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NO. 32332-0-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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**STATE OF WASHINGTON, Respondent,**

v.

**ERIC ALBERT WATSON, Appellant.**

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APPELLANT'S BRIEF

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Rebecca Wold Bouchey  
WSBA #26081  
Attorney for Appellant

P.O. Box 1401  
Mercer Island, WA 98040  
(206) 275-0551

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## **I. ASSIGNMENTS OF ERROR**

1. The trial court erred by convicting Watson of failure to register, RCW 9A.44.130(4)(a)(i), where the statute is ambiguous as to whether it requires registration where the offender is being released from incarceration due to a probation violation to the same address he has already registered.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Is RCW 9A.44.130(4)(a)(i), defining the offense of failure to register, ambiguous as to whether it requires registration where the offender is being released from incarceration due to a probation violation to the same address he has already registered?

## **III. STATEMENT OF THE CASE**

On November 2, 1993, Watson was convicted of a sex offense that required registration as a sex offender. CP 41. Watson served his time on the offense and was released into community custody. Watson registered as required by law on January 2, 2003, giving his residence as 7807 304<sup>th</sup> St. E, Graham, Washington. RP 8/30/04 – 6, CP 41. On May 27, 2003, Watson was sent to jail on three probation violations for a term of 60 days.

CP 41. Watson was released from jail on July 2, 2003, and returned to the same address in Graham. CP 41.

Watson did not re-register upon his release from jail because his address had not changed and he did not believe that the law required him to formally re-register when he had not changed address and was being released from jail on separate incidents.

On January 14, 2004, Watson was charged with failure to register as a sex offender for failing to re-register when he was released from jail on July 2, 2003. CP 1-2. Watson brought a Knapstad motion to dismiss, arguing that RCW 9A.44.130(4)(a)(i) is ambiguous, and arguably only requires registration if the offender's address changes or if he is being released from his original sentence, but not when he is being released from a jail term following a probation violation and has not changed address. The trial court denied the motion to dismiss, finding that the language of the statute was not ambiguous and required re-registration under these circumstances. CP 8/30/04 – 14. Following a bench trial on stipulated facts, Watson was convicted of failure to register as a sex offender and sentenced to 30 days in jail, with one year of community custody. CP 46-52.

## IV. ARGUMENT

**ISSUE 1: RCW 9A.44.130(4)(A)(I), DEFINING THE OFFENSE OF FAILURE TO REGISTER, IS AMBIGUOUS AS TO WHETHER IT REQUIRES REGISTRATION WHERE THE OFFENDER IS BEING RELEASED FROM INCARCERATION DUE TO A PROBATION VIOLATION TO THE SAME ADDRESS HE HAS ALREADY REGISTERED.**

Due process requires that penal statutes be drawn with sufficient specificity so that persons of common understanding will be on notice of the activity prohibited by the statutes. *State v. Richmond*, 102 Wn.2d 242, 243, 683 P.2d 1093 (1984). The fundamental principle underlying the vagueness doctrine is that the Fourteenth Amendment requires citizens be afforded fair warning of proscribed conduct. *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992).

The constitutionality of a statute is a question of law that the courts review de novo. *State v. Shultz*, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999). If the statute does not involve First Amendment rights, the courts evaluate the vagueness challenge by examining the statute as applied under the particular facts of the case. *Coria*, 120 Wn.2d at 163.

The challenger must show that either (1) the statute does not define the criminal offense with sufficient definiteness so that ordinary people can understand what conduct is proscribed, or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement. *Coria*, 120 Wn.2d at 163.

The requirement of sufficient definiteness “protects individuals from being held criminally accountable for conduct which a person of ordinary intelligence could not reasonably understand to be prohibited.” *Coria*, 120 Wn.2d at 163. Accordingly, a statute is unconstitutional if it “forbids conduct in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application.” *Coria*, 120 Wn.2d at 163.

In this case, the statute carrying the unconstitutionally vague language is RCW 9A.44.130(4)(a)(i), which provides that:

Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, ***are in custody, as a result of that offense***, . . . must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender.

(emphasis added).

Under this statutory language, one could reasonably interpret the “as a result of that offense” language to mean the sentence served on the original conviction, as opposed to time served on parole violations. A person such as Watson is not given sufficient notice that he must re-register following his release after serving time on parole violations, despite the fact that he had not changed address. The ambiguity in the statutory language makes it unconstitutionally vague as applied here and requires the application of the rule of lenity, construing the statute in the

defendant's favor. *See State v. Martin*, 102 Wn.2d 300, 304, 684 P.2d 1290 (1984).

Even looking to the purpose of the statute does not shed light on this question of when registration at release is required. The purpose of statute is clearly to keep law enforcement informed of the address of sex offenders. This purpose is served with an interpretation of the statute's language that registration is required upon release from the sentence served on the conviction, or when the offender's address changes. Interpreting this language to include any jail time tangentially related to the original conviction does not serve any additional purpose when the offender serves a short jail term that does not disrupt his living situation. In this case, for example, law enforcement knew at all times where Watson lived. Ironically, Watson was arrested on this offense at the address he gave when he registered. Thus, the purpose of the statute gives no guidance in resolving the ambiguity and again the ordinary person is left to wonder what is required of him.

Persons of common intelligence are left to guess about whether they are required to re-register or not following short jail time served on parole violations. Because of this ambiguity, the phrase "in custody, as a result of that offense" lacks sufficient definiteness to allow ordinary people to understand what conduct is proscribed.

The statute as applied to Watson's conduct in this case was unconstitutionally vague as to the conduct proscribed in that it could reasonably be interpreted as requiring registration only on release from the original prison term for the conviction. Therefore, this statute did not afford Watson fair notice that his conduct violated the law and his conviction must be reversed

#### V. CONCLUSION

For the reasons stated above Watson asks that the court reverse his conviction for failure to register.

DATED: May 20<sup>th</sup>, 2005.

By: Rebecca W. Bouchey  
Rebecca Wold Bouchey #26081  
Attorney for Appellant

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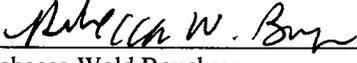
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I certify that on the 20<sup>th</sup> day of May 2005, I caused a true and correct copy of this

Appellant's Brief to be served on the following via prepaid first class mail:

*Counsel for the Respondent:*  
Kathleen Proctor  
Office of Prosecuting Attorney  
930 Tacoma Ave. S., Rm. 946  
Tacoma, Washington 98402-2171

*Appellant:*  
Eric Watson  
7807 Kapowsin Hwy. E.  
Graham, WA 98338

  
\_\_\_\_\_  
Rebecca Wold Bouchey  
WSB# 26081  
Attorney for Appellant