

FILED
Court of Appeals
Division III
State of Washington
7/11/2018 12:47 PM

No. 35271-4-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

Division III

STATE OF WASHINGTON, Respondent

v.

RUDY E. WILLIAMS, Appellant

**RESPONSE TO
DEFENDANT'S OPENING BRIEF**

CRAIG J. WATT
Asotin County
Deputy Prosecuting Attorney
WSBA #50405

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I. SUMMARY OF ISSUES

- A. No error occurred when the trial court declined to remove Defendant's signature from the post-bench trial findings and conclusions.

ISSUE ON APPEAL

- A. Whether the trial court abused its discretion by declining to remove Defendant's signature from that court's findings and conclusions after bench trial.

II. STATEMENT OF THE CASE

The Defendant, after waiving his right to a jury trial, proceeded pro se to a bench trial after the trial court advised him of the potential consequences of moving forward pro se. RP 7, 17, 35, 83-92. After trial the court entered its findings and conclusions and Defendant signed that document. CP 17-21. Defendant now wishes to remove his signature from that document.

III. DISCUSSION

- A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DECLINING TO REMOVE DEFENDANT'S SIGNATURE FROM THE COURT'S FINDINGS AND CONCLUSIONS AFTER BENCH TRIAL.

Counsel requests this matter be remanded to the trial court for withdrawal of Defendant-Appellant's signature from the trial

court's post-bench trial findings of fact and conclusion of law. This request should be denied for any of the numerous reasons below.

First, Defendant expressly waived his right to a jury trial, and was advised of the potential consequences of proceeding pro se. RP 7, 17, 35, 83-92. Second, Defense misapplies CR 11. The document at issue was the trial court's findings and conclusions after the bench trial, it was not an adverse pleading submitted by Respondent. CR 11 provides that "(a) Every pleading, motion, and legal memorandum *of a party* ... shall be dated and signed... A party who is not represented by an attorney shall sign and date *the party's* pleading, motion or legal memorandum...." CR 11 (emphasis added). Because this was the trial court's document, not a pleading by a party, CR 11 does not apply.

Third, Defendant waived no rights by signing the document. In fact, on page four (4) of her Opening Brief Defense Counsel correctly states that "this issue is not of constitutional magnitude." Defendant's signature was merely confirmation that he had the opportunity to read and become familiar with the document. His signature is not an "endorsement of the findings" as Defense would have this Court believe. His non-endorsement of the trial court's findings and/or conclusions is contained within the trial record. RP 266-279. Fourth, Defense fails to show Defendant's signature was

not voluntary, nor does she object to any particular finding or conclusion.

Fifth, Defense could locate no Washington legal authority on point in this matter. “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” Deheer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (Respondent’s search also came up blank). Sixth, even if remand is granted and the Defendant’s signature is removed, it has no practical effect. Here, for all intents, the Defendant apparently signed the document “as to form” or as “objecting to its contents”. However, mere objection does not warrant removal of his signature.

If for some reason this Court finds reason for removal of his signature, the Court should not bother because its removal has no practical effect. The Defendant did not waive any rights by signing the document. And his signature is necessary to show that he had opportunity to read the document and become aware of its contents.

IV. CONCLUSION

For the reasons above, this Court should deny Defense Counsel’s request to withdraw the Defendant’s signature from the trial court’s findings and conclusions.

Dated July 11, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Watt', with a horizontal line extending to the right from the end of the signature.

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THE STATE OF WASHINGTON,

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DECLARATION OF SERVICE

DECLARATION

On July 11, 2018 I electronically mailed, through the portal, a copy of the RESPONSE TO DEFENDANT'S OPENING BRIEF in this matter to:

LISE ELLNER
liseellnerlaw@comcast.net

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on July 11, 2018.



LISA M. WEBBER
Office Manager

DECLARATION
OF SERVICE