

[Cite as *State v. Self*, 2005-Ohio-311.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 20423
v.	:	T.C. CASE NO. 02 TRD 8186
KEVIN M. SELF, JR.	:	(Criminal Appeal from
Defendant-Appellant	:	Miamisburg Municipal Court)
	:	

.....
OPINION

Rendered on the 28th day of January, 2005.

.....
CHRISTINE L. BURK, Atty. Reg. No. 0050559, 10 N. First Street, Miamisburg, Ohio 45342

Attorney for Plaintiff-Appellee

GLEN H. DEWAR, Atty. Reg. No. 0042077, Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45422

Attorney for Defendant-Appellant
.....

FREDERICK N. YOUNG, J.

{¶ 1} Mr. Self is appealing from the trial court's decision ordering him to serve fourteen days in jail for the nonpayment of a combined total fine and court costs of

\$661.00 (first assignment of error) and is asserting the trial court failed to follow R.C. 2947.14 when it ordered him to serve a term of incarceration for nonpayment of a fine (second assignment of error).

{¶ 2} The appellee, State of Ohio, did not file a brief in opposition to the appeal, probably because it recognized the validity of the appellant's arguments. As the appellant points out, it is well settled that a court cannot incarcerate a person for nonpayment of court costs. *Strattman v. Studt* (1969), 20 Ohio St.2d 195, 103, 49 O.O.2d 428, 432. The record supports the appellant's argument that the court costs were merged with the fine, and the incarceration was, therefore, unlawful. The appellant properly notes that the court should have separated the amount of the fine from the amount of the court costs in order to avoid the error of incarcerating Mr. Self for nonpayment of court costs. (Brief, 2).

{¶ 3} It is also clear from the record that the trial court did not follow the terms of R.C. 2947.14, which provides for a hearing for an offender for the court to determine that the offender is able, at that time, to pay the fine but refuses to do so. The determination by the court that the offender is able to pay the fine must be supported in its judgment entry which lists the offender's income, assets, and debts, and the offender's ability to pay. *Id.* Mr. Self had signed an agreement acknowledging his obligation to pay, but he failed to do so within the thirty days imposed by the court. If the court had followed R.C. 2947.14(D), the most the court could have sentenced Mr. Self to serve were three days, including credit for days that he had spent incarcerated after being arrested for his failure to pay or appear.

{¶ 4} The record shows that Mr. Self was incarcerated for a total of twelve days

whereas the most he could serve under R.C. 2947.14(D) for a \$150.00 fine is three days.

{¶ 5} The assignment of error is sustained, the decision will be reversed, and the sentence of the defendant is hereby vacated.

.....

BROGAN, P.J. and GRADY, J., concur.

Copies mailed to:

Christine L. Burk
Glen H. Dewar
Hon. Robert E. Messham, Jr.