

No. 29100-6-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL JOHNSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WALLA WALLA COUNTY

The Honorable Donald Schact

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

Samuel Johnson's plea was not knowingly, voluntarily and intelligently made because he was not informed of the direct consequences of pleading guilty to a domestic violence-related charge. Alternatively, his conviction of fourth-degree assault/domestic violence violates due process of law because RCW 10.99.020 is void for vagueness as to what relationships qualify for "domestic violence."

B. ASSIGNMENTS OF ERROR

1. The court erred by accepting Mr. Johnson's guilty plea without advising him of all the direct consequences of pleading guilty.
2. The court erred by convicting Mr. Johnson of assault/domestic violence pursuant to an unconstitutionally vague statute.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether Mr. Johnson's plea was involuntary where he was not informed of the direct consequences of pleading guilty to a domestic violence-related charge.

Issue 2: Whether the domestic violence statute – RCW 10.99.020 – is unconstitutionally vague because it does not specify the degree of family relationship required to support a domestic violence-related charge.

D. STATEMENT OF THE CASE

On April 1, 2010, Samuel Johnson entered an *Alford*¹ plea of guilty to residential burglary and fourth-degree assault/domestic violence. (RP 18-25; CP 10-18) The convictions followed an incident in January 2010

¹ *North Carolina v. Alford*, 400 U.S. 25, 36-37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) (an *Alford* plea generally allows the accused to enter a guilty plea based on the strength of the State's case while denying guilt in order to settle a criminal proceeding).

where Mr. Johnson pushed his way through the door of a house, located his brother in a bedroom, said “kill me before I kill you,” pushed his brother and then wrestled with him to the ground until he was restrained by his brother. (CP 5-6; RP 25)

During the plea hearing, the court conducted the usual colloquy before accepting the plea. (See RP 18-25) But, with the exception of the judge mentioning a domestic violence evaluation and the plea paperwork noting the \$100 penalty assessment (RP 23; CP 14), the court did not question or advise Mr. Johnson on any other effects of a domestic violence-related charge. He now appeals. (CP 44)

E. ARGUMENT

Issue 1: Whether Mr. Johnson’s plea was involuntary where he was not informed of the direct consequences of pleading guilty to a domestic violence- related charge.

Mr. Johnson’s conviction should be reversed because he was not informed of the direct consequences of pleading guilty. Specifically, he was not informed that a no contact order would be imposed or other direct consequences of pleading guilty to a domestic violence-related charge.

This Court reviews the circumstances surrounding entry of a guilty plea de novo. *Young v. Konz*, 91 Wn.2d 532, 535-36, 588 P.2d 1360 (1979). Due process requires that a trial court not accept a guilty plea without determining that a defendant understands the nature of the

charges. CrR 4.2(d); *In re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993). This requires that defendants understand the direct consequences of pleading guilty, or those that have a “definite, immediate and largely automatic effect on the range of the defendant's punishment.” *Ness*, 70 Wn. App. at 822 (quoting *Cuthrell v. Director*, 475 F.2d 1364, 1366 (4th Cir.1973)).

A domestic violence-related charge carries its own unique range of consequences. Indeed, Mr. Johnson was informed that he could be required to complete a domestic violence assessment and pay a \$100 fine. RP 23; CP 14. But in reality, a domestic violence-related charge has additional direct consequences for which Mr. Johnson should also have been warned.

For example, a domestic violence-related conviction results in a no contact order being imposed, and Mr. Johnson was never informed of this at his plea hearing. *C.f. State v. Wilson*, 117 Wn. App. 1, 11-12, 75 P.3d 573 (2003) (court noted that the defendant was warned of the direct consequences of a domestic violence-related charge including that the prosecutor would recommend no contact with the victim). In addition, a domestic-violence designation on a conviction is given special consideration that can affect a defendant at sentencing, it can result in increased penalties for other violations and it can result in loss of early

release time. RCW 10.99.0001 (sentencing considerations due to domestic violence notation); *State v. O.P.*, 103 Wn. App. 889, 892, 13 P.3d 1111 (2000) (no contact orders and increased punishments); RCW 10.99.040(4)(b) (elevated punishments); RCW 26.50.110 (elevated punishments); RCW 9.94A.729 (early release time). Furthermore, the defendant could be subjected to electronic home monitoring as a result of the no contact order at his own expense. RCW 10.99.040(3).

Mr. Johnson was not informed of the direct consequences of pleading guilty to assault/domestic violence and, as such, Mr. Johnson's plea was not voluntary, knowing and intelligent. His conviction should be reversed and plea withdrawn.

Issue 2: Whether the domestic violence statute – RCW 10.99.020 – is unconstitutionally vague because it does not specify the degree of family relationship required to support a domestic violence-related charge.

Virtually any person could be convicted of a domestic violence-related charge since RCW 10.99.020 does not specify the degree of blood or family relationship necessary to make an offense qualify as “domestic violence.” As such, the statute is unconstitutionally vague and Mr. Johnson's conviction violates due process of law.

“The due process vagueness doctrine ‘serves two important purposes: first, to provide citizens with fair warning of what conduct they must avoid; and second, to protect them from arbitrary, ad hoc, or

discriminatory law enforcement.” *State v. Sansone*, 127 Wn. App. 630, 638-39, 111 P.3d 1251 (2005) (quoting *State v. Halstien*, 122 Wash.2d 109, 116-17, 857 P.2d 270 (1993)). “A statute is “void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.” *State v. Alphonse*, 142 Wn. App. 417, 437, 174 P.3d 684 (2008) (internal quotations omitted). “We analyze vagueness claims under the Fourteenth Amendment due process test, which requires the challenger to demonstrate beyond a reasonable doubt that the statute either (1) fails to sufficiently define the offense so that ordinary people can understand what conduct is proscribed, or (2) fails to provide ascertainable standards of guilt to protect against arbitrary enforcement.” *Id.*

“Domestic violence” includes certain crimes between “family or household members.” RCW 10.99.020. A “family or household member” is defined as:

“spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.”

RCW 10.99.020(3) (emphasis added).

Unlike other statutes dealing with family relationships, RCW 10.99.020 does not specify the degree of blood necessary to bring a crime under the parameters of “domestic violence.” *C.f.*, RCW 9A.64.020 (incest where involving siblings or known ancestors and descendents); RCW 13.34.110(4) (specific degrees of relationships require notification in dependency proceedings); RCW 51.12.020 (excluding those related by blood to third degree or marriage from certain employment requirements).

The statute defining domestic violence between “family or household members” is void for vagueness. It does not specify “domestic violence” as that which occurs between siblings or specified family members, but simply “adult persons related by blood...” RCW 10.99.020(3). This may include siblings or it may not, and it may include a 10th-removed cousin or it may not. The statute is clear that it includes parents/grandparents and children/grandchildren, but the statute could also encompass cousins of the farthest-reaching degree. It is unclear to what extent of family relation this statute would apply, and one can only guess at the Legislature’s meaning given that the Legislative intent seemed to focus on those living together or in a guardian/trust or dating/marital-type relationship (see RCW 10.99.010).

In sum, we must guess at the meaning of “family and household members.” It is unlikely the Legislature meant to classify crimes involving every relationship with any blood-tie as domestic violence, no matter how distant the relative. One must guess at what relationships are included and, as such, the statute is void for vagueness. Mr. Johnson’s conviction of assault-domestic violence violated due process of law.

F. CONCLUSION

Mr. Johnson’s plea was not voluntarily made because he was not informed of all the direct consequences of pleading guilty to a domestic violence-related charge. Alternatively, his conviction for assault/domestic violence must be reversed since the domestic violence statute is void for vagueness.

Respectfully submitted this 20 day of August, 2010.


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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

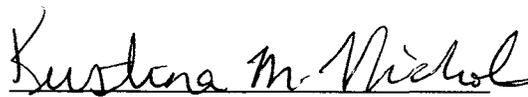
STATE OF WASHINGTON) Superior Court No. 10-1-100019-1
Plaintiff/Respondent)
vs.) COA NO. 29100-6-III
)
SAMUEL JOHNSON)
) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Kristina M. Nichols, assigned counsel for the defendant/appellant herein, do hereby certify under penalty of perjury that on August 20, 2010, I mailed by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's Opening Brief to:

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Dated this 20 day of August, 2010.


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