IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. HOPEANN EVAN, Appellant.	No. 40848-1-II UNPUBLISHED OPINION

Penoyar, C.J. — Hopeann Evan appeals her failure to register as a sex offender conviction, arguing that the State presented insufficient evidence that she knowingly failed to comply with the registration requirements of former RCW 9A.44.130 (Laws of 2006, ch. 126, § 2).[1] She also challenges several community custody conditions, arguing that (1) the trial court improperly delegated its sentencing authority to the Department of Corrections (Department) when it imposed the conditions, and (2) the conditions are unconstitutionally vague. We affirm Evan's conviction and sentence.

FACTS

In 1991, Evan was convicted of first degree child rape. Accordingly, she had the duty to register as a sex offender with the sheriff in the county where she lived. Former RCW 9A.44.130(1) (1990). She also had the duty to notify the sheriff of any change in her residence address. Former RCW 9A.44.130(3) (1990).

[1] Because the State alleged that Evan committed this crime on or about November 18, 2008, we apply the version of RCW 9A.44.130 in effect on that date. *See* Laws of 2006, ch. 126, § 2. Unless otherwise noted, all references to "former RCW 9A.44.130" are references to Laws of 2006, ch. 126, § 2.

In 1992, after her release from a juvenile detention facility, Evan appeared in person at the Pierce County Sheriff's Department to complete her initial registration. In 1995, she again appeared at the sheriff's office in person and filed a change of address form.

In November 1997, she changed her residence address but failed to notify the sheriff in a timely manner. Accordingly, in February 1998, she pleaded guilty to the crime of failure to register as a sex offender, and she filed an updated change of address form. The statement of defendant on plea of guilty, which she signed, stated in relevant part:

> Because this crime involves a **sex offense**, I will be required to **register** with the sheriff of the county of the State of Washington where I reside.
>
> . . . .
>
> If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence.

Ex. 29 at 5.

The next six times that Evan changed her residence address in Pierce County, she appeared in person at the sheriff's department to file a change of address form.[2] She filed the last of these forms on April 28, 2006, listing her residence as an apartment on South Eighth Street in Tacoma.

On September 4, 2007, Evan's landlord evicted her from the South Eighth Street apartment. Despite the eviction, she did not file a change of address form or notify the sheriff that she no longer lived at her registered address. On November 18, 2008, the police conducted an address verification check at the South Eighth Street apartment and determined that Evan no longer lived there.

[2] Evan filed these change of address forms on January 15, 1998; October 6, 1999; March 13, 2001; April 1, 2004; October 18, 2004; and April 28, 2006.

On June 10, 2009, police arrested Evan at a house on Warner Street in Tacoma. Five days later, Evan filed a change of address form. She did not register as homeless, but instead listed the Warner Street house as her residence address.

The State charged Evan with failure to register as a sex offender. *See* former RCW 9A.44.130(11)(a). Specifically, in the amended information, the State alleged that on or about November 18, 2008, she knowingly failed to comply with former RCW 9A.44.130's registration requirements.

At a bench trial, Evan testified that, after her eviction from the South Eighth Street apartment in September 2007, she lived "[f]rom place to place." Report of Proceedings (RP) at 175. She testified that she lived at some of these places for more than one month. For instance, from September 2008 through December 2008, she resided at the Vagabond Motel in Tacoma. From January 2009 until her arrest in June 2009, she lived with her boyfriend's family at the Warner Street residence. She also testified that she lived at a motel in Lakewood for about a week and that she "stayed with [her] sister a little while." RP at 176. It is not clear from her testimony when she stayed at the Lakewood motel or stayed with her sister.

On cross-examination, she testified that she was not living in the South Eighth Street apartment on November 18, 2008. She acknowledged that her February 1998 statement on plea of guilty advised her that she had a duty to register with the sheriff. She admitted that she knew that she had to register any new residence address with the sheriff because she had done so nine times in the past. But she explained her failure to register after her September 2007 eviction as follows:

> I was homeless. I didn't have a permanent address. I wasn't aware at that time that when you are homeless, you are required to let them know where you are staying. I know now that if you are staying in a car, you have to call and you have to register that with them.

RP at 190.

Evan then testified that, at one point while she was living in the Vagabond Motel, she notified the Pierce County Sheriff's Office in writing that she was living at the motel. She explained that she did not register in person as she had the previous nine times because she used all of her money to pay for the motel and did not have any way to get to the sheriff's office. A sheriff's department employee testified, however, that the department did not receive any written notice from Evan between April 28, 2006 and June 15, 2009 that she had changed her residence address.

The trial court convicted Evan as charged, concluding that she knowingly failed to update her registration after her eviction in September 2007. The trial court found that between the time of her conviction and arrest, Evan "resided at several locations or was transient" but failed to update her sex offender registration with the sheriff and "either provide a new address or register transient." Clerk's Papers (CP) at 49, 53. The trial court entered a finding that Evan did not file any change of address forms with the sheriff between April 28, 2006 and June 15, 2009. The trial court also entered a finding that her testimony that she sent written notice to the sheriff while living at the Vagabond Motel was not credible.

In the "Sentence and Order" section of Evan's judgment and sentence, the trial court ordered her to "[f]ollow all direction[s], conditions, + instructions of CCO." CP at 63-64. The trial court also listed the following community custody conditions:

- The defendant shall participate in the following crime-related treatment or

> counseling services: any per CCO
>
> . . . .
>
> • The defendant shall comply with the following crime-related prohibitions: per CCO
>
> . . . .
>
> Other conditions may be imposed by the court or DOC during community custody, or are set forth here: per CCO

CP at 67 (original underlining omitted).

In the "Notices and Signatures" section of the judgment and sentence, the trial court wrote "per CCO + Appendix F" in the provision reserved for "OTHER." CP at 70. Appendix F reads, in relevant part:

> The Court may also order any of the following special conditions:
>
> X (VI) The offender shall comply with any crime-related prohibitions.
>
> X (VII) Other: per CCO

CP at 72 (original underlining omitted). Evan did not object to the imposition of any of these conditions.

Evan appeals her conviction and sentence.

ANALYSIS

I. Sufficiency of the Evidence

Evan argues that the State presented insufficient evidence to prove the *mens rea* of the crime, i.e. that she *knowingly* failed to comply with former RCW 9A.44.130's registration requirements. Specifically, she asserts that the State did not present evidence "that [she] knew she was required to register when she . . . considered herself transient." Appellant's Br. at 13.

This argument fails.

When reviewing a sufficiency challenge, we view the evidence in the light most favorable to the State in order to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). We interpret all reasonable inferences in the State's favor. *Hosier*, 157 Wn.2d at 8. We defer to the trier of fact on the issues of witness credibility and persuasiveness of the evidence. *State v. Cantu*, 156 Wn.2d 819, 830-31, 132 P.3d 725 (2006).

According to the statute in effect on November 18, 2008—the date that the State alleged that Evan committed the charged crime—a person who "knowingly fails to comply with any of the requirements of this section is guilty of a class B felony."[3] Former 9A.44.130(11)(a). A person acts knowingly when he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense or he or she has information that would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense. RCW 9A.08.010(1)(b).

Former RCW 9A.44.130(5)(a) stated that any person required to register under that statutory section who changed her residence address within the same county had to "send written notice of the change of address to the county sheriff within seventy-two hours of moving." Additionally, any person required to register under that statutory section who lacked a fixed residence had to "provide written notice"—including information about where the person planned to stay—"to the sheriff of the county where he or she last registered within forty-eight hours

[3] In 2010, the legislature deleted former 9A.44.130(11)(a) and created a new statutory section, later codified at RCW 9A.44.132, which defines the crime of failure to register as a sex offender in a nearly identical fashion. *See* Laws of 2010, ch. 267, §§ 2-3.

excluding weekends and holidays after ceasing to have a fixed residence." Former 9A.44.130(3)(b)(x), (6)(a).

Here, the State presented sufficient evidence that Evan acted knowingly when she failed to provide signed written notice of her change of address after her September 2007 eviction. First, the State proved that Evan was aware that her first degree child rape conviction required her to register with the county sheriff under former RCW 9A.44.130. She signed a statement of plea on guilty in February 1998 that explicitly stated this fact. And from this date until 2006, she appeared in person at the sheriff's office every time she moved and provided signed written notice of her new residence address. Second, the State proved that she did not live at the South Eighth Street apartment on November 18, 2008. Evan openly admitted this fact, testifying that she lived in the Vagabond Motel from September 2008 through December 2008. Third, it is unchallenged on appeal that Evan did not provide signed written notice to the county sheriff that she lived at the Vagabond Motel. Although she testified that she sent a letter to the sheriff, we must defer to the trial court's finding that her testimony on this point was not credible. *Cantu*, 156 Wn.2d at 830-31. Accordingly, any reasonable factfinder could have found that Evan was aware of three facts—that her conviction required registration, that she changed her residence address after the eviction and was living in a motel on November 18, 2008, and that she did not notify the sheriff that she had changed her residence address—that the sex offender registration statute defined as criminal. *See* former 9A.44.130(5)(a). Because she possessed this knowledge, she acted "knowingly." *See* RCW 9A.08.010(1)(b).

Evan asserts that the State did not prove that she acted knowingly because it did not prove that she actually knew about the unique registration requirements for offenders who lacked fixed

addresses. She observes that the legislature did not adopt these requirements until 1999, eight years after her rape conviction, and she asserts that the State did not present evidence that it notified her of these requirements. *See* Laws of 1999, 1st Sp. Sess., ch. 6, § 1.

This argument fails for two reasons. First, although Evan repeatedly testified that she was homeless after her eviction, and although she states in her appellate brief that she "considered herself transient" during this time, it is undisputed that Evan had a fixed address at the Vagabond Motel from September 2008 to December 2008, a period that encompasses the charging date. Appellant's Br. at 13. Accordingly, the applicable registration requirements were those related to individuals who change their address within the county, former RCW 9A.44.130(5)(a), and not those related to individuals who lacked fixed address, former RCW 9A.44.130(6)(a). Second, and more importantly, the State does not need to prove that a defendant actually knows the contents of a criminal statute in order to prove that the defendant knowingly committed the crime described in that statute. To prove that a defendant acted "knowingly," the State need only prove the defendant's awareness of facts that the statute defines as a crime. *See* RCW 9A.08.010(1)(b); *see also State v. Minor*, 162 Wn.2d 796, 802, 174 P.3d 1162 (2008) ("Ignorance of the law is generally not a defense."). Here, the evidence clearly demonstrated that Evan knew that she had a legal obligation to comply with the sex offender registration requirements, knew that she had changed residence addresses, and knew that she had not notified the sheriff. Accordingly, sufficient evidence supports the conviction.

II. Challenge to Community Custody Conditions

Evan challenges the trial court's imposition of the community custody conditions that appear in the facts section of this opinion.[4] She asks us to strike these conditions because the trial

court (1) improperly delegated its sentencing authority to the Department when it imposed these conditions, and (2) violated due process by imposing vague conditions. This argument fails.

A. Improper Delegation

We decline to address Evan's improper delegation argument for the first time on appeal. Because Evan did not object to the trial court's imposition of the community custody conditions, she must demonstrate that the trial court committed a "manifest error affecting a constitutional right" by delegating its sentencing authority. RAP 2.5(a)(3); *State v. Kirkman*, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007) ("[T]he defendant must identify a constitutional error and show how the alleged error actually affected the defendant's rights at trial."). She has failed to demonstrate a constitutional error.

The version of the Sentencing Reform Act (SRA) of 1981 in effect at the time of Evan's crime required the trial court to sentence her to community custody. Former 9.94A.715(1) (Laws of 2008, ch. 276, § 305), *repealed by* Laws of 2009, ch. 28, § 42 ("When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712 . . . the court shall . . . sentence the offender to community custody."); *see also* former RCW 9.94A.030(46)(a)(i) (Laws of 2008, ch. 276, § 309) (a violation of former 9A.44.130(11)(a) is a "sex offense"); former RCW 9.94A.712(1)(b) (Laws of 2006 ch. 124, § 3) (failure to register is not a "sex offense" subject to sentencing under former RCW 9.94A.712). The Act further stated,

[4] Evan does not assign error to all of the conditions that the trial court imposed in the judgment and sentence. She assigns error only to those conditions listed in the facts section of this opinion. Accordingly, we do address the propriety of several other conditions—including those ordering Evan to obey the law, to remain within a specific geographical area, and to receive the Department's approval about her residence location and living arrangements—that the State addresses in its response brief.

"[T]he court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720." Former 9.94A.715(2)(b). The referenced statute provided in relevant part:

> [A]ll offenders sentenced to terms involving . . . community custody shall be under the supervision of the department and *shall follow explicitly the instructions and conditions of the department*. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.
>
> . . . .
>
> For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include . . . *any appropriate conditions of supervision.*

Former 9.94A.720(1)(a), (c) (Laws of 2003, ch. 379, § 7), *repealed by* Laws of 2008, ch. 231, § 57 (emphases added).

Division One of this Court observed, in a similar case, that because the SRA "authorizes the Department of Corrections to impose conditions unilaterally in certain situations," an appellant's argument that the trial court had improperly delegated its powers to the Department to define crime-related prohibitions appeared to implicate a statutory, not a constitutional right. *State v. Smith*, 130 Wn. App. 721, 728-30, 123 P.3d 896 (2005) (declining to review the merits of the argument for the first time on appeal). The same reasoning holds true here. The applicable version of the SRA required the trial court to order the defendant to comply with the Department's conditions and instructions. *See* former RCW 9.94A.715(2)(b), .720(1)(a). Because Evan has not identified any constitutional error related to this delegation, we decline to review her argument for the first time on appeal under RAP 2.5(a)(3).

B. Vagueness Challenge

A defendant may assert a vagueness challenge to a condition of community custody for

the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 745, 193 P.3d 678 (2008). "[T]he due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of the state constitution requires that citizens have fair warning of proscribed conduct." *Bahl*, 164 Wn.2d at 752. This assures that ordinary people can understand what is and is not allowed and are protected against arbitrary enforcement of the laws. *State v. Sanchez Valencia*, 169 Wn.2d 782, 791, 239 P.3d 1059 (2010). A trial court has discretion to impose community custody conditions; it is an improper exercise of this discretion, however, to impose an unconstitutionally vague condition. *Sanchez Valencia*, 169 Wn.2d 791-93. But here the trial court simply followed the statutory requirement that it order Evan to comply with her CCO's directives. Again, Evan has failed to set forth any claim that the statutory scheme followed by the court (or any specific requirement imposed on her under the scheme) is unconstitutional. And again we decline to review this claim. RAP 2.5(a)(3).

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Van Deren, J.

Worswick, J.