

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-11-053

Appellee

Trial Court No. 2009CR0299

v.

Stephanie Nickell

DECISION AND JUDGMENT

Appellant

Decided: January 11, 2013

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, David E. Romaker, Jr. and Aram M. Ohanian, Assistant Prosecuting Attorneys, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas, which sentenced appellant to joint and several restitution, equivalent to that imposed upon the co-defendant, and imposed court costs upon appellant. Appellant entered into a voluntary plea agreement, pleading guilty to an amended charge of

criminal damaging, in violation of R.C. 2909.06, a misdemeanor of the first degree, as amended from the original indictment of aggravated arson, in violation of R.C. 2909.02, a felony of the first degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Stephanie Nickell, sets forth the following three assignments of error:

I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT AT SENTENCING BY IMPOSING RESTITUTION WITHOUT FOLLOWING THE PROCEDURES REQUIRED BY R.C. 2929.71.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT AT SENTENCING BY IMPOSING FINANCIAL [SIC] WITHOUT CONSIDERATION OF APPELLANT'S ABILITY TO PAY.

III. APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF HER RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION TEN OF THE CONSTITUTION OF THE STATE OF OHIO.

{¶ 3} The following undisputed facts are relevant to this appeal. On April 18, 2008, a home in Fostoria, Ohio was destroyed by fire. Appellant resided in the home

with her parents. Appellant's father was out of town at the time of the fire. Appellant and her mother, the co-defendant, had left the home and gone to Wal-Mart immediately prior to the fire being observed and reported by neighbors. They were notified of the fire as they arrived at Wal-Mart and returned home. Independent eyewitnesses reported to investigators that appellant behaved strangely and suspiciously as she observed the fire burning at her home.

{¶ 4} Despite unsupported and insistent contentions by appellant that the fire must have somehow ignited inside the interior walls of the home, the professional fire investigator dispatched by the insurer concluded that the fire had been intentionally set via flammable liquid being poured and ignited on the living room floor. The state fire marshal's office likewise investigated and similarly found arson to be the cause of the fire. Notably, in conjunction with these findings, certain valuables were inexplicably removed from the home by the parties prior to the fire.

{¶ 5} On June 18, 2009, appellant was indicted on one count of aggravated arson, in violation of R.C. 2909.02, a felony of the first degree. The co-defendant, appellant's mother and companion to Wal-Mart immediately after the fire commenced, was similarly charged. On June 6, 2011, appellant's jury trial commenced.

{¶ 6} On the second day of trial, appellant elected to cease the proceedings and reached a plea agreement. Appellant voluntarily pled guilty to an amended charge of criminal damaging, in violation of R.C. 2909.06, a misdemeanor of the first degree. Consistent with the co-defendant's outcome, appellant was sentenced to joint and several

restitution in the amount of \$2,764.42, constituting the documented, reported costs incurred by the office of the state fire marshal in connection to this matter. On September 2, 2011, notice of appeal was filed.

{¶ 7} In the first assignment of error, appellant contends that the trial court abused its discretion in imposing restitution. Despite appellant's unsupported assertions that the restitution amount was not properly supported by objective evidence, the record reveals that the restitution amount was based upon an itemized expense report and statement furnished to the court by the state fire marshal. In conjunction with this, R.C. 2929.71 expressly authorizes the state to request restitution based upon the costs incurred by the state fire marshal in the course of investigating both arson and criminal damaging cases.

{¶ 8} The record reflects that on July 12, 2012, the requested itemized expense report delineating the costs incurred by the state fire marshal's office was furnished to the court. The record further reflects that the amount set forth in that report is the exact amount of the joint and several restitution ordered in this case. Based upon the foregoing, there is no objective evidence in the record to support the notion that the restitution order of the trial court was arbitrary, unreasonable or unconscionable. Appellant's first assignment of error is found not well-taken.

{¶ 9} In appellant's second assignment of error, appellant contends the trial court abused its discretion in imposing court costs upon appellant. In essence, appellant argues that the trial court did not make sufficient inquiry during the colloquy regarding appellant's ability to pay costs. On the contrary, the record reflects that the trial court

fully advised appellant of the potential financial obligations in connection to her change of plea and, more importantly, the trial court possessed the presentence report clearly reflecting appellant's work history and ability to work in order to meet the financial obligation of court costs. There is no objective evidence in the record to support the notion that the imposition of court costs was arbitrary, unreasonable or unconscionable. Appellant's second assignment of error is found not well-taken.

{¶ 10} In appellant's third assignment of error, appellant asserts that she received ineffective assistance of counsel. Specifically, appellant asserts that trial counsel was ineffective in failing to object to the joint and several restitution and costs orders that served as the basis of the first two assignments of error. As such, the propriety of the third assignment is prefaced upon the legitimacy of the first two assignments of error. Given our determinations in response to the first two assignments of error that the disputed financial orders were proper, the third assignment of error is similarly not well-taken.

{¶ 11} On consideration whereof, we find that substantial justice has been done in this matter. The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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