

[Cite as *State v. Papagianis*, 2015-Ohio-678.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101219

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**ANTHONY C. PAPAGIANIS**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-576809-A

**BEFORE:** E.A. Gallagher, J., Celebrezze, A.J., and S. Gallagher, J.

**RELEASED AND JOURNALIZED:** February 26, 2015

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EILEEN A. GALLAGHER, J.:

{¶1} The state of Ohio (“State”) appeals the sentencing entry of defendant-appellee Anthony C. Papagianis (“Papagianis”) issued by the Cuyahoga County Court of Common Pleas on March 5, 2014. The state argues that the trial court failed to apprise it of a change in the date of Papagianis’ sentencing hearing and thus denied the state the opportunity to present evidence of the costs of extraditing him for the purpose of calculating court costs. For the following reasons, we affirm the judgment of the trial court.

{¶2} Papagianis plead guilty to receiving stolen property, misuse of credit cards and aggravated theft on November 12, 2013. The trial court issued a journal entry scheduling Papagianis’ sentencing hearing for March 20, 2014, but the sentencing hearing was actually held on March 5, 2014. There does not exist a journal entry in advance of this date that reflects the advancement of the hearing, which would have been the better course of action. Papagianis and his trial counsel were present, but the state did not appear. The trial court imposed a six-month suspended prison term for each of the above offenses and ordered one and one-half years of community control sanctions. The trial court further ordered restitution in the amount of \$1,180 and entered judgment against Papagianis in an amount equal to the costs of prosecution.

{¶3} On March 21, 2014, the state filed a motion for the imposition of court costs wherein it asserted that it was not notified of the change in the date of Papagianis’ sentencing hearing and was prevented from requesting that the trial court impose the cost of extradition upon Papagianis as part of his court costs. The state argued, however, that pursuant to R.C. 2947.23, the trial court retained the jurisdiction to modify Papagianis’ court costs and requested a hearing to address the issue of extradition costs. The trial court denied the state’s motion on April 1, 2014. This court granted the state leave to appeal from Papagianis’ sentencing entry and notes that the state has not appealed the denial of its motion for the imposition of court costs.

The state presents two interrelated assignments of error which state:

I. The trial court erred when it held a sentencing hearing without notifying the state.

II. The trial court erred when it held a sentencing hearing without providing notice to the state because it impaired the state's right to seek the proper costs of prosecution.

{¶4} The state argues that it had a right to be present at Papagianis' sentencing hearing and present evidence of its extradition costs. The procedural history that resulted in the state's absence at sentencing in this case is as murky and unclear as the remarkably similar facts that this court examined in *State v. Payne*, 8th Dist. No. 86367, 2006-Ohio-2085. However, we need not address the state's argument that the trial court erred in failing to notify it of the change in Papagianis' sentencing date because we find no prejudice to the state in this instance.

{¶5} As part of Papagianis' sentence, the trial court ordered judgment against him "in an amount equal to the costs of this prosecution." In conjunction with this order, we note that R.C. 2949.14 provides:

Upon conviction of a nonindigent person for a felony, the clerk of the court of common pleas shall make and certify under the clerk's hand and seal of the court, a complete itemized bill of the costs made in such prosecution, including the sum paid by the board of county commissioners, certified by the county auditor, for the arrest and return of the person on the requisition of the governor, or on the request of the governor to the president of the United States, or on the return of the fugitive by a designated agent pursuant to a waiver of extradition except in cases of parole violation. The clerk shall attempt to collect the costs from the person convicted.

{¶6} Pursuant to the trial court's sentencing order and R.C. 2949.14, the clerk was obligated to account for Papagianis' extradition costs and attempt to collect such costs. *See also State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, ¶ 21 ("calculating a bill for the costs in a criminal case is merely a ministerial task"); *State v. Peacock*, 11th Dist. Lake No. 2002-L-015, 2003-Ohio-6772, ¶ 50 ("R.C. 2949.14 does not govern the court's ability to

order costs. The statute is directed at the ability of the clerk of courts to collect the costs from the person convicted.”). Papagianis did not assert at sentencing that he was indigent for the purpose of seeking a waiver of court costs. In fact, Papagianis’ presentence investigation states that “[Papagianis] reported that he has always worked and does not have any difficulty paying his bills.”

{¶7} The state suggests that on March 7, 2014, the trial court assessed \$363.50 in court costs, which did not include the cost of extradition. There is absolutely no evidence in the record to support this allegation. The transcript provided to this court of Papagianis’ sentencing hearing on March 5, 2014, reflects that the trial court informed Papagianis that “[he] will be responsible for the payment of court costs.” No specific figure is provided.

{¶8} We find the state’s argument to be without merit.

{¶9} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant the 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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EILEEN A. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., CONCURS;  
SEAN C. GALLAGHER, J., CONCURS (WITH SEPARATE OPINION ATTACHED)

SEAN C. GALLAGHER, J., CONCURRING:

{¶10} I concur fully with the judgment and analysis of the majority, but write separately to address what seems to be the underlying concern in the state's appeal. The sentencing in this case took place on a date not reflected on the docket. I have no doubt there is probably a reasonable explanation for this inconsistency, as the judge is a well respected and seasoned jurist, but it is generally best, especially in scheduling, to have clarity rather than uncertainty.