s Brief at 6.

However, the Savings Clause clearly indicates that, even though the statute has been repealed, the conviction retains its nature of being “a felony that is a violation of chapter 9A.44 RCW.”

No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

RCW 10.01.040

RCW 9A.44.090 was repealed by Laws 1988, ch. 145, § 24. The repealing act states “[t]his act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988.” Laws 1988, ch. 145, § 25.

Therefore, the legislature has expressly indicated its intention that the defendant's conviction is still a violation of RCW 9A.44 and would require him to register.

Further, the legislature clearly indicates offenses that it is omitting from the registration statute. The "sex offense" definition reads: "A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12)." Clearly, in light of the savings clause, the legislature would have omitted the repealed sections of chapter 9A.44 RCW, if it intended to have those offenders be unregistered.

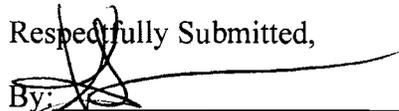
Also, in footnote 1, the appellant states that "[t]he legislature has taken similar steps for other definitions involving statutes that have since been repealed" and cites the RCW 9.94A.030(31) reference to the Indecent Liberties statute. However, the Indecent Liberties statute, RCW 9A.88.100 was not repealed, it was recodified into another section, and thus this analysis should fail.

CONCLUSION

The defendant's appeal should be denied and the conviction of the trial court should be affirmed.

DATED this 8 day of February, 2011.

Respectfully Submitted,

By: 

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

STATE OF WASHINGTON,

Respondent,

No.: 40887-2-II

v.

DECLARATION OF MAILING

HOMER TAYLOR, III,

Appellant.

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 9th day of February, 2011, I mailed a copy of the Brief of Respondent to Manek R. Mistry and Jodi R. Backlund; Backlund & Mistry; P.O. Box 6490, Olympia, WA 98507 and to Homer Taylor, DOC #250420, Monroe Corrections Center, PO Box 777, Monroe, WA 98272, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Barbara Chapman