

FILED

SEP 17, 2013
Court of Appeals
Division III
State of Washington

APPEAL NO. 31260-7-III

Consolidated With

PERSONAL RESTRAINT PETITION NO. 31443-0-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

DAVID WAYNE HALLS, Appellant/Petitioner

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 12-1-00610-9

BRIEF OF RESPONDENT

ANDY MILLER
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for Benton County

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. RESPONSE TO ASSIGNMENT OF ERRORS1

 1. Because the “domestic violence” allegation was not properly pled or proved, the Judgment and Sentence should be modified to remove the allegation; the \$100.00 domestic violence assessment should be stricken, and the domestic violence no-contact order should be vacated.....1

 2. The defendant’s legal financial obligations were properly imposed1

 3. The defendant’s motion to withdraw his guilty plea should be denied for lack of sufficient grounds.....1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....1

 1. **The State agrees that the record does not support a finding that the “domestic violence” allegation was pled or proved.**1

 2. **Legal financial obligations were properly imposed.**2

 3. **The defendant’s plea was knowingly, intelligently, and voluntarily made.**.....2

IV. CONCLUSION3

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Baldwin, 63 Wn. App. 303, 818 P.2d 1116 (1991).....2

State v. Bertrand, 165 Wn. App. 393, 267 P.3d 511 (2011).....2

State v. Saas, 118 Wn.2d 37, 820 P.2d 505 (1991).....2

State v. Taylor, 83 Wn.2d 594, 521 P.2d 699(1974)2

COURT RULES

CrR 4.2(f).....2

CrR 7.8.....2

I. RESPONSE TO ASSIGNMENT OF ERRORS

1. Because the “domestic violence” allegation was not properly pled or proved, the Judgment and Sentence should be modified to remove the allegation; the \$100.00 domestic violence assessment should be stricken, and the domestic violence no-contact order should be vacated.
2. The defendant’s legal financial obligations were properly imposed.
3. The defendant’s motion to withdraw his guilty plea should be denied for lack of sufficient grounds.

II. STATEMENT OF THE CASE

The State agrees with the statement of facts as recited in Appellant’s Brief at pages two through five.

III. ARGUMENT

1. **The State agrees that the record does not support a finding that the “domestic violence” allegation was pled or proved.**

The defendant’s statement on plea of guilty does not include the necessary language to establish that the offense was committed against a family or household member, nor is there other evidence on the record from which the court could make that finding. Consequently, the defendant’s judgment and sentence should be amended and the “domestic violence” allegation removed. Likewise, the \$100.00 domestic violence

penalty assessment should be stricken, and the domestic violence no-contact order vacated.

2. Legal financial obligations were properly imposed.

The trial court did not make a finding as to the defendant's current or future ability to pay. (CP 50). While the absence of such a finding precludes the State from collecting money from the defendant until such a finding is made, it does not undermine the court's authority to impose the costs as part of the defendant's sentence. *State v. Baldwin*, 63 Wn. App. 303, 818 P.2d 1116 (1991), and *State v. Bertrand*, 165 Wn. App. 393, 267 P.3d 511 (2011). Consequently, the defendant's request to strike the legal financial obligations imposed by the trial court should be denied.

3. The defendant's plea was knowingly, intelligently, and voluntarily made.

A defendant should be allowed to withdraw his guilty plea whenever necessary to correct a manifest injustice. CrR 4.2(f) and CrR 7.8. A manifest injustice is one that is "obvious, directly observable, overt, and not obscure. *State v. Saas*, 118 Wn.2d 37, 42, 820 P.2d 505 (1991). The burden is on the defendant to show a manifest injustice. *State v. Taylor*, 83 Wn.2d 594, 596, 521 P.2d 699(1974). At page 4, paragraph 4, of Defendant's affidavit, he refers to ineffective assistance of counsel, but does not complain about any specific conduct on the part of his trial

counsel that could have affected the outcome of his case. On page 4, paragraph 5, he mentions “no-no contact order,” the existence of which is irrelevant to the crime of witness tampering. The defendant’s affidavit in support of his motion to withdraw his guilty plea articulates nothing that would constitute a manifest injustice. Consequently, the defendant’s request to allow him to withdraw his guilty plea should be denied.

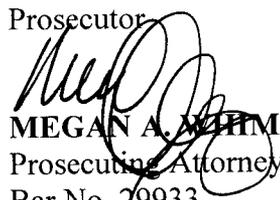
IV. CONCLUSION

This matter should be remanded to the trial court for entry of an amended judgment and sentence which strikes the “domestic violence” allegation, and associated domestic violence cost assessment. However, all other legal financial obligations should remain as previously ordered. Also upon remand, the trial court can determine whether entry of a modified protection order is appropriate.

RESPECTFULLY SUBMITTED this 17th day of September
2013.

ANDY MILLER

Prosecutor


MEGAN A. WHIMIRE, Deputy

Prosecuting Attorney

Bar No. 29933

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

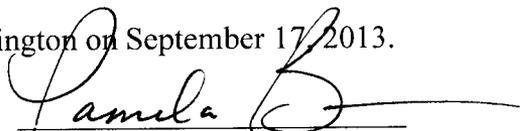
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U.S. Regular Mail, Postage
Prepaid

Signed at Kennewick, Washington on September 17, 2013.



Pamela Bradshaw
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