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STATE OF WASHINGTON  
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NO. 89689-5  
Cowlitz Co. Cause NO. 10-8-00130-4

**SUPREME COURT OF STATE OF  
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

A.G.S.,

Petitioner.

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**ANSWER TO PETITION FOR REVIEW**

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 ORIGINAL

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**I. ANSWER TO ISSUES PRESENTED FOR REVIEW BY THE PETITIONER**

1. The decision of the Court of Appeals does not conflict with a decision of this court.
2. The petition does not involve an issue of substantial public interest that should be determined by the Supreme Court.

**II. ISSUE PRESENTED FOR REVIEW BY THE RESPONDENT**

Does a juvenile have a statutory right to have a Special Sex Offender Evaluation filed in the juvenile social file and not the court file?

**III. STATEMENT OF THE CASE**

The State agrees with the Statement of the Case given in the Petition for Review with the following exceptions and additions:

A.G.S. (DOB: 06/19/93) was charged with two counts of rape of a child in the first degree and two counts of child molestation in the second degree, to which A.G.S. pled guilty. CP 4-6, 7-16; 3RP 11-12. The victims were his young nieces and nephews and his crimes sharply divided the family. 4RP 7 - 8, 11 - 12, 18. The child victims' parents acted as their representatives in the criminal process. See 4RP 5 - 24.

At A.G.S.'s disposition hearing on June 22, 2010, the court noted that the SSODA evaluations submitted by the State and the Defense were similar and that both concluded that A.G.S. is amenable to treatment. 4RP 30. In noting that the reports did not address the emotional harm to the child victims, the court stated the following:

“One thing that they [the reports] do not discuss, but that I’ve heard here today very eloquently, is how damaging his conduct was to these children. This is – this is the overwhelming consideration to me: There’s been a huge amount of damage done to these children, and I think, quite frankly, we’d give them the wrong message if he was placed on the SSODA disposition. There’s been a huge amount of damage... this conduct, extensive, ongoing is not acceptable.”

4RP 30-31. Although the reports did not address the emotional injury to the child victims, at sentencing the parents of the victims addressed the court extensively on June 22, 2010, and the final disposition of the matter was profoundly impacted by their victim impact statements which are reproduced for the court in 4 RP 5 - 24. Each parent testified to the extreme emotional harm that each of their children is currently working through in daily life. They described the intensive therapy their children had been going through and were continuing to go through to overcome damage resulting from the crimes that were committed against them. The court deviated from the agreed sentence and declined a SSODA

disposition, sentencing the defendant to the maximum standard range of 53 to 76 weeks. 4RP 31. The court set presentation of the Order on Adjudication and Disposition to June 29, 2010. 4RP 32.

On June 29, 2010, at the presentation of the order, the state moved for an order to allow it to release the defendant's SSODA evaluation to the parents of the child victims. 5 RP 3. In its argument, the state explained that the victims' parents had requested this evaluation and that the state believed that it needed an order from the court to release it. 5RP 4. The state argued that the SSODA evaluation would assist in the victims' and their families' therapy. 5RP 7. The court recognized that there was a balancing of the laws:

The considerations – again, it's a balancing. Families of the victims have a – seems to me, a right to some information about the Defendant, the Defendant's evaluation, the information on which the decisions were made. So I think they have a right to some information.

\* \* \*

The balancing is, there may be some parts of the report that they have no need or right to, and that would not be helpful, and may be harmful.

So, my initial inclination is to go through the report and try and make a determination about which things might rightfully be given to the victims, the families of the victims, and which things out [*sic*] not to be....

SRP 5-6.

Defense counsel then argued that the state had already provided its own SSODA evaluation of the defendant to the victims and their parents. 5 RP 6. The court pointed out that the two evaluations were not “substantially different” and that they both came to the same conclusion that the defendant was “amenable to treatment.” 4 RP 28, 30 5 RP 6. The court ordered defense counsel to redact the sections of the SSODA evaluation which were dissimilar to the state’s SSODA evaluation of the defendant and which defense counsel would consider inappropriate and set a follow-up hearing date on July 20, 2010. 5 RP 7-8.

On July 20, 2010, the Court ordered that the following sections of the defendant’s SSODA evaluation could be released to the parents of the child victims: Page 1-6, down to the section titled “Sexual History” but not including that section; the section “Millon Clinical Inventory” on Page 8; and Page 10, starting with the “Polygraph Examination,” to the end of the report. 6 RP 6. The court clarified:

“The – the issue on which I’m deciding this is, essentially, that this is the administration of justice; that it’s supposed to be done openly; and that the evaluation was a matter I considered in making my Disposition Order; and that the family certainly has a right to understand what was considered.

And the part that has been – small part that has been excluded, essentially, does not relate to the particular offense and is not necessary for the family to understand how the decision was made that was made here.

6 RP 8-9. On August 10, 2010, the court entered the following Findings of Fact and Conclusions of Law On Victim’s Motion For Release Of Records:

**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.

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

**Conclusion of Law:**

1. The portions of the evaluation mentioned in Finding of Fact Number 4 [clerical error – should be "5" per the record found at 6 RP 6] shall be released to the victims.

At the presentation of the Findings of Fact and Conclusions of Law on August 10, 2010, the court also granted the defense motion to stay the release of defendant's SSODA evaluation and had the clerk seal the defendant's SSODA evaluation in the court file, pending the outcome of this appeal. 7 RP 3.

The Court of Appeals ruled under RCW chapter 13.50 where a SSOSA evaluation is filed controls if a SSODA evaluation may be released. Division Two remanded the matter back to the trial court for an evidentiary finding of where the evaluation was filed.

**IV. ARGUMENT REGARDING ISSUES PRESENTED FOR REVIEW BY THE PETITIONER**

**THE COURT SHOULD NOT GRANT REVIEW AS THE APPELLATE COURT DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN SANCHEZ AND DOES NOT INVOLVE A SUBSTANTIAL PUBLIC INTEREST.**

The Defendant argues the Court of Appeals decision is in conflict with the Supreme Court decision in State v. Sanchez, 177 Wn.2d 835, 306 P.3d 935 (2013). In Sanchez, this court determined whether a juvenile's SSODA evaluation could be released to local law enforcement for the purpose of making sex offender risk assessments. Id. at 842. Sanchez pled guilty to Child Molestation in the first degree and moved under General Rule 15 to seal the evaluation to prevent the Department of Social and Health Services from using the evaluation in a dependency proceedings. Id. The trial court initially granted the motion but vacated it after learning the evaluations were released to the Sheriff's Office as a

routine part of the duty to carry out risk assessments. Id. Sanchez appealed and moved to stay the release to the Sheriff's Office. Id.

The Supreme Court's analysis covered the statutes governing release for risk assessments, a defendant's constitutional right to privacy, statutory right to privacy, protection of medical records under HIPPA, and court rules. The court reviewed the release of SSODA evaluations for risk assessments under RCW 4.24.550. Id. at 843-46. The Court determined the statute required the trial court to release the information. Id. at 843. Moreover, while Sanchez **might** have a constitutional privacy concern in the release of SSODA evaluations, there was a legitimate basis for the release. Id. at 847.

The Court did consider whether release of Sanchez's SSODA evaluation would violate his statutory right to privacy under RCW 13.50.050(2). Id. at 847. The Court, citing to RCW 13.50.010(1), divided juvenile court records into three categories, the official juvenile court file, including court filings, findings, orders, and the like; the "social file," which contains reports of the probation counselor; and other miscellaneous records. Id. The Court, without citation to where the SSODA evaluation should be filed, stated the evaluation is part of the

social file as it is the examiner's report and it is confidential. Id. It is unclear from the opinion why an examiner's report would be a probation counselor's report, unless in King County the probation officer is the examiner.

This opinion is not in conflict with the Court of Appeals decision. The Court of Appeals decision asks the trial court to determine where the SSODA evaluation was filed. Without a decision whether it was filed in the social file or court file there is no factual or legal contradiction. In fact, the issue is not ripe for review. Should the trial court determine the evaluation was in the social file, there is no contradiction. A.G.S's issue is much like Sanchez's worry the evaluation may be released from the Sheriff's Office under a Public Records Act request. The Supreme Court indicated Sanchez' worry was not ripe for review. Id. at 848. A.G.S's worry is speculative as there is no factual decision of the location of the evaluation.

Even if the trial court determines the evaluation was in the court file, there is no contradiction as the Washington Supreme Court's decision over where the evaluation is filed appears to be dicta. The opinion does not consider where the evaluation should be filed, but rather takes a

narrow view of whether the evaluation can be released to law enforcement. Sanchez's attempts to inflate his argument by creating the potential for release to more persons than law enforcement fail. The Court routinely brings the argument back to the release at issue, reminding Sanchez, that a release to law enforcement is the issue and not full public disclosure. Id. at 850.

The Defendant also argues the matter is one of substantial public concern the court should consider to protect the privacy rights of children. It is important to remember, the defendant wants to keep his independent SSODA evaluation a secret. He presented it to the court in his request for a SSODA. In general, open courts are a matter of substantial public concern because the public is entitled to know what happens in court.

However, the matter is settled as there is a statute directly on point governing the release of juvenile court records. The real issue is a factual one. Where was the evaluation filed? If in the middle of a court proceeding a defendant asks the trial court to consider a document and asks the matter be filed, there is no authority the matter be filed with the probation counselor's reports, rather than the court file. Especially, if the evaluation did not originate with the probation counselor as it did in the

present case. What A.G.S is asking this court to do is give a policy directive of where to file SSODA evaluations. This question should be up to the Legislature. The Legislature has the ability to make law and expand definitions. The Legislature could have included in the definition of social file the word evaluation or even included the term SSODA evaluation. They did not. As such, the court should not consider the matter of substantial public concern and expand the definition.

**V. CONCLUSION**

For the reasons stated above, A.G.S's petition for discretionary review should be denied.

Respectfully submitted this 13<sup>th</sup> day of January, 2014.

SUSAN I. BAUR  
Prosecuting Attorney

By:



AMIE L. HUNTER/WSBA # 31375  
Criminal Deputy Prosecuting Attorney  
Representing Respondent

**CERTIFICATE OF SERVICE**

Michelle Sasser, certifies the Response to Petitioner for Review was served electronically via e-mail to the following:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on January 15<sup>th</sup>, 2014.

  
\_\_\_\_\_  
Michelle Sasser

## OFFICE RECEPTIONIST, CLERK

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**From:** Sasser, Michelle <SasserM@co.cowlitz.wa.us>  
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**Attachments:** SKMBT\_65414011511070.pdf

Attached, please find the Answer to Petition for Review regarding the above referenced Case.

If you have any questions, please contact this office.

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