

[Cite as *State v. Lumpkin*, 2015-Ohio-3887.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT

COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION

No. 102591

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STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MELVIN LUMPKIN

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-571355-A

**BEFORE:** Jones, J., Celebrezze, A.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** September 24, 2015

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant Melvin Lumpkin appeals the imposition of a fine and court costs. We affirm and remand.

{¶2} In October 2013, Lumpkin pleaded guilty in two separate cases. In Cuyahoga C.P. No. CR-13-571355-A, which is the subject of this appeal, Lumpkin pleaded guilty to one count of drug trafficking, a felony of the first degree, and was ordered to forfeit \$110 and two cell phones. At the same plea hearing, Lumpkin also pleaded guilty to one count of drug trafficking, a felony of the first degree and was ordered to forfeit a cell phone and \$1,190 in Cuyahoga C.P. No. CR-12-568631.

{¶3} After his plea, but before his sentencing hearing, Lumpkin moved to waive the fines and court costs associated with his convictions. In support of his motion, Lumpkin submitted an affidavit of indigency, attesting that he did not have the ability to pay fines and did not have family or friends able to assist him in paying fines or court costs. The trial court denied the motion.

{¶4} After his plea hearing, the trial court revoked Lumpkin's bond because he tested positive for cocaine and marijuana on three separate occasions. Lumpkin again moved the trial court to waive the fines and court costs and submitted another affidavit of indigency to the

trial court, attesting that he had no ability to pay fines and court costs and no family or friends to assist him in paying fines or court costs. The trial court again denied the motion.

**{15}** At the sentencing hearing, Lumpkin's counsel again requested a waiver of fines, claiming that Lumpkin was unable to pay the mandatory fines associated with his convictions. The trial court disagreed and ordered Lumpkin to pay a fine of \$10,000 and a judgment "in an amount equal to the costs of this prosecution," reasoning that because Lumpkin had retained counsel and had large amounts of cash on him when he was arrested he had the resources to pay fines and costs:

There's a mandatory minimum fine of \$10,000 on each of these files. I'm going to impose a \$10,000 fine. \* \* \*

I'm going to impose the fines because I know [defense counsel] is retained and this defendant had at least \$4,600 on him at the time of his arrest. Although, it wasn't all forfeited in Case 571355. So he has the ability to have the means to pay those mandatory fines, but I am imposing a minimum fine.

**{16}** With respect to court costs, the trial court ruled that Lumpkin is "responsible for all your court costs," but advised Lumpkin that he may do community service "for not more than 40 hours a month at \$8 an hour reimbursement rate" to pay his court costs. The court then sentenced Lumpkin to an agreed-upon sentence of six years in prison.

**{17}** The sentencing journal entry the trial court entered for both cases listed Lumpkin's fine as \$5,000. After sentencing, Lumpkin filed a pro se motion for approval of a plan for partial payment of his court costs and fines. In his motion, he stated that his total judgment

amount was \$5,545. Lumpkin submitted an affidavit with the motion attesting that he was indigent and had no other means of support. He asked the court to set the payment of fines and costs at \$5 per month because, he claimed, he needed to be able to purchase articles for personal hygiene and over-the-counter medications and his \$18-a-month salary was insufficient to cover both these personal items and his court-ordered fines and costs. In his motion, which was partially a boilerplate motion, he also stated that he had been appointed counsel during the trial court proceedings and that counsel had failed to file a motion to waive fines and court costs.

**{¶18}** The trial court denied Lumpkin’s motion for a payment plan.

**{¶19}** Lumpkin sought leave to file a delayed appeal in Case No. CR-13-571355 only, which this court granted. On appeal, Lumpkin raises one assignment of error for our review: “When it ordered an indigent defendant to pay fines and court costs he has no ability to pay, the trial court abused its discretion.” Within his assignment of error, Lumpkin argues that the trial court erred in failing to waive his fine and in denying his motion to follow a payment plan.

**{¶110}** Before imposing a financial sanction under R.C. 2929.18, a trial court must consider the offender’s present and future ability to pay the amount of the sanction or fine. *See* R.C. 2929.19(B)(5). A trial court’s decision to impose a fine is reviewed for an abuse of discretion. *State v. Williams*, 8th Dist. Cuyahoga No. 92419, 2009-Ohio-5964, ¶ 5. To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219,

450 N.E.2d 1140 (1983).

**{¶11}** Pursuant to R.C. 2929.18(A)(3)(a), a trial court may impose a fine of not more than \$20,000 for a first-degree felony conviction. R.C. 2929.18(B)(1) requires the trial court to impose a mandatory minimum fine of one-half of the maximum fine for felony drug offenses of the first, second, or third degree; thus, one-half of the mandatory fine in this case was \$10,000. R.C. 2929.18(B)(1) further states:

If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

**{¶12}** Thus, the imposition of the mandatory fine is required unless (1) the offender's affidavit is filed prior to sentencing, and (2) the trial court finds that the offender is an indigent person and is unable to pay the mandatory fines. *Williams* at ¶ 8, citing *State v. Gipson*, 80 Ohio St.3d 626, 634, 687 N.E.2d 750 (1998); R.C. 2929.18(B)(1). As to the trial court's findings, "there are no express factors that must be taken into consideration or findings regarding the offender's ability to pay that must be made on the record." *State v. Martin*, 140 Ohio App.3d 326, 338, 747 N.E.2d 318 (4th Dist.2000); *see also State v. Parker*, 2d Dist. Champaign No. 03CA0017, 2004-Ohio-1313, ¶ 42 (holding that a trial court is not required to expressly state that it considered a defendant's ability to pay a fine). A hearing on a defendant's ability to pay is also not required; the statute mandates only that the trial court consider the defendant's

ability to pay. *State v. Hodge*, 2d Dist. Montgomery No. 23964, 2011-Ohio-633, ¶ 55.

Under appropriate circumstances, a reviewing court may infer that a trial court considered the issue. *Parker at id.*

{¶13} In this case, Lumpkin filed two motions to waive mandatory fine and costs with affidavits of indigency prior to his sentencing hearing. He averred that he was unable to pay the fine or court costs and did not have friends or family members that were able to assist him. The trial court rejected his claim, citing Lumpkin's ability to retain an attorney and the cash he had on him when he was arrested.

{¶14} Lumpkin argues that the trial court improperly took into consideration those factors that were present at the time of arrest and ignored his financial position at the time of sentencing. But as stated above, the trial court is not required to make express findings on the record with regard to an offender's ability to pay. Upon review, the record establishes that Lumpkin was 34 years old at the time of sentencing, had attended college, was arrested in both cases with a large amount of drugs and cash on his person, retained an attorney for both cases, posted a \$100,000 bond in Case No. CR-12-568631, and only had to forfeit \$110 of the \$4,600 that was seized in this case. Moreover, the record indicates Lumpkin was married; therefore, contrary to his affidavit in which he stated he did not have family or friends able to assist him in paying his fines or court costs, Lumpkin had a spouse that the court could have reasonably considered would be able to assist him with paying the fine.

**{¶15}** In light of these facts, the trial court did not abuse its discretion in denying Lumpkin's motion to waive mandatory court costs and fines.

**{¶16}** The trial court also did not err in denying his motion for a payment plan. As previously mentioned, Lumpkin's affidavit contained factual inaccuracies — he indicated that he had been assigned counsel who had failed to file a motion to waive court costs and fines when in actuality his retained counsel filed two motions and made an oral motion to waive court costs and fines on his behalf.

**{¶17}** The trial court, however, made a clerical error in imposing only a \$5,000 fine in its sentencing journal entry. In accordance with R.C. 2929.18(A)(3)(a) and (B)(1) and as correctly stated by the trial court during the sentencing hearing, the fine to be imposed in this case was \$10,000. Therefore, the case is remanded for correction of the journal entry to indicate the correct fine.

**{¶18}** Finally, we note that there is nothing to preclude Lumpkin from filing a new motion for a payment plan once the correct fine amount is imposed.

**{¶19}** The assignment of error is overruled.

**{¶20}** Judgment affirmed; case remanded for correction of journal entry.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the



common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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LARRY A. JONES, SR., JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
MARY J. BOYLE, J., CONCUR