

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-04-094
	:	
- vs -	:	<u>OPINION</u>
	:	2/23/2015
	:	
RANDY D. KEITH,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2014-01-0031

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamhawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Christopher P. Frederick, 304 North Second Street, Hamilton, Ohio 45011, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, Randy Keith, appeals his sentence in the Butler County Court of Common Pleas. Specifically, Keith objects to the trial court's order regarding mandatory court costs.

{¶ 2} Keith was indicted on one count of burglary and two counts of theft. He agreed to plead guilty to an amended charge of burglary and the two theft charges. After accepting

Keith's voluntary pleas, the trial court held a sentencing hearing and ordered Keith to serve 18 months in prison on the burglary charge and community control on the two theft charges. At the sentencing hearing, the trial court addressed the imposition of mandatory court costs in a truncated manner, making reference to some of the statutory requirements related to mandatory court costs, but not all of the requirements. Keith now challenges the trial court's imposition of mandatory court costs, raising the following assignment of error.

{¶ 3} THE TRIAL COURT ERRED WHEN IT FAILED [SIC] PROPERLY NOTIFY MR. KEITH OF THE COMMUNITY SERVICE REQUIREMENTS PURSUANT TO R.C. 2947.23.

{¶ 4} Keith argues in his assignment of error that the trial court failed to properly impose court costs during sentencing.

{¶ 5} According to R.C. 2947.23:

(A)(1)(a) In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under section 2947.231 of the Revised Code, and render a judgment against the defendant for such costs. If the judge or magistrate imposes a community control sanction or other nonresidential sanction, the judge or magistrate, when imposing the sanction, shall notify the defendant of both of the following:

(i) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

(ii) If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

(b) The failure of a judge or magistrate to notify the defendant pursuant to division (A)(1)(a) of this section does not negate or limit the authority of the court to order the defendant to perform community service if the defendant fails to pay the judgment

described in that division or to timely make payments toward that judgment under an approved payment plan.

{¶ 6} During the sentencing hearing, the trial court stated, "by the order of the Court that on Count 1, the burglary charge, you receive a prison sentence of 18 months; credit for 106 days; pay costs. Can't afford to pay the costs, you need to do community service to work those off." The trial court then sentenced Keith to community control on the two theft charges and once again stated Keith must "pay all your court costs; can't afford to pay court costs, you'll need – need to do community service."

{¶ 7} The record does not indicate that the trial court informed Keith that it could order him to perform community service "until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule," or that Keith would "receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount."

{¶ 8} Even so, the statute specifically provides that a failure by the trial court to inform the defendant of the imposition of costs or the possibility of community service does not prohibit the trial court from ordering payment of the costs or community service if costs go unpaid. R.C. 2947.23(A)(1)(b). For this reason, this court and others have held that a trial court's failure to advise of mandatory court cost issues does not constitute reversible error. *State v. Brown*, 12th Dist. Butler No. CA2013-03-043, 2014-Ohio-1317; *State v. Leonard*, 1st Dist. Hamilton No. C-130474, 2014-Ohio-3828.

{¶ 9} In *Brown*, we recognized that R.C. 2947.23 had undergone two revisions since 2012. The statute was first revised by 2012 Am.Sub.S.B. 337, effective September 28, 2012, and then later revised by 2012 Am.Sub.H.B. 247, effective March 22, 2013. Keith was sentenced after both amendments became effective.

{¶ 10} Pursuant to S.B. 337's amendment to the statute, a court's failure to notify a defendant that he may be ordered to perform community service if he fails to pay court costs "does not negate or limit the authority of the court to order the defendant to perform community service if the defendant fails to pay the judgment." R.C. 2947.23(A)(1)(b). The plain language of the amended statute provides that a trial court's failure to comply with R.C. 2947.23(A)(1)(a) does not later prevent the court from imposing community service. As such, "the Legislature specifically intended to allow courts to order community service for the failure to pay court costs regardless of whether the court informed the defendant of such." *Brown* at ¶ 31; see also *State v. Lane*, 12th Dist. Butler No. CA2013-05-074, 2014-Ohio-562, ¶ 37 (holding that pursuant to language in H.B. 247 mirroring language in S.B. 337, "even if the trial court had sentenced the defendant to a community control sanction and failed to notify him that he could be ordered to perform community service in lieu of paying court costs, this would not affect the ability of the court to require the defendant to perform community service").

{¶ 11} As such, it is not reversible error that the trial court imposed the court costs and informed Keith that he would be subject to community service but failed to inform Keith of the specific way that community service would be served or credited. We therefore conclude that the trial court did not err in its notification of mandatory court cost issues when it sentenced Keith at the hearing, and consequently overrule Keith's sole assignment of error.

{¶ 12} Judgment affirmed.

HENDRICKSON and M. POWELL, JJ., concur.