

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2002-A-0018
THOMAS S. BANCROFT,	:	
Defendant-Appellee.	:	1/14/05

Criminal appeal from the Court of Common Pleas, Case No. 2000 CR 211.

Judgment: Reversed and remanded.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Angela M. Scott*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellant).

Joseph A. Humpolick, 4817 State Road, Suite 202, Ashtabula, OH 44004 (For Defendant-Appellee).

WILLIAM M. O'NEILL, J.

{¶1} Appellant, the state of Ohio, appeals from the judgment entered by the Ashtabula County Court of Common Pleas. The trial court granted a motion filed by appellee, Thomas S. Bancroft, to vacate an order requiring him to pay court costs.

{¶2} In 2001, Bancroft pled guilty to one count of burglary. He was sentenced to a three-year prison term for this offense. In addition, the trial court ordered Bancroft to pay court costs.

{¶3} After sentencing, Bancroft filed a motion to vacate the order requiring him to pay court costs. The trial court granted this motion.

{¶4} The state has timely appealed the trial court's judgment entry vacating the order to pay court costs. The state raises the following assignment of error:

{¶5} "The trial court committed reversible error when it vacated part of appellee's felony sentence."

{¶6} The trial court based its decision to vacate Bancroft's costs on this court's decision in *State v. Heil*.¹ In *State v. Heil*, this court held that court costs could not be imposed on indigent defendants convicted of a felony.² The Supreme Court of Ohio has vacated this court's opinion in *State v. Heil*, holding that there was not a final appealable order and the order was not proper.³

{¶7} The instant case concerns whether a trial court may impose court costs on an indigent defendant convicted of a felony in a criminal case. The Supreme Court of Ohio recently answered this question, holding, "[a] trial court may assess court costs against an indigent defendant convicted of a felony."⁴

1. *State v. Heil* (Mar. 30, 2001), 11th Dist. No. 2000-G-2268, 2001 Ohio App. LEXIS 1552.

2. *Id.*

3. *State v. Heil*, 95 Ohio St.3d 531, 2002-Ohio-2841, at ¶2.

4. *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, paragraph one of the syllabus.

{¶8} Accordingly, the trial court erred by granting Bancroft's motion to vacate the order requiring him to pay court costs.

{¶9} The state also argues that the trial court erred by modifying Bancroft's sentence. Having held that the trial court erred by vacating Bancroft's court costs, this argument is moot.

{¶10} The state's assignment of error has merit.

{¶11} The judgment of the trial court is reversed, and this matter is remanded to the trial court, in order for the trial court to reinstate the order assessing court costs.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.