

FILED

MAR 19 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

31060-4-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

HAROLD A. WILLEY, 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

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The record does not support the implied finding that Mr. Willey has the current or future ability to pay Legal Financial Obligations.

II.

ISSUE PRESENTED

- A. IS THE SENTENCING COURT REQUIRED TO SUPPORT A LFO PAYMENT RULING WHEN THE LFO IS PURELY MANDATORY FEES?

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

While accepting the imposition of Legal Financial Obligations by the trial court, the defendant argues that the trial court did not make a determination of his

ability to pay. According to the defendant, this means the payment portion of the Judgment and Sentence should be stricken.

The defendant relies heavily on *State v. Bertrand*, 165 Wn. App. 393, 267 P.3d 511, (2011). The *Bertrand* decision is not on all fours for this case. The *Bertrand* court did not show that it recognized that some of the financial obligations were mandatory. RCW 7.68.035(1)(a) requires a \$500 fine, irrespective of the defendant's ability to pay. RCW 7.68.035(1)(a). A \$100 DNA collection fee is required by RCW 43.43.7541, irrespective of the defendant's ability to pay. RCW 43.43.7541. The rationale of *Bertrand* does not work here.

It is only the two fees mentioned above that were levied on the defendant. Since they were mandatory, the defendant must pay them. The trial court stated that the payments would begin one year later than the date of sentencing. RP 86. Thus, the defendant had ample time to address the trial court to ask for remission or other relief.

Granting the defendant's appeal would put the cart before the horse. The net result of the defendant's arguments would be to render the defendant "free and clear" upon his release and force the State to approach the trial court to ask for payments to be imposed. The State prevailed in this case and should not have to come before the court twice to receive mandatory payments.

V.

CONCLUSION

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

Dated this 19th day of March, 2013.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", written over a horizontal line.

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

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,)
)
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 v.)
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 HAROLD A. WILLEY,)
)
 Appellant,)

NO. 31060-4-III

CERTIFICATE OF MAILING

COURT OF APPEALS
 DIVISION III
 STATE OF WASHINGTON
 By _____

I certify under penalty of perjury under the laws of the State of Washington, that on March 19, 2013, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

Susan M. Gasch
 gaschlaw@msn.com

and mailed a copy to:

Harold A. Willey
 DOC #631255
 PO Box 769
 Connell, WA 99326

3/19/2013
 (Date)

Spokane, WA
 (Place)

Suzanne A. Owens
 (Signature)