

NO. 46825-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL FLETCHER

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON GRAYS HARBOR
The Honorable Mark McCauley, Judge

BRIEF OF APPELLANT

LISE ELLNER
Attorney for Appellant

LAW OFFICES OF LISE ELLNER
Post Office Box 2711
Vashon, WA 98070
(206) 930-1090
WSB #20955

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	2
THE STATE FAILED TO PROVE THE ESSENTIAL ELEMENT OF A CHANGE OF ADDRESS TRIGGERING THE REQUIREMENT TO NOTIFY THE CCO IN THE SEX OFFENDER REGISTRATION STATUTE.....	2
D. <u>CONCLUSION</u>	6

TABLE OF AUTHORITIES

	Page
<u>STATE CASES</u>	
<i>In re PRP of Drake</i> , 149 Wn.App. 88, 201 P.3d 1093 (2009), <i>review denied</i> , 166 Wn.2d 1026, 217 P.3d 337 (2009).....	4-6
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	3
<i>State v. Homan</i> , 181 Wn.2d 102, 330 P.3d 182 (2014).....	3
<u>FEDERAL CASES</u>	
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).....	3
<i>Blakely v. Washington</i> , 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).....	3
<i>United States v. Gaudin</i> , 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).....	3
<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).....	3
<u>STATUTES, RULES AND OTHERS</u>	
RCW 9.94A.130.....	4
RCW 9.94A.132.....	4

B. ASSIGNMENT OF ERROR

The state failed to present sufficient evidence to establish beyond a reasonable doubt that appellant knowingly failed to register as a sex offender.

Issue Presented on Appeal

Where the defendant left clothes and a mattress in an apartment that was unoccupied when the CCO officer tried to contact the defendant and where there was an undated eviction notice posted outside the apartment door, did the state establish beyond a reasonable doubt that defendant knowingly failed to register as a sex offender?

B. STATEMENT OF THE CASE

Samuel Fletcher is required to register as a sex offender and provided his community corrections officer (CCO) Curtis Perry with an address located at 112 E, First St # 1 in Aberdeen, WA. RP 19-20, 33. On March 27, 2014, Perry travelled to the address to verify that Fletcher was in residence. RP 20. No one was home when Perry made his visit and he could not see anything through the windows. RP 20. Perry requested that Aberdeen police officer Steve Timons check the same address to determine if Fletcher was in residence. RP 5. On March 31, 2014, Timmins approached the residence and found the door open. RP 7. Timmons reported that there was a mattress

against the wall, garbage and clothes on the floor and the refrigerator door was open. RP 7-16. Timmons noted an eviction notice posted outside the apartment door. RP 7.

When Perry visited the apartment on March 27, 2014, the door was locked and there was no notice posted on the front door. RP 24. Frederick Voosen, the owner of the apartment building testified that he had an employee post the eviction notice sometime before April 4, 2014, but he could not verify if the specific day the notice was posted. RP 42-43. Debbie Grandoff, the SO registration clerk testified that Fletcher was only required to provide a change of address form if he moved. RP 32.

After the state rested, Fletcher moved to dismiss the charges for insufficient evidence, which the trial court denied. RP 51.

C. ARGUMENT

THE STATE FAILED TO PROVE BEYOND
A REASONBLE DOUBT THAT FLETCHER
MOVED OR KNOWINGLY FAILED TO
REGISTER AS A SEX OFFENDER.

The state failed to prove that Fletcher knowingly failed to register his current address with his community corrections officer (CCO) as required by law.

The Fourteenth Amendment provides a criminal defendant may only

be convicted if the government proves every element of the crime beyond a reasonable doubt. *Blakely v. Washington*, 542 U.S. 296, 300- 01, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *United States v. Gaudin*, 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Due process “indisputably entitles[s] a criminal defendant to ‘a . . . determination that he is guilty of every element of the crime beyond a reasonable doubt.’” *Apprendi*, 530 U.S. at 476-77 (quoting *Gaudin*, 515 U.S. at 510).

Evidence is sufficient if, when viewed in a light most favorable to the State, it permits any rational trier of fact to find the elements of the crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). A claim of insufficient evidence admits the truth of the evidence and all reasonable inferences that can be drawn from that evidence. *Homan*, 181 Wn.2d at 106.

a. Failure to Register.

Under this standard, the state failed to prove that Fletcher moved from the address provided to his CCO and that he knowingly failed to provide

notice of an address change. Fletcher was charged under RCW 9.94A.132(1)

which provides:

A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

RCW 9.94A.132(1). The sex offender statutes require that when a registered sex offender changes address within the same county, “ the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.” RCW 13.44.130(4).

Here, there were no facts presented to establish that Fletcher moved or knowingly failed to provide written notice of a change of address.

Here, based on the evidence in this case, at a minimum, the state was required to prove beyond a reasonable doubt that Fletcher moved his address and failed to inform his CCO of this change of address. RCW 9A.44.130(5)(a). Based on the evidence presented it is not reasonable to infer beyond a reasonable doubt that Fletcher moved and failed to knowingly provide notice.

In re PRP of Drake, 149 Wn.App. 88, 201 P.3d 1093 (2009), review

denied, 166 Wn.2d 1026, 217 P.3d 337 (2009), is closely on point and provides authority for this Court to reverse Fletcher's conviction based on insufficient evidence. Drake had no legal right to reside at the address he had given to the sheriff's office but there was no evidence that Drake was notified of his eviction from his apartment by the landlord; or that he changed addresses or maintained a residence elsewhere, or that he did not intend to return to his apartment. Moreover, Drake was not legally evicted. Under those facts, the Court held there was insufficient evidence to support Drake's conviction for failing to register as a sex offender. *Drake*, 149 Wn.App. at 94-96.

The Court in *Drake*, quoting, *State v. Pickett*, 95 Wn.App. 475, 478, 975 P.2d 584 (1999), defined the term "residence" as "the place where a person lives as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit." *Drake*, 149 Wn.App. at 94.

The Court further held that the fact that Mr. Drake knew he did not pay his rent did not mean that he knew he was evicted. *Drake*, 149 Wn.App. at 94.

Under the facts presented, the state proved that Mr. Drake's rent was not paid,

his landlord vacated him from his apartment, and his possessions were stored and picked up by someone else after he was arrested. “But the state did not prove beyond a reasonable doubt that Mr. Drake knowingly failed to register at a new address or as a homeless person.” Id.

As in *Drake*, there were belongings in Fletcher’s apartment, there was a mattress to sleep on and clothes on the floor. In both cases, the fact that the defendants failed to pay rent and that some sort of eviction notice was posted, and where the defendants left possessions in the apartments, was insufficient to establish that Fletcher knowingly failed to register.

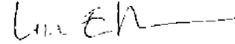
Here, the state established that Fletcher did not pay his rent and that Fletcher lived in deplorable conditions, but this is not evidence of a change of address or of an intentional failure to register. In sum, the state failed to prove the essential elements beyond a reasonable doubt. Accordingly, reversal and remand for dismissal with prejudice is required.

D. CONCLUSION

Bass respectfully requests this Court reverse his convictions and remand for dismissal with prejudice for insufficient evidence to support each charge

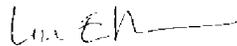
DATED this ___th day of March 2015

Respectfully submitted,



LISE ELLNER
WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Grays Harbor County Prosecutor jwalker@co.grays-harbor.wa.us and Samuel Fletcher DOC # 83986 Coyote Ridge Corrections Center 1301 N Ephrata Ave PO Box 769 Connell, WA 99326 true copy of the document to which this certificate is affixed, on March ___2015. Service was made by electronically to the prosecutor and to Mr. Gipson by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

ELLNER LAW OFFICE

March 21, 2015 - 9:21 PM

Transmittal Letter

Document Uploaded: 3-468255-Appellant's Brief.pdf

Case Name: State v Fletcher

Court of Appeals Case Number: 46825-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lise Ellner - Email: liseellnerlaw@comcast.net

A copy of this document has been emailed to the following addresses:

JWalker@co.grays-harbor.wa.us