

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**Memorandum Order**

**No. 35437**

**FILED**

**September 16,**

**2010**

**released at 3:00 p.m.**

**RORY L. PERRY II, CLERK**

**SUPREME COURT OF APPEALS**

**OF WEST VIRGINIA**

**STATE OF WEST VIRGINIA v. DEAN CRAIG SPEARS**

Petition for Appeal from the Circuit Court of Mercer County  
Criminal Action No. 09-F-83

On January 13, 2010, this Court issued an order granting Dean Craig Spears' petition for appeal challenging his conviction and sentence for the offense of failure to provide notice of changes in sex offender registration by unlawfully, knowingly, and feloniously failing to provide information regarding an automobile he operated regularly, in violation of W. Va. Code § 15-12-8 (2006) (Repl. Vol. 2009). The State confesses error and asks this Court to reverse the conviction and sentence, and remand for dismissal of the indictment. For the reasons more fully set forth in this Memorandum Order, we agree with the State. Accordingly, we hereby reverse Dean Craig Spears' conviction and sentence for the offense of failure to provide notice of changes in sex offender registration, and remand this case to the Circuit Court of Mercer County with directions to dismiss, with prejudice, the indictment charging the same.

On October 26, 2007, following a jury trial, Dean Craig Spears was found guilty of one count of second degree sexual assault. As a result of his conviction, Mr. Spears was required to register as a sex offender with the West Virginia State Police, pursuant to W. Va.

Code § 15-12-2 (2006) (Repl. Vol. 2009).<sup>1</sup> Mr. Spears reported to the Princeton, Mercer County, West Virginia, detachment of the State Police on January 11, 2008, for the purpose of registering as a sex offender. During the course of his registration interview, Mr. Spears was asked by the interviewing state trooper whether he owned any motor vehicles. Mr. Spears accurately responded that he did not own any motor vehicles. Mr. Spears was not asked, on this occasion, whether he had access to any motor vehicles. On other occasions, including January 15, 2008, when he was interviewed by a Mercer County Probation Officer, Mr. Spears was asked whether he had access to any motor vehicles and he responded that he did have such access. Likewise, when interviewed a second time by the West Virginia State Police for sex offender registration purposes, Mr. Spears was asked whether he had access to any motor vehicles and he provided all requested information pertaining to a vehicle to which he had access. This disclosure lead to his indictment for failure to provide notice of changes in sex offender registration.

Following a bench trial, the circuit court of Mercer County concluded that Mr. Spears had not been properly questioned during his sex offender registration process, and observed, in essence, that he had not concealed his access to a motor vehicle, as demonstrated by his disclosure of the same upon questioning by others, including his probation officer. Nevertheless, the circuit court found Mr. Spears guilty and sentenced him to an indeterminate term of not less than one nor more than five years, to run concurrently with

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<sup>1</sup>Mr. Spears was granted post-conviction bond with the condition of home confinement pending his appeal of his conviction for second degree sexual assault. His petition for appeal of that conviction was refused by this Court on January 22, 2009.

his sentence for second degree sexual assault. On appeal, the State observes that it is undisputed that when Mr. Spears initially registered as a sex offender, he was asked only whether he owned a motor vehicle, and that “there was not one shred of evidence [presented during the bench trial] that the Appellant’s failure to provide information about the vehicle he used, but did not own, was a knowing act or omission; further, there was not one shred of evidence from which this element of the offense could be inferred.” Accordingly, the State concedes that there was insufficient evidence at trial to establish that Mr. Spears’ *knowingly* failed to provide information about a vehicle to which he had access, as required by W. Va. Code § 15-12-8. Upon our thorough review of this case, we agree.<sup>2</sup> Although the State incorrectly argues that no statute expressly requires a sex offender registrant to provide information pertaining to motor vehicles, we nevertheless agree that the evidence presented in this action was insufficient to establish that Mr. Spears *knowingly* failed to provide the information required by W. Va. Code § 15-12-2.

For the reasons stated above, we hereby find the evidence presented at trial was insufficient to establish a necessary element of the offense of failure to provide notice of changes in sex offender registration by unlawfully, knowingly, and feloniously failing to provide information. Therefore, we reverse Mr. Spears conviction and sentence, and remand this case to the Circuit Court of Mercer County with directions to dismiss, with prejudice, the indictment.

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<sup>2</sup>“This Court is not obligated to accept the State’s confession of error in a criminal case. We will do so when, after a proper analysis, we believe error occurred.” Syl. pt. 8, *State v. Julius*, 185 W. Va. 422, 408 S.E.2d 1 (1991).

Reversed and Remanded with directions.