

FILED

JAN 05, 2012

Court of Appeals
Division III
State of Washington

NO. 29694-6-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

BRAIDEN MICHAEL CONNOR,

Defendant/Appellant.

REPLY BRIEF

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ARGUMENT

I. MERGER

The State claims that Braiden M. Connor stipulated that his first degree robbery and second degree assault offenses constituted separate offenses. The State misreads the transcripts and the clerk's papers.

Mr. Connor's statement on plea of guilty contains the following provision which has been crossed-out:

[z] I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts ___ and ___ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

Since the foregoing paragraph was stricken from the guilty plea statement, there is no other basis for the State to argue that Mr. Connor agreed that the two offenses were separate offenses.

The trial court recognized that they were not separate and distinct offenses and actually struck that paragraph. (RP 13, ll. 11-16).

The State, in its brief, asserts:

...[H]is agreement that the first degree robbery and the second degree assault convictions constituted separate offenses legally and factually for sentencing purposes.

(State's Brief, p.5)

...The record supports the defendant stipulated that the convictions reflected separate offenses for which there existed a factual basis as such for each to be counted as separate current offenses in calculating his offender score.

(State's Brief, p.8)

The State's reference to the clerk's papers and the transcripts are inaccurate and do not support the statements.

II. RESTITUTION

The deputy prosecutor stated that an order would be presented at a later date and that the restitution would be joint and several. (RP 14, ll. 9-22).

The trial court, at the sentencing hearing, left open the issue of restitution for a period of 180 days. (RP 135, ll. 3-11).

The prosecuting attorney did not present a restitution order at sentencing. The prosecuting attorney did not present a restitution order before the 180 day period elapsed.

The State fails to cite any authority for the position it takes with regard to the restitution issue.

"We will not consider contentions unsupported by argument or citation to authority in the appellate brief." *State v. Mills*, 80 Wn. App. 231, 234, 907 P.2d 316 (1995).

Mr. Connor otherwise relies upon the argument contained in his original brief.

DATED this 5th day of January, 2012.

Respectfully submitted,

s/ Dennis W. Morgan
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NO. 29694-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	SPOKANE COUNTY
Plaintiff,)	NO. 10 1 01979 1
Respondent,)	
)	CERTIFICATE OF
)	SERVICE
v.)	
)	
BRAIDEN MICHAEL CONNOR,)	
)	
Defendant,)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on this 5th day of January, 2012, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK
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E-FILE

SPOKANE COUNTY PROSECUTOR'S OFFICE
Attention: Mark Lindsey
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E-FILE(Agreed)

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