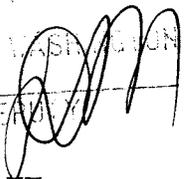


FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY  DEPUTY

NO. 36929-0-II  
Cowlitz Co. Cause NO. 07-1-01047-2

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

Respondent,

v.

**MATTHEW W. BISHOP,**

Appellant.

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**BRIEF OF RESPONDENT**

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*P.M. 8-1-08*

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## **RESPONSE TO ASSIGNMENT OF ERROR**

The trial court did not err when it denied the defendant's motion to suppress evidence seized following his arrest on a municipal court warrant since the warrant was lawfully issued.

## **ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

**WHEN A COURT ISSUES A WARRANT FOR A CONVICTED PERSON'S FAILURE TO COMPLETE OUT-OF-CUSTODY WORK CREW, DOES THAT WARRANT NEED TO BE BASED UPON PROBABLE CAUSE SEPARATE FROM THAT ESTABLISHED BY THE UNDERLYING CHARGE FOR WHICH THE DEFENDANT WAS CONVICTED?**

## **STATEMENT OF THE CASE**

The defendant was sentenced to 365 days in jail, with 355 days suspended. CP 18-19. The court further allowed the defendant to serve his 10 days jail on the out-of-custody work crew. CP 18-19. On the date that the defendant was sentenced, he was ordered to report to Offender Services to arrange to complete the 10 days of work crew. CP-11. This ten days of work crew was imposed as an alternative to 10 days in jail. Id. The defendant acknowledged the court's order with his signature on the work crew referral form. Id. Furthermore, this acknowledged referral also notified the defendant that his failure to report to Offender Services could

result in a warrant for his arrest. *Id.* Nevertheless, the defendant failed to report to Offender Services to comply with his obligation to complete work crew. CP 22 As such, Robin Lux from Offender Services reported to the court with an uncertified notice that the defendant “Did not show up *from court*” (emphasis added because defense misquoted Lux in his brief). *Id.* Consequently, the court issued a warrant for the defendant’s arrest. CP 15, 23.

## ARGUMENT

### **I. THE MUNICIPAL COURT WARRANT WAS LAWFULLY ISSUED BASED UPON PROBABLE CAUSE FOR THE CRIME OF THEFT IN THE THIRD DEGREE, OF WHICH DEFENDANT HAD BEEN CONVICTED.**

The defendant complains that his state and federal constitutional rights were violated because the court issued a warrant based upon a statement by a work crew staff that was not made under oath. However, at the time the warrant was issued, the defendant was not enjoying the usual rights of a free citizen, but instead the limited and diminished rights of one convicted of a crime who was supposed to be serving an out-of-custody sentence. *State v. Lucas*, 143 Wash.App. 660, 179 P.3d 852 (Div. 1 2008), see also *State v. Watson*, 160 Wash.2d 1, 154 P.2d 909 (2007).

Division I recently addressed the issuance of a bench warrant under circumstances similar to those presented in the case at bar. *State v. Erickson*, 143 Wash.App. 660, 179 P.3d 852 (2008). Erickson had been convicted of assault in the fourth degree. *State v. Erickson*, 143 Wash.App. at 661–62. Subsequently, while on probation, Erickson’s probation officer filed a report alleging that Erickson had failed to report to the probation department upon release. *Erickson*, at 662. Erickson was summonsed to appear at a probation review hearing, but the summons was returned because Erickson had moved and not provided the court with a new address. *Id.* The municipal court ordered a bench warrant for Erickson based upon his failure to appear at the review hearing. *Id.* Erickson was eventually arrested on this warrant and found to be in possession of drugs.

Erickson later appealed the trial court’s denial of his motion to suppress the drug evidence on the basis that the municipal court warrant was not based upon probable cause that he had violated the conditions of his probation. Division One rejected this argument, finding instead that the municipal court warrant need not be based upon probable cause of the probation violation, but instead was based upon the probable cause for the

underlying charge of assault in the fourth degree, of which he was convicted. *Id* at 662–663.

The facts of the case at bar are even more compelling since it was not a probation violation at issue, but the defendant's failure to report serve his alternative jail sanction which was the basis for the court's warrant. The defendant's failure to report immediately to Offender Services is probably tantamount to escape. See *State v. Watson*, 160 Wash.2d 1, 154 P.2d 909 (2007). Be that as it may, it cannot be said that the court lacked probable cause to issue a warrant for the defendant's arrest where he stood convicted of a criminal charge, and was unquestionably under the court's charge to fulfill a sentence as imposed by the court. Hence, the warrant was lawful, and the court did not err by denying his motion to suppress.

### CONCLUSION

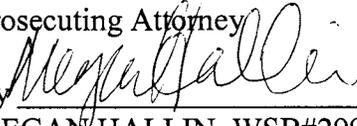
For the above stated reasons, defendant's conviction should be affirmed.

Respectfully submitted this 31<sup>st</sup> day of July, 2008.

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