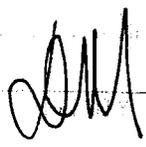


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COURT OF APPEALS

No. 40549-1-II  
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No. 39912-1-II

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STATE OF WASHINGTON

BY 

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON

V.

JAMES M. STONE

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AMENDED  
BRIEF OF APPELLANT

---

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ORIGINAL

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## A. Assignments of Error

### Assignments of Error

1. The Jefferson County Superior Court policy of placing defendants on the “Pay or Appear” calendar violates fundamental due process.

2. The trial court erred by finding Mr. Stone had committed a community custody violation without being notified in writing of the nature of the violation.

3. The trial court erred by finding that the October 2 violation was willful.

4. The trial court erred by not advising Mr. Stone of his right to appeal the March 23, 2009 ruling.

5. The trial court erred by not affording Mr. Stone an attorney on March 23, 2009.

6. The trial court erred by taking testimony from the “Pay or Appear” Coordinator on March 23, 2009 without first placing her under oath.

7. The trial court erred by not finding that Mr. Stone’s failure to pay on March 23 was willful.

## Issues Pertaining to Assignments of Error

1. Does the Jefferson County Superior Court policy of placing defendants on the “Pay or Appear” calendar violate fundamental due process?

2. Should the October 9 violation be reversed because Mr. Stone was found to have committed a community custody violation without being notified in writing of the nature of the violation?

3. Did the trial court err by finding that the October 2 violation was willful?

4. Should the Commissioner have granted Mr. Stone’s motion to file an untimely notice of appeal of the March 23 ruling when the trial court made no effort to advise him of his right to appeal?

5. Did the trial court err by not affording Mr. Stone an attorney on March 23?

6. Did the trial court err by taking testimony from the “Pay or Appear” Coordinator on March 23 without first placing her under oath?

7. Did the trial court err by not finding that Mr. Stone’s failure to pay on March 23 was willful?

## B. Statement of the Case

James Stone filed a notice of appeal to a violation of his community custody. He challenges on a variety of grounds Jefferson County's "Pay or Appear" calendar. In order to fully understand how this calendar operates, it is necessary to begin at the beginning.

Mr. Stone was charged in 2001 by information with possession of a controlled substance and second degree theft. CP, 3. At the time he filed a Determination of Indecency where he reported a monthly income of \$500. CP, 1. The court found him indigent. Mr. Stone pleaded guilty as charged. CP, 5. His defense counsel was Crad Verser (currently Jefferson County Superior Court judge). CP, 10. The prosecuting attorney was Jill Landes (currently Jefferson County District Court judge). CP, 10.

Mr. Stone was sentenced on September 28, 2001. CP, 12. The court imposed 105 days in jail and 12 months of community custody. CP, 17. In addition the court imposed a total of \$2860 in legal financial obligations (LFO). Regarding the LFO's, defense counsel asked the court "to consider reducing once again the attorney's fees here." RP, 5 (Sept. 28, 2001). The prosecutor responded to the request by saying, "That's fine, Your Honor. It's been quite a – he's a little bit of a criminal history and, um, he's does have prior VUCSA's. I'm sure he has a ton of fines that he probably won't pay, so that's – well, will not pay, but, uh, that's fine with

me.” RP, 5 (Sept. 28, 2001). After the court imposed sentence, defense counsel can be heard telling the defendant, “You’ll have to report to the police at least once and they’ll put you on a pay or appear program. They’ll set up a monthly payment to this (inaudible). These are the people you have to talk to and this is where you send your monthly payment. And as long as you do that (inaudible).” RP, 6 (Sept. 28, 2001).

So far as the trial court record shows, Mr. Stone completed his 12 months of community custody without incident. CP, 59-60. On October 29, 2003, the Department of Corrections sent the court a notice indicating that Mr. Stone “does not meet the criteria for continued supervision by the Department.” CP, 26. The Department commented that it would “cease sending billing statements” to the defendant effective January 1, 2004. CP, 27. The Department noted that since his sentence was imposed, Mr. Stone had paid \$290 with his last payment on October 2, 2003. Interest had accrued in the amount of \$659.81, however, bringing his total LFO’s to \$3179.81. CP, 27.

The next notation in the court file is on December 8, 2003. On that date, Mr. Stone signed an “Order Placing Defendant on Jefferson County Pay or Appear Program.” CP, 29. The origin of this Order is unclear as there is not a court summons or any other indication that Mr. Stone appeared before the court. The docket indicates that the Order was

entered as an “ex parte action.” CP, 59. In any event, the Order placed him on a monthly payment plan of \$25 per month. CP, 29. Mr. Stone’s address is listed in Spokane, Washington. The Order is signed by the judge and Mr. Stone, but there is no signature for defense counsel, nor is there any indication that Mr. Stone was afforded counsel on December 3, 2003. CP, 29. The order reads, in part, “If payment is not made by [the last day of the month], Defendant must appear in Court on the second Friday of the following month at 8:30 a.m., or call the clerk’s office at 385-9124 prior to that Friday. If Defendant has not made the minimum payments in the preceding calendar month and does not appear on the second Friday of the following month at the Pay or Appear calendar, a warrant will be issued for Defendant’s arrest.” CP, 29.

Mr. Stone initially did well on the “Pay or Appear” calendar. The docket indicates that he made monthly payments regularly for 29 consecutive months. CP, 59-60. Each month, on the second Friday, the court would note his payment and strike the scheduled hearing.

On the second Friday of June, 2006, Judge Verser held a hearing. Mr. Stone did not appear. Lori Bailey, the Pay or Appear Coordinator, testified that Mr. Stone’s last payment was in April of 2006. RP, 10 (June 9, 2006). Ms. Bailey was not placed under oath prior to her testimony. Judge Verser ordered a warrant. RP, 10.

Apparently, Mr. Stone started making payments on his LFO's in June of 2007. When he started making payments again, the court reinstated him on the "Pay or Appear" calendar. CP, 60. But Mr. Stone remained in warrant status due to his failure to appear on June 9, 2006. On December 26, 2007, Vicky Lockhart, the Pay or Appear Coordinator sent Mr. Stone a letter notifying him that he was in warrant status, despite his pattern of regular monthly payments. CP, 32. [NOTE: the date listed on the letter is December 26, 2008. This appears to be an error. The letter is date stamped on December 26, 2007 and the docket reflects the 2007 date.] The letter included an "order quashing [the] bench warrant, which [Mr. Stone was] to sign and return." CP, 32.

On January 3, 2008, Mr. Stone returned a signed copy of an order designated "Order Re: Pay or Appear." CP, 33. This Order differs significantly from the December 8, 2003 Order. The Order quashes Mr. Stone's warrant, places him on a monthly payment plan for \$25 per month and sets a review hearing for February 8, 2008. It further states that Mr. Stone need not appear for the review hearing if he has made payments. The remedy for failing to pay or appear is that "the Court may either convert LFO's to jail time or turn LFO's over to collection agency." CP, 33. Notably, the Order does not state that any further review hearings would be held after February 8, 2009.

On February 8, 2008, Mr. Stone failed to appear and had apparently not made a payment. CP, 34. The Court ordered a warrant.

On April 11, 2008, the Court signed an “Order Re: Pay or Appear.” This order, which is signed by Mr. Stone, places him once again on a monthly payment plan of \$25 and schedules a review hearing for May 9, 2008, to which he need not appear if a payment has been made. CP, 36.

Apparently, Mr. Stone made regular payments between April and June of 2008 though there are no entries on the docket or court file indicating any court activity. CP, 61. On the second Friday of September, 2008, Mr. Stone failed to appear. CP, 37. The court ordered a warrant.

On October 13, 2008, Mr. Stone appeared in custody before the court. Ms. Lockhart testified that Mr. Stone’s last payment was in June. RP, 13. She reported that prior to that month, his payments were “frequently pretty good.” RP, 13. Ms. Lockhart was not placed under oath. Mr. Stone was not represented by a lawyer, even though he was in custody. Mr. Stone reported his address in Spokane. RP, 15. The Court said, “If you, if you appear by phone just call in and talk to Ms. Lockhart. You can avoid all this stuff. I don’t expect you to come all the way over from Spokane, but, let us know.” RP, 15. Mr. Stone signed another

“Order Re: Pay or Appear” setting a review hearing for December 12, 2008. CP, 38.

Mr. Stone failed to appear on December 12, 2008. A warrant was issued. CP, 62.

Mr. Stone appeared in custody on the warrant on March 23, 2009. The court file reflects that Mr. Stone was handed an “Acknowledgment of Defendant’s Rights,” which he signed. CP, 46. The Acknowledgement contains some glaring errors, including the advisement that he has the right to a trial by an impartial jury, the presumption of innocence, and proof beyond a reasonable doubt.

At the hearing, Ms. Lockhart testified, again not under oath. RP, 18. She reported that Mr. Stone had not made a payment since June and she was requesting 10 days in jail. RP, 18. Mr. Stone was not orally advised by the court of his right to an attorney nor was he asked if he wished for an attorney. RP, 18. Mr. Stone did his best to present a defense, telling the court that he had been evicted from his home and he was having medical problems with his shoulder that would probably require surgery. RP, 18-19. He stated, “I didn’t blatantly want to blow off the Court and not make payments. Just it’s been a lot of things, sir, that I’ve been dealing with and I want to set it all right.” RP, 19. The court was unsympathetic, saying, “I understand you’ve had problems, but this is

an absolute mandatory obligation you have and the only type of response that can be done is to let you understand how serious it is and that apparently requires jail time.” RP, 19. The court ordered 10 days jail. RP, 19. The court signed an “Order Re: Pay or Appear” ordering 10 days jail, setting a monthly payment plan of \$25 per month and a review hearing for May 8, 2009. CP, 43. The order notes that, with accrued interest, the balance was now \$3453.42. There is no evidence in the record that the court advised Mr. Stone of his right to appeal.

On May 8, 2009, Mr. Stone failed to appear. CP, 47. The court ordered a warrant.

On September 24, 2009, Mr. Stone appeared in custody. RP, 22. Judge Verser decided to recuse himself on that day. The matter was set over to September 25. RP, 22. Although no one asked Mr. Stone if he wanted an attorney, the file reflects an Order Assigning Lawyer, partially at public expense. CP, 51.

On September 25, 2009, Mr. Stone appeared with public defender Ben Critchlow. RP, 24. Also present were deputy prosecutor Scott Rosekrans and Ms. Lockhart. Ms. Lockhart was never sworn. She testified that Mr. Stone’s last payment was in June of 2008 and she was asking for 30 days in jail. RP, 25. DPA Rosekrans said, “We would encourage the Court to go ahead and accept the recommendation.” RP, 25.

Mr. Critchlow said, “I would urge the Court to afford him some due process, maybe finding that it was a willful failure. He’s had an ability to pay and he’s got counsel who’s got time to meet with him and prepare. I guess I was appointed this morning.” RP, 26.

The court, noting that the defendant does have the “right to a Fact Finding on the issue of ability to pay,” asked for a response from the prosecutor. RP, 26. The prosecutor responded by asking Ms. Lockhart whether Mr. Stone had contacted the court since his last warrant. Ms. Lockhart testified that he had not. The court then inquired whether the prosecutor was “asking [for] a sanction for failing to appear as opposed to failure to pay.” RP, 26. The prosecutor responded that he wanted both. RP, 27. After some further discussion, Mr. Critchlow noted that under the rules Mr. Stone was entitled to written notice of the allegations and there was no written motion pending. RP, 27. The court decided to set a fact finding hearing. RP, 28. The court set bail at \$1000 cash only. RP, 29. At the conclusion of the hearing, almost as an afterthought, the court advised Mr. Stone of his rights at a community custody hearing, including the right to an attorney and the right to have the State prove the violation by a preponderance of the evidence. RP, 30.

The court held a fact finding on October 2, 2009. From the beginning, that hearing was different than hearings that had been held

previously. For instance, at the insistence of defense counsel, Ms. Lockhart was sworn for the first time. RP, 34. When Ms. Lockhart started to give a narrative of Mr. Stone's failures, defense counsel objected and insisted that she testify in a question/answer format. RP, 34. She testified that since his last release from jail he had not made any payments, had not appeared in court, or made any phone calls to the court. RP, 36.

Mr. Stone testified on his own behalf. He testified he is "presently homeless." RP, 39. He had not worked since March of 2008. RP, 40. His only source of income is a "GAU program with DSHS due to my disability with my torn rotator cuff in my shoulder." RP, 39. This source nets him \$339. RP, 40. He is limited in the use of his left hand to 25%, which is particularly difficult because he is left handed. RP, 40. His medical bills are paid by DSHS. RP, 40. In order to travel from his home to Jefferson County, it costs him approximately \$100. RP, 40.

At the conclusion of the hearing, defense counsel argued that the violation was not willful. RP, 43.

The court found that the "failure to pay or appear was willful. You could have made a phone call, sent a letter, made some attempt to contact Superior Court here in Jefferson County. As a result of your failure to do that the County's had to issue a warrant, there's been state expense picking you up, putting you in jail, um, all because you couldn't pick up

the phone or send a letter. And, that's not right and your failure is willful and I'm imposing forty-five days in jail." RP, 43.

Mr. Stone signed yet another "Order Re: Pay or Appear" setting his monthly payments at \$25 and a review date for December 11, 2009. CP, 55. His balance owing is \$3649.42. There was also a discussion on the record about whether a phone call was sufficient to avoid the "Pay or Appear" calendar. The parties disagreed about the effect of a phone call. The prosecutor indicated that a phone call would avoid a warrant. RP, 43. Defense counsel disagreed, saying, "[S]imply a phone call does not prevent a warrant from being issued." RP, 44.

Mr. Stone filed a timely notice of appeal of the October 2, 2009 order. On March 31, 2010, he filed an untimely notice of appeal of the March 23, 2009 order. On May 14, 2010, the Commissioner denied Mr. Stone's motion to file an untimely notice of appeal. On July 28, 2010, the court granted Mr. Stone's motion to modify and ordered him to file an amended opening brief.

### C. Argument

Mr. Stone raises seven assignments of error. Assignments of Error #1 and #2 apply to both the October 2, 2009 and the March 23, 2009 orders. Assignment of Error #3 pertains only to the October 2, 2009

order. Assignments of error #4, 5, 6, and 7 pertain to the March 23, 2009 order.

**1. The Jefferson County Superior Court policy of placing defendants on the “Pay or Appear” calendar violates fundamental due process.**

A court violates Due Process pursuant to the Fourteenth Amendment when it "automatically turn[s] a fine into a prison sentence." Bearden v. Georgia, 461 U.S. 660, 674, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). Equal protection concerns are also implicated in the "fundamentally unfair" decision to revoke probation when an indigent defendant is unable to pay. Id. at 666-67. The Constitution requires that, "in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for failure to pay," and cannot order imprisonment unless the individual willfully refused to pay. Id. at 672. "Washington law ... follows Bearden in requiring the court to find that a defendant's failure to pay a fine is intentional before remedial sanctions may be imposed." Smith v. Whatcom County District Court, 147 Wn.2d 98, 112, 52 P.3d 485 (2002). Accord State v Nason, 168 Wn.2d 936, 233 P.3d 848 (2010).

Bearden and Smith make clear that courts may not incarcerate individuals if they fail to pay fines because of indigence, but only if they

willfully refuse to pay despite ability to do so. Bearden, 461 U.S. at 668; Smith, 147 Wn.2d at 111. Otherwise the State is improperly "punishing a person for his poverty." Bearden, 461 U.S. at 671.

The trial court in Mr. Stone's case demonstrated a fundamental misapprehension of the legal standard when it opined at the March 23 hearing that legal financial obligations are an "absolute mandatory obligation you have and the only type of response that can be done is to let you understand how serious it is and that apparently requires jail time." RP, 19. Contrary to the trial court's opinion, legal financial obligations are not an "absolute mandatory obligation," but an obligation only for those who have the present ability to pay. The Jefferson County's policy of summarily violating people for failure to pay violates Due Process.

**2. Mr. Stone was found to have committed a community custody violation without being notified in writing of the nature of the violation.**

The United States Supreme Court has set forth due process requirements for a probationer at a revocation hearing:

- (a) written notice of the claimed violations of [probation or] parole;
- (b) disclosure to the [probationer or] parolee of evidence against him;
- (c) opportunity to be heard in person and to present witnesses and documentary evidence;
- (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
- (e) a 'neutral and detached' hearing body such

as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation or] parole.

In re Boone, 103 Wn.2d 224, 691 P.2d 964, 968 (1984), quoting Gagnon v. Scarpelli, 411 U.S. 778, 36 L. Ed. 2d 656, 93 S. Ct. 1756 (1973). In Boone, the Washington Supreme Court reversed a probation violation because the trial court relied on a secret probation report that was not provided to the defendant.

In Mr. Stone's case, he was charged orally with two probation violations, one on October 2, 2009 and one on March 23, 2009. He was not provided notice in writing of either violation. His defense counsel timely objected to the lack of written notice on the October 2, 2009. On the March 23, 2009 order, he was not provided with counsel nor did he waive his right to counsel. This is sufficient by itself to reverse both orders.

In addition, Mr. Stone was actually prejudiced by the error. Throughout the October 2, 2009 proceedings, there was confusion whether Mr. Stone was charged with failure to pay or failure to report. On September 25, the prosecutor orally represented that he wanted to charge Mr. Stone with both. At the October 2 hearing, nothing was done to clarify the ambiguity. Even the trial court's findings read in the

alternative, with the court finding the “failure to pay *or* appear was willful.” RP, 43 (Emphasis added.) Mr. Stone was entitled to actual and written notice of the violation and this was not provided. Both orders should be reversed.

**3. The trial court erred by finding that the October 2 violation was willful.**

The trial court concluded that Mr. Stone’s violation was willful. Regardless of whether the violation is for failure to pay or failure to appear, the violation was not willful. According to the un rebutted testimony of Mr. Stone, he was “presently homeless.” RP, 39. He had not worked since March of 2008. RP, 40. His only source of income is a “GAU program with DSHS due to my disability with my torn rotator cuff in my shoulder.” RP, 39. This source nets him \$339. RP, 40. He is limited in the use of his left hand to 25%, which is particularly difficult because he is left handed. RP, 40. His medical bills are paid by DSHS. RP, 40. In order to travel from his home to Jefferson County, it costs him approximately \$100. RP, 40. Given this un rebutted testimony, there was insufficient evidence of a willful violation at the October 2 hearing.

A general comment, again relevant to the issue of whether Mr. Stone was charged with failure to pay or failure to appear, about the “Pay or Appear” calendar is worth noting. Mr. Stone consistently represented

himself as living in Spokane. When he appeared on March 23, 2009, he told the court that he was living homeless in Spokane and had no present ability to pay. The trial court ignored this testimony, finding that the obligations under the “Pay or Appear” calendar were “absolute mandatory obligations.” The court then ordered a homeless man who lives on the other side of the state to appear once a month or make a payment. Under the circumstances, it is not surprising that Mr. Stone failed to appear on May 8, 2009, the next “Pay or Appear” date. The trial court essentially set Mr. Stone up to fail.

There was also some discussion on the record about whether a phone call is sufficient to avoid a warrant. It is impossible to determine, on this record, whether a phone call is sufficient. While the prosecutor believed it was, defense counsel represented that a phone call will not avoid a warrant. RP, 44 The “Pay or Appear” Coordinator was not asked this question in her testimony and the trial court made no findings on this issue.

Mr. Stone’s violation, regardless of whether it is treated as a failure to pay or a failure to report, was not willful. The violation should be reversed.

**4. The trial court erred by not advising Mr. Stone of his right to appeal the March 23, 2009 ruling.**

Mr. Stone raises several issues related to the March 23, 2009 hearing. On March 23, 2009, Mr. Stone appeared in custody and without counsel. Mr. Stone did not waive his right to counsel and was never asked if he wished to be represented by an attorney.

There is also no evidence that Mr. Stone was advised of his right to appeal the March 23, 2009 ruling. A trial court is required to advise a defendant of his right to appeal his conviction, and that unless a notice of appeal is filed within 30 days after the entry of judgment, the right to appeal is irrevocably waived. CrR 7.2(b). Additionally, the court's instruction on a defendant's right to appeal must be reflected within the record of proceedings. CrR 7.2(b). “[A] criminal appeal may not be dismissed as untimely unless the State demonstrates that the defendant voluntarily, knowingly, and intelligently abandoned his appeal right.” State v. Kells, 134 Wn.2d 309, 312, 949 P.2d 818 (1998). And “the State carries the burden of demonstrating that a convicted defendant has made a voluntary, knowing, and intelligent waiver of the right to appeal.” State v. Tomal, 133 Wn.2d 985, 988, 948 P.2d 833 (1997).

Mr. Stone filed an untimely notice of appeal, which was initially denied by the Commissioner. Although this court has now accepted the notice of appeal, the systemic problems with the Jefferson County’s “Pay or Appear” calendar continue.

**5. The trial court erred by not affording Mr. Stone an attorney on March 23.**

Courts are required to indulge in "every reasonable presumption against a defendant's waiver of his or her right to counsel." State v. Madsen, 168 Wn.2d 496 , 504 (2010), citing In re Det. of Turay, 139 Wn.2d 379, 396, 986 P.2d 790 (1999) and Brewer v. Williams, 430 U.S. 387, 404, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977).

When Mr. Stone appeared on March 23, he was advised in writing of his pre-conviction rights, including the presumption of innocence and right to proof beyond a reasonable doubt. Included in this list of rights, which mostly relate to criminal offenses and not probation violations, was the right to counsel. But Mr. Stone was never asked if he wished counsel and never waived his right to counsel. The presumption is that he did not waive his right to counsel and the remedy is reversal of the March 23 violation.

**6. The trial court erred by taking testimony from the "Pay or Appear" Coordinator without first placing her under oath.**

The "Pay or Appear" Coordinator testified without being placed under oath on March 23, 2009. Although Mr. Stone tried to present evidence that the failure to pay was not willful because he was homeless and had medical problems that would probably require surgery, the trial

court dismissed this information on the ground that the legal financial obligations were an “absolute mandatory obligation.” At that hearing, the court found him in violation and ordered 10 days in jail based upon unsworn testimony. Later, at the October 2, 2009 hearing, the court relied on the fact that Mr. Stone was being sentenced for a second violation in setting the jail term at 45 days.

At least three times in this record, the “Pay or Appear” Coordinator testified without first being placed under oath. This happened in June of 2006, October 13, 2008, and March 23, 2009. This started to happen again on September 25, 2009, although on that date Mr. Stone, represented for the first time by counsel, objected and the court swore the witness in.

A trial court may not rely on unsworn testimony in reaching its conclusions. In re M.B., 101 Wn. App. 425, 3 P.3d 780 (2000), review denied, 142 Wn.2d 1027 (2001). It appears to be the standard practice of the Jefferson County Superior Court to take unsworn testimony. The violation of March 23 should be reversed.

**7. The trial court erred by not finding at the March 23 hearing that Mr. Stone’s failure to pay was willful.**

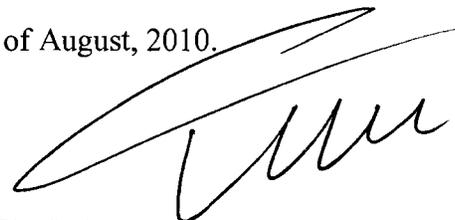
On March 23, the trial court determined that Mr. Stone’s legal financial obligations constituted an “absolute mandatory obligation.” The trial court made no effort to determine that the violation was willful,

despite Mr. Stone's attempt to argue that he was homeless with serious medical problems. It is worth noting that the judge on March 23 was the same judge as October 2. The March 23 finding should be reversed.

#### D. Conclusion

This Court should reverse and dismiss both the March 23 and October 2 probation violation orders. Any future probation violations on this cause number related to Mr. Stone should be treated as a first violation and should be handled by a different judge. This Court further should order that Jefferson County implement fundamental due process procedures at the "Pay or Appear" calendar, including written notice of the violation, the presence of a defense attorney, and advisement of the right to appeal.

DATED this 12th day of August, 2010.

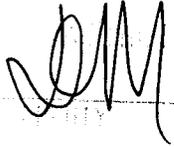
A handwritten signature in black ink, appearing to read 'T. Weaver', written over a horizontal line.

Thomas E. Weaver, WSBA #22488  
Attorney for Defendant

FILED  
COURT OF APPEALS

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STATE OF WASHINGTON

BY 

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

STATE OF WASHINGTON,

Respondent,

vs.

JAMES MICHAEL STONE.,

Defendant.

) Case No.: 01-1-00096-4  
) Court of Appeals No.: 39912-1-II  
) Court of Appeals No.: 40549-1-II

) AFFIDAVIT OF SERVICE

STATE OF WASHINGTON )

COUNTY OF KITSAP )

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action,  
and competent to be a witness.

On August 13, 2010, I sent an original and a copy, postage prepaid, of the AMENDED  
BRIEF OF APPELLANT, to the Washington State Court of Appeals, Division Two, 950  
Broadway, Suite 300, Tacoma, WA 98402.

**ORIGINAL**

1 On August 13, 2010, I sent a copy, postage prepaid, of the AMENDED BRIEF OF  
2 APPELLANT, to the Jefferson County Prosecutor's Office, P.O. Box 1220, Port Townsend, WA  
3 98368.

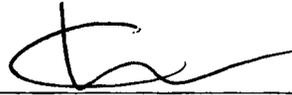
4 On August 13, 2010, I sent a copy, postage prepaid, of the AMENDED BRIEF OF  
5 APPELLANT, to Mr. James M. Stone, 1820 E Riverside, Spokane, WA 99202.

6 Dated this 13<sup>th</sup> day of August, 2010.



7  
8 Thomas E. Weaver  
9 WSBA #22488  
10 Attorney for Defendant

11 SUBSCRIBED AND SWORN to before me this 13th day of August, 2010.



12  
13 Christy A. McAdoo  
14 NOTARY PUBLIC in and for  
15 the State of Washington.  
16 My commission expires: 07/31/2014

