

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

OLLIE V. CHURCH,

Appellant.

No. 42337-5-II

UNPUBLISHED OPINION

Worswick, A.C.J. — Ollie Church appeals his conviction for failure to register as a sex offender, arguing that the State presented insufficient evidence to support his conviction.¹ We reverse and remand for dismissal of Church’s conviction.

FACTS

On June 21, 2011, the State charged Church by amended information with failure to register as a sex offender. The information alleged that Church was convicted of first degree statutory rape in 1987 in Grays Harbor County. It further alleged that he had failed to register as a sex offender on or about March 24, 2011. At trial, the State presented testimony that on March 3, 2011, Church reported to the Grays Harbor Sheriff’s Office that he was transient and no longer at a stable address. The State established that Church failed to check in between March 9 and mid-April of that year despite being required to report weekly to the sheriff’s office. Following a bench trial, the court found Church guilty of failing to register as a sex offender. Church appeals.

¹ A commissioner of this court initially considered Church’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

ANALYSIS

Church argues that the recent decision in *State v. Taylor*, 162 Wn. App. 791, 259 P.3d 289 (2011) requires that his conviction be vacated because that case held that convictions for failure to register as a sex offender are not supported by sufficient evidence where the statute penalizing the underlying sex offense has been repealed. The State concedes that this case cannot be distinguished from *Taylor*.

In *Taylor*, the defendant was convicted of third degree statutory rape under former RCW 9A.44.090 (1979) in 1988. 162 Wn. App. at 793-94. However, the legislature repealed the statute under which he was convicted later that year. Laws of 1988, ch. 145, § 24; *Taylor*, 162 Wn. App. at 793-94. In 2009, the State charged Taylor with failure to register as a sex offender in violation of former RCW 9A.44.130 (2006), listing his predicate offense as the 1988 statutory rape conviction. *Taylor*, 162 Wn. App. at 794 n.1. The trial court found him guilty as charged. *Taylor*, 162 Wn. App. at 794.

Division One of this court noted a significant gap in the Sentencing Reform Act of 1981 (SRA)'s definition of "sex offense" in that it does not include offenses listed in chapter 9A.44 RCW that existed after 1976 but were thereafter repealed. *Taylor*, 162 Wn. App. at 799; *see also* RCW 9.94A.030(46). Recognizing that this gap was likely inadvertent, the court nevertheless declined to fill the gap in the absence of legislative authority. *Taylor*, 162 Wn. App. at 799. Because the predicate offense for Taylor's failure to register conviction was no longer a violation of the SRA, the court held that the failure to register statute did not include his statutory rape conviction as a sex offense. *Taylor*, 162 Wn. App. at 800-01. The *Taylor* court, therefore,

concluded that it was required to reverse his failure to register conviction. 162 Wn. App. at 801.

This case is indistinguishable from *Taylor*. As in *Taylor*, Church was convicted of statutory rape, an offense that was repealed and replaced with the current crime of rape of a child. See *State v. Stockwell*, 159 Wn.2d 394, 397-98, 150 P.3d 82 (2007). The offense thus did not meet the definition of a sex offense under RCW 9.94A.030(46). Therefore, the State failed to prove that Church had been convicted of a sex offense which triggered his duty to register. Concluding that *Taylor* applies to this case, we reverse and remand for dismissal of Church's conviction.

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.

Worswick, A.C.J.

We concur:

Hunt, J.

Johanson, J.