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NO. 68466-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

REC'D
FEB 01 2013
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

LISA O'NEILL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Jay White, Judge

REPLY BRIEF OF APPELLANT

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A. ISSUE IN REPLY

Should this Court reject the State's argument that a sentencing court is not permitted to reduce a restitution award by an offsetting amount?

B. ARGUMENT IN REPLY

A SENTENCING COURT MAY, IN ITS DISCRETION, REDUCE AN AWARD OF RESTITUTION BY AN OFFSETTING AMOUNT.

The State claims, absent citation to authority, that the restitution statutes do not permit a sentencing court to reduce an award of restitution by an offsetting amount. Brief of Respondent at 13-14. But whether or not to offset an award is a matter of the trial court's discretion. See, e.g., State v. Shannahan, 69 Wn. App. 512, 519, 849 P.2d 1239 (1993) (citing State v. Young, 63 Wn. App. 324, 333-34, 818 P.2d 1375 (1991)). And here, the court abused its discretion in declining to order, based on legally untenable reasoning, the offset of an amount acknowledged by the complaining witness at trial. Brief of Appellant at 7-8.

C. CONCLUSION

For the reasons set forth above and in the appellant's opening brief, this Court should reverse the trial court's restitution order and remand for reduction of the amount.

DATED this 1ST day of February, 2013.

Respectfully submitted,

NIELSEN, BROMAN, & KOCH, PLLC



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON

Respondent,

v.

LISA O'NEIL,

Appellant.

COA NO. 68466-3-1

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 1ST DAY OF FEBRUARY 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LISA O'NEIL
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MISSION CREEK CORRCTIONS CENTER
3402 NE SANDHILL ROAD
BELFAIR, WA 98528

SIGNED IN SEATTLE WASHINGTON, THIS 1ST DAY OF FEBRUARY 2013.

x Patrick Mayovsky

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