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Supreme Court No. _____
(COA No. 87684-8-I) Case #: 1043929

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CURTIS MCDUGALL,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Curtis McDougall, the petitioner here and appellant below, asks this Court to accept review of the Court of Appeals' decision terminating review. RAP 13.3, 13.4.

B. COURT OF APPEALS DECISION

Mr. McDougall seeks review of the Court of Appeals' decision dated June 16, 2025, attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. RCW 9A.44.132 provides that a person is guilty of failure to register as a sex offender if the person *knowingly* fails to comply with registration requirements. Mr. McDougall planned to report on July 10, 2023 as required and prepared his registration documents in advance. But Mr. McDougall lost track of time at work and missed the Lewis County Sheriff's Office 4 p.m. closing time. He called to apologize, but was immediately arrested when he reported the following day. The Court of Appeals affirmed Mr. McDougall's conviction, holding the government need only show Mr. McDougall knew

of his registration requirement to prove that he “knowingly” failed to comply.

a. Due process prohibits the State from criminalizing passive nonconduct without mens rea. *State v. Blake*, 197 Wn.2d 170, 182–83, 481 P.3d 521 (2021); Const. art. I, § 3; U.S. Const. amend. XIV. Here, the Court of Appeals interpreted the knowledge element in the failure to register statute to require only proof that Mr. McDougall knew of the requirement to register, rather than knowingly failed to comply. Untethering the mens rea from the wrongful conduct of the accused exceeds the State’s police power in violation of due process. This Court should accept review. RAP 13.4(b)(1), (3).

b. Due process protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. Const. art. I, § 3; U.S. Const. amend. XIV. Here, the evidence showed that Mr. McDougall had every intent to register, but simply lost

track of time at work. Despite insufficient evidence that Mr. McDougall knowingly failed to register, the Court of Appeals affirmed his conviction. This Court should accept review where Mr. McDougall's conviction is not supported by proof beyond a reasonable doubt. RAP 13.4(b)(3).

2. Due process bars wrongful and arbitrary government conduct and requires that government action be implemented in a fundamentally fair manner. *State v. Beaver*, 184 Wn.2d 321, 331, 358 P.3d 385 (2015) (citing *United States v. Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)); Const. art. I, § 3; U.S. Const. amend. XIV. Because Mr. McDougall lacked stable housing, he was required to register as a sex offender every week during “normal business hours.” RCW 9A.44.130(6)(b). But the Lewis County Sheriff's Office restricted Mr. McDougall's ability to register to only Mondays between the limited hours of 9 a.m. and 4 p.m. This arbitrary and fundamentally unfair restriction on reporting hours made it virtually inevitable that despite years of adhering

to his weekly reporting requirement, Mr. McDougall would eventually make a mistake. Finding only that the policy was not vague, the Court of Appeals ignored the fundamentally unfair and arbitrary nature of such a policy, despite the obvious consequences to Mr. McDougall's liberty. This Court should accept review. RAP 13.4(b)(1), (3).

D. STATEMENT OF THE CASE

Curtis McDougall was sentenced to prison for 43 months because he lost track of time on Monday, July 10, 2023. RP 61–62. On Sunday, he carefully filled out the sex offender registration document he planned to present to the Lewis County Sheriff's Office the following day. RP 40, 45; Ex. 4, p. 9 (signed registration document dated July 9, 2023). He packed the document and brought it with him to work at 6 a.m.—just as he had done every Monday since April 2020. RP 43, 45–46. But when Mr. McDougall broke his concentration and looked up from his metal fabrication work, he realized it was past 4

p.m. RP 43, 46. He had already missed the Sheriff's Office closing time. RP 24.

Mr. McDougall called the Sheriff's Office Tuesday at 8:09 a.m. and left a voicemail apologizing. CP 8; RP 37. When he reported to the office later that day, the deputy placed him under arrest. RP 33, 48. For his mistake, Mr. McDougall was convicted of felony failure to register as a sex offender. RP 61–62; CP 33–35.

In his plea for leniency at sentencing, Mr. McDougall acknowledged his life choices had not always been honorable. RP 60–61. But when he was last released from prison in 2020, Mr. McDougall recognized he was no longer a young man and he wanted to become “an upstanding citizen.” RP 60–61. After “struggle[ing] for a long time, far too long, to change [his] life” he explained he was finally “heading down that right path[.]” RP 60. In fact, shortly before his arrest he had successfully completed his three years of DOC supervision. RP 43–44, 59.

He had also settled into a community where he had strong family connections and steady employment with Fire Mountain Farms. RP 7–8, 41. Over the course of three years, he achieved a reputation as a reliable and highly skilled fabricator. CP 60–62. The president of Fire Mountain Farms described him as “an asset.” CP 60–62. Mr. McDougall’s modest income finally allowed him to pay overdue child support, make regular payments on debt, and save toward his goal of stable housing—a goal he proudly met by purchasing a modest motorhome just before he was sentenced to prison. CP 60–62.

Despite his employment, Mr. McDougall lacked a fixed residence and was therefore required to report to the Lewis County Sheriff’s Office every week as a “transient” sex offender based on a 2001 assault conviction when he was 21 years old. Ex. 1. In over three years of weekly reporting, Mr. McDougall only reported late four times. RP 54. On each occasion, Mr. McDougall was unable to leave work before the Sheriff’s Office closed Monday at 4 p.m. and reported the

following day. RP 54. According to the sheriff's deputy, Mr. McDougall received a written warning in August 2022 and a verbal warning the next month. RP 27–28. In April 2023, the deputy referred him for prosecution but the government declined to press charges. RP 28–29. After all, Mr. McDougall diligently reported 178 out of the 182 Mondays before his arrest on July 11, 2023. RP 54.

At trial, the government did not dispute that Mr. McDougall mistakenly lost track of time. Instead, it argued that (1) Mr. McDougall's consistent record of compliance over three and a half years demonstrated he knew he was required to report, and (2) that on Monday, July 10, 2023, he did not. This, it said, was "a bright-line rule" and Mr. McDougall's mistake was enough to send him back to prison for nearly four years. *See generally*, RP 13, 51–53.

The trial court agreed. Despite feeling "sympathetic to [Mr. McDougall's] situation," the court concluded, "the statute

is what it is[.]” RP 62. The court sentenced him to 43 months in prison and 36 months of community custody. RP 61–62.

On appeal, Mr. McDougall challenged his conviction for lack of evidence supporting a “knowing” failure to comply with his reporting requirement. He also challenged the Lewis County Sheriff’s Office arbitrary and fundamentally unfair policy of unreasonably restricting the hours available for reporting. The Court of Appeals rejected these and related arguments.

E. ARGUMENT

1. The Court of Appeals affirmed Mr. McDougall’s conviction for failure to register as a sex offender in the absence of evidence that Mr. McDougall “knowingly” failed to register by effectively eliminating the mens rea requirement and reducing the crime to a strict liability offense.

To convict Mr. McDougall of failure to register as a sex offender, the government needed to prove beyond a reasonable doubt that he knowingly failed to comply with one of the reporting requirements set out in RCW 9A.44.130. RCW 9A.44.132(1)(b). The evidence at trial, however, showed that Mr. McDougall’s delay in reporting was merely a mistake.

Despite insufficient proof, the trial court found Mr. McDougall guilty and the Court of Appeals affirmed. Slip Op. at 9.

a. Contrary to the Court of Appeals' decision, to convict Mr. McDougall of failure to register as a sex offender, the government was required to prove that Mr. McDougall acted knowingly when he did not report on time.

The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. O'Hara*, 167 Wn.2d 91, 105, 217 P.3d 756 (2009) (citing U.S. Const. amend. XIV; Const. art. I, §§ 3, 22; *Jackson v. Virginia*, 443 U.S. 307, 311, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). Evidence is only sufficient where a rational trier of fact could find all essential elements of the crime charged beyond a reasonable doubt. *State v. Longshore*, 141 Wn.2d 414, 420–21, 5 P.3d 1256 (2000).

The government charged Mr. McDougall with “*knowingly* fail[ing] to comply with the requirements of RCW

9A.44.130[.]” RCW 9A.44.132(1)(b) (emphasis added). CP 1, 4–5. To find Mr. McDougall guilty of felony failure to register, the court was required to find Mr. McDougall (1) had a duty to register under RCW 9A.44.130(1)(a), (2) had been convicted of felony failure to register on two or more prior occasions, and (3) knowingly failed to comply with any reporting requirement under RCW 9A.44.130. RCW 9A.44.132(1)(b). Specifically, the government alleged Mr. McDougall failed to comply with the requirement that, because he lacked a fixed residence, he report weekly, within normal business hours, to the county sheriff. RCW 9A.44.130(6)(b). CP 4–5.

It is an “essential element that the crime was committed ‘knowingly.’” *State v. Peterson*, 145 Wn. App. 672, 675, 186 P.3d 1179 (2008), *aff’d on other grounds*, 168 Wn.2d 763, 230 P.3d 588 (2010). Thus, a person is not strictly liable for failing to comply with a registration requirement.

Moreover, knowledge of the duty to report does not, on its own, prove that the failure to comply with a specific

registration requirement was knowing. In other words, the government must prove the failure to comply was knowing and not merely a mistake or accident. *See, e.g., State v. Clark*, No. 75121-2-I, 2017 WL 2840294 (Wash. Ct. App. July 3, 2017) (unpublished); *see also* 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 49C.02 (5th Ed) (“That during that time period, the defendant *knowingly failed* to comply with [a requirement of [[sex] ... offender] registration] [*specific registration requirement* from RCW 9A.44.130)].”) (emphases added).

b. The evidence showed Mr. McDougall’s failure to report on Monday between 9 a.m. and 4 p.m. was not knowing, but rather accidental.

The evidence at trial showed Mr. McDougall planned to report to the Lewis County Sheriff’s Office on Monday, July 10, 2023. Mr. McDougall testified at trial he knew of this duty to report. RP 43. This was further established by the sex offender registration forms he signed and consistently provided to the Lewis County Sheriff’s Office and by his long history of complying with his weekly reporting requirement over three

and a half years. RP 36–37, 40. *See also* Finding of Fact 1.8 (Mr. McDougall “had demonstrated his knowledge by repeatedly registering in this manner as a homeless person in the past.”). In fact, out of 182 consecutive weeks of required weekly reporting as an individual without a fixed residence, Mr. McDougall had reported in compliance 178 times and was one day late on only 4 occasions. RP 54.

The Sunday before he was required to report on July 10, 2023, Mr. McDougall prepared to go directly from his workplace to the Sheriff’s Office. RP 43. He filled out the required paperwork and documented his whereabouts from the week. RP 45; Ex. 4, p. 9 (signed registration document dated July 9, 2023). He packed his registration documents and had the forms with him when he left for work around 6 a.m. Monday morning. RP 43, 45–46.

For several years, Mr. McDougall had worked for Fire Mountain Farms as a laborer. RP 41. He started work around 6 a.m. and worked long hours with no breaks. RP 45–46.

Working in the fabrication shop welding and fabricating required intense concentration. RP 42. He explained, when he “get[s] a big project [he] gets focused on that” and he “get[s] tunnel vision on what [he’s] doing.” RP 42. “It requires 100 percent focus[.]” RP 42.

He knew he needed to report before the office closed at 4 p.m. RP 24, 42. But when Mr. McDougall finished the welding job he was working on, he saw that it was already about 4:30 p.m. RP 43, 46. The Lewis County Sheriff’s Office had already closed. RP 24. There was nothing he could do about it other than admit his mistake, apologize, and report the next day. RP 48. And that is what he did.

On Tuesday, July 11, 2023, Mr. McDougall called the Sheriff’s Office promptly at 8:09 a.m. CP 8; RP 37. In his voicemail he explained, “I got busy again and f***’n forgot man[,]” “I’ll be in today.” CP 8. Later that day, as promised, he reported to the office and provided his registration paperwork. RP 33, 48. At that time, he was arrested.

Because the evidence showed Mr. McDougall missed the window of opportunity to report on July 10, 2023 by mistake and not knowingly, the government failed to meet its burden of proof. The trial court erred in finding Mr. McDougall guilty, and the Court of Appeals compounded this error by affirming the conviction. Slip op. at 9.

c. This Court should correct the Court of Appeals' improper treatment of failure to register as a strict liability offense.

The Court of Appeals' opinion, like the trial court below, reduces the government's burden to prove Mr. McDougall knowingly failed to comply with a specific requirement to simply showing Mr. McDougall knew of his duty to report. Slip op. at 5–9. This interpretation conflicts with the plain language of the statute. Worse, it reduces failure to register to a constitutionally impermissible strict liability offense.

To be guilty of failure to register as a sex offender, one must “knowingly fail[] to comply” with their registration requirements. RCW 9A.44.132(1). In other words, not only

must the State prove the defendant failed to comply, but also that the defendant *acted with knowledge* in failing to comply with their duty to register. WPIC 49C.02 (5th Ed).

Despite the absence of any such evidence in this case, the Court of Appeals affirmed Mr. McDougall's conviction by assuming that while the legislature used the phrase "knowingly fail[ed] to comply" in the statute, it actually intended to punish any individual who knows of their duty to register and then, with or without their knowledge, fails to comply. But had the legislature intended this meaning, it would have said so. *See, e.g., Cent. Puget Sound Reg'l Transit Auth. v. Airport Inv. Co.*, 186 Wn.2d 336, 346, 376 P.3d 372 (2016) ("[W]e presume the legislature says what it means and means what it says.").

Moreover, even if the legislature had not so clearly defined the mens rea element of failure to register, Mr. McDougall's plain interpretation of the statute would prevail in order to "avoid[] a confrontation with the constitution[.]" *See*

State v. A.M., 194 Wn.2d 33, 49, 448 P.3d 35 (2019) (Gordon McCloud, J., concurring).

Due process limits the government's ability to criminalize conduct without proof of culpable mental state. *Blake*, 197 Wn.2d at 177–78. “[T]he existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.” *Id.* at 179 (internal quotations omitted). This requirement is grounded in the principal that “wrongdoing must be conscious to be criminal.” *Morissette v. United States*, 342 U.S. 246, 252, 72 S. Ct. 240, 96 L. Ed. 288 (1952).

The requirement of a knowing mental state in RCW 9A.44.132 clearly indicates the legislature did not intend failure to register to be a strict liability offense. Yet, the Court of Appeals depreciates the meaning of the word “knowingly” so thoroughly as to render it entirely superfluous.

Indeed, the government is obligated to notify offenders who are subject to registration requirements of their duty to

register. RCW 9A.44.130(4)(a)(i) (“The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.”). This notification is sufficient to establish an individual has knowledge of their registration requirement. WPIC 49C.02. Thus, according to the Court of Appeals’ logic, *unless* the government was derelict in its duty to notify the person of their registration requirement, any individual subject to registration requirements is guilty of a criminal offense if they are delayed in reporting under any circumstance. With the essential “knowledge” element satisfied by the government’s compliance with *its* duty to notify, the knowledge of the accused is essentially irrelevant.

Assuming the government provided the requisite notice, there would be no difference among the criminal culpability of: Individual A who knowingly flouts their registration requirement with the aim of concealing their whereabouts from the government; Individual B who suffers a medical emergency en route to the Sheriff’s Office and misses registration hours;

and Individual C who, like Mr. McDougall, reports consistently each week for years, but accidentally loses track of time at work and promptly takes accountability the following morning.

According to the Court of Appeals' decision in this case, all three individuals have committed the felony crime of failure to register as a sex offender. This framework is unsupported by statute and flouts the due process principal that states should not criminalize innocent conduct if there is no wrongful intent. *See e.g., Morissette*, 342 U.S. at 252.

The Court of Appeals does not and cannot point to any evidence that Mr. McDougall acted knowingly in missing registration hours on July 10, 2023. To the contrary, the record shows Mr. McDougall was diligent in satisfying his obligation by preparing the required paperwork in advance and had every intention of reporting. RP 40, 45–46; Ex. 4, p. 9. It is undisputed that in 182 consecutive weeks of required weekly reporting as an individual without a fixed residence, Mr.

McDougall reported in compliance 178 times and was one day late on only 4 occasions. RP 54.

This Court should accept review and should give real meaning to the statutory mens rea of “knowingly” in the failure to register statute. And, in the absence of sufficient evidence that Mr. McDougall knowingly failed to comply with his reporting requirement, this Court should reverse for dismissal of the conviction with prejudice. *Burks v. United States*, 437 U.S. 1, 11, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978); *State v. Melland*, 9 Wn. App. 2d 786, 805, 452 P.3d 562 (2019).

2. The Court of Appeals’ opinion ignores Mr. McDougall’s due process challenge to the arbitrary and fundamentally unfair Lewis County Sheriff’s Office policy of exclusively permitting registration between 9 a.m. and 4 p.m. on Mondays.

a. The government may not deprive a person of life, liberty, or property without due process of law.

The due process clause of the Fourteenth Amendment provides that the State shall not “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, *see also* Const. art. I, § 3. The right to due process

confers both substantive and procedural protections. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216, 143 P.3d 571 (2006).

The substantive component of the due process clause bars wrongful and arbitrary government conduct, notwithstanding the fairness of the implementing procedures. *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). The procedural component of the due process clause requires that government action be implemented in a fundamentally fair manner. *State v. Beaver*, 184 Wn.2d 321, 331, 358 P.3d 385 (2015) (citing *United States v. Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)).

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the...Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); U.S. Const. amend. XIV. Procedural due process also requires the government to follow appropriate procedures to promote

fairness in governmental decisions. *Hannah v. Larche*, 363 U.S. 420, 442, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 (1960). When governmental agencies make binding determinations which directly affect the rights of individuals, it is imperative that those procedures provide adequate due process. *Id.*

A court considering a procedural due process claim must weigh: (1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the substitute or additional procedural requirements would entail. *Mathews*, 424 U.S. at 335. The analysis of whether due process is violated is the same under the Washington constitution. *See O'Hartigan v. Department of Personnel*, 118 Wn.2d 111, 117–18, 821 P.2d 44 (1991); *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 104, 937 P.2d 154 (1997).

A person lacking a fixed residence is required to report weekly, in person, to the sheriff of the county where he is registered on a day specified by the county sheriff's office and within "normal business hours." RCW 9A.44.130(6)(b). All deadlines exclude weekends and holidays. RCW 9A.44.128(2); *Peterson*, 168 Wn.2d at 768. There are no other provisions within RCW 9A.44.130 which allow the sheriff to limit the days or hours a person may report.

b. This Court should accept review and condemn policies like the one in Lewis County that violate due process by frustrating good faith efforts to comply with registration requirements.

The Lewis County Sheriff's Office restricts the hours a person may register as a sex offender to between 9 a.m. and 4 p.m. exclusively on Mondays. RP 24; Ex. 4, pp. 2, 7, 9. Though the statute does not define "normal business hours," a sheriff's office policy of arbitrarily restricting its hours runs afoul of due process when a person's liberty is compromised while attempting to comply with a statutory reporting requirement.

Procedural due process claims require this Court to first address the private interest that will be affected by the official action. *Mathews*, 424 U.S. at 335. Due process prohibits the government from depriving an individual of protected liberty interests without appropriate procedural safeguards. *In re Pers. Restraint of Bush*, 164 Wn.2d 697, 704, 193 P.3d 103 (2008). The ability to comply with the registration law implicates a fundamental liberty interest because the failure to register results in prosecution for new felony charges. RCW 9A.44.132.

This Court's second inquiry is the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards. *Mathews*, 424 U.S. at 335. Although the Lewis County Sheriff's Office was authorized by statute to require Mr. McDougall to report on a specified day of the week, its policy of then restricting available hours created an undue risk of erroneous deprivation.

Limiting registration hours to between 9 a.m. and 4 p.m. departs from the common meaning of “normal business hours.” Where this term is not defined by statute, this Court aims to give effect to the legislature’s intent by ascertaining the plain meaning of the statute. *State v. Budik*, 173 Wn.2d 727, 733, 272 P.3d 816 (2012). “Common sense informs [this Court’s] analysis, as we avoid absurd results in statutory interpretation.” *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008). Moreover, this Court must strictly construe statutes establishing procedures leading to a loss of liberty. *State v. Dollarhyde*, 9 Wn. App. 2d 351, 355, 444 P.3d 619 (2019).

The common understanding of “normal business hours” is an eight-hour interval of time, usually between 9 a.m. and 5 p.m. This understanding comports with the traditional 40-hour work week. But rather than operate during normal business hours, the Lewis County Sheriff’s Office is available for registration one day a week for only seven hours. RP 24; Ex. 4, pp. 2, 7, 9. In doing so, it mandates unattainable requirements

for homeless individuals, especially those seeking and maintaining full-time employment, and creates an unreasonable risk of punishing innocent conduct and passive mistake.

Mr. McDougall had every intention to comply with his registration requirements on Monday, July 10, 2023. But he was also turning his life around through hard work that required focus and he lost track of time. This Court should find that by failing to maintain normal business hours, the Lewis County Sheriff's Office denied Mr. McDougall his due process rights.

Indeed, providing for registration during normal business hours as contemplated by the statute would have provided the additional safeguards necessary for sufficient due process here. On each of the 4 occasions Mr. McDougall reported one day late out of 182 Mondays, the reason for his tardiness was missing the narrow window of hours to report due to the demands of his work. RP 42. Had the Sheriff's Office maintained normal business hours, no additional safeguards would have been necessary in order for Mr. McDougall to be

provided with sufficient due process. The Sheriff's policy of restricting registration days to limited hours exclusively on Mondays, however, resulted in a high risk of erroneous deprivation of liberty.

Finally, this Court addresses the government's interest, including the function involved and the fiscal and administrative burdens that the substitute or additional procedural requirements would entail. *Mathews*, 424 U.S. at 335. Implicit in RCW 9A.44.130 is that registration with the Sheriff's Office should be possible during normal business hours. RCW 9A.44.130 creates specific limitations, exempting weekends and holidays from the time period required for registration. Nothing in the statute suggests the Sheriff may restrict registration in such a way as to make it unreasonably difficult—nearly impossible—for a person to flawlessly comply with their registration requirements. RCW 9A.44.130.

Instead, the government has an interest in ensuring that registrants have the ability to keep their address current. *See*

State v. Stratton, 130 Wn. App 760, 765, 124 P.3d 660 (2005).

The purpose of the sex offender registration statute is to assist law enforcement agencies' efforts to protect their communities against sex offenders who re-offend. *State v. Vanderpool*, 99 Wn. App. 709, 712, 995 P.2d 104 (2000). A policy which interferes with the government's ability to collect sex offender registration information, while also creating undue risk of erroneous deprivation of liberty, fails to adequately protect private liberty interests and government interests alike.

Due process required the government to provide the means for Mr. McDougall to comply with his registration requirements. And yet, the Court of Appeals completely ignored this meritorious argument and recast the claim of error as a vagueness challenge. *Compare* Slip op. at 9–11 *with* Br. of Appellant (no mention of vagueness). This Court should accept review where Mr. McDougall's right to due process was violated by the unilateral decision of the Lewis County Sheriff's Office to restrict registration to limited hours on Mondays.

F. CONCLUSION

For the above stated reasons, Mr. McDougall respectfully requests this Court grant review pursuant to RAP 13.4(b).

This petition is 4,606 words long and complies with RAP 18.7.

DATED this 16th day of July 2025.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "W. Osborn", written in a cursive style.

WILLA D. OSBORN (58879)
Washington Appellate Project (91052)
Attorneys for Petitioner

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CURTIS DEAN MCDOUGALL,

Appellant.

No. 87684-8-I

DIVISION ONE

UNPUBLISHED OPINION

HAZELRIGG, C.J. — Curtis McDougall appeals from his conviction of one count of failure to register as a sex offender as a person with two or more prior convictions of that offense. On appeal, McDougall asserts that the State did not present sufficient evidence to support that he acted with the knowledge required to convict him of the offense in question. He also contends that the statute authorizing the county sheriff's offices to specify a day and normal business hours during which convicted sex offenders must register was unconstitutionally vague as applied to him, and the sentencing court abused its discretion when it denied his request for an exceptional downward sentence. We disagree and affirm.

FACTS

In 2002, Curtis McDougall was convicted of assault of a child in the third degree with sexual motivation. As a result, he was required to register as a sex offender. Between 2003 and 2005, in Thurston County, he was charged with and

entered guilty pleas to failure to register as a sex offender on three separate occasions. Then, between 2009 and 2017, in Lewis County, he entered guilty pleas to failure to register as a sex offender on three more occasions. These convictions for failure to register, among others, imposed on McDougall a continuing duty to register as a sex offender.

McDougall was released from incarceration in January 2020. He was directed to report to the Lewis County Sheriff's Office (LCSO) to register as a sex offender. When he reported in, LCSO Detective Jamey McGinty provided him with a document outlining the sheriff's office's requirements for offender registration. The document included a requirement stating as follows:

If you lack an official residence, you must report in person to the county sheriff's office where you last registered on a weekly basis. The report date for Lewis County Sheriff's Office is Monday between 9:00 A.M. and 4:00 P.M., excluding holidays, where the report date would be the following workday.

McDougall initialed and signed the document.

In April 2020, McDougall updated his residence with the LCSO as "transient." McGinty reiterated to McDougall the registration requirements for a person with a transient residence. McGinty told him that, in order to properly register, he had to complete the document provided to him and bring it in person to the Lewis County Sheriff's Office every week on Monday between 9:00 a.m. and 4:00 p.m.¹ Thereafter, between April 2020 and July 10, 2023—as described in his

¹ McGinty later testified with regard to individuals with a transient residence in the following exchange:

. . . They're required to come in once a week and report the previous addresses of where they stayed during the week prior to, and then we'll give them another form to complete that [sic] for the following week, and then—with a date on it, and they'll come back.

Q. Do they have to report in person?

briefing on appeal and as he testified at trial—McDougall registered weekly at the LCSO on 178 out of the 182 Mondays on which he was required to report.² He therefore did not timely register on four occasions during the time in question.

For the first two occasions, in August and September 2022, McDougall presented himself to the sheriff's office the day after the Monday on which he was required to report. McGinty provided him with a written and verbal warning on the first occasion and a verbal warning on the second. On the third such occasion, in April 2023, McGinty referred McDougall's case to the prosecutor's office, which ultimately declined to pursue charges against him.

Prior to the fourth occasion in which he failed to register, McDougall had registered in person at the sheriff's office the week before, on July 3, 2023. As with the prior instances in which he registered at the office, he was given a document informing him that his next registration date and time-window were the following Monday between 9:00 a.m. and 4:00 p.m. On Sunday, July 9, McDougall completed and signed the registration document provided to him by the LCSO. Then, on Monday, July 10, McDougall was required to appear at the sheriff's office to register. He did not.³

A. Yes.

Q. Do they have to report at the sheriff's office?

A. Yes.

Q. And you give them the date; correct?

A. Correct.

² Presumably, some of the Mondays on which McDougall was required to report were holidays and he successfully registered on the following day, per the sheriff's office's requirements.

³ At the ensuing bench trial, McDougall's direct examination during his case in chief resulted as follows: "Q: And you were required to report on Monday July 10th, 2023? A: Yes. . . . Q. All right. And did you report on July 10th? A: No."

McDougall later testified that he knew that he had to register that day and he brought the completed registration document with him to work with the intention of presenting himself to the sheriff's office that day. When he finished his work at 5:00 p.m., however, he realized that he had forgotten to register and had missed the time-window to do so. McDougall telephoned the LCSO the following morning to let them know that he forgot to register on Monday and he was coming in to do so. Later that day, he presented himself at the office to register and, upon his arrival, McGinty arrested him and took him into custody.

McDougall was charged with one count of failure to register as a sex offender as a person with two or more prior convictions of that same crime, a class B felony, for the missed weekly registration on July 10, 2023. A one-day bench trial later commenced. The State called McGinty to testify and introduced exhibits in support of its case.⁴ McDougall testified in his own defense and, in closing, argued that he was not guilty because he substantially complied with the sex offender reporting statute. The court issued its verdict from the bench, rejected his substantial compliance defense, and found him guilty as charged.⁵

At sentencing, McDougall requested an exceptional downward sentence. The court considered and rejected his request and, instead, imposed a sentence at the lowest end of the applicable range.

McDougall timely appealed.

⁴ Despite the parties' repeated reference to these exhibits in their briefing on appeal, the exhibits admitted at trial have not been designated as part of the record for our review.

⁵ The court later issued findings of fact and conclusions of law in support of its verdict. McDougall assigns error to three of the court's findings and conclusions. These challenged findings and conclusions are addressed herein.

ANALYSIS

I. Sufficiency of the Evidence

McDougall first asserts that the trial court erred when it convicted him of failure to register as a sex offender because the State did not present sufficient evidence to establish that he knowingly failed to comply with the registration requirements. We disagree.

Due process requires that the State prove beyond a reasonable doubt every fact necessary to constitute the crime charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. CONST. amend. XIV, § 1. “Sufficiency of the evidence is a question of constitutional law that we review de novo.” *State v. Melland*, 9 Wn. App. 2d 786, 801, 452 P.3d 562 (2019).

“When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* “We defer to the trier of fact’s resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence.” *State v. Curtiss*, 161 Wn. App. 673, 693, 250 P.3d 496 (2011).

McDougall was convicted pursuant to RCW 9A.44.132(1), which provides, “A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and *knowingly*

fails to comply with *any of the requirements of RCW 9A.44.130.*" (Emphasis added.)

RCW 9A.08.010(1)(b) defines "knowledge" as follows:

A person knows or acts knowingly or with knowledge when:

(i) [They are] aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) [They have] information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

The statute imposing a duty to register provides that

[a]ny adult residing whether or not the person has a fixed residence . . . in this state 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, . . . or as otherwise specified in this section.*

RCW 9A.44.130(1)(a) (emphasis added). Additionally, another subsection of that statute explains that

[a] person who lacks a fixed residence *must report weekly, in person, to the sheriff of the county where [they are] registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours.* The person must keep an accurate accounting of where [they stay] during the week and provide it to the county sheriff upon request.

RCW 9A.44.130(6)(b) (emphasis added).

On appeal, McDougall does not contest that the State presented sufficient evidence to establish that he had a duty to register and he failed to comply with the requirements of RCW 9A.44.130. Rather, he contends that the State failed to present sufficient evidence to establish that he *knowingly* failed to do so. In essence, McDougall asserts that because he introduced evidence at trial that he forgot to register on the day in question, the State did not present sufficient

evidence to establish that he knowingly failed to register on that day. McDougall is incorrect.

In support of his contention on appeal, McDougall relies on an instruction on the crime of failure to register as a sex offender set forth in the Washington Pattern Jury Instructions. That instruction reads in pertinent part as follows:

Failure to Register as Sex or Kidnapping Offender—Elements

To convict the defendant of the crime of failure to register [as a [sex] [kidnapping] offender], each of the following elements of the crime must be proved beyond a reasonable doubt:

-
- (3) That during that time period, the defendant knowingly failed to comply with [a requirement of [[sex] [kidnapping] offender] registration] [(specific registration requirement from RCW 9A.44.130)].

11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 49C.02, at 1173 (5th ed. 2024) (WPIC).

Notably, as identified by the State on appeal, that instruction also sets forth a comment explaining the knowledge element of the offense in question: “Knowledge. It is an element of a failure to register charge that the defendant acted with knowledge of the applicable registration requirement. *Most typically, the evidence in support of this element will consist of written notification from law enforcement, prior court orders, or other evidence relating to prior adjudications.*” WPIC 49C.02, comment at 1175 (emphasis added).

The evidence introduced at trial was sufficient to establish that, in failing to report on the day in question, McDougall did so with knowledge of the registration requirements applicable to him. The following is undisputed: McDougall has been required to register as a sex offender for over 20 years. He has previously been

convicted of failure to register as a sex offender on six occasions. Since 2020, due to his transient residence, he has been required to report weekly in person at the Lewis County Sheriff's Office on Mondays between 9:00 a.m. and 4:00 p.m. Around that time, he signed paperwork reflecting that he understood this duty.

Additionally, for more than three years, he successfully complied with this duty each week, arriving at the sheriff's office on the designated day, during the designated time-window, on 178 out of the 182 days on which he was required to report. On the days he did not present himself, he did so on the following day and was given a warning about the consequences of his failure to report.

Furthermore, one week before the day in question, he successfully registered in person and was provided with documentation indicating that he was required to report on the following Monday. On the day before the one in question, he successfully completed and signed his paperwork for the following registration day. And, on the morning at issue, he brought this paperwork with him to work, but did not report to the sheriff's office between 9:00 a.m. and 4:00 p.m. Instead, he telephoned the office the following morning, explained that he "forgot," and presented himself at the office later that day.⁶

Given all of this, the record is replete with evidence supporting that McDougall failed to comply with the registration requirements while having

⁶ At trial, McDougall did not argue or present evidence in support of a defense that his alleged forgetfulness arose from diminished capacity. See *State v. Thomas*, 123 Wn. App. 771, 779, 98 P.3d 1258 (2004) ("Diminished capacity is a defense when either specific intent or knowledge is an element of the crime charged. If specific intent or knowledge is an element, evidence of diminished capacity can then be considered in determining whether the defendant had the capacity to form the requisite mental state. . . . To present a diminished capacity defense, expert testimony must establish that a 'mental disorder, not amounting to insanity, impaired the defendant's ability to form the culpable mental state to commit the crime charged.'" (citations omitted) (quoting *State v. Atsbeha*, 142 Wn.2d 904, 914, 16 P.3d 626 (2001)).

knowledge of those requirements. The record reflects that, in general, McDougall was aware of his duty to report since 2002 and the legal consequences of failure to timely report since 2003. The record further establishes that, at a more specific level, McDougall was aware of the recurring location at which he was to report since 2009, his duty to report on a weekly basis in light of his transient residence, and the recurring day and time when he was to report since 2020. Furthermore, and even more particular to the day on which he failed to report, the record shows that McDougall had knowledge of the precise day and time at which he was required to report on the day in question for at least one week before he failed to register at the LCSO.

Thus, the evidence introduced at trial was sufficient to establish that McDougall committed the crime of failing to register as a sex offender with the knowledge required to support a conviction under the due process clause of the federal constitution. Accordingly, his challenge to the sufficiency of the evidence underlying his conviction fails.⁷

II. Due Process

McDougall next asserts that RCW 9A.44.130(6)(b), the statute authorizing county sheriff's offices to specify the day and hours for sex offender registration, is unconstitutionally vague in violation of the due process clauses of the state and

⁷ In reliance on WPIC 49C.02, McDougall contends that "knowledge of the duty to report does not, on its own, prove that the failure to comply with a specific registration requirement was knowing." However, he does not present us with persuasive decisional authority in support of the notion that proof of a defendant's knowledge of the duty to report, by itself, is not sufficient to uphold a conviction. Regardless, as explained herein, the evidence adduced at trial amply reflected that McDougall knew of the specific registration requirements with which he failed to comply.

federal constitutions. This is so, he contends, because the LCSO requirements adopted pursuant to that statute are arbitrary and, therefore, rendered his compliance with those requirements impossible. We disagree.

We review de novo a challenge to the constitutionality of a statute. *State v. Shultz*, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999). Where the statute does not infringe on rights provided by the First Amendment to the United States Constitution, we evaluate a vagueness challenge “by examining the statute as applied under the particular facts of the case.” *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992). We presume that statutes are constitutional. *State v. Hamilton*, 33 Wn. App. 2d 895, 565 P.3d 595 (2025).

The guaranty of due process requires that laws not be vague. U.S. CONST. amend. XIV, § 1; WASH. CONST. art. I, § 3. “The laws must (1) provide ordinary people fair warning of proscribed conduct and (2) have standards that are definite enough to ‘protect against arbitrary enforcement.’” *State v. Irwin*, 191 Wn. App. 644, 652-53, 364 P.3d 830 (2015) (internal quotation marks omitted) (quoting *State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008)). However, if “persons of ordinary intelligence can understand what the [law] proscribes, notwithstanding some possible areas of disagreement, the [law] is sufficiently definite.” *State v. Johnson*, 197 Wn.2d 740, 747, 487 P.3d 893 (2021) (alterations in original) (internal quotation marks omitted) (quoting *Bahl*, 164 Wn.2d at 754)

Once again, RCW 9A.44.130(6)(b) is the statute authorizing the sheriff’s office to adopt the reporting requirements in question. It provides that a “person who lacks a fixed residence must report weekly, in person, to the sheriff of the

county where [they are] registered. *The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours.*" RCW 9A.44.130(6)(b) (emphasis added). Here, in accordance with this statute, the Lewis County Sheriff's Office specified that McDougall was required to make his weekly report on Mondays between 9:00 a.m. and 4:00 p.m.

As applied to the facts of this case, the LCSO's implementation of RCW 9A.44.130(6)(b) is not vague.⁸ It specified that Mondays would be the day on which McDougall must report and the "normal business hours" for him to do so were between 9:00 a.m. and 4:00 p.m. No ordinary person could believe that such a day and time-window did not provide them with a fair warning of when they were to report. Nor could such a person believe that such a specific day and time-window were so abstract as to be subject to arbitrary enforcement. Thus, given the LCSO requirements adopted herein, an ordinary person could plainly understand what conduct was proscribed.

Moreover, McDougall conceded at trial and reiterates on appeal that, between 2020 and early July 2023, he was able to successfully comply with these same requirements on 178 out of the 182 reporting days on which he was required to report. He does not contend that he managed to do so for so long out of pure coincidence. Given that, the record does not support McDougall's contention that his ability to comply with the sheriff's office's registration requirements was impossible. Thus, the statute in question is not unconstitutionally vague as applied to him. Accordingly, he does not establish an entitlement to appellate relief.

⁸ McDougall does not contest the constitutionality of RCW 9A.44.130(6)(b).

III. Sentencing

McDougall next asserts that the sentencing court erred when it denied his request for an exceptional sentence below his standard range. The court erred, he contends, because it failed to meaningfully consider his request. According to McDougall, the court had a “mistaken belief that it did not have the discretion to impose a mitigated exceptional sentence for which he may have been eligible.”

We disagree.

Our Supreme Court has instructed that

[t]he [Sentencing Reform Act of 1981⁹ (SRA)] operates to provide structure to sentencing, “but does not eliminate[] discretionary decisions affecting [offender] sentences.” RCW 9.94.010. Consistent with the SRA, a court “may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of [the SRA], that there are *substantial and compelling reasons justifying an exceptional sentence.*” RCW 9.94A.535.

State v. McFarland, 189 Wn.2d 47, 52, 399 P.3d 1106 (2017) (some alterations in original) (emphasis added). The court has also directed that

[w]hen a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). While no defendant is entitled to challenge a sentence within the standard range, this rule does not preclude a defendant from challenging on appeal the underlying legal determinations by which the sentencing court reaches its decision; every defendant is entitled to have an exceptional sentence actually considered. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). A discretionary sentence within the standard range is reviewable in “circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range.” *State v. McGill*, 112 Wn. App. 95, 100, 47 P.3d 173 (2002) (quoting *Garcia-Martinez*, 88 Wn. App. at 330). A trial court errs when “it refuses categorically to impose an exceptional sentence below the standard range under any

⁹ Chapter 9.94A RCW.

circumstances” or when it operates under the “mistaken belief that it did not have the discretion to impose a mitigated exceptional sentence for which [a defendant] may have been eligible.” *Garcia-Martinez*, 88 Wn. App. at 330; [*In re Pers. Restraint of]Mulholland*, 161 Wn.2d [322,] 333[, 166 P.3d 677 (2007)].

Id. at 56.

Here, at sentencing, McDougall did not dispute the court’s proposed findings of fact and conclusions of law for sentencing purposes, his proposed prior convictions, or that the standard sentencing range for the conviction in question was 43 to 57 months. The State recommended a term of confinement of 48 months, along with the required term of community custody. McDougall requested an exceptional downward sentence on the basis that he completed his prior term of Department of Corrections supervision, obtained gainful employment, found a fixed residence to move into, substantially complied with his reporting requirements, and voluntarily showed up the day after he missed the reporting date in question. McDougall acknowledged, however, that the reasons he provided “don’t fit directly the mitigating circumstances listed in” the statute governing departures from the sentencing guidelines.¹⁰

The court denied his request and reasoned that

the problem here is that this requirement to register is something that you have known, you’ve known it very well.

. . . .

And you have this, you know, the once a week that you’re supposed to do it, and you got a break over and over and over on this, you know, that you’re not reporting. Well, you kept reporting late. You reported, but you kept doing it late, knowing that it had to be on Monday, but you just didn’t do it.

So I don’t accept that a sentence outside the standard range is appropriate here. I will impose the low end of the range, 43

¹⁰ The statute in question, RCW 9.94A.535(1), sets forth a non-exhaustive list of mitigating circumstances on which a sentencing court may rely in departing from the sentencing guidelines.

months, because of the fact that the report did happen a day late each time.

But, you know, as I said earlier, if this was a case where you were required to report once every five years and you were a day late, that would be substantial compliance. But here, where you have been told over and over again that—and where it's every week, it makes a difference. It matters.

So I don't find that there are mitigating circumstance[s] here. I'm sympathetic to your situation but the statute is what it is, and so I'm going to impose the 43 months, credit for time served as calculated by the jail, and thirty-six months of community custody.

The sentencing court did not abuse its discretion when it denied McDougall's request for an exceptional downward sentence. As an initial matter, there is no indication that the court denied McDougall's request on the basis of either a categorical refusal to impose an exceptional sentence under any circumstance or a refusal to consider such a sentence for a certain class of offenders. See *Grayson*, 154 Wn.2d at 342.

Rather, the record reflects that the court heard and meaningfully considered McDougall's request. Notably, the court indicated that it understood his request and explained that it was rejecting it for the following reasons: McDougall had known about his duty to report for many years, repeatedly failed to report, frequently been warned about the consequences of not reporting, and, yet again, failed to report as ordered. The court further determined that even if the bases that he relied on were sympathetic, they did not, by themselves, constitute substantial or compelling reasons to justify departing below the standard range in his case.¹¹ See *McFarland*, 189 Wn.2d at 56.

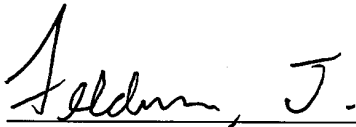
¹¹ McDougall nevertheless asserts that the sentencing court engaged in a "misapprehension of the law" when it denied his request for an exceptional sentence outside the standard range. According to McDougall, the court erroneously denied his request in reliance on its finding convicting him beyond a reasonable doubt under the failure to register statute.

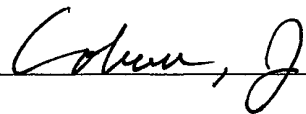
Additionally, McDougall conceded that the bases on which he relied for relief “don’t fit directly the mitigating circumstances listed in this statute.” Although the bases listed in RCW 9.94A.535(1) “are illustrative only and are not intended to be exclusive reasons for exceptional sentences,” McDougall’s concession supports that the bases that he presented are not of the type contemplated by the legislature as constituting substantial and compelling reasons justifying an exceptional sentence outside the standard range. Thus, the court did not abuse its discretion when it denied McDougall’s request to depart from the sentencing guidelines.

Affirmed.



WE CONCUR:





McDougall is incorrect. As set forth herein, the court expressly denied his request on the basis that he did not present a substantial or compelling reason to justify an exceptional sentence in his case. See *McFarland*, 189 Wn.2d at 56. This was a valid basis on which to deny his request.

Furthermore, the record reflects that, in considering his request, the court identified that McDougall had been warned and yet repeatedly failed to timely register prior to the charges being brought against him in this matter. We construe the court’s identification of such facts not as the court relying on the fact of his conviction as a basis to deny his request but, rather, as the court determining that such facts undermined his argument that he had presented a substantial or compelling reason in support of his request. We cannot say that the trial court erred by so reasoning.

WASHINGTON APPELLATE PROJECT

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