NO. 43827-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

GEOFFREY LAWSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 11-1-00746-2

BRIEF OF RESPONDENT

RUSSELL D. HAUGE
Prosecuting Attorney

JEREMY A. MORRIS
Deputy Prosecuting Attorney

614 Division Street
Port Orchard, WA 98366
(360) 337-7174

SERVICE

Thomas Kummerow
Ste. 701, 1511 3rd Ave
Seattle, WA 98101
tom@washapp.org

This brief was served, as stated below, via U.S. Mail, the recognized system of interoffice communications, *or, if an email address appears to the right, electronically.* I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED December 19, 2012, Port Orchard, WA
Original e-filed at the Court of Appeals; Copy to counsel listed at left.

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the present appeal must be dismissed when the Defendant entered guilty pleas below and thereby waived his right to appeal?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Geoffrey Lawson was charged by second amended information filed in Kitsap County Superior Court with one count of Voyeurism and one count of Attempted Voyeurism. CP 27. The Defendant entered a guilty plea to the charged offenses. CP 31, 37, RP (2/1/2012) 16-29. The trial court imposed a standard range sentence. CP 99. For reasons not entirely clear to the State, this appeal followed.

B. FACTS

The Defendant was originally charged, on September 13, 2011, with one count of Voyeurism and one count of Attempted Voyeurism. CP 1. Although an attorney had been appointed to represent the Defendant, the Defendant ultimately chose (against the advice of the trial court) to represent himself. RP (10/4/2011) 2-15. The Defendant also advised the court that he did not want the court to appoint "standby counsel." RP (10/4/2011) 12. The Defendant, however, later changed his mind and asked the court to appoint standby counsel. RP (11/10/2011) 9. The trial court immediately appointed standby counsel to assist the Defendant. RP (11/10/2011) 14. The court also

appointed an investigator to assist the Defendant. RP 11/8/2011. 103-04.

On February 1, 2012, the Defendant decided to enter guilty pleas to the charges in the Second Amended Information. RP (2/1/2012) 17-29. The trial court then went through the written plea agreement and statement of defendant on plea of guilty with the Defendant. RP (2/1/2012) 18-28. The trail court specifically explained to the Defendant that if he entered a guilty plea he would be waiving his right to appeal, and the Defendant stated he understood this. RP (2/1/2012) 27.[1]

After going through the relevant portions of these documents with the Defendant, the trial court ultimately accepted the guilty pleas and found that the Defendant made the pleas knowingly, intelligently and voluntarily. RP (2/1/2012) 29; CP 36; CP 46.[2]

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[1] At a subsequent hearing the Defendant was again advised that by pleading guilty he waived his right to appeal and that "includes any decisions that were adverse to you on the pretrial motions, and that's the way guilty pleas work." RP (2/27/2012) 23-24. The Defendant then stated that he understood this. RP (2/27/2012) 24.

[2] The Defendant subsequently filed a motion to withdraw his guilty plea. CP 54. The Defendant, however, later decided to withdraw the motion and asked to proceed to sentencing. RP (2/27/2012) 30-31.

III. ARGUMENT

A. THE PRESENT APPEAL MUST BE DISMISSED BECAUSE THE DEFENDANT ENTERED GUILTY PLEAS BELOW AND THEREBY WAIVED HIS RIGHT TO APPEAL.

The Defendant argues that the trial court erred in failing to grant his motions for additional resources to assist in his defense below. By entering a guilty plea below, however, the Defendant waived any issues regarding his pretrial motions. The present appeal, therefore, must be dismissed.

It is well settled that a "plea of guilty, voluntarily made, waives the right to trial and all defenses other than that the complaint, information, or indictment charges no offense." *Garrison v. Rhay*, 75 Wn.2d 98,101, 449 P.2d 92 (1968); *citing, In re Woods v. Rhay*, 68 Wash.2d 601, 414 P.2d 601 (1966), *cert. denied* 385 U.S. 905, 87 S.Ct. 215, 17 L.Ed.2d 135 (1966). Stated another way, "[A] guilty plea waives or renders irrelevant all constitutional violations that occurred before the guilty plea, except those related to the circumstances of the plea or to the government's legal power to prosecute regardless of factual guilt." *In re Pers. Restraint of Bybee*, 142 Wn. App. 260, 268, 175 P.3d 589 (2007) (*citing Menna v. New York*, 423 U.S. 61, 63 n. 2, 96 S. Ct. 241, 46 L. Ed. 2d 195 (1975); *State v. Saylors*, 70 Wn.2d 7, 9, 422 P.2d 477 (1966); *Woods v. Rhay*, 68 Wn.2d 601, 606-07, 414 P.2d 601, *cert. denied*, 385 U.S. 905, 87 S. Ct. 215, 17 L. Ed. 2d 135 (1966);

In re Habeas Corpus of Salter, 50 Wn.2d 603, 606, 313 P.2d 700 (1957)). Furthermore, a defendant whose guilty plea was validly entered generally waives complaints about events that occurred prior to the entry of the plea. *See, e.g., In re Teems*, 28 Wn. App. 631, 637, 626 P.2d 13 (1981).

In short, as the Defendant in the present case entered a guilty plea, he has waived his right to complain about any those issues that occurred prior to the entry of the plea.

One narrow exception to the general rule (that a defendant waives the right to appeal by entering a guilty plea) is that a defendant may argue that the guilty plea was not made voluntarily. The Defendant in the present case, however, has not claimed that his plea was involuntary. Nor has the Defendant claimed or shown any connection between the issues he now raises and the voluntariness of his guilty plea. Rather, the record shows that the trial court carefully went through all of the consequences of the plea and found, orally and in writing, that the Defendant was entering the pleas knowingly, intelligently, and voluntarily. As the pleas were validly entered, the Defendant waived his right to appeal.

Given the guilty pleas in the present appeal, the State is unaware of any provision that would allow for the appointment of an appellate attorney at public expense for the present appeal. If that is what has occurred in the

present case, then perhaps this Court should ask the Office of Public Defense to review this matter. In any event, as the Defendant entered guilty pleas in the present case and has not even argued that the pleas were involuntary, the present appeal must be dismissed.[3]

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[3] Furthermore, the Defendant's sole argument on appeal, that the trial court erred in failing to provide him with additional resources, is clearly without merit. Although the Defendant's brief makes it appear as if the Defendant was denied access to even pen and paper, the actual record clearly demonstrates that the Defendant was provided access to pens, paper, Westlaw, a defense investigator, and standby counsel. In short, the Defendant was clearly provided with all the resources constitutionally required. For instance, once the Defendant raised the issue of needing additional paper, he was immediately provided legal pads. *See*, e.g, RP (10/28/2011) 9; RP (11/10/2011) 12-13. The Defendant also had access to a phone and was allowed to leave his pod in the jail in order to access the law library, where he was able to access Westlaw. RP (10/28/2011) 9-11; RP (11/2/2011) 8-10, 25-26. The record further shows that the trial court periodically reviewed the Defendant's access to legal research materials. RP (10/28/2011) 22-23; RP (11/2/2011) 8-9, 25-26. The record further shows that once the Defendant raised the issue regarding access to the law library (and Westlaw) in October 2011, the jail allowed the Defendant to check out of his pod and access the library for 20 hours in October, 119 hours in November, 102.75 hours in December, and 30.25 hours in the first ten days of January 2012. RP (1/12/2012) 24-25, 27. The Court also immediately appointed a defense investigator to assist the Defendant when the Defendant requested one. RP (11/8/2011) 77. The Defendant adamantly refused the appointment of "standby" counsel, but when the Defendant finally changed his mind the trial court immediately appointed standby counsel to assist the Defendant. RP (11/10/2011) 9, 24. At a hearing on January 12, the trial court summarized all of these issues and found that the Defendant had been given sufficient resources. RP (1/12/2012) 38-40. Although the Defendant also repeatedly asked to have access to his personal laptop computer, the trial court denied this request due to legitimate security concerns raised by the jail. RP (11/10/2011) 86-87. As outlined in *State v Silva*, 107 Wn.App. 605, 622, 27 P.3d 663 (2001), a defendant does have a right of reasonable access to resources that will enable him to prepare a meaningful defense. The *Silva* court clearly explained, however, that a trial court has broad discretion in deciding what exact resources are necessary, and the *Silva* court specifically stated that it was appropriate for a trial court to take legitimate safety and security concerns into consideration. *Id.* at 623. Thus, in *Silva* the trial court appropriately determined that a defendant (who had access to the normal jail phones) was not entitled to access to a direct dial telephone due to security concerns. *Id* at 624. The trial court's decision in the present case (which provided the Defendant with access to paper, pens, Westlaw, a jail phone, a defense investigator, and standby counsel) was entirely consistent with *Silva*. In addition, the denial of access to a laptop computer and a direct dial phone was also entirely consistent with *Silva*. In short, the Defendant has failed to show any error at all.

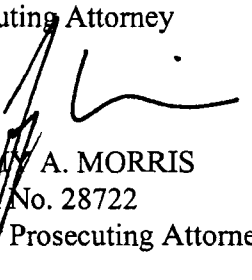
IV. CONCLUSION

For the foregoing reasons, the Defendant's conviction and sentence should be affirmed.

DATED December 19, 2012.

Respectfully submitted,

RUSSELL D. HAUGE
Prosecuting Attorney



JEREMY A. MORRIS
WSBA No. 28722
Deputy Prosecuting Attorney

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