

FILED

JUN 25 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON
COURT OF APPEALS NO. 30375-6-III

STATE OF WASHINGTON,
RESPONDENT

vs.

THEODORE SAROFF,
APPELLANT

REPLY BRIEF OF APPELLANT

Robbert R. Cossey, WSBA #16481
Attorney for APPELLANT THEODORE SAROFF

902 N. Monroe
Spokane, WA 99201
Phone: (509) 327-5563
Fax: (509) 327-5610

TABLE OF CONTENTS

I.	Argument.....	1
II.	Conclusion.....	2

TABLE OF AUTHORITIES

Statutes

RCW 9.94A.753.....1

I. ARGUMENT

The defendant's desired outcome from this appeal is for the restitution order requiring \$1,250.00 per month be reversed and the matter be returned to the lower court to determine what the monthly payments should be set at an amount based on the defendant's ability to pay and not on the judge's personal knowledge of the housing market and economy. The defendant does wish to do his best to pay off his restitution but would like the monthly amount set appropriately.

The defendant operates a dog and horse boarding business out of his residence. RP 10. The \$1,650.00 per month in rent is not only for the residence, but also for the property and business that has been established on the property. RP 8. The \$1,650.00 amount does not cover the taxes or other items on the property. RP 8. If the defendant were to move to a South Hill apartment as the court suggested, RP 23, he would lose the ability to make a living from the business that he started in 2008.

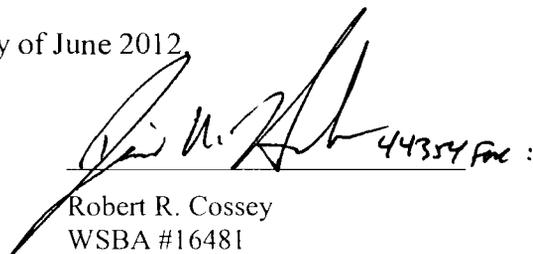
Under RCW 9.94A.753, which makes clear that modifications of monthly payments is limited to the offender's present economic circumstances, it was error for the court to not consider the affect of the defendant losing his business and way of life if he were to move to a new residence with cheaper rent. During the summer months, which are the most profitable, the Defendant earns between \$1,500.00 and \$2,000.00 per month from his business. CP 22 lines 3-5; 61. If the defendant were to take the lower court's advise and move to an apartment with rent of \$540.00 per month, he would save \$1,100.00 dollars a month in rent but lose the \$1,500.00 to \$2,000.00 a month from the business.

The Defendant would like the court to order an amount based on his current ability to pay based on his economic circumstances. Respondent points out that the defendant has not claimed that he cannot make the payments set by the lower court in its Response Brief. The defendant has consistently been making his monthly payments of \$50.00. RP 20. The defendant has told the court that he is unable to pay \$1,000.00 let alone \$300.00. RP 8. In a seven-month period, the Defendant was able to put \$300 towards the amount he owes. This was before having surgery and going through physical therapy. The Defendant has had to borrow money from his son for many things including bail, attorney fees, and medical procedures. \$1,250.00 is simply too much of a burden for the defendant to make each month.

II. CONCLUSION

Theodore Saroff respectfully requests the trial court's order of increased restitution payments be reversed.

DATED this 25th day of June 2012.


44354 Fax :
Robert R. Cossey
WSBA #16481
Attorney for Appellant,
THEODORE SAROFF