FILED
APRIL 4, 2012
Court of Appeals
Division III
State of Washington

NO. 299511-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

State of Washington,

Respondent,

v.

Paul Scott Bickle,

Appellant.

Appeal From The Superior Court
Of Whitman County
Case No. 10-1-00170-5
The Honorable David Frazier

BRIEF OF RESPONDENT

Denis P. Tracy, WSBA # 20383
Whitman County Prosecutor

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I. DEFENDANT / APPELANT'S ASSIGNMENTS OF ERROR

A. Defendant argues the trial court abused its discretion in denying defendant's motion to withdraw guilty plea due to defendant's non-compliance with CrR 7.8 (c)(1) (requiring defendant's motion to be supported by affidavit or properly certified declaration).

B. Defendant also argues that the trial court did not follow the requirements of CrR 7.8 in that it did not hold a full evidentiary hearing on defendant's allegations before dismissing the motion.

C. Defendant argues the trial court erred in imposing legal financial obligations which included a $10,000 fine. He argues that there was insufficient evidence from which a court could conclude that defendant could eventually pay such a fine.

The State believes there was no error and the argument regarding the amount of fine imposed is not timely.

D. In the Statement of Additional Grounds For Review, defendant makes a number of statements and argues essentially the same points his counsel makes in the opening brief of appellant. Therefore, the State believes no further response is needed.

II. STATEMENT OF THE CASE

The State believes the facts recited in Appellant's Brief are sufficient to give the court an outline of the conduct of the defendant, which resulted in a plea bargain involving guilty pleas to four burglary charges. That guilty plea hearing is located at RP 11-27. This court is also referred to CP 60-70, which is the defendant's statement on plea of guilty, attached to which is the prosecutor's detailed plea offer, which detailed plea offer contains a detailed statement of the defendant as to his criminal conduct and which the defendant adopted as a true statement. That statement provided:

> "As to Count 1, starting shortly before midnight on 7-28-10, and then continuing into 7-29-10, I broke into the Arrow Machinery Store, located at 42951 SR 195 in Whitman County, Wa. When I entered, I intended to steal things. I broke the front window to get into the store, and stole Stihl chainsaws, weedeaters and other power tools and other small items, with a total value over $6,000."

"As to Count 2, starting shortly before midnight on 7-28-10, and then continuing into 7-29-10, in order to assist me in the burglary described in Count 1, I broke into the fenced and locked storage yard at the Washington State Department of Transportation facility at 43101 SR 195 in Whitman County, Wa. When I entered the storage yard, I intended to steal a pickup truck. I stole a pickup truck from that storage yard, and used it to haul away the stolen merchandise from the Arrow Machinery Store that is described in Count 1."

"As to Count 3, on or about and between 8-1-10 and 8-9-10, I repeatedly entered the fenced and locked construction area in Pullman, Whitman County, Wa, where a new WalMart store was being built. While there, I stole construction supplies and tools. Even though I was employed at the time as a night watchman for that site, every time I entered the site I did so with the intent to steal items when the opportunity presented itself. My employment as a night watchman was a cover to give me access to the site so that I could steal things."

"As to Count 4, on 8-1-10, during the middle of the night, I broke into the Ace Hardware store, located at 1690 S. Grand Ave in Pullman, Wa (Whitman County). When I entered, I intended to steal things. I broke a window to get into the store and I stole Stihl chainsaws, weed eaters, and other tools and items, with a total value over $4,000. I did this during my shift as a night watchman at the nearby Walmart construction site."

III. ARGUMENT

A. The Trial Court properly exercised its discretion in dismissing defendant's motion to withdraw guilty plea, based on there being no affidavit in support of the motion.

Defendant claims that the trial court abused its discretion in finding that he did not support his motion to withdraw plea with a sufficient affidavit. Defendant points out that while his paperwork did not contain a formal affidavit setting forth a concise statement of facts to support the motion, he alleges that his paperwork did contain language that complied with the requirements of RCW 9A.72.085. That statute provides:

> Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter in an official proceeding is required or permitted to be supported, evidenced, established, or proved by a person's sworn written statement, declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved in the official proceeding by an unsworn written statement, declaration, verification, or certificate, which:
>
> (1) Recites that it is certified or declared by the person to be true under penalty of perjury;
>
> (2) Is subscribed by the person;

> (3) States the date and place of its execution; and
>
> (4) States that it is so certified or declared under the laws of the state of Washington.
>
> The certification or declaration may be in substantially the following form:
>
> "I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":
>
> . . . .
>
> (Date and Place) (Signature)
>
> This section does not apply to writings requiring an acknowledgment, depositions, oaths of office, or oaths required to be taken before a special official other than a notary public.

As this court will see, the defendant's "affidavit" did not note the place signed, and it did not note that it was certified or declared under the laws of the State of Washington. It simply does not meet the requirements of RCW 9A.72.085. As such, the trial court did not abuse its discretion when it dismissed defendant's motion to withdraw plea. To the contrary, it would have been an abuse of discretion for the court to grant such motion, since the motion did not comply with the rule: it was not supported by affidavit, nor by a declaration in compliance with RCW 9A.72.085.

B. The trial court did not err by also denying the motion to withdraw plea based on no credible allegation of any reason justifying relief from the operation of the judgment.

Defendant argues that the trial court did not follow the requirements of CrR 7.8 in that it did not hold a full evidentiary hearing on defendant's allegations before dismissing the motion. However, when this court reviews the transcript of the hearing that was held on the defendant's motion to withdraw plea (RP 45-74), this court will see that the trial court, at RP 58 to 72, gives its oral ruling as to why it denied defendant's motion (even if defendant had made his motion with the required supporting affidavit or declaration) and notes its reasoning. Prior to giving its decision, it gave the defendant a chance to present any information he wanted to present. (See RP 45-58) Essentially, the court ruled in favor of the State on defendant's motion, after hearing the defendant's version. The court chose to find the defendant's version entirely non-credible, but nonetheless the court considered it.

The trial court dismissed the motion based on there being no affidavit (or sufficient sworn declaration). It also dismissed the motion based on insufficient evidence at the hearing to consider the motion. Neither decision was error.

C. There was sufficient evidence from which the sentencing court could conclude that defendant could eventually pay the fine that was imposed.

The State first notes that the defendant did not appeal his conviction or sentence until months after he was sentenced and transported to prison. He then filed his motion to withdraw plea, which was denied. The fact that a fine was imposed, or the amount of that fine, was not appealed until now, nor was it a part of the motion to withdraw plea. The State believes this part of defendant's appeal is therefore untimely under RAP 5.2.

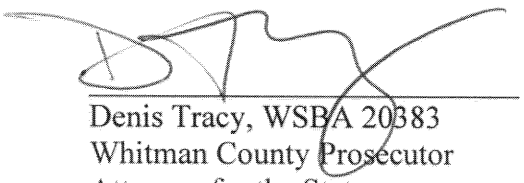
Defendant argues the trial court erred in imposing legal financial obligations which included a $10,000 fine. He argues that there was insufficient evidence from which a court could conclude that defendant could eventually pay such a fine. However, it was plain, from defendant's own written statement on plea of guilty, that he was an able-bodied man, and was employable. (See CP 68-70) As quoted above, defendant acknowledged in his statement that he had gotten a job as a night watchman at a construction site. He was able to do that, as well as able to break into various stores and steal thousands of dollars worth of tools, chainsaws, etc. His physical ability, as well as

the fact that he had shown an ability to obtain employment, gave a sufficient basis for the court to believe that he could obtain employment upon release from prison. Therefore, there was sufficient evidence to support a finding that the defendant could eventually be able to pay the fine imposed.

IV. CONCLUSION

For all of the above reasons, this court is respectfully requested to uphold the defendant's conviction and sentence and deny his appeal.

Respectfully submitted this 4 day of April, 2012.



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Whitman County Prosecutor
Attorney for the State

IN THE COURT OF APPEALS, DIVISION III
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, v. PAUL SCOTT BICKLE, Appellant,	Court of Appeals No. 29511-III No. 10-1-00170-5 AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
COUNTY OF SPOKANE)

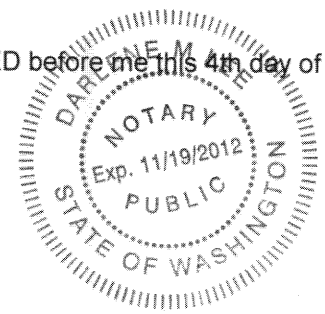
JENNIFER GRIFFIN, being first duly sworn, deposes and says as follows: That on **the 4th day of April, 2012** I caused a full, true and correct copy(ies) of the original **MOTION TO ALLOW SUBSTITUTION OF BRIEF TO INCLUDE TABLE OF CONTENTS AND CORRECT CITATION and SUBSTITUTE BRIEF OF RESPONDENT** on file herein to be served on the following in the manner indicated below:

Renee Townsley Clerk of the Court of Appeals, Division III 500 N Cedar St Spokane, WA 99210	(X) Electronic Filing () U.S. Mail () Electronic Mail () Facsimile
Marie Trombley marietrombley@comcast.net	(X) Electronic Mail- with the permission of the recipient () U.S. Mail
Paul Bickle #743245 Washington Corrections Center PO Box 900 Shelton, WA 98584	() Electronic Filing (X) U.S. Mail () Electronic Mail

DATED this 4th day of April, 2012.

Jennifer Griffin
JENNIFER GRIFFIN

SIGNED before me this 4th day of April, 2012, by JENNIFER GRIFFIN.



Darlene M. Lee
NOTARY PUBLIC in and for the State of Washington, residing at: Colfax
My Appointment Expires: 11-19-12

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