

[Cite as *State v. Price*, 2015-Ohio-4592.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102987

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

RAMONE E. PRICE

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-10-536743-B

BEFORE: Laster Mays, J., E.A. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: November 5, 2015

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ANITA LASTER MAYS, J.:

{¶1} In 2010, Ramone E. Price (“Price”) pleaded guilty to robbery, in violation of R.C. 2911.02, a felony of the second degree, with a one-year firearm specification pursuant to R.C. 2941.141. The trial court imposed a sentence of eight years, and Price was ordered to pay court costs. In 2015, Price filed a motion with the trial court, asking it to either vacate or waive the court costs or to implement a payment plan. The trial court granted Price’s motion and waived the court costs. As a result the state filed a notice of appeal and assigns the following error:

I. The trial court erred when it granted Price’s motion to vacate or waive court costs, as the trial court was without the jurisdiction to do so.

{¶2} As of March 22, 2013, R.C. 2947.23(C) gives the court jurisdiction “to waive, suspend, or modify the payment of the costs of prosecution * * * at the time of sentencing or at any time thereafter.” The issue in this appeal is whether a defendant who was sentenced before the effective date of R.C. 2947.23(C) and who did not seek a waiver of court costs at the time of sentencing, can subsequently use the statute as a means of invoking the court’s jurisdiction to seek a waiver of those costs. We hold that the specific language of R.C. 2947.23(C) stating that a court has jurisdiction to waive costs at “any time” after sentencing is prospective in application and is not a retroactive application that would bar defendants who failed to seek a waiver of court costs at the

time of sentencing. *State v. Hunter*, 8th Dist. Cuyahoga No. 102245, 2015-Ohio-4180, ¶ 1.

I. Standard of Review

{¶3} “On matters of law, choice, interpretation, or application, our review is, of course, plenary. We give no deference and exercise our right to de novo error by looking at the correctness with which the trial court acted.” *Raceway Video & Bookshop v. Cleveland Bd. of Zoning Appeals*, 118 Ohio App.3d 264, 692 N.E.2d 656 (8th Dist.1997).

II. Analysis

{¶4} This exact issue has been decided by this court in *Hunter*. The state is arguing that the trial court does not have the jurisdiction to waive court costs because the amendment was enacted after Price’s sentencing. However the language of the statute is clear. It states that the court can waive costs at sentencing or any time thereafter. This is not a retroactive statute as the state claims. In *Hunter*, we spoke to this argument and stated,

We believe the state’s argument misapprehends what constitutes a “retroactive” application of R.C. 2947.23(C). It is true that absent express language indicting retroactivity, a statute is presumed to be prospective in its application. *See* R.C. 1.48; *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 105, 522 N.E.2d 489 (1988).

But retroactivity is premised on the idea that a law reaches back in time to upset settled legal expectations. By its own terms, R.C. 2947.23(C) states that a court retains jurisdiction to waive, suspend, or modify court costs “at the time of sentencing or at any time thereafter.” No settled legal expectations are affected by the amended statute — it expressly states, consistent with prior precedent, that the court may waive court costs at the time of sentencing, but the statute goes on to expand the time frame in which a court may waive, suspend, or modify costs to “any time thereafter.”

In other words, the plain wording of R.C. 2947.23(C) no longer places limits on when a defendant can seek a waiver, suspension, or modification of court costs. There is no dispute that Hunter sought a waiver of court costs after the effective date of the modifications to R.C. 2947.23(C), so there was no retroactive application of the statute.

{¶5} Therefore, we hold, consistent with our decision in *Hunter*, that the trial court had authority and jurisdiction to waive court costs, and affirm the trial court's decision.

{¶6} It is ordered that the appellee recover from 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 to carry this judgment into execution.

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

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, P.J., and
TIM McCORMACK, J., CONCUR