

No. 70613-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL THOMAS THRASHER,

Appellant.

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2013 DEC 30 PM 4:36

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

The Honorable Laura Gene Middaugh

BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR..... 1

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT..... 2

THE TRIAL COURT’S ORDER DENYING RELIEF
FROM THE REQUIREMENT TO REGISTER AS A
SEX OFFENDER SHOULD BE REVERSED. 2

1. A sex offender may petition to be relieved from the duty to
register as a sex offender..... 2

2. The superior court erred in failing to hold a hearing at which
Mr. Thrasher would have been given the opportunity to prove
by clear and convincing evidence that he posed an extremely
low risk of reoffense. 5

E. CONCLUSION 8

TABLE OF AUTHORITIES

FEDERAL CASES

North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162
(1970)..... 1

WASHINGTON CASES

State v. Clark, 75 Wn.App. 827, 880 P.2d 562 (1994)..... 4

State v. Gossage, 138 Wn.App. 298, 156 P.3d 951 (2007), *rev'd in part*
on other grounds, 165 Wn.2d 1, 195 P.3d 525 (2008)..... 4

State v. Ward, 123 Wn.2d 488, 869 P.2d 1062 (1994)..... 2

STATUTES

RCW 9.94A.030 2

RCW 9A.36.021 2

RCW 9A.44.130 2

RCW 9A.44.142 3, 4, 7

A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Mr. Thrasher's petition for relief from the requirement to register as a sex offender.

2. The trial court erred in denying a hearing at which Mr. Thrasher could present evidence in support of his petition for relief from the duty to register as a sex offender.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A sex offender may petition for relief from the duty to register, and the court may grant relief if the offender proves, by clear and convincing evidence, that his future registration would not aid law enforcement efforts to apprehend sex offenders. Where the defendant's petition provides sufficient facts to show he has been sufficiently rehabilitated, did the trial court err in denying a hearing on the petition for relief from sex offender registration?

C. STATEMENT OF THE CASE

On May 18, 1992, Thrasher entered an *Alford*¹ plea to an amended information charging one count of assault in the second degree with sexual motivation.² CP 4-17. On June 26 of that year he

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

was sentenced to a standard range nine-month term. CP 18-20. Mr. Thrasher was also ordered to avoid contact with his victim for 10 years, and was notified of his statutory duty to register as a sex offender. CP 20.

On April 26, 2013, Mr. Thrasher petitioned *pro se* for relief from sex offender registration. CP 38-44. On May 24, 2013, the superior court denied Mr. Thrasher's petition without a hearing. CP 31-32.

D. ARGUMENT

THE TRIAL COURT'S ORDER DENYING RELIEF FROM THE REQUIREMENT TO REGISTER AS A SEX OFFENDER SHOULD BE REVERSED.

1. A sex offender may petition to be relieved from the duty to register as a sex offender. Mr. Thrasher's 1992 second degree assault conviction with sexual motivation required him to register as a sex offender. RCW 9A.44.130(1)(a); RCW 9.94A.030(46)(c), (47); RCW 9A.36.021(2)(b). Second degree assault with sexual motivation is a class A felony. RCW 9A.36.021(2)(b). However, this registration requirement is not intended to be a "lifelong 'badge of infamy.'" *State v. Ward*, 123 Wn.2d 488, 509, 869 P.2d 1062 (1994).

² Mr. Thrasher had originally been charged with a count of third degree rape of a child. CP 1.

A person who must register as a sex offender may petition the superior court for relief from the registration requirement. RCW 9A.44.142(1). It is the petitioner's burden to prove, by clear and convincing evidence, "that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders." RCW 9A.44.142(4)(a). In assessing whether to grant the petition, the court is provided with several non-exclusive factors to consider. RCW 9A.44.142(4)(b)(i) – (xiii).³

³ These factors are:

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination:

- (i) The nature of the registrable offense committed including the number of victims and the length of the offense history;
- (ii) Any subsequent criminal history;
- (iii) The petitioner's compliance with supervision requirements;
- (iv) The length of time since the charged incident(s) occurred;
- (v) Any input from community corrections officers, law enforcement, or treatment providers;
- (vi) Participation in sex offender treatment;
- (vii) Participation in other treatment and rehabilitative programs;
- (viii) The offender's stability in employment and housing;

The purposes of these registration and notification statutes are “to aid law enforcement’s effort to protect the community, investigate sex crimes and apprehend sex offenders, who the Legislature has found ‘often pose a high risk of reoffense.’” *State v. Clark*, 75 Wn.App. 827, 832, 880 P.2d 562 (1994).

The denial of a petition for relief from the sex offender registration requirement is reviewed for an abuse of discretion. *State v. Gossage*, 138 Wn.App. 298, 306, 156 P.3d 951 (2007), *rev’d in part on other grounds*, 165 Wn.2d 1, 195 P.3d 525 (2008).

(ix) The offender's community and personal support system;

(x) Any risk assessments or evaluations prepared by a qualified professional;

(xi) Any updated polygraph examination;

(xii) Any input of the victim;

(xiii) Any other factors the court may consider relevant.

RCW 9A.44.142(4)(b).

2. The superior court erred in failing to hold a hearing at which Mr. Thrasher would have been given the opportunity to prove by clear and convincing evidence that he posed an extremely low risk of reoffense. The superior court here denied Mr. Thrasher's petition for relief from the duty of sex offender registration without a hearing, ruling his petition "failed to provide sufficient information so that the Court can make a determination as to whether the defendant should be relieved from his obligation to register and the Defendant [sic] has not filed the appropriate forms with the court." CP 31-32. Mr. Thrasher should have been granted a hearing at which he could have presented evidence that his continued registration would not serve the purposes of the relevant statutes.

A review of the superior court file here shows Mr. Thrasher was sentenced on June 26, 1992, to a nine-month sentence; the trial court authorized incarceration to be completed in work release if he was eligible to participate. CP 20, 23. At the time of sentencing in 1992, Mr. Thrasher had a single prior conviction in 1991 for attempting to elude a police officer. CP 19. Later in 1992, the court modified Mr. Thrasher's sentence and imposed an additional 45 days incarceration finding he had failed to obtain DNA and HIV testing. CP 24. The

sentence was modified again in 1993, where 30 additional days were added when the court found Mr. Thrasher had changed his address without the permission of his Community Corrections Officer (CCO). CP 27.

Mr. Thrasher's petition contains sufficient claims that indicate his petition was not frivolous and should have been fully considered on the merits. In his petition, Mr. Thrasher represented that:

I served my whole sentence of my sentencing range of 0-12 months in the King County Jail Work Release Program. Successfull [sic] was able to volunteer for the King County Park Services doing janitorial work. I was also employed as a dish washer and waiter at the pancake house, and Café Minnie's. Worked for merchant Dick Wright, business man [sic] and mentor. I was released from my incarceration with excellent reviews and thanks for all my help and volunteer work at the King County Court House waxing floors. On my days off, I also completed my 12 months probation that was a requirement of my J&S on my Alfred [sic] plea agreement and first time offender qualification since I had no criminal history entill [sic] I took the prosecutors office of a no-contest agreement.

CP 39.

The superior court refused to grant a hearing on Mr. Thrasher's motion. CP 31-32. Initially, his failure to use the court's forms should not have precluded Mr. Thrasher from either prevailing on his petition, or at the very least, the court should have held a hearing to allow him

the opportunity to provide clear and convincing proof that he was sufficiently rehabilitated. In addition, Mr. Thrasher's petition provided sufficient proof necessary to carry his burden of proving he was sufficiently rehabilitated under RCW 9A.44.142(4)(a), (b). The court erred in refusing to grant his petition.

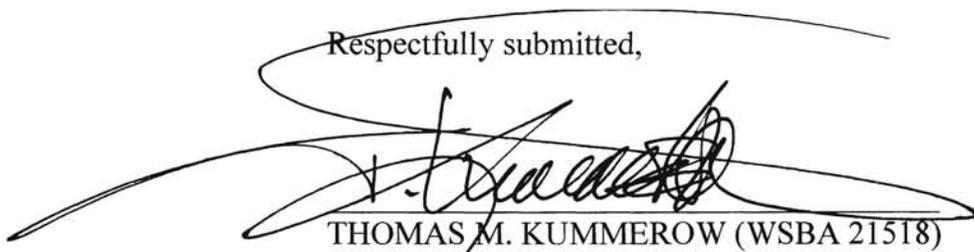
Further, at the very least, the court's denial of the petition for relief from sex-offender registration should be remanded for a hearing at which Mr. Thrasher may present clear and convincing evidence that his future registration would not aid law enforcement's efforts to apprehend sex offenders.

E. CONCLUSION

For the reasons stated, Mr. Thrasher asks this Court to either reverse the superior court and grant his petition for relief from sex offender registration, or remand for a hearing at which Mr. Thrasher can present evidence proving he should be relieved from sex offender registration.

DATED this 30th day of December 2013.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read 'T. Kummerow', is written over a horizontal line. The signature is highly cursive and extends significantly to the left and right of the line.

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 70613-6-I
v.)	
)	
MICHAEL THRASHER,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF DECEMBER, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY	(X)	U.S. MAIL
APPELLATE UNIT	()	HAND DELIVERY
KING COUNTY COURTHOUSE	()	_____
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
[X] MICHAEL THRASHER	(X)	U.S. MAIL
BKG #122020405	()	HAND DELIVERY
KING COUNTY JAIL	()	_____
500 4 TH AVE		
SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF DECEMBER, 2013.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710