

66126-4

66126-4



NO. 66126-4-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

SHANE L. WATSON,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

1. Whether the court found that Watson's failure to make payment on his legal financial obligations were willful?

2. Whether the court had authority to sanction Watson with confinement in jail for his willful failure to make payment on his legal financial obligations?

## **II. STATEMENT OF THE CASE**

On September 1, 2009, the Snohomish County Superior Court heard the following cases of Shane Watson on the Community Custody Hearing Calendar; 94-1-01710-6, 95-1-00658-7, 97-1-00520-0, 98-1-01263-8. The alleged violation in each case was that Watson has failed to make payments on his legal financial obligations (LFO). At that time Watson owed the following LFO under each case number:

\$6,432.39, #94-1-01710-6;  
\$ 572.74, #95-1-00658-7;  
\$1,234.29, #97-1-00520-0<sup>1</sup>;  
\$9,419.74, #98-1-01263-8.

Watson had made no payments on any of his LFO. Watson stipulated to the violations. CP 12, 51, 96; 3CP<sup>2</sup> \_\_ (sub# 187, #98-1-01263-8, Notice of Violation/Hearing Request); 9/1/09 RP<sup>3</sup> 1.

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<sup>1</sup> Jurisdiction lapsed and case number 97-1-00520-0 was closed on July 27, 2010; it is not part of this appeal.

At the September 1, 2009 hearing, Watson claimed that “when I was on supervision in Yakima, they took all these cases and said that they were no longer going to collect them. And I received a letter, and it was kind of a deal with the Attorney General that I made.” Watson asked the court to close the cases based on his non-payment. The State suggested the court order Watson to either pay or serve and terminate the cases. Watson replied that he would rather not go back to jail and asked the court to give him additional time to start making payments and to set a review hearing. The court found that the violations were willful, set monthly payments at \$20 on each case, and set review hearings for June 1, 2010. Watson did not appeal the court’s September 1, 2009, order. CP 12-14, 51-53, 96-98; 9/1/09 RP 3-5.

The June 1, 2010, hearings were reset to June 8, 2010, and Watson was summoned for that date. Watson appeared on June 8, 2010, and the matters were continued to July 13, 2010, for Watson to obtain counsel. On July 13, 2010, Watson failed to appear for the review hearings and bench warrants were issued. 3CP \_\_\_ (sub# 87, #95-1-00658-7, Summons), \_\_\_ (sub# 88, #95-1-00658-7,

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<sup>2</sup> Plaintiff’s Designation of Clerk’s Papers (3CP).

Motion Hearing), \_\_ (sub# 90, #95-1-00658-7, Order Determining Probable Cause), \_\_ (sub# 140, #94-1-01710-6, Summons), \_\_ (sub# 141, #94-1-01710-6, Petition for Order Revoking/Modifying Probation), \_\_ (sub# 144, #94-1-01710-6, Order Determining Probable Cause), \_\_ (sub# 193, #98-1-01263-8, Summons), \_\_ (sub# 194, #98-1-01263-8, Motion Hearing), \_\_ (sub# 197, #98-1-01263-8, Order Determining Probable Cause).

Watson was arrested on the warrants and appeared before the court on July 27, 2010. Watson was released on condition that he attends the hearings on August 31, 2010. Watson again failed to appear for the review hearings on August 31, 2010, and bench warrants were issued. 3CP \_\_ (sub# 92, #95-1-00658-7, Order of Release), \_\_ (sub# 95, #95-1-00658-7, Order Determining Probable Cause), \_\_ (sub# 146, #94-1-01710-6, Order of Release), \_\_ (sub# 149, #94-1-01710-6, Order Determining Probable Cause), \_\_ (sub# 199, #98-1-01263-8, Order of Release), \_\_ (sub# 202, #98-1-01263-8, Order Determining Probable Cause).

Watson was arrested on the warrants and appeared before the court on September 7, 2010. Watson was held on bail until

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<sup>3</sup> Simultaneously with this brief, respondent is filing a motion to supplement the record with a verbatim transcript of the September 1, 2009, Community Custody hearing.

September 13, 2010, for the review hearings. At the September 13, 2010 review hearings, Watson again claimed that he had not paid because of a letter he received from the Attorney General's Office in 2002 that relieved him of the obligation to pay his LFO and that these cases had been transferred to Yakima and closed. Watson did not provide a copy of the letter nor any order transferring jurisdiction on any of the cases. Watson also told the court that he had been staying with his mother and unable to keep a steady job for 28 years. However, Watson added that he now has a place to stay in Everett, that he is a mechanic and recently got his tools back, and that he was optimistic about getting and keeping a job and being able to pay his LFO. Watson asked the court to set his payments at \$5 per month on each case. Watson provided no verification of any efforts to find work since the September 1, 2009 hearing. The court maintained Watson's payment schedule of \$20 per month and imposed 20 days for each violation. The violations had previously been found to have been willfully committed on September 1, 2009. CP 9-11, 12, 48-50, 51, 91-93, 96; Suppl. CP 140-142, 143-145, 146-148; RP 2-7.

### **III. ARGUMENT**

#### **A. THE COURT FOUND THAT WATSON'S FAILURE TO PAY WAS WILLFUL.**

Watson argues that the court sanctioned him for failing to pay his legal financial obligations without finding that he willfully refused to pay. Watson's argument is not well taken in light of the court's findings, entered on September 1, 2009, that the violations were willful. The box on page 1, § II, ¶ 2.1, indicating a finding that the violation was willful, was checked on each of the orders.<sup>4</sup> CP 12, 51, 96. Watson did not appeal the court's September 1, 2009 finding.

#### **B. THE COURT HAD AUTHORITY TO IMPRISON WATSON FOR REFUSING TO PAY HIS LFO.**

"The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance ...." RCW 9.94A.760(10). "If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation ...." RCW 9.94B.040(3)(c).

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<sup>4</sup> The orders entered on September 13, 2010, clearly identified that they were for review hearings on page 1, § I. CP 9, 48, 91.

In Washington the court may place the burden on the defendant to prove inability to pay. Smith v. Whatcom County Dist. Court, 147 Wn.2d 98, 112, 52 P.3d 485 (2002) (citing State v. Bower, 64 Wn. App. 227, 234, 823 P.2d 1171 (1992)). Having requested that the court give him additional time to start making payments on September 1, 2009, it was incumbent on Watson to provide some verification showing what efforts he had made to seek employment or obtain money to pay his LFO since that date. Watson provided nothing to substantiate any of his claims.<sup>5</sup>

A court is justified in using imprisonment as a sanction on a defendant who has willfully refused to pay his legal financial obligations when the defendant has the means to pay or the defendant fails to make a *bona fide* effort to seek employment or borrow money to pay his legal financial obligations. Such inaction by the defendant reflects “an insufficient concern for paying the debt he owes to society for his crime.” Bearden v. Georgia, 461 U.S. 660, 669, 103 S.Ct 2064, 2071 (1983). The court appropriately sanctioned Watson to 60 days confinement, 20 days

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<sup>5</sup> The information cited in Appellant’s Brief on page 8 is from Watson’s Motions for Reconsideration; this information was not presented to the court at either the September 1, 2009 hearing or the September 13, 2010 review hearing. Watson does not assign error to the court’s denial of his Motion for Reconsideration.

on each case, for his willful refusal to pay his legal financial obligations.

**IV. CONCLUSION**

For the reasons stated above the appeal should be denied.

Respectfully submitted on May 19, 2011.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
JOHN J. JUHL, WSBA #  
Deputy Prosecuting Attorney  
Attorney for Respondent

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

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STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 95-1-00658-7
	)	94-1-01710-6
SHANE L. WATSON,	)	97-1-00520-0
	)	98-1-01263-8
Defendant.	)	
	)	

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REPORT OF PROCEEDINGS  
PROBATION CALENDAR HEARING

THE HONORABLE ELLEN J. FAIR, Judge  
Snohomish County Superior Court  
Department No. 304  
Everett, Washington

September 1, 2009

APPEARANCES:

For the Plaintiff: MARA ROZZANO, Deputy Prosecutor  
For the Defendant: Pro Se

NORA C. STARR, Official Court Reporter, CSR No. 2701  
3000 Rockefeller Avenue  
Everett, Washington 98201  
(425) 388-3303

1 (During the Probation Calendar, the  
2 following proceedings were held:)

3 THE COURT: Shane Watson.

4 THE DEFENDANT: Present, Your Honor.

5 MS. ROZZANO: Mr. Watson is present. There are four  
6 matters on before the Court.

7 THE COURT: You are not represented; is that correct?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Did you wish to be represented on these  
10 matters?

11 THE DEFENDANT: I see no reason for it, Your Honor.

12 MS. ROZZANO: His matters all come on for failure to make  
13 payments on legal financial obligations. I show on the 94  
14 cause number that no payments have been made. \$6,432.39 is  
15 owing. On the 98 cause number, no payments have been made.  
16 \$9,419.74 is owing. On the 95 cause number, again, I show no  
17 payments have been made. \$572.74 is owing. And on the 97  
18 cause number, no payments have been made. \$1,234.29 is  
19 owing.

20 I was trying to keep track, and I don't see that any of  
21 these are restitution. I can check that again to be sure.

22 THE DEFENDANT: Your Honor, none of them are restitution.  
23 I've just never been able to pay it. I've been locked up  
24 since all these cases, and --

25 THE COURT: When were you released?

1 THE DEFENDANT: Last time I was released was July 1st, and  
2 since then, they've issued a warrant for my arrest. It  
3 lasted for a month and a half. Then they suspended my  
4 license for not paying child support, which I'm working on  
5 getting that straightened out. I'm a mechanic, so I can't  
6 hardly work without a license, and then having warrants for  
7 my arrest, I couldn't even get food stamps.

8 And the warrant shouldn't never have been issued. I was  
9 completed on my cases. These cases are extremely old. I've  
10 never been able to pay those.

11 THE COURT: There's no warrants outstanding on any of  
12 these.

13 THE DEFENDANT: No, I understand that. There was a warrant  
14 issued by the DOC saying that I was supposed to be on  
15 supervision when I wasn't.

16 THE COURT: Well, in any event, you haven't paid anything  
17 on any of them.

18 THE DEFENDANT: I've never been able to, Your Honor.

19 THE COURT: They're not going to go away. So what, if  
20 anything, is your request?

21 THE DEFENDANT: Well, when I was on supervision in Yakima,  
22 they took all these cases and said that they were no longer  
23 going to collect them. And I received a letter, and it was  
24 kind of a deal with the Attorney General that I made. How  
25 these got put back on, I don't understand.

1 THE COURT: Well --

2 THE DEFENDANT: I would ask that the cases be closed. I  
3 mean, these are -- I've never been able to pay it. You know,  
4 I mean, it's just really unfair that I should have to pay  
5 this money when I'm trying to get back on my feet again and  
6 I've got other cases that I do have to pay on. As long as I  
7 can get child support paid and everything else, I just don't  
8 see where I can ever pay this money.

9 MS. ROZZANO: Your Honor, one possibility is essentially  
10 just to pay or serve, and I would expect the Court would be  
11 inclined to waive the interest on that situation, but I don't  
12 know, but it would get the matters taken care of and they  
13 could be terminated.

14 THE COURT: That's true. We could do that on everything  
15 other than the --

16 THE DEFENDANT: I'd rather not be going back to jail, Your  
17 Honor.

18 THE COURT: I think that's your choice at this point.

19 THE DEFENDANT: What other option do I have?

20 THE COURT: There's a lot of people that have -- that's  
21 pretty much your option. Well, your other option is to start  
22 making payments like everybody else here has been doing.

23 THE DEFENDANT: Well, can you give me that option, then,  
24 and let me, at least give me a time period where, like, say,  
25 two months I can try to get a job and start making payments?

1 THE COURT: I assume you're going to try and support  
2 yourself?

3 THE DEFENDANT: Yes.

4 THE COURT: So, yes, I will do that, but those are kind of  
5 the two options.

6 THE DEFENDANT: Okay. I'd much rather not be in jail.

7 THE COURT: All right. Then I'll set \$20 a month payments  
8 on each of these, and I think there are -- I will find --

9 THE DEFENDANT: Can you please make this reviewable so that  
10 if I didn't somehow get a job --

11 THE COURT: I'll set a review hearing.

12 THE DEFENDANT: Thank you.

13 THE COURT: So \$20 on each cause number. We'll have that  
14 commence November 1. So that gives you some time to get a  
15 job and some income. Then we'll review these in June and see  
16 what the situation is. So I'll set a review hearing for June  
17 1st.

18 THE DEFENDANT: Thank you, Your Honor.

19 THE CLERK'S ASSISTANT: Your Honor, we need a current  
20 address for Mr. Watson.

21 THE DEFENDANT: Care of Suzanne Wilson, 307 - 106th Street  
22 Southwest, is the only address I can give.

23 THE CLERK'S ASSISTANT: What city is it?

24 THE DEFENDANT: Everett, Washington, 98204.

25 THE CLERK'S ASSISTANT: Thank you.

1 THE COURT: Okay. Well, it will take a few minutes to get  
2 your paperwork.

3 MS. ROZZANO: I apologize, Your Honor, but it's going to  
4 take me a minute to get all these done.

5 THE COURT: That's all right. I just have eight  
6 sentencings waiting.

7 MS. ROZZANO: Your Honor, do you want to do the bench  
8 warrants and I'll finish these while you're doing the  
9 sentencings?

10 THE COURT: I guess.

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(After hearing other matters, the  
following proceedings were held:)

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16 MS. ROZZANO: Then I will complete the orders for Mr.  
17 Watson, go over them with him and hand them forward for Your  
18 Honor's signature, but I believe you can proceed to the  
19 sentencing calendar.

20 THE COURT: All right. I'll take a short recess and get  
21 those files.

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(The Court recessed at 10:48 a.m.)

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1 CERTIFICATE OF OFFICIAL COURT REPORTER  
STATE OF WASHINGTON )  
2 COUNTY OF SNOHOMISH )

3

4 I, Nora C. Starr, CSR, RPR, RMR, CRR, one of the official  
5 court reporters of the Superior Court of the State of  
6 Washington, in and for the County of Snohomish, do hereby  
7 certify that the Report of Proceedings in the foregoing cause  
8 was reported stenographically by me and reduced to  
9 computerized transcription under my direction;

10 I further certify that I am not a relative or employee or  
11 attorney or counsel of any of the parties to said action, or  
12 relative or employee of any such attorney or counsel, and  
13 that I am not financially interested in the said action or  
14 the outcome thereof;

15 I further certify that the Report of Proceedings is a full,  
16 true, and correct transcript of the proceedings to the best  
17 of my ability.

18

19

Nora C. Starr  
Official Court Reporter

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April 27, 2011  
Date

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