

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
May 01, 2015, 3:41 pm
BY RONALD R. CARPENTER
CLERK

COA # 338134

RECEIVED BY E-MAIL

Supreme Court No. 907846

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Respondent,

v.

PATRICK L. RHYNARD
Appellant.

DIRECT REVIEW FROM THE
SUPERIOR COURT FOR BENTON COUNTY
NO. 12-1-01213-3

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

TERRY J. BLOOR
Prosecuting Attorney
BAR NO. 9044
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509)735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. ISSUE1

1. Is the defendant required to register as a sex offender based on a conviction for Indecent Liberties as a juvenile?1

II. ARGUMENT1

1. Previous cases have dealt with the defendant’s argument......1

2. In addition, the defendant’s Motion or Appeal is time barred under RCW 10.73.090.2

3. Response to the defendant’s specific arguments......2

III. CONCLUSION8

TABLE OF AUTHORITIES

WASHINGTON CASES

Collins v. Clark Cnty. Fire Dist. No. 5, 155 Wn. App. 48, 231 P.3d 1211 (2010).....3

In re Frederick, 93 Wn.2d 28, 604 P.2d 953 (1980)5,6

In re Weaver, 84 Wn. App. 290, 929 P.2d 445 (1996)6

State v. Acheson, 75 Wn. App. 151, 877 P.2d 217 (1994).....1, 5

State v. Cheatham, 80 Wn. App. 269, 908 P.2d 381 (1996).....6

State v. J.H., 96 Wn. App. 167, 978 P.2d 1121 (1999).....6

State v. Michaelson, 124 Wn.2d 364, 878 P.2d 1206 (1994)5

State v. Tuck, 127 Wn. App. 1008 (2005).....5

UNITED STATES SUPREME COURT CASES

Hu Yau-Leung v. Soscia, 500 F. Supp. 1382 (E.D.N.Y. 1980), *rev'd*, 649 F.2d 914 (1981).....8

Thomas v. United States, 121 F.2d 905 (D.C. Cir. 1941)7, 8

United States v. Canniff, 521 F.2d 565 (2d Cir. 1975)7

United States v. Doe, 53 F.3d 1081 (1995).....2

United States v. Hill, 538 F.2d 1072 (4th Cir. 1976).....7

United States v. Kinsman, 195 F. Supp. 271 (S.D. Cal. 1961)7

WASHINGTON STATUTES

RCW 9.94A.030.....1, 3

RCW 9A.44.130.....	1, 3-5, 7-8
RCW 10.73.090	2
RCW 10.73.100	2
RCW 13.04.011	3, 4
RCW 13.04.240	3
RCW 13.40.020	4, 5
RCW 13.40.240	4
RCW 29A.04.079.....	5

REGULATIONS AND COURT RULES

RAP 10.3(a)(6).....	3
---------------------	---

OTHER AUTHORITIES

18 U.S.C. § 5031-42	2, 6
---------------------------	------

I. ISSUE PRESENTED

1. **Is the defendant required to register as a sex offender based on a conviction for Indecent Liberties as a juvenile?**

II. ARGUMENT

1. **Previous cases have dealt with the defendant's argument.**

The defendant's basic argument is that he committed the offense of Indecent Liberties when he was a juvenile. Therefore, he committed an offense rather than a crime. Therefore, it is not a sex offense under RCW 9.94A.030 and he should not have been required to register.

This argument has been dealt with previously. *State v. Acheson*, 75 Wn. App. 151, 877 P.2d 217 (1994), held that the sex offender registration statute, RCW 9A.44.130, applied to juvenile convictions as well as adult convictions. The *Acheson* Court noted that RCW 9A.44.130(1)(a) applied to "Any adult *or juvenile*...who has been found to have *committed or has been convicted* of any sex offense...". *Acheson*, 75 Wn. App. at 153 (emphasis added). The *Acheson* Court concluded that Mr. Acheson, who pled guilty in juvenile court to first degree child molestation, was required to register as a sex offender under RCW 9A.44.130.

2. In addition, the defendant's Motion or Appeal is time barred under RCW 10.73.090.

The defendant generally has one year to collaterally attack a Judgment and Sentence under RCW 10.73.090. None of the exceptions to the one-year time period listed in RCW 10.73.100 (newly discovered evidence, unconstitutional statute, double jeopardy, insufficient evidence, sentence in excess of court's jurisdiction or significant change of law) apply.

In this case, the defendant was sentenced on June 6, 2013. He filed a Motion to Modify or Correct Judgment and Sentence with the trial court on July 14, 2014. That motion was not on the same grounds as he has argued here. He filed the Motion for Direct Review with this Court on September 18, 2014. In either case, more than one year elapsed from the date of sentencing to his collateral attack on the Judgment and Sentence.

3. Response to the defendant's specific arguments:

A. Response to Argument Number 1: "An adjudication of juvenile delinquency is neither a felony nor a misdemeanor but a civil determination of status. (*United States v. Doe*, 53 F.3d 1081, @1083, (C.A. 9 (Wash) 1995) [sic]."

Incorrect. The *Doe* Court dealt with the federal Juvenile Delinquency Act, 18 U.S.C. § 5031-42. It has no bearing on this case.

B. Response to Argument Number 2: "The judgment in question not only violates Washington State and Federal Law, but is repugnant to the Fifth

Amendment[']s due process clause, the Sixth Amendment[']s provision of effective assistance of counsel, the Eighth Amendment[']s prohibition on cruel and unusual punishment and, the Fourteenth Amendment[']s guarantee of the equal protection of the laws.”

The above is the total stated in support of this argument. Under RAP 10.3(a)(6), an appellant’s brief must include arguments supporting the issues presented for review and citations to legal authority. An appellate court need not consider arguments that are not developed in the brief for which a party has not cited any authority. *Collins v. Clark Cnty. Fire Dist. No. 5*, 155 Wn. App. 48, 231 P.3d 1211 (2010). This Court should not consider these statements.

C. Response to Argument Number 3: “RCW 13.04.011(1) states - ‘Adjudication’ has the same meaning as ‘conviction’ in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW.”

The defendant quoted RCW 13.04.011 correctly. However, the defendant is required to register as a sex offender due to his conviction of Indecent Liberties as a juvenile under RCW 9A.44.130.

D. Response to Argument Number 4: “RCW 13.04.240 states - An order of court adjudging a child, a juvenile offender, or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime. ”

The defendant quoted the provision correctly, but it has no bearing on whether he is required to register under RCW 9A.44.130.

E. Response to Argument Number 5: “RCW 13.40.240 states – All references to juvenile delinquents or juvenile delinquency in other chapters of the RCW shall be construed as meaning juvenile offenders or the commitment of an OFFENSE by juveniles as defined in this chapter” (original emphasis retained).

The defendant quoted the provision correctly. However, this statute has nothing to do with the defendant’s duty to register as a sex offender under RCW 9A.44.130.

F. Response to Argument Number 6: “RCW 13.04.011(3) states, ‘Juvenile offender’ and ‘Juvenile offense’ have the meaning ascribed in RCW 13.40.020.”

The defendant quoted the provision correctly, but it has nothing to do with his requirement to register under RCW 9A.44.130.

G. Response to Argument Number 7: “[RCW 13.40.020(21)] states - ‘Offense’ means an act designated a violation or a crime if committed by an adult” (correct statute subsection cited).

The defendant correctly quotes the statute. Under RCW 9A.44.130, a person who commits a juvenile sex offense is required to register as a sex offender.

H. Response to Argument Number 8: “RCW 13.40.020(32) states - ‘sex offense’ means an OFFENSE defined as a sex offense in RCW 9.94A.030.” (original emphasis retained).

The defendant correctly quotes the statute.

- I. Response to Argument Number 9:** “RCW 29A.04.079 states - ...a juvenile adjudication pursuant to chapter 13.40 RCW is not an ‘infamous crime.’ ”

The citation has nothing to do with the defendant’s requirement to register as a sex offender.

- J. Response to Argument Number 10:** “In *State v. Tuck* it was held that a juvenile who had been adjudicated of first degree child rape couldn’t be found guilty of ‘felony’ Failure to Register, but could be found guilty of a ‘gross misdemeanor’! The court holding that a juvenile adjudication is not a crime but civil adjudication. (38 A.L.R. 6th, *State v. Tuck*, 127 Wash. App. 1008, 2005 WL 950688 . . .). [sic]”

State v. Tuck is not a reported case. However, the defendant’s statement is incorrect. The issue raised herein is well settled: a juvenile convicted of a sex offense is required to register as a sex offender. *State v. Acheson*, 75 Wn. App. 151 (1994).

- K. Response to Argument Number 11:** “In *State v. Michaelson*, the Washington State Supreme Court held that, ‘a juvenile has not committed a crime, including a “felony,” when he has committed an offense.’ (*State v. Michaelson*, 124 Wash.2d 364, 878 P.2d 1206 (1994).”

Correct, but this citation has nothing to do with whether the defendant has to register under RCW 9A.44.130.

- L. Response to Argument Number 12:** “Referencing *In re Frederick*, the Washington State Supreme Court held, ‘Under [RCW] 13.40.020 which defines an offense as an act designated a crime if committed

by an adult, when a juvenile commits an offense, he has not committed a crime and, therefore, he has not committed a felony.’ (*In re Frederick*, 93 Wash.2d 28, 604 P.2d 953 (1980). [sic]”

See above. The citation is correct, but not relevant.

M. Response to Argument Number 13: “In Reference to *In re Weaver*, it was held that, ‘juvenile offense is not a felony.’ (*In re Weaver*, 84 Wash.App. 290, 929 P.2d 445 (1996).”

See above. The citation is correct, but not relevant.

N. Response to Argument Number 14: “In *State v. Cheatham* it was held that, ‘under the Juvenile Justice Act, a juvenile cannot be convicted of a crime or felony.’ (*State v. Cheatham*, 80 Wash.App. 269, 908 P.2d 381 (1996). [sic]”

See above. The citation is correct, but not relevant.

O. Response to Argument Number 15: “*In State v. J.H.* it was held that, ‘under the juvenile code, an adjudication does not constitute conviction of a crime Thus, an act which would be a crime if committed by an adult is not a crime, and thus not a felony, if committed by a juvenile.’ (*State v. J.H.*, 96 Wn. App. 167, 978 P.2d 1121, @1125 (1999) [sic].”

See above. The citation is correct, but not relevant.

P. Response to Argument Number 16: “U.S.C. 18 § 5031 states - For the purposes of this section a ‘juvenile’ is a person who has not attained his eighteenth birthday ‘juvenile delinquency’ is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult [sic].”

See above. The designation of Indecent Liberties as an “offense” rather than a “crime” when committed by a juvenile has no bearing on whether the juvenile must register. In addition, the citation to Federal authority is not helpful.

Q. Response to Argument Number 17: “In *United States v. [Canniff]*, it was held that, ‘no criminal prosecution is instituted against the young person . . . and the ultimate adjudication is not a criminal conviction.’ (*United States v. [Canniff]*, 521 F.2d 565, @ 569 (C.A. 2 (N.Y.) 1975) [sic].”

This citation to federal authority has nothing to do with the defendant’s requirement to register under RCW 9A.44.130.

R. Response to Argument Number 18: “In *United States v. Hill* it was held that, ‘an adjudication of delinquency . . . is a determination of status and, not a conviction of crime.’ (*United States v. Hill*, 538 F.2d 1072, @ 1074 (4th Cir. 1976) [sic].”

This citation to federal authority has nothing to do with the defendant’s requirement to register under RCW 9A.44.130.

S. Response to Argument Number 19: “In *United States v. Kinsman* it was held that, ‘Not only is § 5031 not a felony . . . it does not describe a crime of any kind.’ (*United States v. Kinsman*, 195 F.Supp. 271, @273 (S.D. Cal. 1961) [sic].”

This citation to federal authority has nothing to do with the defendant’s requirement to register under RCW 9A.44.130.

T. Response to Argument Number 20: “In *Thomas v. United States* it was held that, ‘the primary function of juvenile courts . . . is not conviction or punishment for

crime, but crime prevention and delinquency rehabilitation. It would be a serious breach of public faith, therefore, to permit these informal and presumably beneficent procedures to become the basis for criminal records, which could be used to harass a person throughout his life.’ (*Thomas v. United States*, 121 F.2d 905, @ 907-909 (DC Cir. 1941) [sic].”

This citation to federal authority has nothing to do with the defendant’s requirement to register under RCW 9A.44.130.

U. Response to Argument Number 21: “In *Hu Yau Leung v. Soscia* it was held that, ‘a juvenile court adjudication is not a crime and should not be viewed to indicate criminality for any purpose.’ (*Hu Yau Leung v. Soscia*, 500 F.Supp. 1382, @1388 (E.D.N.Y. 1980) [sic], [rev’d, 649 F.2d 914 (1981)].”

This citation to federal authority has nothing to do with the defendant’s requirement to register under RCW 9A.44.130.

III. CONCLUSION

The defendant’s “Motion for Direct Appeal” which is a collateral attack on the Judgment and Sentence should be denied.

RESPECTFULLY SUBMITTED this 1st day of May, 2015.

ANDY MILLER

Prosecutor


Terry J. Bloor, Deputy
Prosecuting Attorney

Bar No. 9044

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Patrick Rhynard

#853584

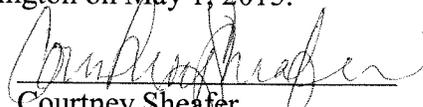
Coyote Ridge Corrections Center

P.O. Box 769

Connell, WA 99326

U.S. Regular Mail, Postage
Prepaid

Signed at Kennewick, Washington on May 1, 2015.



Courtney Sheater
Appellate Secretary