

NO. 78963-1

SUPREME COURT OF THE STATE OF WASHINGTON

SHELDON MARTIN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
07 JUL 19 AM 8:06
BY RONALD R. CARRETER
CLERK

**SUPPLEMENTAL BRIEF OF RESPONDENT,
STATE OF WASHINGTON**

ROBERT M. MCKENNA
Attorney General

MALCOLM ROSS
Assistant Attorney General
WSBA 22883
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-2011

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 JUL 16 PM 3:35

ORIGINAL

TABLE OF CONTENTS

I.	ISSUE PRESENTED	1
II.	STANDARD OF REVIEW.....	1
III.	STATEMENT OF THE CASE	1
	A. Factual Background	1
	1. Burglary in the Second Degree with Sexual Motivation, Clark County Cause Number 91-1- 01069-2.....	1
	2. Kidnapping in the Second Degree and Attempted Sexual Abuse in the First Degree, Multnomah County Cause No. 92-04-32087	2
	B. Procedural History	3
IV.	ARGUMENT	5
	A. The Plain Language Of RCW 71.09.030 Granted The Thurston County Superior Court Subject Matter Jurisdiction.....	5
	1. Jurisdiction and venue are distinct concepts	5
	2. RCW 71.09.030 grants jurisdiction to the superior courts to hear civil commitment cases.....	7
	3. The superior courts' universal original jurisdiction cannot be overridden by a venue designation.....	9
	B. Legislative Intent Confirms That Thurston County Had Subject Matter Jurisdiction Under RCW 71.09.030	12
V.	CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<i>Anderson v. State, Dep't of Corrections,</i> 159 Wn.2d 849, 858-64, 154 P.3d 220 (2007)	13
<i>Born v. Thompson,</i> 154 Wn.2d 749, 776, 117 P.3d 1098 (2005).....	15
<i>Cherry v. Municipality of Metro. Seattle,</i> 116 Wn.2d 794, 800, 808 P.2d 746 (1991).....	14
<i>Dougherty v. Dep't of Labor and Indus.,</i> 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).....	1, 6, 9, 10
<i>In re Detention of Martin,</i> 133 Wn. App. 450, 136 P.3d 789 (2006).....	4, 11
<i>In re Estate of Black,</i> 153 Wn.2d 152, 163, 102 P.3d 796 (2004).....	13
<i>Kilian v. Atkinson,</i> 147 Wn.2d 16, 21, 50 P.3d 638 (2002).....	12, 13
<i>McGinnis v. State,</i> 152 Wn.2d 639, 645, 99 P.3d 1240 (2004).....	12
<i>Moore v. Perrott,</i> 2 Wn. 1, 4, 25 P. 906 (1891).....	10
<i>Nat. Elec. Contractors Ass'n v. Riveland,</i> 138 Wn.2d 9, 19, 978 P.2d 481 (1999).....	7, 12
<i>Shoop v. Kittitas County,</i> 149 Wn.2d 29, 37, 65 P.3d 1194 (2003).....	6, 10
<i>State v. Hennings,</i> 129 Wn.2d 512, 522, 919 P.2d 580 (1996).....	14, 15

<i>State v. Hughes</i> , 154 Wn.2d 118, 151, 110 P.3d 192 (2005).....	15
<i>State v. Smalls</i> , 99 Wn.2d 755, 766, 665 P.2d 384 (1983).....	13
<i>State v. Taylor</i> , 97 Wn.2d 724, 729-30, 649 P.2d 633 (1982)	15
<i>United States v. Buckland</i> , 289 F.3d 558 (9 th Cir.2002)	15
<i>Young v. Clark</i> , 149 Wn.2d 130, 133-34, 65 P.3d 1192 (2003)	6, 10

Statutes

RCW 2.28.150	11
RCW 4.12.020	6
RCW 36.01.050	6
RCW 51.52.110	6
RCW 71.09	1
RCW 71.09.010	13
RCW 71.09.020(15).....	2, 4, 12
RCW 71.09.020(15)(b).....	12, 13
RCW 71.09.020(16).....	3, 8
RCW 71.09.025	11
RCW 71.09.030	passim

Other Authorities

20 Am. Jur. 2D *Courts* § 70, at 384 (1997) 6

77 Am. Jur. 2D *Venue* § 44, at 651 (1997)..... 6

Black’s Law Dictionary 1431 (5th ed.1979)..... 8

I. ISSUE PRESENTED

Whether the Thurston County Superior Court lacked subject matter jurisdiction to civilly commit Sheldon Martin (Martin) under RCW 71.09, the Sexually Violent Predator Act (SVPA), because Martin had not been previously convicted of a sexually violent offense in that county.

II. STANDARD OF REVIEW

“Whether a court has subject matter jurisdiction is a question of law reviewed de novo.” *Dougherty v. Dep’t of Labor and Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).

III. STATEMENT OF THE CASE

A. Factual Background

1. **Burglary in the Second Degree with Sexual Motivation, Clark County Cause Number 91-1-01069-2**

On October 22, 1991, Martin followed a female patron into a public restroom at a department store in Vancouver, Washington. After she entered a stall, he pulled his pants down and stared up at her from the floor of the stall. When the woman saw him, Martin grabbed her ankle. She kicked him and chased him out of the bathroom as he attempted to pull up his pants. It appeared to her that Martin was masturbating. Store

personnel disclosed that Martin had been engaging in this type of behavior since the early 1980s. CP 9-10.¹

Martin was convicted of Burglary Second Degree with Sexual Motivation and Indecent Exposure in Clark County Superior Court on March 3, 1992. This was not a sexually violent offense as that term is defined in RCW 71.09.020(15) and used in RCW 71.09.030. Released pending sentencing, Martin fled to Oregon where he committed and was later convicted of two sexually violent offenses, as described below. Oregon authorities later returned Martin to Clark County and, on March 8, 1994, he was sentenced to serve 30 months in a Washington State prison at the conclusion of his Oregon incarceration. CP 10.

2. Kidnapping in the Second Degree and Attempted Sexual Abuse in the First Degree, Multnomah County Cause No. 92-04-32087

On April 8, 1992, security personnel in an Oregon department store observed Martin in the children's clothing section. They saw him approach a three-year-old girl, take her by the hand, and lead her out of the store into the parking lot towards his truck. The security personnel

¹ Martin stipulated to commitment; there was no trial and no testimony regarding the underlying facts of his prior convictions. He stipulated, however, that the Findings of Fact were agreed upon by the parties and were based upon the pleadings filed in this matter, particularly the Certification for Determination of Probable Cause. CP 102. Therefore, the State is relying on the Certification for Determination of Probable Cause to provide the Court with background information useful to understanding this case. CP 6-16.

stopped Martin and he was arrested. Afterwards, police searching his truck recovered a machete, a six-inch boning knife, a towel, a map with markings, a shovel, and a rake. Martin admitted he kidnapped the child so he could drive her to another location and molest her. CP 7.

Martin was convicted on July 22, 1992, of Kidnapping Second Degree and Attempted Sexual Abuse First Degree in Multnomah County Superior Court. He was sentenced to 120 months in prison. CP 8.

B. Procedural History

On August 26, 2002, the Department of Corrections Community Protection Unit sent a letter to Thurston County Prosecuting Attorney Edward Holm. The letter advised Mr. Holm that Martin appeared to meet the criteria for commitment as a sexually violent predator, and asked him to determine if he intended to file a petition for civil commitment against Martin. CP 84. On March 4, 2003, shortly before Martin was due to be released from total confinement, the Attorney General's Office filed a petition on behalf of the Thurston County Prosecuting Attorney's Office alleging that Martin is a sexually violent predator as defined by RCW 71.09.020(16). CP 3-5. Consistent with its standard practice, the State filed its petition in Thurston County because Martin's sexually violent offense conviction occurred in a state other than Washington.

On October 6, 2004, Martin filed a motion to dismiss the petition, arguing that Thurston County Superior Court was not the proper court to hear the State's petition since he had never been convicted of an offense there. CP 69-86. The State responded that the definition of "sexually violent offense" under RCW 71.09.020(15) allows the use of out-of-state convictions as predicate sexually violent offenses, and that the established practice of the Attorney General's Office is to file such petitions in Thurston County. CP 87-91.

The motion was argued on October 29, 2004. RP 1 (October 29, 2004). The trial court concluded that both jurisdiction and venue were proper. RP 23-34.

On February 22, 2005, Martin stipulated to commitment as a sexually violent predator. He stipulated that his Oregon conviction for Attempted Sexual Abuse in the First Degree was comparable to Child Molestation in the First or Second Degree under Washington law, and that it constituted a sexually violent offense as that term is defined in RCW 71.09.020(15). CP 102-103. The stipulation permitted Martin to appeal the trial court's denial of his motion to dismiss.

On June 14, 2006, the Court of Appeals, Division II, affirmed the trial court's order denying Martin's motion to dismiss. *In re Detention of Martin*, 133 Wn. App. 450, 136 P.3d 789 (2006). The court noted that

Martin had not moved the trial court to change venue, but had only moved to dismiss for lack of jurisdiction. 133 Wn. App. at 453. The court therefore did not address the venue issue, as it had not been raised below. *Id.* at 454.

IV. ARGUMENT

A. **The Plain Language Of RCW 71.09.030 Granted The Thurston County Superior Court Subject Matter Jurisdiction**

Martin asserts that the Thurston County Superior Court did not have jurisdiction to hear the SVP petition, because he has never been convicted of an offense in that county. His argument, however, is based upon an erroneous reading of RCW 71.09.030, which includes both jurisdictional and procedural elements. Martin confuses the two, mistaking the venue-related procedural element for a jurisdictional requirement. His reading of the statute is clearly erroneous, at odds with prior holdings of this Court and would defeat the primary purpose of the Legislature – to protect Washington citizens from dangerous sexual predators. The trial court had subject matter jurisdiction over the State’s petition and this Court should affirm Martin’s commitment.

1. **Jurisdiction and venue are distinct concepts**

Martin confuses jurisdiction with venue. Jurisdiction differs from venue in that the former concerns the power and authority of the court to

act, while the latter concerns the location of the proceeding. *Dougherty*, 150 Wn.2d at 315-16 (references in RCW 51.52.110 to superior court locations where industrial insurance appeals are to be brought designate venue, not subject matter jurisdiction). While the location of an event determines the venue, it does not ordinarily determine jurisdiction. *Id.* at 316 (citing 20 Am. Jur. 2D *Courts* § 70, at 384 (1997)). Statutes that require a case to be filed in a particular county will generally be considered venue-related, and “are ordinarily construed not to limit jurisdiction of the state courts to the courts of the counties thus designated.” *Id.* (quoting 77 Am. Jur. 2D *Venue* § 44, at 651 (1997)). See also *Shoop v. Kittitas County*, 149 Wn.2d 29, 37, 65 P.3d 1194 (2003) (filing requirements of RCW 36.01.050 relate to venue, not subject matter jurisdiction); *Young v. Clark*, 149 Wn.2d 130, 133-34, 65 P.3d 1192 (2003) (filing requirements of RCW 4.12.020 relate to venue, not subject matter jurisdiction).

Though venue and subject matter jurisdiction are distinct concepts, the distinction is sometimes mistakenly “blurred” when they are intertwined within a statute, and “procedural elements have sometimes been transformed into jurisdictional requirements.” *Dougherty*, 150 Wn.2d at 315. This is the error in Martin’s argument.

2. RCW 71.09.030 grants jurisdiction to the superior courts to hear civil commitment cases

In RCW 71.09.030, the Legislature addressed both jurisdiction and venue. Martin's argument fails to recognize that distinction. With respect to jurisdiction, the statute clearly grants it to the superior courts.

This Court, of course, has the final say on the interpretation of a Washington statute, and reviews such questions de novo. *Nat. Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). The primary goal is to give effect to the Legislature's intent. *Id.* Review begins with "the statute's plain language and ordinary meaning." *Id.*

RCW 71.09.030 provides, in pertinent part:

When it appears that: (1) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement on, before or after July 1, 1990 . . . and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation.

The plain language of this statute establishes that it consists of two distinct parts. The first part addresses subject matter jurisdiction, and the second designates venue.

The jurisdictional first part begins with the word "when," followed by several conditions, the last of which is: ". . . and it appears that the

person may be a sexually violent predator[.]” The word “when” is “[f]requently employed as equivalent to the word ‘if’ in legislative enactments and in common speech.” Black’s Law Dictionary 1431 (5th ed.1979). Thus, the first part of the statute sets up the conditions that, if met, establish subject matter jurisdiction.

Relevant to this case, the first part of RCW 71.09.030 establishes the following jurisdictional prerequisites: The subject of a petition must: (1) have been previously convicted of a sexually violent offense; (2) be about to be released from total confinement; and (3) appear to be a sexually violent predator.² There is no dispute that these are jurisdictional conditions and Martin does not dispute that the State satisfied them at the time of filing. The State asserts that these are the sole prerequisites for establishing subject matter jurisdiction. Martin disagrees.

Martin requests that this Court ignore the jurisdictional provision in RCW 71.09.030 and replace it with the language addressing venue.

The portion of RCW 71.09.030 that addresses venue reads as follows:

... the prosecuting attorney of *the county where the person was convicted or charged* or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a

² RCW 71.09.020(16) defines “sexually violent predator:”

“Sexually violent predator” means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

“sexually violent predator” and stating sufficient facts to support such allegation.

Id. (emphasis added). The language “the county where the person was convicted or charged” clearly refers to the county where the person was convicted or charged with a sexually violent offense – the only type of offense discussed in the statute. Thus, in this second part of RCW 71.09.030, the Legislature located venue for SVP cases in the county where the respondent was last charged or convicted with a sexually violent offense. The statute thus is silent regarding cases where a respondent’s sexually violent offense was not committed in Washington State.

3. The superior courts’ universal original jurisdiction cannot be overridden by a venue designation

Martin believes that the venue language in RCW 71.09.030 is jurisdictional, and that its plain language precludes the filing of a petition in a county where the respondent has not committed a sexually violent offense. His analysis is contrary to this Court’s prior holdings on the superior court’s jurisdiction, because statutes that require a case to be filed in a particular county are considered venue-related, and “are ordinarily construed not to limit jurisdiction of the state courts to the courts of the counties thus designated.” *Dougherty*, 150 Wn.2d at 316.

This Court has held that the Legislature cannot restrict subject matter jurisdiction to only certain counties of the state. *Id.* at 320 (filing appeal in wrong county does not defeat subject matter jurisdiction, and limitation of superior court's appellate jurisdiction to designated counties relates to venue, not jurisdiction); *Shoop*, 149 Wn.2d at 37 (limitation of superior court's original jurisdiction to only certain counties would violate article IV, section 6 of Washington Constitution); *Young*, 149 Wn.2d at 130, 133-34 (companion case to *Shoop*). The Washington Constitution vests the superior courts of this state with "universal original jurisdiction." *Young*, 149 Wn.2d at 133-34 (quoting *Moore v. Perrott*, 2 Wn. 1, 4, 25 P. 906 (1891)). Consequently, filing requirements addressing venue cannot defeat subject matter jurisdiction. *Shoop*, 149 Wn.2d at 37.

Martin's reading of the venue portion of RCW 71.09.030 as restricting subject matter jurisdiction violates this Court's prior decisions. If a venue designation by the Legislature cannot override the superior court's subject matter jurisdiction, neither can the absence of a venue designation. Moreover, once granted jurisdiction, the superior courts of this state have implied powers to do anything suitable to carry out the Legislature's intent:

When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of

the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws.

RCW 2.28.150. The trial court below had subject matter jurisdiction and the implied powers to proceed in the absence of a legislatively-designated venue.

While the Legislature did not restrict venue for cases such as Martin's, in RCW 71.09.030 it authorized the Attorney General, when requested by a county prosecutor, to file a petition when a person who appears to be an SVP has been convicted of an out-of-state offense. Here, the Department of Corrections Community Protection Unit notified the Thurston County Prosecutor that Martin appeared to meet the criteria for commitment as a sexually violent predator. CP 84; RCW 71.09.025. The Attorney General's Office filed the SVP petition on behalf of the Thurston County Prosecutor. CP 3-5. The Petitioner, therefore, complied with the plain language of the venue provisions in RCW 71.09.030 by filing the SVP petition at the request of the county's prosecutor.

Additionally, Martin never challenged venue in Thurston County, only the superior court's subject matter jurisdiction. *Martin*, 133 Wn. App. at 451. As Division II noted, "the remedy for improper venue is a change of venue, not dismissal of the action." *Id.* Where the

plain language of RCW 71.09.020(15) and .030 provides for filing a petition on those whose predicate convictions are out-of-state, but does not specify the venue, there is no jurisdictional issue and Martin's commitment should be affirmed.

B. Legislative Intent Confirms That Thurston County Had Subject Matter Jurisdiction Under RCW 71.09.030

The plain language of RCW 71.09.030 grants subject matter jurisdiction to the Thurston County superior court. However, if the Court finds any ambiguity in the statute, it is appropriate to engage in statutory construction. The primary goal of construction is to give effect to the Legislature's intent. *Riveland*, 138 Wn.2d at 19. Martin's interpretation of the statute undermines its purpose and should be rejected.

The statute must be construed so that "no portion is rendered meaningless or superfluous." *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). The Legislature is presumed not to include unnecessary language when it enacts legislation. *McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004).

Here, a reading of the entire statute reveals that the Legislature clearly intended to protect the public from all dangerous sexual predators, not just those with in-state predicate offenses. RCW 71.09.020(15)(b) provides that any out-of-state conviction that is comparable to a sexually

violent offense under Washington law constitutes a sexually violent offense. This provision must be interpreted with all others so that the SVPA is read as a whole, all of its language is given effect, and its provisions are harmonized with each other. *In re Estate of Black*, 153 Wn.2d 152, 163, 102 P.3d 796 (2004); see *Anderson v. State, Dep't of Corrections*, 159 Wn.2d 849, 858-64, 154 P.3d 220 (2007) (absence of authority in one provision not controlling, where read within statute as a whole).

The intent of the Legislature to protect the public from violent and predatory sexual offenders is readily apparent. RCW 71.09.010. This goal is furthered by interpreting RCW 71.09.030 to allow prosecutors to file petitions on offenders in Washington whose predicate sexually violent offenses were committed elsewhere. If Martin's reading of RCW 71.09.030 is accepted, it renders RCW 71.09.020(15)(b) meaningless. Martin's rewriting of the statute would strip the superior courts of their ability to hear a case where the predicate conviction occurs out-of-state.

A court must also avoid constructions that yield unlikely, absurd or strained consequences. *Kilian*, 147 Wn.2d at 21. Statutes are to be given a rational, sensible construction. *State v. Smalls*, 99 Wn.2d 755, 766, 665 P.2d 384 (1983). The State's interpretation conforms to these

principles. Martin's interpretation, conversely, is neither rational nor sensible. Martin is attempting to overcome his failure to challenge venue in Thurston County by asking the Court to modify the jurisdictional provision of the statute by incorporating the venue provision into it.

Martin contends that the venue provision of the RCW 71.09.030 omits reference to cases in which the conviction occurred out-of-state. Even if this is so, Martin's argument still cannot prevail. Omissions in a statute can render it ambiguous and subject to construction. *State v. Hennings*, 129 Wn.2d 512, 522, 919 P.2d 580 (1996). Where a statute is ambiguous, courts will "seek help in interpreting [a] statutory section by determining legislative intent in the context of the whole statute and its general purpose." *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 800, 808 P.2d 746 (1991). Because the Legislature's intent in the SVPA is clear, a legislative omission in the RCW 71.09.030 venue provision cannot be read to undermine that purpose.

This Court has reviewed three classes of cases where the Legislature has omitted language from a statute. *Hennings*, 129 Wn.2d at 523. In the first class, a party alleged an omission, but the Court found reasons why the Legislature "may have intended the literal meaning of the statute." *Id.* In the second class, the Court concluded there was an omission, but the omission did not "undermine the purpose of the statute"

and the statute was considered rational, though inconsistent. *Id.* at 523-24. In the third class, an omission by the Legislature “created a contradiction in the statute that rendered the statute absurd and undermined its sole purpose.” *Id.* at 524. For this third class, this Court has inferred language to accomplish the purpose of the statute. *Id.* (citing *State v. Taylor*, 97 Wn.2d 724, 729-30, 649 P.2d 633 (1982)).

The rational construction of the statute is to infer that the Legislature intended that prosecutors have discretion over where to file SVP petitions relying on out-of-state predicate convictions. Such an interpretation sustains the statute’s primary purpose and is consistent with this Court’s recognition of instances where “a statute is silent or ambiguous on an issue and the court takes the opportunity to imply a necessary procedure.” *State v. Hughes*, 154 Wn.2d 118, 151, 110 P.3d 192 (2005) (citing at n.14 *United States v. Buckland*, 289 F.3d 558 (9th Cir.2002) as having inferred a procedure about which a statute was silent). And, though reluctant to do so, this Court will even at times add words to a statute “where it is necessary to carry out legislative intent.” *Born v. Thompson*, 154 Wn.2d 749, 776, 117 P.3d 1098 (2005) (quoting *Hennings*, 129 Wn.2d at 523).

Of course, in this case, where Martin has raised only a jurisdictional issue, it is not necessary to address venue. The plain

language of RCW 71.09.030 extends subject matter jurisdiction to the superior courts of Washington. To the extent that RCW 71.09.030 is ambiguous, application of basic statutory construction principles yields the same result. Martin's reading of the statute is clearly at odds with the Legislature's intent and his commitment should be affirmed.

V. CONCLUSION

Under RCW 71.09.030, the Thurston County superior court had subject matter jurisdiction to consider the petition. Therefore, the State respectfully requests that this Court affirm the order civilly committing Martin as a sexually violent predator.

RESPECTFULLY SUBMITTED this 16th day of July, 2007.

ROBERT M. MCKENNA
Attorney General


MALCOLM ROSS, WSBA # 22883
Assistant Attorney General
Attorneys for Respondent