

FILED

Mar 28, 2012

Court of Appeals
Division III
State of Washington

29930-9-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL WILLETT,

Appellant.

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

The Honorable John D. Knodell

RESPONDENT'S BRIEF

D. ANGUS LEE
Prosecuting Attorney

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

The State asserts the court's finding that Mr. Willett has the likely future ability to pay legal financial obligations is supported by Mr. Willett's stipulation at sentencing.

III. ISSUE

Whether the court properly found that Mr. Willett had the likely future ability to pay legal financial obligations when Mr. Willett stipulated at sentencing that he did.

IV. STATEMENT OF THE CASE

On May 6, 2011, a jury found Michael Willett guilty of residential Burglary. 3RP at 4.¹ Prior to sentencing, Mr. Willett also pled guilty to Escape in the 2nd Degree. See 4RP at 12. As part of sentencing the court asked “[i]s Mr. Willett going to be prepared to pay [legal financial obligations]?” 4RP at 25. Mr. Willett's attorney responded “[h]e will, your Honor, when he gets out, certainly initially at a reduced rate, and then

¹ For ease of reference, the Verbatim Report of Proceedings will be listed as follows: 1RP = May 4, 2011; 2RP = May 5, 2011; 3RP = May 6, 2011; 4 RP = May 17, 2011.

thereafter, depending upon his job prospects.” *Id.* Based on this representation, the court found Mr. Willett had the likely future ability to pay legal financial obligations (LFO’s) and informed Mr. Willett of specific amounts he would be required to pay. *Id.* at 26-29. Mr. Willett made no objection to any of the financial obligations or to the court’s finding that he had the likely future ability to pay the LFO’s. He now appeals the court’s finding.

V. ARGUMENT

A. THE SENTENCING COURT PROPERLY FOUND MR. WILLETT HAD THE LIKELY FUTURE ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.

On appeal, Mr. Willett argues the court’s finding regarding his ability to pay LFO’s should be stricken from the Judgment and Sentence. Appellant’s Br. at 1. In essence, he supports this argument by claiming that the court did not take into account his financial resources and the nature of the burden of imposing LFO’s. *Id.* at 3. Mr. Willett’s claim is meritless and should be denied.

One of the leading cases regarding review of the imposition of LFO’s is Division I’s *State v. Baldwin*, 63 Wn. App. 303, 818 P.2d 1116

(1991). In *Baldwin*, the court articulated the standard of review regarding whether the trial court erred in finding a defendant had the future likely ability to pay LFO's should be the "clearly erroneous" standard. *Id.* at 312. In *Baldwin*, the court upheld the trial court's finding that Baldwin had the present and future ability to pay LFO's because the presentence report stated that "Mr. Baldwin describes himself as employable, and should be held accountable for legal financial obligations normally associated with this offense." *Id.* at 311. Division I also noted that Baldwin made no objection to the court's finding.

Mr. Willett cites to *State v. Bertrand*, 165 Wn. App. 393, 267 P.3d 511 (2011) to support his position that the sentencing court erred in finding he had the likely future ability to pay LFO's. However, *Bertrand* is easily distinguishable. In *Bertrand*, there was nothing in the record to indicate the judge inquired, discussed, or considered whether Bertrand had the likely future ability to pay LFO's. *Id.* at 398. Instead, it appears the judge simply found that she could.

In the present case, the sentencing judge clearly and directly began an inquiry into Mr. Willett's ability to pay LFO's. Mr. Willett's attorney responded that Mr. Willett did have the ability to pay LFO's and Mr. Willett did not object. The court then listed out the specific amounts Mr.

Willett was expected to pay and, again, Mr. Willett did not object. This situation mirrors *Baldwin*, not *Bertrand*.

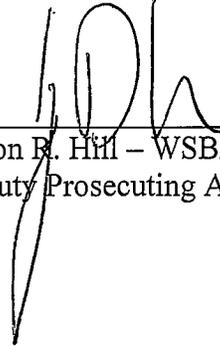
Considering Mr. Willett's attorney essentially stipulated that Mr. Willett had the likely future ability to pay LFO's and Mr. Willett failed to object, the court did not abuse its discretion in its finding. Therefore, Mr. Willett's appeal should be denied.

VI. CONCLUSION

The sentencing court's finding that Mr. Willett had the likely future ability to pay LFO's was not clearly erroneous where Mr. Willett's attorney essentially stipulated to that finding after the judge began his inquiry. Therefore, Mr. Willett's appeal should be denied.

Dated this 28th day of March 2012.

D. ANGUS LEE
Prosecuting Attorney

By:  _____
Tyson R. Hill – WSBA # 40685
Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 29930-9-III
)	
vs.)	
)	
MICHAEL A. WILLETT,)	DECLARATION OF SERVICE
)	
Appellant.)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Respondent's Brief in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Susan Marie Gasch
Gasch Law Office
gaschlaw@msn.com

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Respondent's Brief in the above-entitled matter.

Michael A. Willett #781631
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Coyote Ridge Corrections Center
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Dated: March 28, 2012.



Kaye Burns