

[Cite as *State v. Pate*, 2016-Ohio-399.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103077

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**WILLIE I. PATE**

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-15-592962-A

**BEFORE:** Celebrezze, J., E.A. Gallagher, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** February 4, 2016

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, Willie I. Pate, brings the instant appeal challenging the imposition of fines that resulted from his convictions for drug trafficking. Appellant claims he is indigent and the court failed to properly consider the factors necessary before imposing fines. After a thorough review of the record, this court affirms.

### **I. Factual and Procedural History**

{¶2} Cleveland police officers received information in January 2015 that appellant was selling cocaine. As a result of the tip, officers set up controlled drug buys from appellant at various locations. A search warrant was obtained and executed on appellant's home. There, police officers located 44 grams of cocaine, scales, guns, and \$2,764 in cash.

{¶3} Appellant was arrested and charged with drug trafficking, possession of cocaine, possession of criminal tools, and having weapons while under disability. The first two charges carried juvenile and one-year firearm specifications, and all charges carried forfeiture specifications. Initially, appellant was found to be indigent and an attorney was appointed to represent him. However, appellant later retained counsel to represent him. On April 17, 2015, appellant entered guilty pleas to drug trafficking, a first-degree felony violation of R.C. 2925.03(A)(2), having weapons while under disability, a third-degree felony violation of R.C. 2923.24(A), and the accompanying forfeiture specifications. The remaining count and specifications were dismissed.

{¶4} Prior to the sentencing hearing, appellant filed an affidavit of indigency and a motion to waive fines and costs in an attempt to avoid the mandatory fine that accompanied his

drug trafficking conviction. At sentencing, the court imposed the agreed sentence of four years in prison and also imposed a minimum mandatory \$10,000 fine.

{¶5} Appellant then filed the instant appeal arguing one error for review:

[Appellant] was denied due process of law when the court imposed a fine on [appellant] who was in jail and had been previously declared indigent at his arraignment.

## **II. Law and Analysis**

{¶6} R.C. 2929.18(A)(3)(a) and 2929.18(B)(1) require a fine of between \$10,000 and \$20,000 be imposed for a first-degree felony drug trafficking conviction. The language of the statutes mandate such a fine but gives the court the ability to waive it:

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.

R.C. 2929.18(B)(1).

{¶7} R.C. 2929.18(B)(1) gives the court discretion to waive a fine where the defendant is able to show a present and future inability to pay. *State v. Ficklin*, 8th Dist. Cuyahoga No. 99191, 2013-Ohio-3002, ¶ 10-15. R.C. 2929.19(B)(5) directs the court to these considerations: “Before imposing a financial sanction under section 2929.18 of the Revised Code \* \* \* the court shall consider the offender’s present and future ability to pay the amount of the sanction or fine.”

{¶8} However, there are no specific factors a court must consider before imposing a fine pursuant to R.C. 2929.18(B)(1). So long as the record evidences that a court considered a defendant’s present and future ability to pay, the decision to impose or not impose a fine will be affirmed. *Ficklin* at ¶ 17, citing *State v. Schneider*, 8th Dist. Cuyahoga No. 96953,

2012-Ohio-1740, ¶ 10. Indeed, this court has recognized that a court may impose a fine on an indigent person. *Ficklin* at ¶ 16, citing *State v. Gipson*, 80 Ohio St.3d 626, 687 N.E.2d 750 (1998). This court reviews the trial court's decision for an abuse of discretion. *State v. Ramirez*, 8th Dist. Cuyahoga No. 102518, 2015-Ohio-4497, ¶ 7, citing *Ficklin* at ¶ 5. A trial court abuses its discretion when it "fails to inquire into a defendant's ability to pay a financial sanction." *Schneider* at ¶ 10, citing *State v. Brewer*, 3d Dist. Auglaize No. 2-97-20, 1998 Ohio App. LEXIS 660 (Jan. 28, 1998).

{¶9} The court did indicate the reason for its decision to impose a mandatory fine:

You are ordered on count one to pay a fine in the amount of ten thousand dollars. Your motion to waive the fine, which is mandatory by law, is denied, and in consideration of the fact that this was an activity undertaken for profit, and that there is reason to think it was ongoing for some period of time, meaning that while I have no way of knowing exactly how much money was coming in, typically this is a money-making venture.

Additionally, I know despite not having a job, you were found with \$2,700 or so at the time of your arrest, suggesting again, that you, during the course of these activities, had the means to afford a fine of ten thousand dollars.

{¶10} Prior to imposing the fine, the court heard from the state regarding the extent of appellant's drug trafficking operation. The state described a series of controlled buys initiated at appellant's apartment over a period of approximately one month. Appellant was also found with 44 grams of cocaine and around \$2,700 in cash.

{¶11} The court indicated that appellant likely still possessed ill-gotten proceeds of drug trafficking activities with which he could pay the fines. Also implicit in the court's findings is that appellant had the ability to run an illicit business and in his present physical condition would be able to operate a legitimate business or be gainfully employed in the future. When the court asked about the waiver, appellant's attorney responded,

Motion to waive the fine; of course, he was arrested in January, the end of January, date of the offense, been in jail, cannot post bond, and most of his assets, other than an old truck with over hundreds of thousands of miles on it was his only asset that he had, and of course, he's not working, didn't work, cannot work in connection with the case, and we'd ask that the Court go forward with the agreed sentence, your Honor, and waive the fine and costs.

{¶12} Neither appellant's affidavit nor his attorney's arguments address appellant's future ability to pay. Appellant's attorney indicated appellant could not work in connection with this case. This presumably means appellant cannot work while he is in prison. Nothing indicates appellant could not work after his release from prison. There is some indication in the record that appellant was working prior to his arrest. During a pretrial hearing, appellant's attorney requested a lower bond:

Just, briefly Your Honor, in connection with the case, the bond is — a very high bond was set in this particular case, and it's resulted from apparently an execution of a search warrant where Mr. Pate was stopped at one location, brought back to a home, and a search conducted at the home in connection with the case.

*I understand he's been gainfully employed.* He had this home, he didn't own the home, he rented a home there on the east side of Cleveland on McElhatten. \* \* \*.

(Emphasis added.) Tr. 4.

{¶13} The trial court examined appellant's lengthy criminal history, including a significant history of drug trafficking. The court also was aware of appellant's relatively young age and good health. The court considered appellant's ability to pay the fine when overruling the motion to waive. Therefore, the court did not abuse its discretion.

### **III. Conclusion**

{¶14} The trial court considered appellant's present and future ability to pay before imposing a \$10,000 mandatory fine. Therefore, the court did not abuse its discretion.

{¶15} 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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FRANK D. CELEBREZZE, JR., JUDGE

EILEEN A. GALLAGHER, P.J., and  
MARY J. BOYLE, J., CONCUR