IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DARREN RONELL SMITH, Appellant.	No. 38779-4-II UNPUBLISHED OPINION

Houghton, J. — Darren Smith appeals his conviction for failure to register as a sex offender. He argues that (1) RCW 9A.44.130(4)(a)(i) is unconstitutionally vague as applied to the facts of his case and (2) insufficient evidence supports his conviction. We affirm.

FACTS

Washington law requires Smith to register as a sex offender based on a 2002 juvenile conviction. He has two adult convictions (March 15, 2005 and July 16, 2007) for failing to register as a sex offender. The judgment and sentence for his March 15, 2005 conviction required him to report to a community corrections officer and to not purchase, possess, or use any controlled substances without a valid prescription. The judgment and sentence for his July 16, 2007 conviction required him to report to a community corrections officer.

After Smith's November 20, 2007 release into the community, he registered his address as a residence on Martin Luther King Way in Tacoma on November 27. On December 7, the

Department of Corrections (DOC) filed a report alleging that (1) on November 20, 2007, Smith had consumed cocaine, (2) on November 26, Smith had failed to report to his community corrections officer, and (3) Smith had been terminated from the Breaking the Cycle (BTC) chemical dependency treatment program. Smith stipulated to his guilt on these violations. The DOC ordered him to serve 60 days in jail. The DOC entered the order on five cause numbers: his two failure to register convictions, cause numbers 05-1-00681-3 and 07-1-02341-2, and three other non-sex offenses, 05-1-00393-8, 05-1-05025-1, and 05-1-03480-9.[1]

On January 25, 2008, Smith was again released into the community. He did not re-register his address. On February 8, law enforcement officers arrested him at the same Martin Luther King Way address for failure to register a sex offender, unlawful possession of a controlled substance, and unlawful possession of a firearm. The State charged Smith with one count of failure to register as a sex offender; one count of unlawful possession of a controlled substance, cocaine; one count of first degree unlawful possession of a firearm; and one count of unlawful possession of an uncontrolled substance, 40 grams or less of marijuana.

Smith filed a *Knapstad*[2] motion to dismiss the count of failure to register as a sex offender. The trial court denied the motion.

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[1] The record reflects that these latter three convictions were for unlawful possession of a controlled substance, custodial assault, and a different unlawful possession of a controlled substance. We note that the trial court's findings of fact variously list the cause numbers for Smith's two previous failure to register convictions as 05-1-05025-1, 05-1-00393-8, and "07-1-02341." Clerk's Papers at 184. These cause numbers conflict with the cause numbers listed on the DOC report and order. But these variations make no difference for our analysis.

[2] *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986) (upholding a motion to dismiss for lack of material facts sufficient to prove guilt).

The State filed an amended information regarding the date the events occurred. The trial court severed the charges against Smith, and he submitted to a stipulated facts bench trial only on the failure to register as a sex offender charge. The trial court found him guilty and he appeals.

ANALYSIS

Vagueness

Smith first contends that, as applied to the facts of his case, RCW 9A.44.130(4)(a)(i) is unconstitutionally vague. Specifically, he asserts that because the DOC order returning him to confinement listed five cause numbers, a reasonable person would not understand that his incarceration required him to re-register on release.

We review a statute's constitutionality de novo. *State v. Watson*, 160 Wn.2d 1, 5-6, 154 P.3d 909 (2007). When the statute does not involve First Amendment rights, we review a vagueness challenge by examining the statute as applied to the particular facts of the case. *Watson*, 160 Wn.2d at 6. Because we presume a statute constitutional, the standard for finding a statute unconstitutionally vague is high. *Watson*, 160 Wn.2d at 11. Only in exceptional cases may this presumption be overcome. *Watson*, 160 Wn.2d at 11. A challenger bears the burden of proving beyond a reasonable doubt that a statute is unconstitutionally vague. *Watson*, 160 Wn.2d at 11.

We consider a statute void for vagueness if either " '(1) the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct [the statute] proscribed or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement.' " *Watson*, 160 Wn.2d at 6 (quoting *State v. Williams*, 144 Wn.2d

197, 203, 26 P.3d 890 (2001)) (internal quotation marks omitted). Smith appears to challenge RCW 9A.44.130(6)(b) only on the first ground.

Under the first ground, "[t]he due process clause of the fourteenth amendment to the United States Constitution requires statutes to provide fair notice of the conduct they proscribe." *Watson*, 160 Wn.2d at 6. To meet this standard, "the language of a penal statute 'must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.' " *Watson*, 160 Wn.2d at 6-7 (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926)). "A statute fails to provide the required notice if it 'either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.' " *Watson*, 160 Wn.2d at 7 (quoting *Connally*, 269 U.S. at 391).

But because " '[s]ome measure of vagueness is inherent in the use of language,' " we "do not require 'impossible standards of specificity or absolute agreement.' " *Watson*, 160 Wn.2d at 7 (alteration in original) (quoting *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 740, 818 P.2d 1062 (1991)); *Watson*, 160 Wn.2d at 7 (quoting *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992)) (internal quotation marks omitted). Unconstitutional vagueness is not mere uncertainty, and a statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which their actions become prohibited conduct. *Watson*, 160 Wn.2d at 7. Given this, "a statute meets constitutional requirements '[i]f persons of ordinary intelligence can understand what the ordinance proscribes, notwithstanding some possible areas of disagreement.' " *Watson*, 160 Wn.2d at 7 (alteration in original) (quoting *City*

of Spokane v. Douglass, 115 Wn.2d 171, 179, 795 P.2d 693 (1990)) (internal quotation marks omitted).

"In addition, because of the inherent vagueness of language, citizens may need to utilize other statutes and court rulings to clarify the meaning of a statute." *Watson*, 160 Wn.2d at 8. We consider such materials " '[p]resumptively available to all citizens.' " *Watson*, 160 Wn.2d at 8 (alternation in original) (quoting *Douglass*, 115 Wn.2d at 180) (internal quotation marks omitted).

In *Watson*, our Supreme Court reasoned that its prior decisions established that incarceration for probation violations relates back to the original conviction for which probation was granted. 160 Wn.2d at 8. Thus, it concluded that Watson's 60 days' custody for violation of his community custody conditions were a result of his sex offense, triggering the requirement under RCW 9A.44.130(4)(a)(i) that he re-register upon his release.[3] *Watson*, 160 Wn.2d at 9. Furthermore, it observed that requiring re-registration after sex offenders are released from jail after violating their probation on their sex offenses serves the legislative purpose behind the sex

[3] RCW 9A.44.130(4)(a)(i) provides in relevant part:

> Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, *are in custody, as a result of that offense*, of the state department of corrections, . . . or a local jail . . . must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. . . . . The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence.

(Emphasis added.)

offender statute. *Watson*, 160 Wn.2d at 9-10. Because presumptively available case law and legislative guidance clarified the requirements of RCW 9A.44.130(4)(a)(i), the court held that it was not unconstitutionally vague. *Watson*, 160 Wn.2d at 11-12.

Here, Smith's November 20, 2007 cocaine consumption and his November 26 failure to report to his community corrections officer violated the terms of his community custody for his two previous convictions for failure to register as a sex offender. The DOC order returning him to confinement listed the cause numbers of those two convictions. Thus, his incarceration related back to those convictions. Furthermore, the same case law and legislative materials analyzed in *Watson* were presumptively available to Smith. Accordingly, we hold that RCW 9A.44.130(4)(a)(i) is not unconstitutionally vague as applied to the facts of this case.

Sufficiency Of The Evidence

Smith also contends that the State failed to prove he violated RCW 9A.44.130(4)(a)(i). He asserts that there are no facts on the record to support a finding that he was released from custody on his sex offenses.

Evidence sufficiently supports a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). On appeal, we draw all reasonable inferences from the evidence in favor of the State and interpret them most strongly against the defendant. *Hosier*, 157 Wn.2d at 8. Any insufficiency claim admits the truth of the State's evidence and all reasonable inferences from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

We review a trial court's conclusions of law de novo. *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007). We uphold a trial court's findings of fact if substantial evidence supports them. *State v Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). Substantial evidence exists if there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *Levy*, 156 Wn.2d at 733. We treat unchallenged findings of fact as verities on appeal. *Levy*, 156 Wn.2d at 733.

Here, Smith's November 20, 2007 cocaine consumption and his November 26 failure to report to his community corrections officer violated the terms of his community custody for his two previous convictions for failure to register as a sex offender. The DOC order returning him to confinement listed the cause numbers of those two convictions. Thus, his incarceration related back to those convictions. Accordingly, we hold that sufficient evidence supports Smith's conviction.

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

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Houghton, J.

We concur:

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Van Deren, C.J.

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Penoyar, J.