

FILED

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**CAROL G GREEN
CLERK OF APPELLATE COURTS**

No. 12-108615-A

**IN THE
COURT OF APPEALS OF THE
STATE OF KANSAS**

STATE OF KANSAS
Plaintiff-Appellee

vs.

JAMES EDEN
Defendant-Appellant

REPLY BRIEF OF APPELLANT

Appeal from the District Court of Shawnee County, Kansas
Honorable Mark Braun, Judge
District Court Case No. 10 CR 2447

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A. Mr. Eden’s conviction of an offender registration violation violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution because a defendant may not be convicted based upon taking an action that the State leads him to believe complies with the law 1

B. Shawnee County Sheriff Department’s operating procedures prevented Mr. Eden from timely completing his offender registration with resulted in his conviction and denied him fundamental fairness as required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution3

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Nature of the Case

Mr. Eden appeals his conviction of offender registration violation and his sentence. (R. II, 109).

Statement of Reply Issue

Issue I: Mr. Eden's conviction violates the Due Process Clause of the United States Constitution because the State of Kansas was estopped from prosecuting Mr. Eden for an offender registration violation when it was the actions of the State which made it impossible for Mr. Eden to complete his registration during the time required.

Arguments and Authorities

Issue I: Mr. Eden's conviction violates the Due Process Clause of the United States Constitution because the State of Kansas was estopped from prosecuting Mr. Eden for an offender registration violation when it was the actions of the State which made it impossible for Mr. Eden to complete his registration during the time required.

A. Mr. Eden's conviction of an offender registration violation violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution because a defendant may not be convicted based upon taking an action that the State leads him to believe complies with the law.

Mr. Eden argued in his brief that his conviction violated the due process clause of the Fourteenth Amendment, in part, because the State, through the Shawnee County Sheriff's Department, did not schedule his appointment to complete his November registration until after his registration deadline has passed. Therefore, his conviction was based on an action he took in reliance on the State's implicit assertion that such an action was lawful.

The State argued in its brief that the State did not actively mislead Mr. Eden because Mr. Eden did not allege that he told the Shawnee County Sheriff's Department that he needed to complete his registration by the end of November or that the December

registration appointment would be after his deadline had passed. (Appellee's brief, 9). The State also argued that Mr. Eden did not rely on the Shawnee County Sheriff's Department's misleading behavior. (Appellee's brief, 10). Finally, the State argued that any reliance by Mr. Eden would have been unreasonable. (Appellee's brief, 13).

The State's arguments are without merit. The record is clear that Mr. Eden attempted to complete his registration in the month of November. (R. X, 54-55). The record is also clear that Mr. Eden cannot complete his registration without an appointment. (R. X, 31, 53). Mr. Eden did not have the ability to go into the Shawnee County's Sheriff's office in the middle of November and try to complete his registration. He had to have an appointment. Mr. Eden could not have completed his registration without the \$20 fee, so he attempted to comply with the requirement once he had the financial means to do so.

The only reason Mr. Eden did not register in November is because the Shawnee County Sheriff's Department scheduled his appointment in December. (R. X, 54-55). The Shawnee County Sheriff's Department misled Mr. Eden because (1) it scheduled the appointment in December, and (2) its policies prevented Mr. Eden from registering at a different time. Mr. Eden relied upon this misrepresentation when he showed up to register at his December 8 appointment only to be turned away.

The State argued that Mr. Eden's reliance was unreasonable given the state of the law. (Appellee's brief, 14). However, the State did not explain, or even attempt to explain how Mr. Eden could have complied with the registration requirement in Shawnee County in the month of November, when he could not register without an appointment and his appointment was not scheduled until December. The point the State overlooked in its

brief was that Mr. Eden could not complete his registration in Shawnee County without an appointment. (R. X, 31, 53). He was at the mercy of when the Shawnee County Sheriff's Department chose to schedule that appointment. The Shawnee County Sheriff's Department scheduled that appointment after his registration month. Mr. Eden could not register at another time. It was not an option in this county. As such, his reliance on the Shawnee County's Sheriff's Department scheduling his appointment on December 8, was reasonable under the circumstances.

B. Shawnee County Sheriff Department's operating procedures prevented Mr. Eden from timely completing his offender registration with resulted in his conviction and denied him fundamental fairness as required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

First, the State argued that Mr. Eden failed to assert an exception as to why this section of **Issue I** could be addressed for the first time on appeal. The State argued that the arguments raised for reviewing the issue for the first time on appeal primarily entailed reliance by Eden, not fairness of the operating procedures. (Appellee's brief, 16). This argument ignores the fact that Mr. Eden argued in his brief that the newly asserted claim involves only a question of law arising on proved or admitted facts and is determinative of the case. (Appellant's brief, 6). The facts then provided apply to both this subsection of the issue and the entrapment by estoppel section of this issue. (Appellant's brief, 6).

While the second part of the reviewability argument was focused on the entrapment by estoppel argument, the reasoning applies equally to this subsection of this issue as this section also implicates Mr. Eden's due process rights. Mr. Eden cited several cases in his brief which stand for the proposition that when an argument concerns due process rights, it can be address for the first time on appeal to prevent the denial of a

fundamental right. (Appellant's brief, 7-8).

The State next argued that because Mr. Eden cited no authority to support the argument raised, this issue is waived and abandoned. (Appellee's brief, 16). Mr. Eden cited the only authority which was available on this issue – the authority that states that the Due Process Clause of the Fourteenth Amendment of the United States Constitution necessarily includes a requirement of fundamental fairness. *Schad v. Arizona*, 501 U.S. 624, 637, 115 L. Ed. 2d 555, 111 S. Ct. 2491 (1991). Mr. Eden then argued why upholding Mr. Eden's conviction under the circumstances in this case would be fundamentally unfair.

The appellate courts have not decided an issue like this before, as such there is not authority which directly supports Mr. Eden's argument. However, Mr. Eden argues that the only authority necessary is the Due Process Clause of the Fourteenth Amendment of the United States Constitution which "necessarily includes a requirement of fundamental fairness."

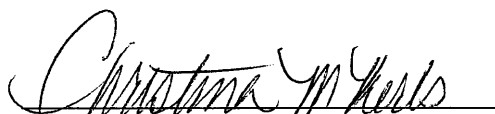
Finally, the State asserted that it was Mr. Eden's own actions, not the operating procedures of the State, which led to his conviction. (Appellee's brief, 16). The State argued that because Mr. Eden did not attempt to contact the Shawnee County Sheriff's Department until the middle of November 2010, it was his own fault that he could not register until a month later. (Appellee's brief, 17). The law does not require Mr. Eden to attempt to register on a certain day. The Shawnee County Sheriff's Department procedures do not require, as far as counsel knows, an offender to call for an appointment by a certain time of the month.

Mr. Eden attempted to comply with his registration requirement by calling to make an appointment once he had the money required to complete his registration. (R. X, 54-55). This was in the middle of November. (R. X, 54-55). He did not wait until the last week of November to call, or the last day of November to call. (R. X, 54-55). He called in the middle of his registration month for an appointment. (R. X, 54-55). It was only because of the operating procedures of the Shawnee County Sheriff's Department that he was not able to complete his registration in November.

Conclusion

Mr. Eden's conviction violates the Due Process Clause of the Fourteenth Amendment for the reasons stated above and in Mr. Eden's original brief.

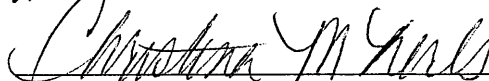
Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies that service of the above and foregoing reply brief was made by mailing two copies, postage prepaid, to Chad Taylor, Shawnee County Attorney, 200 SE 7th, Suite 214, Topeka, KS 66603-3922; and by delivering one copy by building mail to Derek Schmidt, Attorney General, 120 SW 10th Ave, 2nd floor, Topeka, KS, 66612 on the 18 day of July, 2013.



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