90906-7

No. 44654-5-II

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

HOWARD SHALE,

Appellant.

BRIEF OF RESPONDENT

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INTRODUCTION

Restatement of Issue

1. Does a State court have jurisdiction over a convicted sex offender tribal member staying on another tribe's land when he violates RCW 9A.44.130(1)(a) by failing to register with the county sheriff?

STATEMENT OF THE CASE

Statement of Facts

On July 25, 1997, Mr. Shale was convicted in the United States District Court for the Western District of Washington in Cause No. CR97-5066FDB for the offense of Sexual Acts with a Child Under Twelve. This offense, if charged in Washington, would be the equivalent of Rape of a Child in the First Degree, a Class A felony, pursuant to RCW 9A.44.073.

Shale is a member of the Yakima tribe of the State of Washington. RP 25. When arrested he was living on the Quinault Indian reservation. RP 8; CP 8-12.

Mr. Shale was charged with Failing to Register as a Sex Offender in Jefferson County Superior Court. CP 1-2. Mr. Shale moved pre-trial to dismiss for lack of jurisdiction. RP 9.

The court determined the State had jurisdiction because Mr. Shale was not an enrolled member of the Quinault Nation. CP 16-19.

Shale stipulated to the police reports and the court found him guilty at a bench trial. RP 23; CP 20. This appeal was timely filed.

ARGUMENT

A. Standard of Review

Where there is no factual dispute as to the location of the alleged crime, the question of the State's jurisdiction is a question of law. *State v. L.J.M.*, 129 Wn.2d 386, 396, 918 P.2d 898 (1996). This court reviews questions of law de novo. *State v. Squally*, 132 Wn.2d 333, 340, 937 P.2d 1069 (1997).

B. Jurisdiction

Shale argues that the State did not have jurisdiction over him because he was a tribal member living on tribal lands.

An Indian who retains his tribal relations may be prosecuted in the courts of a state for a crime committed at a place without the limits of a reservation. *State v. Williams*, 13 Wn. 335, 43 P. 15 (1895).

RCW 37.12.010 clearly states that the "state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with ... Public Law 280." The statute then provides that " such assumption of jurisdiction shall not apply to Indians when on

their tribal lands or allotted lands within an established Indian reservation" without a resolution "except for the following:" (and names eight crimes not including failure to register as a sex offender) (emphasis added). *State v. Abrahamson,* 157 Wn.App. 672, 683, 238 P.3d 533 (2010).

This court has held that the State's jurisdiction to prosecute an Indian depends on whether the crime was committed on that Indian's tribal lands. *State v. Pink,* 144 Wn.App. 945, 956, 185 P.3d 634 (2008).

As the trial court observed,

> It is clear that the court in *Pink* read the word 'their' in RCW 37.12.010 as a specific reference between the Indians and their reservation. In other words, the state would not have jurisdiction to prosecute a Quinault Indian for a crime committed on the Quinault reservation, but would have jurisdiction to prosecute a Yakima Indian for a crime committed on the Quinault reservation. CP 18.

Here, Shale was a Yakima Indian visiting a relative on the Quinault Nation's Tribal Lands, thus the trial court properly found the State had criminal jurisdiction over him. This appeal is without merit and should be denied.

A sex offender has a statutory duty to register with the sheriff of the county of residence. RCW 9A.44.130(1)(a). The offender must keep that registration current as to his/her whereabouts. *State v. Peterson*, 145 Wn.App. 672, 676, 186 P.3d 1179 (2008).

C. Registration of Sex Offenders

This offense is one that requires registration under the Revised Code of Washington 9A.44.132(1)(a). This is a federal sex offense conviction and would classify as a Washington State sex offense pursuant to the definition of a sex offense in RCW 9A. 44.128 (10(g).

RCW 9A.44.130 (1)(a) states in part that any adult or juvenile residing whether or not the person has fixed residence...shall register with the county sheriff for the county of the person's residence....

"The statute imposes one duty: to register with the sheriff." *State v. Peterson*, 145 Wn.App. 672, 677, 186 P.3d 1179 (2008).

Any adult or juvenile who has been found to have committed or has been convicted of any sex offense shall register with the county sheriff for the county of the person's residence. RCW 9A.44.130.

The 1990 Legislature enacted the Community Protection Act to address concerns about sex offenders. One of the provisions of that legislation was the registration of convicted sex offenders with local law enforcement authorities. The Legislature articulated the purpose of registration as follows:

> The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and

> quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in section 402 of this act.
>
> Laws of 1990, ch. 3, § 401.

Thus, the legislative purpose behind sex offender registration is to assist law enforcement agencies' protection efforts. In *State v. Ward*, 123 Wn.2d 488, 869 P.2d 1062 (1994), we upheld the registration statute against constitutional challenges on grounds it was an ex post facto enactment, and violated rights to due process and equal protection. *State v. Heiskell*, 129 Wn.2d 113, 916 P.2d 366 (1996).

The purpose of the sex offender registration statute is to aid law enforcement in keeping communities safe by requiring offenders to divulge their presence in a particular jurisdiction. Laws of 1990, ch. 3, § 401. The criminal punishment attendant to failure to register helps effectuate this purpose. The Court of Appeals correctly observed that allowing individuals to escape punishment when they have failed to register within the prescribed deadlines is an absurd reading of the statute. *State v. Peterson*, 145 Wn.App. at 677, 186 P.3d 1179 (citing *State v.*

Ammons, 136 Wn.2d 453, 457, 963 P.2d 812 (1998) (noting that courts cannot construe statutes in a matter that renders them absurd)).

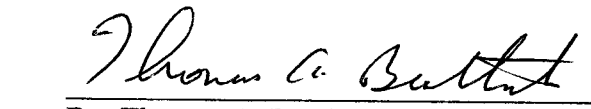
Reduced to its essentials, [Defendant's] argument is that an offender who successfully hides his whereabouts after moving cannot be convicted of failure to register despite clear evidence that he failed to register within any statutorily prescribed deadline. We reject this argument and hold that residential status is not an element of the crime of failure to register. *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010). There is only one method by which an offender fails to register, and that is if he moves from his residence without notice. *Id.* at 770.

CONCLUSION

The State respectfully requests that this Court affirm the trial court and that Appellant be ordered to pay costs, including attorney fees, pursuant to RAP 14.3,18.1 and RCW 10.73.

Respectfully submitted this 1st day of October, 2013.

SCOTT ROSEKRANS, Jefferson County
Prosecuting Attorney



By: Thomas A. Brotherton, WSBA # 37624
Deputy Prosecuting Attorney

PROOF OF SERVICE

I, Janice N. Chadbourne, certify that on this date:

I filed the State's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of same using the Court's filing portal to:

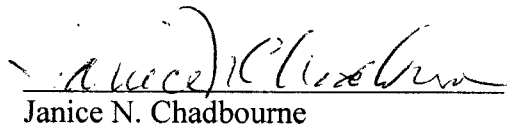
Backlund & Mistry
backlundmistry@gmail.com

And to Defendant via U.S. Mail, postage prepaid:

Howard Shale
211 2nd Ave., #10
Forks, WA 98331

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

Signed at Port Townsend, Washington on October 1, 2013.



Janice N. Chadbourne
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JEFFERSON COUNTY PROSECUTOR

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