

**FILED**

AUG 03 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

30548-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LOUIS V. KUSTER, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

STEVEN J. TUCKER  
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**INDEX**

APPELLANT’S ASSIGNMENT OF ERROR.....1

ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....1

ARGUMENT .....2

    A.    THE TRIAL COURT HAD ESSENTIAL DATA TO  
          DETERMINE THE AMOUNT OF THE DEFENDANT’S  
          MONTHLY LFO PAYMENTS OWING TO THE FACT  
          THAT THE DEFENDANT WAS TO BE INCARCERATED  
          FOR AN EXTENDED LENGTH OF TIME.....2

    B.    THE POSSESSION OR VIEWING OF PORNOGRAPHY  
          IS AN UNCONSTITUTIONALLY VAGUE CONDITION .....2

CONCLUSION.....3

**TABLE OF AUTHORITIES**

**WASHINGTON CASES**

STATE V. BAHL, 164 Wn.2d 739,  
193 P.3d 678 (2008)..... 2, 3

**STATUTES**

RCW 10.01.160(3)..... 2

I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The record does not support the implied finding that Mr. Kuster has the current or future ability to pay Legal Financial Obligations.
2. The trial court erred in imposing a sentencing condition prohibiting possessing or viewing pornography.

II.

ISSUES PRESENTED

- A. DID THE TRIAL COURT HAVE EVIDENCE FROM WHICH TO MAKE A DECISION ON THE AMOUNT OF THE DEFENDANT'S MONTHLY LFO PAYMENTS?
- B. DID THE TRIAL COURT PROPERLY PLACE A "NO PORNOGRAPHY" CONDITION ON THE DEFENDANT'S COMMUNITY SUPERVISION?

III.

STATEMENT OF THE CASE

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

#### IV.

#### ARGUMENT

- A. THE TRIAL COURT HAD ESSENTIAL DATA TO DETERMINE THE AMOUNT OF THE DEFENDANT'S MONTHLY LFO PAYMENTS OWING TO THE FACT THAT THE DEFENDANT WAS TO BE INCARCERATED FOR AN EXTENDED LENGTH OF TIME.

It is clear from existing caselaw that the trial court has the discretion to determine the payment of fees and the rate at which LFOs are to be paid. RCW 10.01.160(3). It does not appear from defendant's briefing that he contests the powers and authority of the trial court to set amounts and pay rates for LFOs.

The defendant only contests an alleged lack of evidence upon which the trial court might base its holdings. The trial court was aware that the defendant was going to prison. RP 27. The trial court discussed the work setup for inmates and noted that the amount of payment in prison was "...not a whole lot." RP 27. Thus, the trial court had in mind the potential earning power of the defendant should he get a job while in prison.

The defendant's arguments can be shown to be incorrect simply by reference to the sentencing transcript.

- B. THE POSSESSION OR VIEWING OF PORNOGRAPHY IS AN UNCONSTITUTIONALLY VAGUE CONDITION.

The State notes that with the holding of *State v. Bahl*, 164 Wn.2d 739, 745, 193 P.3d 678 (2008) in its current state, it is impractical to attempt to limit a

defendant's access to pornography. The Washington State Supreme Court held in *Bahl* that the fact a defendant was incarcerated would not be seen as an impediment to ruling on a "no pornography" sentencing condition. Furthermore, the Court's holding in *Bahl* makes the wording of an acceptable pornography condition essentially impossible. Therefore, the State agrees with the defendant that the offending condition should be struck.

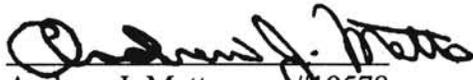
V.

#### CONCLUSION

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

Dated this 3<sup>rd</sup> day of August, 2012.

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