

FILED  
OCT 16, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 30614-3-III  
COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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State of Washington,

Respondent,

v.

Michael David Thompson,

Appellant.

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Appeal From The Superior Court  
Of Whitman County  
Case No. 11-1-00130-4  
The Honorable David Frazier

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BRIEF OF RESPONDENT

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Denis P. Tracy, WSBA # 20383  
Whitman County Prosecutor

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I. DEFENDANT / APPELLANT'S ASSIGNMENTS OF ERROR

A. Defendant argues there is no support for the trial court's finding that defendant has the ability to pay costs of incarceration. The State believes 1) this issue is moot, since no costs of incarceration were imposed; and 2) defendant is correct and the State believes the "finding" is just the result of a scrivener's error, since there was no mention of this issue at sentencing.

B. Defendant also argues that the trial court's implied finding that defendant would have the ability to pay the restitution and other LFO's at some reasonable payment plan, was unsupported by the record. The State believes defendant is not correct on this point, but believes the issue to be moot and has no objection to granting the relief requested.

C. Defendant seeks no relief, other than the striking from the Judgment and Sentence both the direct finding regarding costs of incarceration, and the implied finding regarding the various other LFO's. As noted, the State does not object to this relief.

## II. STATEMENT OF THE CASE

In addition to the facts noted in Defendant's brief, this court may note that the defendant has a date of birth of 11-29-90, making him currently, and at time of sentencing, 21 years old. (CP 94) As testified to at trial, and summarized by the judge at sentencing, he is spry enough to knock a man to the ground and wrestle his wallet away from him, and has the mental capacity to plan such an assault and robbery, and to organize and lead his friends to help him commit the crime. (RP 245, 60-70, 91-99, 112-121, 136-147) In addition, his mother informed the court at sentencing of the defendant's work history (having worked at McDonald's), and his helping his family pay bills. (RP 242)

The sentencing court also noted (at CP 97) that "[t]he court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160)."

### III. ARGUMENT

A. The State concedes that there is not sufficient support in the record to support the sentencing court's finding that defendant has the present or future ability to pay the costs of incarceration. There was no mention of that issue at sentencing or elsewhere in the record. The State believes that "the box was checked" in error, and the State does not oppose striking that finding from the Judgment and Sentence.

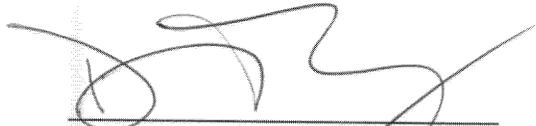
B. While there is evidence which supports an implied finding by the trial court that the defendant will be able to pay a reasonable payment plan, to be set by the court clerk and/or the Department of Corrections, the defendant is correct that the clerk, or the DOC, must examine the defendant's ability to pay at the time that the payment plan is actually set. Therefore, the State has no objection to the relief requested, as striking the implied finding will not affect a future determination of ability to pay.

### IV. CONCLUSION

Defendant does not challenge his conviction, nor any part of his sentence. He merely challenges two findings by the sentencing court, one direct finding and one implied finding. The State concedes error on the

direct finding. As to the indirect/implied finding of ability to pay various LFO's, the State agrees with defendant that a future determination of ability to pay will have to be made in order to set a reasonable payment plan. Therefore, the sentencing court's implied finding as that issue is moot and the State does not object to striking it.

Respectfully submitted this 15 day of October, 2012.



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Denis Tracy, WSBA 20383  
Whitman County Prosecutor  
Attorney for the State

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IN THE COURT OF APPEALS, DIVISION III  
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
Plaintiff,

Court of Appeals No. 306143  
No. 11-1-00130-4

v.

MICHAEL DAVID THOMPSON,  
Defendant,

AFFIDAVIT OF DELIVERY

STATE OF WASHINGTON )  
COUNTY OF WHITMAN )

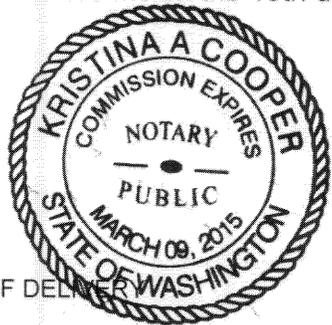
JENNIFER GRIFFIN, being first duly sworn, deposes and says as follows: That on the 5th day of October, 2012 I caused to be delivered a full, true and correct copy(ies) of the original **BRIEF OF RESPONDENT** on file herein to the following named person(s) using the following indicated method:

- Emailed to Susan Marie Gash at gaschlaw@msn.com, per prior agreement of parties.
- Mailed to Michael Thompson, # 355448, PO Box 2049, Airway Heights, WA 99001.

DATED this 15th day of October, 2012.

*Jennifer Griffin*  
\_\_\_\_\_  
JENNIFER GRIFFIN

SIGNED before me on the 15th day of October, 2012.



*Kristina A Cooper*  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at: Oakesdale  
My Appointment Expires: 03-09-2015

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