

FILED
Nov 30, 2012
Court of Appeals
Division III
State of Washington

NO. 30817-1-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

THOMAS BROCKMAN,

APPELLANT.

BRIEF OF RESPONDENT

**D. ANGUS LEE
PROSECUTING ATTORNEY**

**By: Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney
Attorney for Respondent**

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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 that the court's imposition of legal financial obligations against the appellant is supported in the record and should not be stricken.

III. ISSUE

Whether the court properly assessed legal financial obligations against the appellant after appellant's trial counsel had informed the court as to Mr. Brockman's financial situation.

IV. STATEMENT OF THE CASE

The State adopts Mr. Brockman's statement of the case, but notes that at the sentencing hearing of April 24, 2012, after Mr. Brockman's allocution, counsel for Mr. Brockman addressed the court stating "I'm sorry, Your Honor. I wanted to add regarding fines, my client is on disability, Social Security. So I would ask that you take that into account, either find that he is incapable of pa—making fines or make the fines as low as possible." RP 7. The

court in its sentencing then stated “(t)he financial obligation in the case is limited by the defendant’s financial circumstances. It is set at \$1,000.” RP 9. This \$1,000 fine consists of \$200 in court costs, \$200 for his court appointed attorney, \$500 for the crime victim assessment, and \$100 DNA database fee. CP 55.

V. ARGUMENT

A. THE SENTENCING COURT PROPERLY FOUND MR. BROCKMAN HAD THE LIKELY FUTURE ABILITY TO PAY AND MODIFIED HIS FINANCIAL OBLIGATION TO TAKE HIS CIRCUMSTANCES INTO ACCOUNT.

On appeal, Mr. Brockman argues the court’s finding regarding his ability to pay LFOs should be stricken from the Judgment and Sentence. BA 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 LFOs. *Id.* at 2. Mr. Brockman’s claim is meritless and should be denied.

A trial court’s determination on an offender’s financial resources and ability to pay is to be reviewed under the clearly erroneous standard. *State v. Bertrand*, 165 Wn.App. 393, 403-404 n.13, 267 P.3d 511 (2011) (citing *State v. Baldwin*, 63 Wn.App. 303, 312, 818 P.2d 1116 (1991), 837 P.2d 646 (1992)). “A finding of fact is clearly

erroneous when, although there is some evidence to support it, review of all the evidence leads to a 'definite and firm conviction that a mistake has been committed.'" *Schryvers v. Coulee Cmty. Hosp.*, 138 Wn.App. 648, 654, 158 P.3d 113 (2007) (quoting *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)).

The trial court need not make formal, specific findings on an offender's present or likely future ability to pay LFOs. *Bertrand*, 165 Wn.App. at 404 (citing *Baldwin*, 63 Wn.App. at 311-312). However the court must make an adequate record for the reviewing court to conclude that there is a sufficient "factual basis for the defendant's ... ability to pay." *Baldwin*, 63 Wn.App. at 311. Specifically, the trial court must make a record showing "the trial court judge took into account the financial resources of the defendant and the nature of the burden' imposed by LFOs." *Bertrand* 165 Wn.App. at 404 (quoting *Baldwin*, 63 Wn.App. at 312).

At sentencing, Mr. Brockman's attorney requested that the court waive or modify the appellant's financial obligation. RP 7. The Court, in its imposition of costs, referenced Mr. Brockman's financial circumstances and limited the appellant's obligation. RP

9. The record clearly reflects that the Court took the financial circumstances of the appellant into account when assessing and imposing the appellant's LFOs in this matter.

VI. CONCLUSION

The sentencing court's finding that Mr. Brockman had the likely future ability to pay was not clearly erroneous when counsel for Mr. Brockman asked that the court modify the amount of LFOs imposed, and the court indicated that it in fact did so. Therefore, Mr. Brockman's appeal should be denied.

Dated this 29th day of November, 2012.

D. ANGUS LEE
Prosecuting Attorney

By: Carole L. Highland
Carole L. Highland, WSBA #20504
Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 30817-1-III
)	
vs.)	
)	
THOMAS BROCKMAN,)	DECLARATION OF SERVICE
)	
Appellant.)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

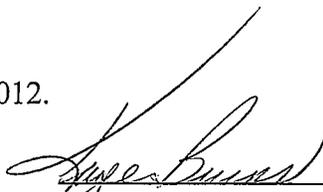
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Nielsen, Broman & Koch, PLLC
sloanej@nwattorney.net

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 Brief of Respondent in the above-entitled matter.

Thomas Carl Brockman
4200 Airway Dr - #1
Moses Lake WA 98837

Dated: November 30, 2012.



Kaye Burns