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No. 67123-5-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

SHANE WATSON,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

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APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

**The prosecution's brief ignores the lack of court authority to issue a warrant under the false claim of a community supervision violation and impose sanctions after finding the failure to pay LFOs non-willful**

The prosecution's response brief is largely off-point. Watson does not claim the court lacked authority to order that he pay legal financial obligations (LFOs) but takes issue with the mechanism by which the court ordered him arrested and held him in jail for a non-willful failure to pay LFOs when the court lacked authority to impose a jail sentence as a sanction.

Watson had served the statutory maximum term of confinement. He was sentenced to the statutory maximum of 60 months and he told the court that he served all of that time in prison. 4/25/11RP 3, 5. Neither the prosecution nor the court took issue with Watson's explanation of the length of prison time served. In its brief on appeal, the State asserts that Watson was obligated to present formal documentation of his incarceration even though he unable to access state records from jail while the prosecution could readily obtain such corroboration. Resp. Brief at 5. The court did not question Watson's explanation that he had served the

statutory maximum and since he received the statutory maximum, there is no reasonable basis to discredit his explanation.

RCW 9A.20.021(1)(c) states that “no person convicted of a classified felony shall be punished” for a class C felony that exceeds “confinement in a state correctional institution for five years.” When the governing statute “does not authorize confinement any longer,” the State may not use the authority of a criminal prosecution to hold that person. State v. Reanier, 157 Wn.App. 194, 204, 237 P.3d 299 (2010). Having served the entire prison sentence authorized as punishment, the court lacked authority to impose more jail time upon Watson.

The State cites RCW 9.94A.760 at length. RCW 9.94A.760(10) explains the court’s authority to punish violations of sentencing conditions. However, it does not give the court authority to exceed the statutory maximum when ordering that the person be held in jail. It does not trump the statute setting forth the maximum punishment that may be imposed in the course of a criminal case.

In the instant case, the court used its authority under community supervision to order a bench warrant when Watson failed to appear at a hearing regarding his failure to pay LFOs. CP 12, 93, 95. Yet the prosecution conceded that it never gave

Watson proper notice of the hearing. 4/25/11RP 4, 6. No bench warrant should have been issued when the State had not properly notified Watson to appear in court, but because the court was operating under an erroneous impression of its authority over Watson, it ordered the bench warrant and Watson was held in jail.

As Watson explained in his Opening Brief, when a court decides to impose a sanction upon a person who has purposefully failed to pay legal financial obligations but has served the statutory maximum term of confinement, the court retains its contempt power. To exercise its punitive contempt power, the court “must afford a contemnor full criminal due process.” In re Silva, 166 Wn.2d 133, 141, 206 P.3d 1240 (2009) (citing RCW 7.21.040). A person may not be summarily jailed for criminal contempt unless charges are instituted by the process required, including filing an information upon probable cause. See King v. Department of Social and Health Services, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988).

Here, Watson did not willfully fail to pay and did not willfully fail to appear at the hearing. He was not notified of the hearing and he was and remains indigent. The State’s refusal to acknowledge Watson’s poverty demonstrates that this issue is likely to recur and

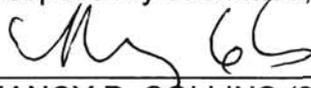
the Court should address a trial judge's authority to enforce LFO payments in this context, to provide needed guidance.

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, Mr. Watson respectfully requests this Court remand his case for further proceedings.

DATED this 3rd day of May 2012.

Respectfully submitted,



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	)	
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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3<sup>RD</sup> DAY OF MAY, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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|---|-------------|-------------------------------------|
| [X] JOHN JUHL, DPA<br>SNOHOMISH COUNTY PROSECUTOR'S OFFICE<br>3000 ROCKEFELLER<br>EVERETT, WA 98201 | (<br>(<br>( | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] SHANE WATSON<br>BKG #54404<br>SNOHOMISH COUNTY JAIL<br>3025 OAKES AVE<br>EVERETT, WA 98201      | (<br>(<br>( | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 3<sup>RD</sup> DAY OF MAY, 2012.

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