

NO. 73803-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA REDDING,

Appellant.

FILED
Apr 29, 2016
Court of Appeals
Division I
State of Washington

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

APPELLANT'S REPLY BRIEF

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A. SUMMARY OF REPLY

Joshua Redding's felony conviction, and the attendant lengthy sentence, violates the very notions of fair play, decency, and reasonableness that underlie our criminal justice system and our common law of contracts. Mr. Redding reported in the time required by law enforcement. Nonetheless, charges were filed and a conviction for failure to register obtained. This conviction is a mar on the foundations of our system. Reversal is required.

B. ARGUMENT IN REPLY

1. Contract law principles compel reversal of the failure to register conviction.

Law enforcement told Joshua Redding that he needed to report by February 13 or failure to register charges would be forwarded to the Snohomish County Prosecuting Attorney. 4/17/15 RP 19-20; Exhibit 2; see CP 148. This was an offer for a unilateral contract. *Storti v. University of Washington*, 181 Wn.2d 28, 35-36, 330 P.3d 159 (2014). Understanding this conversation to mean that if he reported by February 13, charges would not be filed, Mr. Redding reported to the Snohomish County jail on February 12. 4/17/15 RP 19-20, 26-27, 32-33; Exhibit 2; see CP 148. Detective Berg and Mr. Redding thereby formed a unilateral contract. *Storti*, 181 Wn.2d at 35-36.

Despite the agreement, Mr. Redding was charged with, and ultimately convicted of, felony failure to register, leading to a three-year prison sentence plus four years community custody. CP 22, 23, 33. The State takes issue with Mr. Redding reporting directly to the Snohomish County jail rather than the Sheriff's Office. Resp. Br. at 5, 13-15. But Detective Berg had indicated Mr. Redding could fulfill his end of the bargain by reporting to the jail. 4/17/15 RP 32-34. The State also argues no evidence shows Mr. Redding had his registration form with him when he reported to the jail. Resp. Br. at 5. However, the State bore the burden to prove the charges below. Any gap in the record supports reversal.

The State also relies on law enforcement's lack of power to make prosecutorial decisions. Resp. Br. at 8-10. This argument fails to absolve the breach here for two reasons. First, Mr. Redding's breach of contract claim does not rely upon law enforcement actually making the charging decision. Law enforcement breached the contract when it forwarded the charges to the prosecuting attorney's office. Second, law enforcement's limited role in the criminal justice system counsels against it making promises it cannot fulfill. This at least supports Mr. Redding's due process argument below.

The State further claims the unilateral contract lacked adequate consideration. Resp. Br. at 16. Mr. Redding's consideration for entering into the contract was coming into compliance with his registration duties. Compliance with registration was Detective Berg's primary concern and served the purported purpose of the registration requirements. 4/17/15 RP 10. The contract terms were sufficient.

Law enforcement's forwarding of charges breached the unilateral contract formed between the police and Mr. Redding. To make Mr. Redding whole, the resulting conviction should be reversed and the charge dismissed.

2. The conviction should be reversed due to abuse of prosecutorial discretion and the denial of Mr. Redding's due process rights.

- a. Snohomish County abused its prosecutorial discretion when it filed charges after law enforcement assured Mr. Redding that prompt reporting would not result in charges.

Snohomish County abused its prosecutorial discretion by filing charges carrying three years in prison and four years community custody where Mr. Redding turned himself in after a conversation with law enforcement. Prosecutors are granted broad discretion on charging decisions on the presumption "that public officials will act fairly, reasonably and impartially in the exercise of [this] discretionary

authority.” *State v. Jefferson*, 79 Wn.2d 345, 350-51, 485 P.2d 77, 80 (1971); *see, e.g., State v. Pettitt*, 93 Wn.2d 288, 294, 609 P.2d 1364 (1980).

Prosecutors owe a duty to consider more than the strength of its case when deciding whether to pursue criminal charges and its attendant “awesome consequences.” *Pettitt*, 93 Wn.2d at 295 (quoting *United States v. Lovasco*, 431 U.S. 783, 794, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977)), 296. The circumstances here militated against wielding the full impact of criminal laws against Mr. Redding, who had just reported as requested.

Mr. Redding answered Detective Berg’s calls and complied with his request to report. Detective Berg’s statements and Mr. Redding’s conforming actions are mitigating circumstances that should have caused Snohomish County not to file a charge against Mr. Redding, particularly a charge which would result in substantial prison time.¹ This Court should rectify Snohomish County’s abuse of its broad authority by reversing the conviction and lengthy sentence against Mr. Redding.

¹ It is also notable that Mr. Redding’s duty to register stems from a juvenile adjudication. CP 112.

b. Due process notions of fundamental fairness, decency, and fair play require reversal of this conviction.

Due process notions of fair play and decency were trounced upon when Snohomish County prosecuted Mr. Redding following his conversation with law enforcement and reporting to the county jail. Due process commands that the government act towards its citizens in a fundamentally fair manner. *In re Detention of Ross*, 114 Wn. App. 113, 121, 56 P.3d 602 (2002). Due process is violated if a prosecutor's actions infringe those "fundamental conceptions of justice which lie at the base of our civil and political institutions,' . . . and which define 'the community's sense of fair play and decency.'" *Lovasco*, 431 U.S. at 790 (quoting *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935) and *Rochin v. California*, 342 U.S. 165, 173, 72 S. Ct. 205, 96 L. Ed. 183 (1952)).

When determining whether to forward charges, Detective Berg generally acts discretionally out of courtesy and in the interest of securing compliance. 4/17/15 RP 9-10. Detective Berg appeared to extend this courtesy to Mr. Redding by indicating he would not forward charges if Mr. Redding reported within two days. CP 148; 4/17/15 RP 19-20, 26-27, 32-33; Exhibit 2. Mr. Redding reported the next day; his

whereabouts were accounted for. 4/17/15 RP 21, 27. He had come into compliance.

“[C]onvictions cannot be brought about by methods that offend ‘a sense of justice.’” *Rochin*, 342 U.S. at 173 (quoting *Brown v. Mississippi*, 297 U.S. 278, 285-86, 56 S. Ct. 461, 80 L. Ed. 682 (1936)). Our constitutional guarantees require reversal of this failure to register conviction.

C. CONCLUSION

Mr. Redding’s conviction for failure to register should be reversed because he reported to the county jail after he spoke with law enforcement and understood charges would not be filed. In filing the failure to register charge, law enforcement breached its contact with Mr. Redding, prosecutorial discretion was abused, and due process was violated. On each and all of these grounds, the conviction should be reversed.

DATED this 29th day of April, 2016.

Respectfully submitted,

s/ Marla L. Zink _____
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

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|----------------------|---|---------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | NO. 73803-8-I |
| |) | |
| JOSHUA REDDING, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 29TH DAY OF APRIL, 2016, I CAUSED THE ORIGINAL **REPLY 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:

- | | | |
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SIGNED IN SEATTLE, WASHINGTON, THIS 29TH DAY OF APRIL, 2016.



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