

[Cite as *State v. Ramirez*, 2015-Ohio-4497.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102518

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DAVID RAMIREZ**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-585230-A

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

**RELEASED AND JOURNALIZED:** October 29, 2015

**ATTORNEY FOR APPELLANT**

Rick L. Ferrara  
2077 East 4th Street  
Second Floor  
Cleveland, Ohio 44114

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

BY: John F. Hirschauer  
Assistant County Prosecutor  
The Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant David Ramirez appeals from the trial court's judgment imposing nonmandatory fines on him. We affirm.

### **Procedural History**

{¶2} In 2014, Ramirez was charged with eight counts of sexually oriented offenses. He was declared indigent and appointed counsel. After negotiations with the state, Ramirez pleaded guilty to four of the eight counts, consisting of two counts of sexual battery and two counts of kidnapping with sexual motivation specifications. The parties agreed that the sexual battery and kidnapping counts would merge for the purpose of sentencing.

{¶3} At sentencing, the state elected to proceed on the sexual battery counts. Each count was subject to a possible one- to five-year prison term and a possible \$10,000 fine. The trial court sentenced Ramirez to five years on each of the two counts, to be served consecutively. The defense requested that costs and fines be waived because Ramirez was indigent, but the court denied the request and imposed a \$20,000 fine, which consisted of \$10,000 for each count.

### **Law and Analysis**

{¶4} In his sole assignment of error, Ramirez contends that the trial court abused its discretion in imposing the fines against him. We disagree.

{¶5} Ramirez contends that the trial court acted unreasonably in imposing the fines because he was indigent, had served an almost six-year prison sentence prior to this case, and had no earnings or assets. Although Ramirez obtained his GED in prison during his previous sentence, he contends that the prospect of obtaining a job after his release on this case is dismal given that he was convicted of sexually oriented offenses.

{¶6} Ohio law does not prohibit a court from imposing a fine on an indigent defendant. *State v. Ramos*, 8th Dist. Cuyahoga No. 92357, 2009-Ohio-3064, ¶ 7. However, under R.C.

2929.19(B)(5), the trial court “shall consider the offender’s present and future ability to pay” before imposing a financial sanction or fine. But there are no express factors that must be taken into consideration or finding regarding the offender’s ability to pay that must be made on the record. *State v. Jacobs*, 89 Ohio App.3d 283, 2010-Ohio-4010, 938 N.E.2d 79, ¶ 11 (8th Dist.). Moreover, the trial court is not required to hold a hearing in order to comply with R.C. 2929.19(B)(5). *State v. Martin*, 140 Ohio App.3d 326, 338, 747 N.E.2d 318 (4th Dist.2000).

{¶7} We review the trial court’s decision to impose a fine on an indigent defendant for an abuse of discretion. *State v. Ficklin*, 8th Dist. Cuyahoga No. 99191, 2013-Ohio-3002, ¶ 5. An abuse of discretion implies that the trial court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶8} The record demonstrates that the trial court considered the presentence investigation report (“PSI”). Pertinent information contained in a PSI is properly considered by a trial court in determining a defendant’s ability to pay a financial sanction. *State v. Bulstrom*, 4th Dist. Athens No. 12CA19, 2013-Ohio-3582, ¶ 15. From the PSI, the trial court had information that the victims in the first case are the same victims in this case. After serving an almost six-year sentence in the first case, Ramirez moved back in with the victims and their mother. Even as a sex offender, Ramirez was able to obtain full-time employment and keep it for almost a year and a half, until he was arrested in this case for re-victimizing the minor girls.

{¶9} On this record, we find that the trial court did not abuse its discretion in imposing the fines on Ramirez. His sole assignment of error is therefore overruled.

{¶10} Judgment affirmed.

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., PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR