

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.

See
STATE OF WASHINGTON
11.11.11 PM 10:50
COURT OF APPEALS

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

The Honorable James E. Warme

REPLY BRIEF OF APPELLANT

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P M 6-30-11

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A. ARGUMENT IN REPLY

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

The State argues that the trial court “properly allowed disclosure of the SSODA evaluation to the child victims and their parents” but fails to cite any authority that supports its argument. Instead, the State cites article I, section 35 of the Washington Constitution, RCW 7.69, and RCW 13.50, which contain no provisions that entitle child victims to have access to confidential SSODA evaluations. Brief of Respondent at 8-18. Unable to cite to any relevant authority, the State asserts that “Washington’s broad and liberal crime victim’s laws” justify the release of the evaluation. Brief of Respondent at 18. The State argues further that RCW 4.24.550 does not apply and therefore this Court’s decision in Koenig v. Thurston County, 155 Wn. App. 398, 229 P.3d 910 (2010), only provides “guidance” in this case. Brief of Respondent at 18-22. Consequently, the State’s argument leads to the only logical conclusion that the trial court had no authority to release the SSODA evaluation.

Irrespective of the State’s argument, the record reflects that defense counsel brought to the court’s attention that the parents of the victims intended to disseminate information in the evaluation to the public,

which was not disputed by the State. 5RP 4-5. Upon ordering release of the evaluation to the parents, the court recognized that there was no limitation to what the parents could do with the information because when it is released, “we lose control.” 6RP 7-8. At sentencing, following A.G.S.’s plea hearing, he addressed the court and took responsibility for his actions:

THE DEFENDANT: I know that I hurt a lot of people by doing this, and that I want to -- I want to do treatment. I want to help myself, and I want to try to -- try to make this as good as I can, and I want to make sure that this never happens again. It was my fault, and I just (sic) try to make it better.

4RP 24.

It is apparent that A.G.S. regrets that he cannot change the past but realizes that he can work toward a “better” future through rehabilitation. Unrestricted release of the confidential evaluation not only violates his right to privacy but jeopardizes his future.

For all intents and purposes, release of the SSODA evaluation to the parents constitutes disclosure to the public, which implicates this Court’s decision in Koenig. Nonetheless, Koenig is distinguishable where the trial court here found in finding of fact 6 that “[t]he law governing the release of Public Records would not allow the release of the evaluation”

which would include the Public Records Act.¹ “It is well-established law that an unchallenged finding of fact will be accepted as a verity upon appeal.” State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Reversal is required because the trial court had no authority to disclose the confidential SSODA evaluation. In any case, the court’s findings of fact are not supported by substantial evidence and consequently do not support its conclusion to release the evaluation. See Opening Brief of Appellant.

B. CONCLUSION

For the reasons stated here and in appellant’s opening brief, this Court should reverse the trial court’s order to protect A.G.S.’s right to privacy.

DATED this 30th day of June, 2011.

Respectfully submitted,



VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant, A.G.S.

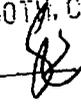
¹ The Findings of Fact and Conclusions of Law are attached as an appendix. CP 25-26.

APPENDIX

FILED
SUPERIOR COURT

2010 AUG 10 P 3:49

COWLITZ COUNTY
RONI A. BOOTH, CLERK

BY 

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,)

Plaintiff,)

vs.)

ANTHONY SIRAGUSA,
DOB 6/19/1993)

Respondent.)

No. 10-8-00130-4

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
ON VICTIM'S MOTION FOR RELEASE
OF RECORDS

On June 29, 2010 and July 20, 2010, the Honorable Jim Warne, Superior Court Judge, presided over the victims' request for release of the Respondent's psycho-sexual SSODA evaluation. The court heard argument, and found the following:

Findings of Fact

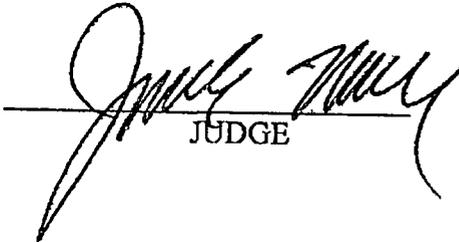
1. The victims' parents have requested a copy of the Respondent's psycho-sexual SSODA evaluation.
2. The evaluation was used by the Court in determining the Respondent's disposition.
3. The victims' families have a right to know the information considered by the court in making its disposition. This is essential in the open administration of justice.
4. The open and public nature of the courts is central to the administration of justice.

- 1 5. The Court finds the following sections of the evaluation were relevant to the Court's
2 disposition decision and related to the particular offense:
3 a. Pages 1-5
4 b. Page 6 down to the section labeled Sexual History
5 c. Page 8 section labeled Millon Adolescent Clinical Inventory
6 d. Page 10, beginning with the section labeled Polygraph Examination, through
7 the end of the report to page 15.
8
9 6. The law governing the release of Public Records would not allow the release of the
10 evaluation and the victims do not have another way of obtaining this information of
11 which the Court is aware.

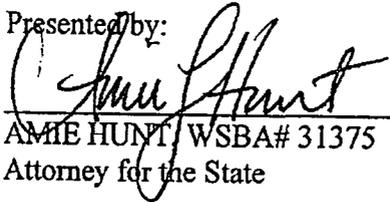
12 **Conclusions of Law**

- 13 1. The portions of the evaluations mentioned in Finding of Fact Number 4 shall be
14 released to the victims.

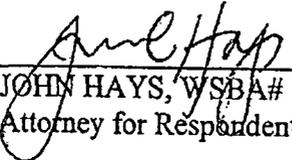
15
16 DATED this 10 day of ~~July~~^{Aug}, 2010.

17
18 
19 JUDGE

20 Presented by:

21 
22 AMIE HUNT, WSBA# 31375
23 Attorney for the State

24 Approved as to form:

25 
JOHN HAYS, WSBA#
Attorney for Respondent

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Sarah Silberger, Cowlitz County Prosecutor's Office, 312 SW First 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 30th day of June 2011, in Kent, Washington.


VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

11 JUN 2011 10:00 AM
KENT, WA