

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

NO. 42208-5-II

STATE OF WASHINGTON

Respondent,

vs.

Bruce Bratton

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 10-1-00109-9

BRIEF OF RESPONDENT

SCOTT ROSEKRANS
Jefferson County Prosecuting Attorney
Attorney for Respondent

P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

Date: March 5, 2012

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
Restatement of Issues Presented.....	1
Statement of the Case	1
Statement of Prior Proceedings.....	3
ARGUMENT.....	4
Evidence found during service of a valid warrant was properly admitted.....	4
A. Standard of Review.....	4
B. Evidence seized under a valid warrant is admissible...5	5
C. Jefferson County’s Pay or Appear Program did not violate Mr. Bratton’s right to counsel.....6	6
D. The court had a well-founded suspicion Mr. Bratton had violated the terms of his sentence.....7	7
E. The arrest warrant was validly issued.....8	8
CONCLUSION.....	.9

TABLE OF AUTHORITIES

Page

Washington State Supreme Court Cases

State v. Erickson, 168 Wn.2d 41, 225 P.3d 948 (2010)..... 3, 5

State v. George, 161 Wn.2d 203, 207, 164 P.3d 506 (2007)..... 3

State v. Johnson, 128 Wn.2d 431, 446-47, 909 P.2d 293 4

State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986)..... 5

State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008)..... 3

State v. Parks, 136 Wn.App. 232, 239, 148 P.3d 1098 (2006)..... 7

State v. Vrieling, 144 Wn.2d 489, 492, 28 P.3d 762 (2001)..... 4

Washington Court of Appeals Cases

State v. Erickson, 143 Wn.App. 660, 666, 179 P.3d 852..... 6

State v. Mannhalt, 1 Wn.App. 598, 599, 462 P.2d 970 (1969)..... 4

State v. Simms, 10 Wn.App. 75, 86, 516 P.2d 1088 (1973) 5

State v. Stone, --- P.3d ---, 2012, WL 12376 Wn.App. (2012) 4

Other Authorities

In re Martinez, 1 Cal.3d 641, 646, 83 Cal.Rptr. 382, 463 P.2d 734 (1970))
..... 5

Restatement of Issues Presented

Was Mr. Bratton's arrest warrant valid?

Statement of the Case

After being convicted of Unlawful Possession of Methamphetamine, which resulted in LFOs of \$21,229.79, Mr. Bratton was placed on Jefferson County's "Pay or Appear" program on January 30, 2007. The order placing him on the program stated, in pertinent part,

Payment is due by the last business day of each month. If payment is not made by that day, Defendant must appear in Court the second Friday of the following month at 8:30 am, or call Lori Bailey at 385-9126 prior to that Friday.

If Defendant has not made the minimum payments in the preceding 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.

Mr. Bratton signed this order. Order Placing Defendant on Pay or Appear Calendar (attachment to Motion to Suppress), Supp. CP.

Mr. Bratton's payments were irregular, but he both failed to pay on time and failed to contact Ms. Bailey only twice. Bench warrants were issued for Mr. Bratton on August 14, 2009, and July 9, 2010. Order Placing Defendant on Pay or Appear Calendar (attachment to Motion to Suppress), Supp. CP 33.

On July 9, 2010, when Mr. Bratton's case was called, Ms. Lori Bailey, the Pay or Appear Program coordinator, stated."And, your honor, his last payment was in May, and I move for a warrant in the amount of a thousand dollars." The court issued a warrant for Mr. Bratton. VRP 7/9/2010 , 2.The court's financial records show that, as of 9/01/2010, Mr. Bratton's last payment was received by the court on May, 11, 2010. CP 33-34.

The July 9, 2010, Order for Bench Warrant states,

The court finds that the Office of the Prosecuting Attorney has shown good cause for the issuance of a bench warrant for the defendant for the reason(s) that: Pay or Appear – F.T.A.

When police served the arrest warrant on Mr. Bratton on July 9, 2010, they found methamphetamine in his pocket and he was charged with unlawful possession of methamphetamine. CP 1-2.

Mr. Bratton moved to suppress the evidence, arguing his arrest was unlawful because the warrant was invalid. VRP 2/4/11, 3. The trial court denied his motion. Supp. CP 46-49.

After a stipulated bench trial, Mr. Bratton was convicted and sentenced. He timely appealed and his sentence was stayed pending appeal. CP 3-12.

Argument

Was Mr. Bratton's arrest warrant valid?

A. Standard of Review

The issuance of a warrant is reviewed for abuse of discretion. *State v. Erickson*, 168 Wn.2d 41, 45, 225 P.3d 948 (2010), quoting *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The Erickson court went on to review the question de novo, because, in their case, the trial court issued a bench warrant without a formal finding of probable cause on the underlying allegations after the probationer failed to appear at a probation violation hearing. This posed a question of law, which they reviewed de novo. *State v. George*, 161 Wn.2d 203, 207, 164 P.3d 506 (2007). However that is not the case here, where the trial court issued a formal finding that good cause for a bench warrant had been shown, therefore the standard of review is abuse of discretion.

B. Evidence seized under a valid warrant is admissible

Article I, section 7 provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” While warrantless searches are per se unreasonable, an exception to the warrant requirement allows for a warrantless search incident to arrest. *State v.*

Vrieling, 144 Wn.2d 489, 492, 28 P.3d 762 (2001) quoting *State v. Johnson*, 128 Wn.2d 431, 446-47, 909 P.2d 293.

A reasonable search incident to a legal arrest is legal and the results of the search are admissible as evidence. *State v. Mannhalt*, 1 Wn.App. 598, 599, 462 P.2d 970 (1969).

Mr. Bratton was arrested pursuant to an arrest warrant, thus the arrest was legal if the warrant was valid.

C. The arrest warrant was valid.

Mr. Bratton argues first that this court found Jefferson County's Pay or Appear program to be unconstitutional in *State v. Stone*, --- P.3d ---, 2012, WL 12376 Wn.App. (2012); therefore his arrest warrant violated his Sixth and Fourteenth rights to counsel. Mr. Bratton misstates this court's holding in *Stone*. This court held "the trial court violated Stone's due process rights by imposing jail time in its March 23 and October 2 orders without making the required inquiries and findings. We vacate the March 23 and October 2 orders and remand the matter for further proceedings consistent with this opinion." The Jefferson County Pay or Appear program was not found to be flawed, rather, this court found the trial court had committed an error, which was remanded for correction.

D. The court had a well-founded suspicion Mr. Bratton had violated the terms of his sentence

Mr. Bratton argues the court lacked a well-founded suspicion he had violated the court order because details of his violation were not thoroughly articulated in court. However, none of the details he mentions were relevant to the court's well-founded suspicion. He states that when Ms. Bailey informed the court that Mr. Bratton had not made a payment since May she did not indicate whether he had called her office, and she did not inform the court as to his financial circumstances, or the willfulness of his failure to pay then argues that the lack of these data shows the court lacked a well-founded suspicion he had violated a court order.

The court has held that "once a person has been convicted of a crime and is on conditional release for that offense, a bench warrant may be issued for his arrest without probable cause that he has violated the terms of his release. Instead, the court needs only a well-founded suspicion that a violation of the terms of the release has occurred before it may issue an arrest warrant." *State v. Erickson*, 168 Wn.2d 41, 50, 225 P.3d 948 (2010).

Analogous to the requirements of a Terry stop, reasonable suspicion requires specific and articulable facts and rational inferences. *State v. Simms*, 10 Wn.App. 75, 86, 516 P.2d 1088 (1973) (quoting *In re*

Martinez, 1 Cal.3d 641, 646, 83 Cal.Rptr. 382, 463 P.2d 734 (1970)), cert. denied, 400 U.S. 851, 91 S.Ct. 71, 27 L.Ed.2d 88 (1970), review denied, 83 Wn.2d 1007, 1974 WL 45211 (1974).

“Articulable suspicion” is defined as a substantial possibility that criminal conduct has occurred or is about to occur. *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

When a court sentences a person to jail for failure to pay a LFO, then they must find the defendant willfully failed to pay. That is not the situation here. In this case the court was only deciding whether to compel Mr. Bratton’s appearance to explain his non-payment.

Here, the court knew Mr. Bratton had signed the order placing him on the pay or appear program, that the pay or appear program coordinator had placed his case on the calendar for July 9, 2010, that the court records showed Mr. Bratton’s last payment was received on May 11, 2010, and that Mr. Bratton did not appear at the hearing. The court had articulable facts that gave them a well-founded suspicion Mr. Bratton had violated the court’s order. The court issued a bench warrant to compel Mr. Bratton’s appearance based on its well-founded suspicion that Mr. Bratton had violated the court order he had previously signed.

The warrant was validly issued. And this appeal should be denied.

E. The arrest warrant was validly issued.

The probable cause necessary for a court to issue a bench warrant for the arrest of a probationer who fails to appear is the probable cause for the original crime of which he or she was convicted. *State v. Erickson*, 143 Wn.App. 660, 666, 179 P.3d 852. If a trial court may issue a bench warrant for a probationer's failure to appear based on the probable cause supporting the original conviction, it may also issue a bench warrant for failure to serve a sentence based on the oath or affirmation supporting the original conviction. See *Erickson*, 143 Wn.App. at 663, 666–67, 179 P.3d 852. Therefore, the same oath or affirmation that supported Bishop's arrest warrant for his original third degree theft conviction supported the trial court's later warrant that it issued when he did not report for his work crew sentence. FN5

Additionally, Division One determined in *State v. Parks* that “[u]nder CrRLJ 2.5, it is not necessary that a probable cause finding be made at the time of issuing the bench warrant. But the bench warrant will not be valid unless the record establishes that the court made a finding of probable cause at some earlier point in the history of the case.” *State v. Parks*, 136 Wn.App. 232, 239, 148 P.3d 1098 (2006).

CrRLJ 2.5 states:

The court may order the issuance of a bench warrant for the arrest of any defendant who has failed to appear before the court,

either in person or by a lawyer, in answer to a citation and notice, or an order of the court, upon which the defendant has promised in writing to appear, or of which the defendant has been served with or otherwise received notice to appear, if the sentence for the offense charged may include confinement in jail.

The court has held that “once a person has been convicted of a crime and is on conditional release for that offense, a bench warrant may be issued for his arrest without probable cause that he has violated the terms of his release. Instead, the court needs only a well-founded suspicion that a violation of the terms of the release has occurred before it may issue an arrest warrant.” *State v. Erickson*, 168 Wn.2d 41, 50, 225 P.3d 948 (2010).

In this case, Mr. Bratton signed the order requiring him to appear in court at 8:30 a.m. on the second Friday of a month following a month when he did not make his payment and did not contact the court Pay or Appear coordinator. A bench warrant for Mr. Bratton was issued when he failed to appear at a hearing on July 9, 2010, for which he had proper notice.

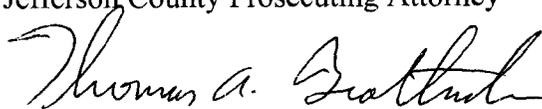
This appeal is without merit and should be denied.

CONCLUSION

The State respectfully requests that this Court affirm Appellant's conviction as determined by the trial court and that Appellant be ordered to pay costs, including attorney fees, pursuant to RAP 14.3,18.1 and RCW 10.73.

Respectfully submitted this 21st day of February, 2012

SCOTT ROSEKRANS,
Jefferson County Prosecuting Attorney

A handwritten signature in cursive script that reads "Thomas A. Brotherton". The signature is written in black ink and is positioned above a horizontal line.

By: Thomas A. Brotherton, WSBA # 37624
Deputy Prosecuting Attorney

PROOF OF SERVICE

I, Janice N. Chadbourne, certify that on this date:

I filed the State's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of the brief, using the Court's filing portal, to:

Jodi Backlund
Manek R. Mistry
backlundmistry@gmail.com

I mailed a copy of the BRIEF OF RESPONDENT, first class postage prepaid, to:

Bruce Bratton
293367 Hwy 101
Quilcene, WA 98376

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Port Townsend, Washington on March 6, 2012.


Janice N. Chadbourne
Lead Legal Assistant

JEFFERSON COUNTY PROSECUTOR

March 06, 2012 - 9:45 AM

Transmittal Letter

Document Uploaded: 422085-Response Brief.pdf

Case Name: State of Washington v. Bruce Bratton

Court of Appeals Case Number: 42208-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Response

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Jan N. Chadbourne - Email: jchadbourne@co.jefferson.wa.us

A copy of this document has been emailed to the following addresses:

backlundmistry@gmail.com