

89689-5

NO. 41081-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

A.G.S. (DOB: 06/19/93),

Appellant.

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

The Honorable James E. Warme

SUPPLEMENTAL BRIEF OF APPELLANT

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A. SUPPLEMENTAL STATEMENT OF THE CASE

On March 14, 2011, A.G.S. filed his opening brief, arguing that the trial court erred in ordering the release of his confidential SSODA evaluation. As part of his argument, A.G.S. discussed this Court's decision in State v. Koenig, 155 Wn. App. 398, 299 P.3d 910 (2010), review granted, 170 Wn.2d 1020, 245 P.3d 774 (2011), regarding RCW 4.24.550. Brief of Appellant at 5-7. After the State filed its response brief, this Court stayed the matter on June 15, 2011, pending the Supreme Court's resolution of Koenig. The Supreme Court's decision became final on January 11, 2013, Koenig v. Thurston County, 175 Wn.2d 837, 287 P.3d 523 (2012). A.G. filed a motion to lift the stay and file a supplemental brief, which was granted on February 27, 2013.

B. ARGUMENT

REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT ERRED IN ORDERING THE RELEASE OF A.G.S.'s CONFIDENTIAL SSODA EVALUATION.

The Supreme Court's decision in Koenig has no effect on this case because the Court's narrow holding has no application here. In Koenig, the Thurston County Prosecuting Attorney's Office refused Koenig's request for a SSOSA evaluation under the Public Records Act.¹ Koenig, 173 Wn.2d at 841-42. Thurston County argued that a SSOSA evaluation

¹ Koenig also made a request for a victim impact statement which is not relevant here.

is exempt under the investigative records exemption, RCW 42.56.240, which provides in relevant part:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

Koenig, 173 Wn.2d at 842-43.

The Supreme Court determined that records are investigative if they were “compiled as a result of a specific investigation focusing with special intensity upon a particular party” and the investigation must be “one designed to ferret out criminal activity or to shed light on some other allegation of malfeasance.” Id. at 843. When applying the investigative records exemption, a court must find that “an investigative entity is compiling and using the relevant record to perform an investigative function.” Id. at 849.

The Court concluded that a SSOSA evaluation is not an investigative record because it principally provides a basis for the court to impose sentencing alternatives and is not part of an investigation into criminal activity or an allegation of malfeasance. In holding that a

SSOSA evaluation is not exempt under the investigative records exemption, the Court declined to consider whether it is essential to effective law enforcement or for the protection of any individual's right to privacy. Id. at 849-50.

The Koenig decision has no relevance here because A.G.S. is not asserting that his SSODA evaluation is exempt as an investigative record under RCW 42.56.249. Furthermore, Koenig involves a SSOSA for adult offenders, which is clearly distinguishable from a SSODA governed by chapter 13.50 RCW.

Under the unique dual nature of juvenile court record keeping, juvenile records are divided into two files. The "official juvenile court file" is the "legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders." RCW 13.50.010(1)(b). The "social file" is the "juvenile court file containing the records and reports of the probation counselor." RCW 13.50.010(1)(d). All records "other than the official court file" are confidential. RCW 13.50.050(3). Thus, the contents of the social file are confidential and not open to public inspection. State v. J.A.B., 98 Wn. App. 662, 664, 991 P.2d 98 (2000). "The policy of confidentiality is designed to protect the privacy of the juvenile's personal and family matters." Id.

In State v. Sanchez, 169 Wn. App. 405, 279 P.3d 999, review granted, 175 Wn.2d 1023, 291 P.3d 253 (2012), the juvenile court transmitted Sanchez’s SSODA evaluation to the sheriff’s office to enable it to establish a risk assessment. Sanchez argued first, that the court had no authority to transmit the SSODA evaluation to the sheriff and second, since it was provided to the sheriff, it is at risk of being released under the Public Records Act, chapter 42.56 RCW. Sanchez, 160 Wn. App. at 407-09.

In affirming the trial court, the Court of Appeals pointed out that RCW 13.50.050² provides that all records other than an official juvenile court file are confidential and may be released only in certain circumstances, such as to the sheriff’s office. Further, RCW 42.56.070 provides for the protection of records from disclosure where specifically exempt from disclosure by other statutes, such as RCW 13.50.050. Sanchez, 160 Wn. App. at 409-410. The Court noted that Sanchez agreed with the State that “its policies would prohibit re-disclosure of the

² RCW 13.50.050 provides:

- (1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.
- (2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.
- (3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

evaluation under the public policy and rights to privacy contained within the PRA under RCW 42.56.070.” Sanchez, 160 Wn. App. at 410.

Under Sanchez and J.A.B., a SSODA evaluation is confidential and not open to public inspection because it is a record filed in the social file, not the official juvenile court file. Accordingly, the SSODA Evaluation by PPA dated 03-22-10 and SSODA Evaluation by VGC dated 06-14-10 should be filed in the confidential social file. CP 12. As the trial court here found in finding of fact 6, “the law governing the release of Public Records would not allow the release of the evaluation and the victims do not have any other way of obtaining this information of which the Court is aware.” CP 25-26.

C. CONCLUSION

For the reasons stated here, and in appellant’s opening and reply briefs, this Court should reverse the trial court and hold that SSODA evaluations are records filed in the confidential social file and not open to public inspection.

DATED this 29th day of March, 2013.

Respectfully submitted,

/s/ Valerie Marushige
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DECLARATION OF SERVICE

On this day, the undersigned sent by e-mail, the document to which this declaration is attached to Amie Hunter, Cowlitz County Prosecutor's Office, 312 SW 1st Avenue, Kelso, Washington 98626.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 29th day of March, 2013 in Kent, Washington.

/s/ Valerie Marushige
VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

MARUSHIGE LAW OFFICE

March 29, 2013 - 12:52 PM

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