

NOTICE

*Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

GERALD HARRY OUTWATER,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12129  
Trial Court No. 3AN-14-6036 CR

MEMORANDUM OPINION

No. 6478 — May 31, 2017

Appeal from the District Court, Third Judicial District,  
Anchorage, David R. Wallace, Judge.

Appearances: Josie Garton, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
G. Michael Ebell, Assistant District Attorney, Anchorage, and  
Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats,  
Senior Judge.\*

Senior Judge COATS.

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\* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Upon his release from prison on unrelated charges, Gerald Harry Outwater filled out his sex offender registration paperwork with the help of his probation officer. One of the forms included an acknowledgment that Outwater “must provide written notice of a change in residence ... by the next working day following the change.” The form defined “residence” as “the physical location of my home or other place where I am living.”

After twelve days living at a rooming house in Anchorage, Outwater voluntarily left and became homeless. He did not provide notice of a change of residence. Outwater bounced around various locations in Anchorage for five weeks until he was located and charged with second-degree failure to register as a sex offender. He was found guilty after a bench trial.

In this appeal, Outwater argues that the State presented insufficient evidence of the mens rea of the crime — that he was aware that leaving the rooming house and becoming homeless meant that he had changed his residence, thus triggering his duty to provide written notice of a change in residence. For the reasons explained in this opinion, we conclude that the verdict was supported by substantial evidence, and we therefore affirm Outwater’s conviction.

#### *Factual background*

After serving two years in prison for two sexual assault convictions, Outwater was released on probation and mandatory parole in Anchorage in May 2014.

Outwater’s convictions required him to register as a sex offender. Prior to his release, he met with his institutional probation officer to complete the necessary paperwork.

One of the forms was titled “Sex Offender/Child Kidnapper Acknowledgment of Requirements and Duties.” It contained a list of duties and a space

to initial by each. The duties were divided into three categories. The first four duties related to Outwater's "residence," which was defined as "the physical location of my home or other place where I am living." The first duty listed under this section stated:

I must provide written notice of a change in residence to the Alaska State Trooper post or municipal police department located nearest to my new residence, or to the Alaska Sex Offender/Child Kidnapper Central Registry Office if I reside within the Municipality of Anchorage, by the next working day following the change.

Another portion of the form included Outwater's duty to register quarterly and verify his registration information.

According to Outwater's testimony at trial, his probation officer read all of these duties aloud to him and asked him if he had any questions. Outwater then initialed the space by each duty that applied to him.

None of the forms Outwater signed included any information regarding homelessness.

When Outwater was released on May 16, 2014, his probation officer arranged a place for him to stay at Henry House — a drug- and alcohol-free rooming house in Anchorage. Outwater left Henry House after twelve days, on May 28th. When asked at trial why he left, he said, "I don't know. ... I met a friend and didn't go back." For the next five weeks, Outwater stayed at ten to fifteen different places around Anchorage, including two different family friends' houses, on a park bench, under a bridge, and in a parking lot. According to Outwater, he was "homeless." There was no evidence that Outwater ever returned to stay at Henry House.

During this time, Outwater stopped communicating with his probation officer and missed a scheduled appointment with her on June 6th.

Outwater was arrested on July 5, 2014. After responding to a call at an apartment, an Anchorage police officer knocked on a neighboring apartment door to tell

the occupants that their music was too loud. Outwater was present at this neighboring apartment. At first, Outwater gave the officer a false identity. When the officer confronted him, Outwater gave his correct identification. The officer determined that Outwater had outstanding warrants and arrested him.

### *Proceedings*

The State charged Outwater with second-degree failure to register as a sex offender based on his knowingly failing to file written notice of a change in residence.<sup>1</sup> Outwater waived his right to a jury trial and proceeded to a bench trial in front of District Court Judge David R. Wallace.

At trial, the State played a recording of the exchange between Outwater and the arresting officer. During the exchange, Outwater admitted that he had left Henry House and had been living on the streets. He acknowledged that he knew that he was required to notify the sex offender registry within one day if he moved, but he stated that he had not done so because he “didn’t really move anywhere.”

Two employees from the Department of Public Safety (DPS) Sex Offender Registry also testified. They testified that their ad hoc policy is to allow homeless registrants to list “homeless” as their residence. Depending on the person’s specific situation, DPS typically advises them to describe their residence as “the place where they sleep” — for example a homeless shelter or a homeless camp, or, if they are truly transient, then the DPS employee would help the registrant narrow their location to a zip code or several zip codes.

The DPS employees acknowledged that there was no formal procedure for conveying this information to registrants, and that none of the standard forms that

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<sup>1</sup> AS 11.56.840(a)(3)(B)(i).

Outwater signed provided any advice or information about homelessness. But they testified that they would advise anyone who called or came in and asked what they should do, and that DPS frequently answered such questions from homeless registrants. Neither of the DPS employees testified that Outwater had ever interacted with a registry employee who might have given him this information.

At the close of the State's evidence, Outwater moved for a judgment of acquittal. Outwater argued that the State had not proved the mens rea requirement for the crime — that he knew that his homelessness triggered a duty to file a written notice of a change in residence.

The court denied the motion for judgment of acquittal. The court concluded that it could infer from the facts that Outwater knew that his leaving Henry House meant he was supposed to file a notice of a change in residence, even though he may have been confused about where he should tell DPS he was living.

Outwater took the stand in his defense. He testified that he lied to the police about his identity because he knew he was in trouble for missing his probation appointment. He testified that he was not looking for a permanent place to stay because he planned to turn himself in for missing the appointment — and that he planned to do this before his quarterly registration date, so that he would not be charged with failure to register. Outwater testified that, at the time he was arrested, he did not think he was out of compliance with his registration requirements, only with his probation requirements. He also testified that he thought a “change of residence” only applied if he found a new residence or if he had a place to stay.

In closing, both parties focused on whether Outwater's failure to file a change of residence was knowing. The State argued that Outwater was aware of a substantial probability that he was required to file a change in residence when he left Henry House. Outwater argued that his responses to the arresting officer and his trial

testimony were consistent and demonstrated that he did not know that his homelessness constituted a change in residence.

The court found Outwater guilty. The court found that Outwater initialed the acknowledgment form indicating that he knew that he was required to provide a written notice of a change in residence. The court found that when the officer asked Outwater if he knew he was required to notify the registry if he moved, Outwater responded “yes.” The court then found that, when Outwater was asked why he did not do that, Outwater responded he had not really moved. The court further found that Outwater’s testimony that he did not think his change in residence duty had been triggered was “not credib[le].” The court thus concluded that Outwater was aware of the circumstances giving rise to his duty to register and that he knowingly refrained from notifying the registry of a change in residence.

*There was sufficient evidence to find that Outwater was aware that his leaving Henry House triggered his duty to file a written notice of a change in residence*

In this appeal, Outwater renews his argument that the State presented insufficient evidence of the mens rea of the crime — that Outwater was aware that leaving Henry House and becoming homeless meant that he had changed his residence, thus triggering his duty to provide written notice.

In considering claims of insufficient evidence following a bench trial, we assess whether the verdict is supported by “substantial evidence” — “such relevant evidence [as] is adequate to support a conclusion by a reasonable mind that there was no

reasonable doubt as to [the] appellant’s guilt” — when all inferences are resolved in favor of the verdict.<sup>2</sup>

The Alaska Sex Offender Registration Act (ASORA) requires people convicted of a sexual offense to register with the State of Alaska.<sup>3</sup> Part of this registration requires the registrant to complete a form that includes their address.<sup>4</sup> After registering, if a registrant “changes residence,” they must “provide written notice of the change by the next working day.”<sup>5</sup>

Pursuant to AS 11.56.840(a)(3)(B)(i), a person is guilty of second-degree failure to register if they are required to register under ASORA, know they are required to so register, and fail to file a written notice of a change in residence.

It is not disputed that Outwater was a sex offender and knew of his duty to register as a sex offender — both in the sense that he had to register quarterly and that he had to file written notice if he changed residences. Outwater initialed the acknowledgment form that said he would “provide written notice of a change in residence.” Outwater answered in the affirmative when the officer asked him, “Do you know that when you move you’re required to notify the sex offender registry within one day?” He also confirmed this understanding when he testified, saying that he signed the acknowledgment form and that he understood that if he moved somewhere, he would have to give notice.

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<sup>2</sup> *Shayen v. State*, 373 P.3d 532, 535 (Alaska App. 2015) (citing *Helmer v. State*, 608 P.2d 38, 39 (Alaska 1980)). Substantively, this is the same test that an appellate court applies to a jury verdict. *Id.*

<sup>3</sup> AS 12.63.010(a) & AS 12.63.100(5), (6).

<sup>4</sup> AS 12.63.010(b)(1)(A).

<sup>5</sup> AS 12.63.010(c).

The dispute in this case involves the mens rea of the crime. As explained in *Dailey v. State*, when a person is prosecuted for a failure to act, the State must prove two mental states: first, that the person is aware of the circumstance giving rise to the duty to act and second, that the person “knowingly refrained from performing that duty.”<sup>6</sup> Knowledge of a circumstance is established when a person is aware of a substantial probability of that circumstance’s existence, unless the person actually believes that it does not exist.<sup>7</sup>

After reviewing the record and the superior court’s explanation of its verdict, we conclude that the verdict was supported by substantial evidence.<sup>8</sup>

The judge found that Outwater knew that he was no longer living at Henry House, knew that he would have to verify his address information at the time of his quarterly deadline, and knew that he had to give notice the next day if he changed residences. The judge acknowledged that Outwater testified that he did not understand that his duty was triggered, but the judge concluded that it was not credible that Outwater understood the parameters of his sex offender duties, but yet claimed not to know that his leaving Henry House triggered the change in residence requirement.

Even though Outwater testified to the contrary, it was the court’s prerogative not to find that testimony believable. And on review, this Court is required to view the evidence in the light most favorable to upholding the verdict. The judge could infer from the evidence presented that Outwater was aware of a substantial probability that his leaving Henry House constituted a change in the “physical location of [the] place where [he was] living” and triggered his duty to register. When Outwater

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<sup>6</sup> *Dailey v. State*, 65 P.3d 891, 895 n.9 (Alaska App. 2003).

<sup>7</sup> AS 11.81.900(a)(2).

<sup>8</sup> *See Shayen*, 373 P.3d at 535.

left Henry House, he essentially went off the radar and stopped communicating with his probation officer. Outwater's avoidance of opportunities to ascertain the details of his sex offender requirements is an indication that he was conscious of his guilt. While Outwater may have legitimately been confused or unsure about what new address or location to submit, the record supports the district court's conclusion that Outwater was aware that he had to do *something* to be in compliance.

*Conclusion*

Outwater's conviction is AFFIRMED.