

[Cite as *State v. Chase*, 2015-Ohio-545.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26238
	:	
v.	:	Trial Court Case Nos. 2013-CR-1080
	:	2012-CR-3789
ERIC CHASE	:	
	:	(Criminal appeal from
Defendant-Appellant	:	Common Pleas Court)
	:	

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OPINION

Rendered on the 13th day of February, 2015.

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MATHIAS H. HECK, JR., by APRIL F. CAMPBELL, Atty. Reg. #0089541, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402 Attorneys for Plaintiff-Appellee

ERIC CHASE, #686-671, North Central Correctional Complex, 670 Marion Williamsport Road, Post Office Box 1812, Marion, Ohio 43301-1812
Defendant-Appellant, *pro se*

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FAIN, J.

{¶ 1} Defendant-appellant Eric Chase appeals from an order of the trial court overruling his post-judgment motion to vacate or delay the imposition of court costs. We conclude that the trial court had authority to sustain Chase's motion. *State v. Powell*, 2d Dist. Montgomery No. 24433, 2014-Ohio-3842, ¶ 20. The trial court did not make sufficient findings to permit meaningful review of its decision under an abuse-of-discretion standard of review. Accordingly, the order overruling his motion is Reversed, and this caused is Remanded for re-consideration of the motion.

I. The Course of Proceedings

{¶ 2} In trial court case no. 2012 CR 3789, Chase was convicted of two fifth-degree felony drug possession offenses, and a third-degree felony heroin possession offense. Chase was sentenced to 36 months in prison for the third-degree felony offense, and to six months for the fifth-degree offenses, to be served concurrently, for a total sentence of 36 months. He was also given a mandatory fine of \$5,000, and a six-month license suspension. The trial court imposed court costs, as well.

{¶ 3} In trial court case no. 2013 CR 1080, Chase was convicted of a third-degree felony cocaine possession offense and a third-degree felony heroin possession offense. The trial court imposed a prison sentence of 36 months on each count, to be served concurrently with one another, with the sentence in case no. 2012 CR 3789, and with prison sentences in two other cases. Chase's driver's license was suspended for six months, a mandatory fine of \$5,000 was imposed, and court costs were also imposed.

{¶ 4} We have no record of the sentencing hearing in either case. Therefore, our record does not establish, and Chase does not claim, that he moved for a waiver of court costs at the sentencing hearings.

{¶ 5} Five months after judgment was entered, Chase moved for the waiver of the mandatory fines in both cases. The trial court sustained his motion.

{¶ 6} Almost ten months after judgment was entered, Chase moved “to vacate or delay mandatory payment of court costs, fees,” in both cases. The trial court overruled this motion ten days later, without a hearing. From the order overruling the motion, Chase appeals.

II. The Trial Court Had Authority to Sustain the Motion

{¶ 7} Although Chase’s pro se brief contains no assignments of error, we understand his sole assertion of error to be that the trial court erred by overruling his motion without “proper ‘Facts and Findings and Conclusion of Law’” We must first deal with the State’s contention that the trial court did not err in overruling his motion, because the trial court was without authority to sustain his motion.

{¶ 8} The State relies upon *State v. Carver*, 2d Dist. Montgomery No. 25197, 2012-Ohio-5789 ¶ 10-11, in which we held that:

[*State v.*] *Clevenger*[, 114 Ohio St.3d 258, 2007-Ohio-4006, 871 N.E.2d 589] also recognized that, in some situations, courts have limited statutory authority to waive payment of court costs after they have been imposed, including when the defendant is indigent. See R.C. 2949.092. However, a motion by an indigent criminal defendant to waive payment of

costs must be made at the time of sentencing. *Clevenger* at ¶ 4-5, citing *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, paragraph two of the syllabus. See also *State v. Nason*, 2d Dist. Montgomery No. 22796, 2008-Ohio-6337, ¶ 3. Otherwise, the issue is waived and costs are res judicata. *Clevenger*, citing *Threatt* at ¶ 23. Carver claims that he raised the issue of his indigency at the sentencing hearing, when the imposition of court costs was discussed. Even assuming that this assertion were correct, Carver should have challenged the trial court's failure to waive court costs on direct appeal. Neither this court nor the trial court has jurisdiction to consider this argument now.

The trial court correctly concluded that it lacked authority to waive Carver's previously imposed court costs.

{¶ 9} Since *Carver*, we decided *State v. Powell, supra*. In that opinion, at ¶ 19-20, we noted that 2012 Sub.H.B. 247 had made a number of changes to R.C. 2947.23, effective March 22, 2013, as a result of which:

These statutory provisions give authority to the trial court to consider waiving court costs even after sentencing. *State v. Hawley*, 2d Dist. Montgomery No. 25897, 2014-Ohio-731, ¶ 12. Accordingly, regardless of when court costs were imposed, [the defendant] may ask the trial court, under R.C. 2947.23(C), to waive, suspend, or modify his payment of court costs.

{¶ 10} We conclude, therefore, that the trial court had authority to grant Chase the relief he was seeking.

**III. The Trial Court Did Not Make Sufficient Findings
to Permit Meaningful Review of its Order under
an Abuse-of-Discretion Standard of Appellate Review**

{¶ 11} In support of his motion, Chase presented an affidavit in which he averred:

1. That I am incarcerated at the North Central Correctional Institution, 670 Marion-Williamsport Road East, Marion [Marion County].¹ Ohio 43301, pursuant to the conviction and sentence imposed upon me by the Court of Common Pleas of Montgomery County, Ohio;
2. That I earn \$18.00 monthly in my prison employment;
3. That as a result of this incarceration, I have no money to pay for representation or secure [sic] costs in this matter;
4. That I have no bank accounts, bonds, real property or equity therein in which to satisfy the costs of maintaining this action;
5. That I am a true pauper according to the laws of the State of Ohio and of the United States of America[.]

{¶ 12} In his motion, Chase contended that he uses his \$18 monthly stipend “for basic necessities of institutional life: toiletries, hygiene and shaving products, writing paper, postage, and medical co-pay. These items are a necessity and are not provided by the Department of Rehabilitation and Correction.” His motion concluded with a request that the trial court “cease from/or delay this Cost and fees, under Loc.R. 9.02 until

¹ Brackets in original.

this case is decided if this Court determines not to vacate cost, * * * .”

{¶ 13} The entirety of the order and entry from which this appeal is taken is as follows:

This matter is before the Court on Defendant’s Motion to Vacate or Delay Mandatory Payment of Court Costs, Fees filed with this Court on May 2, 2014.

The Court finds the matter is **NOT WELL TAKEN** and the Defendant’s Motion is **OVERRULED**.

{¶ 14} Because the trial court’s statutory authority to waive costs is permissive, its decision whether to do so is reviewed under an abuse-of-discretion standard of review. The trial court did not present any reasons or explanation for its decision.

{¶ 15} In *Delong v. Delong*, 2d Dist. Clark No. 94-CA-0656, 1995 WL 118162 (March 15, 1995), we reversed a trial court’s award of spousal support, opining, at *2:

Where the trial court fails to explain why or how it came to its decision, and that is not apparent from the record, an appellate court cannot resolve an abuse of discretion argument. Then, the appellate court may remand the matter to the trial court to indicate the basis for its [decision] in detail sufficient to permit the appellate court to resolve the issues before it. *Kaechele [v. Kaechele (1988), 35 Ohio St.3d 93, 518 N.E.2d 1197]*.

{¶ 16} See also *Arnett v. Arnett*, 2d Dist. Montgomery No. 20332, 2004-Ohio-5274, ¶ 17, in which we reversed an order of a trial court because: “Absent supportive findings, we cannot determine the abuse of discretion claimed, and an effort on our part to do so would require an almost *de novo* review of the issues presented.”

{¶ 17} In the case before us, as in the *Delong* and *Arnett* cases, we conclude that the trial court has not provided a sufficient explanation for its decision to permit us to perform meaningful appellate review of its decision under an abuse-of-discretion standard. The lynchpin of abuse-of-discretion review is the determination whether the trial court’s decision is reasonable. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). Unless the reason or reasons for the trial court’s decision are apparent from the face of the record, it is not possible to determine if the decision is reasonable without some explanation of the reason or reasons for that decision.

{¶ 18} As in the *Delong* case, we will reverse the order of the trial court and remand this cause to the trial court for re-consideration of Chase’s motion, with directions to provide a sufficient explanation of the reason or reasons for the trial court’s decision to permit us to review that decision, should either party choose to appeal, under an abuse-of-discretion standard of appellate review. Chase’s sole inferred assignment of error is sustained.

IV. Conclusion

{¶ 19} Chase’s sole inferred assignment of error having been sustained, the trial court’s order overruling his motion to vacate, or delay the payment of, court costs, from which this appeal is taken, is Reversed, and this cause is Remanded for re-consideration of Chase’s motion, in accordance with this opinion.

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FROELICH, P.J., and HALL, J., concur.

Copies mailed to:

Mathias H. Heck, Jr.
April F. Campbell
Eric Chase
Hon. Dennis J. Adkins