

FILED
OCT 24 2012
COURT OF APPEALS
DIVISION III

30399-3-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JERRY L. RUNCK, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

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(509) 477-3662

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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The court erred by sanctioning Jerry Lannon Runck for violating conditions of supervision.

II.

ISSUES PRESENTED

- A. DID THE DEFENDANT FAIL TO NOTIFY THE CLERK'S OFFICE OF A CHANGE IN ADDRESS?
- B. DID THE DEFENDANT FAIL TO NOTIFY THE CLERK'S OFFICE OF A CHANGE IN CIRCUMSTANCE?
- C. DID THE DEFENDANT FAIL TO PAY HIS MONTHLY LFO CHARGES?
- D. DID THE DEFENDANT FAIL TO REPORT?
- E. DID THE TRIAL COURT ERR IN FINDING THE DEFENDANT IN WILLFUL VIOLATION OF HIS OBLIGATIONS?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

- A. THE DEFENDANT DID NOT REPORT HIS CHANGE OF ADDRESS, HIS CHANGE IN FINANCIAL CIRCUMSTANCES, REPORT HIS FINANCIAL INFORMATION IN A TIMELY MANNER. THE DEFENDANT ALSO FAILED TO MAKE HIS MONTHLY PAYMENTS.

The “failure to pay allegations” are not being contested by the defendant. That leaves the convictions for failure to provide financial information in a timely manner, failure to provide a current address to the clerk’s office and failure to report a change in his circumstances. The defendant was advised of his reporting requirements at the time of his sentencing. CP 31.

The defendant argues that there was no need to give the Clerk’s Office his latest address data as shown by the defendant receiving mail from the Clerk’s Office. What the defendant leaves out of his argument is that he had nothing whatever to do with the Clerk’s Office having the correct data. The reason the Clerk’s Office had an updated address for the defendant was because the defendant received a traffic ticket. RP 4. The ticket contained updated data which was sent to the Clerk’s Office through no effort of the part of the defendant. Thus, it was just a convenient happenstance that the defendant’s address was updated. Had the information from the ticket not been forwarded, there is no way to know when or even if, the defendant’s address would have been

updated. The statutes do not provide that the defendant can refuse to follow his reporting requirements and be forgiven when the Clerk's Office receives the required data from a source that is not the defendant.

Because there was no action taken by the petitioner to alert authorities of his new address, the guilty verdict by the trial court was correct. The petitioner is trying to take advantage of the serendipitous events of his ticket leading to knowledge at the Clerk's Office.

The trial court found that there was little question that the defendant did not report his change in circumstances, *i.e.* loss of painting job. RP 20.

In addressing the failure to report a change in address, the court stated that it is not the Clerk's Office's job to track people down in order to determine if they have moved. It is the responsibility of the defendant to report a change in address. RP 21.

The court found that the defendant had not committed the violation of failing to provide his financial data in a timely manner. RP 22.

In contesting the court's finding that the defendant had failed to report a change of circumstances, the defendant argues that purpose of the statute, (RCW 9.94A.760(7)(b)) is "clearly aimed at the situation where a defendant is hiding income to avoid paying a higher amount on LFOs" Brf. of App. 6.

In this case, the defendant lost his job, but did not report the change to the Clerk's Office.

The State agrees that the legislature probably was trying to keep tabs on defendant's who came into money without notifying the Clerk's Office. However, the statute does not state that only those whose income increases need to report. The statute in question simply requires a change in circumstances to be reported. This reporting requirement may sometimes work in the favor of the defendant by lowering his monthly payment amounts, or a report might cause the court to increase the monthly payment.

What the defendant does not accept is the idea that the onus is not on the Clerk's Office to track down each defendant and investigate that defendant's true financial situation. Obviously, this would be impossible.

The defendant challenges the idea that he must report within a certain time frame. This was also argued at the hearing on the defendant's violations. It is not difficult to figure out what the time frame for reporting might be. It is part of the original Judgment and Sentence that the defendant is to make *monthly* payments on his LFOs. Thus, the defendant must report to the Clerk's Office within one month of any change in address, financial circumstances, etc. The defendant is to make proper payments on his LFOs each month. If the defendant does not report changes so that the Clerk's Office can determine the correct amounts, the system falls apart.

The defendant does not appear to want to cooperate in this process. (He has received six bench warrants in this case). CP 4, 46, 64, 95, 108, 117. For

example, the defendant puts forth an argument that he had reported his circumstances and that he may have lost his job because he was incarcerated. Brf. of App. 8. This notice was completed when the defendant was arrested on these violations and placed in jail. RP 6-7. The required form was never completed by the defendant; the public defender's office completed the forms and delivered them. This is absurd. The defendant has an obligation to the court and he has an obligation as a citizen to comply with the court's clear LFO orders. It should not be the public defender's office that does the job that the defendant is legally obligated to do. The Public Defender's Office cannot substitute for the defendant's willing cooperation.

There was no contest from the defendant on the violation of failure to pay. Defense counsel plainly stated that the defendant had not made his payment. RP 11.

The defendant continues to have difficulties with the judicial system, claiming he lost his job because he was incarcerated, etc. However, the defendant's problems all stem from one source: the defendant. If the defendant would simply comply with his obligations and report as required, he would not be arrested, would not lose his employment and not spend time in jail for violations.

The defendant does not challenge the propriety of the charges themselves; he challenges the trial court's applications of the violations. The defendant simply does not like the idea that he must comply with the requirements of

reporting and the unpleasant fact that his willful failure to comply will result in court findings such as the ones here.

V.

CONCLUSION

For the reasons stated, the convictions of the defendant should be affirmed.

Dated this 24th day of October, 2012.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", with a circled "P" to the left.

Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)
)
 Respondent,) NO. 30399-3-III
 v.)
) CERTIFICATE OF MAILING
 JERRY L. RUNCK,)
)
 Appellant,)

I certify under penalty of perjury under the laws of the State of Washington, that on October 24, 2012, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

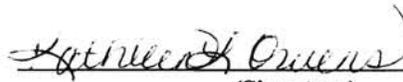
Kenneth H. Kato
khkato@comcast.net

and mailed a copy to:

Jerry L. Runck
1523 West Knox
Spokane WA 99205

10/24/2012
(Date)

Spokane, WA
(Place)


(Signature)