

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
PIKE COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA930
	:	
v.	:	
	:	
Peggy A. Lansing,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	

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APPEARANCES:

Karyn Justice, Portsmouth, Ohio, for appellant.

Michael A. Davis, Pike County Prosecuting Attorney, Waverly, Ohio, for appellee.

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Smith, P.J.

{¶1} Appellant, Peggy A. Lansing, appeals the judgment of the Pike County Court of Common Pleas convicting her of one first-degree felony count of trafficking in a fentanyl-related compound in violation of R.C. 2925.03(A)(2) and one second-degree felony count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1). On appeal, she contends that she did not receive the effective assistance of counsel by virtue of counsel's failure to request a waiver of court costs. However, having found no merit to appellant's sole assignment of error, the judgment of the trial court is affirmed.

## FACTS

{¶2} On October 11, 2022, appellant was indicted on multiple felony counts of possession, aggravated possession, trafficking, and aggravated trafficking of both cocaine and a fentanyl-related compound, as well as engaging in a pattern of corrupt activity. Appellant retained counsel, who represented her throughout the proceedings below. Appellant eventually entered into a plea agreement whereby she agreed to enter pleas to one first-degree felony count of trafficking in a fentanyl-related compound and one second-degree felony count of engaging in a pattern of corrupt activity, in exchange for the dismissal of the remaining charges, as well as a sentencing recommendation from the State.

{¶3} The trial court held a combined change of plea and sentencing hearing on January 24, 2024. During the plea colloquy, defense counsel provided the court with an affidavit of indigency, stating that “[i]n terms of the financial sanctions. I’d like to have that before the record.” Later during the hearing, the trial court asked appellant to confirm that she had no money to hire her own counsel or to pay a fine. Appellant confirmed and the trial court clarified that although the indigency affidavit was a standard court form for the appointment of counsel, it was “being used in this case to establish this defendant’s indigency, uh, to avoid paying mandatory or discretionary court ordered fines.”

{¶4} After imposing concurrent prison terms upon appellant for both charges, the trial court found appellant to be indigent, ordered that no fines be imposed, and it assessed costs against appellant. Appellant now brings her timely appeal from the judgment of the trial court, setting forth a single assignment of error for our review.

### ASSIGNMENT OF ERROR

#### I. MS. LANSING DID NOT RECEIVE THE EFFECTIVE ASSISTANCE OF COUNSEL.

{¶5} In her sole assignment of error, appellant contends that she did not receive the effective assistance of counsel. More specifically, she argues that counsel was ineffective for failing to request the trial court waive the imposition of courts costs. In support of her argument, she draws our attention to the fact that the trial court found her to be indigent and as such, did not impose any fines. She claims that if counsel had requested a waiver of costs, it is likely the trial court would have waived them and that counsel's failure to do so prejudiced her.

{¶6} The State responds by arguing that appellant has failed to show that her trial counsel's performance was deficient. The State further argues that because R.C. 2947.23(C) permits the court to waive, suspend, or modify court costs at the time of sentencing or anytime thereafter, appellant has suffered no prejudice despite counsel's failure to request a waiver.

## STANDARD OF REVIEW

{¶7} The Sixth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution, provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. The United States Supreme Court has generally interpreted this provision to mean that a criminal defendant is entitled to the “reasonably effective assistance” of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). To establish a claim of ineffective assistance of counsel, a defendant must show that 1) counsel's performance was deficient, and 2) the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *Id.* at 687. To show deficient performance, a defendant must prove that counsel's performance fell below an objective level of reasonable representation. *State v. Conway*, 2006-Ohio-2815, ¶ 95. Moreover, courts need not analyze both prongs of the *Strickland* test if a claim can be resolved under only one prong. *See State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000); *State v. Clark*, 2003-Ohio-1707, ¶ 17 (4th Dist.); *State v. Blair*, 2019-Ohio-2768, ¶ 58 (4th Dist.).

{¶8} When determining whether counsel's representation amounts to deficient performance, “a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.” *Strickland, supra*, at 689. Because a properly licensed attorney is presumed to

execute his duties in an ethical and competent manner, a defendant bears the burden to show ineffectiveness by demonstrating that counsel's errors were “so serious” that counsel failed to function “as the ‘counsel’ guaranteed \* \* \* by the Sixth Amendment.” *State v. Taylor*, 2008-Ohio-482, ¶ 10 (4th Dist.). *See also, Strickland, supra*, at 687.

### LEGAL ANALYSIS

{¶9} We initially note that court costs are not financial sanctions. *State v. Stewart*, 2024-Ohio-1640, ¶ 35 (4th Dist.), citing *State v. Dawson*, 2017-Ohio-965, ¶ 42 (8th Dist.). Thus, “ ‘[a] trial court need not consider a defendant’s ability to pay, as required by R.C. 2929.19 for the imposition of financial sanctions, before imposing court costs.’ ” *Id.* Furthermore, R.C. 2947.23 provides for costs to be included in a criminal sentence. In all criminal cases a judge must include in the sentence the costs of prosecution and render a judgment against the defendant for such costs, even if the defendant is indigent. R.C. 2947.23(A)(1)(a). However, a trial court retains jurisdiction to waive, suspend, or modify the payment of the costs “at the time of sentencing or at any time thereafter.” R.C. 2947.23(C). As this Court held in *Blair, supra*:

In all criminal cases, a judge must include in the sentence the costs of prosecution and render a judgment against the defendant for such costs, even if the defendant is indigent. R.C. 2947.23(A)(1)(a); *State v. Mack*, 4th Dist. Washington No. 17CA35, 2018-Ohio-5165; *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, 817 N.E.2d 393, ¶ 8. However, a trial court

retains jurisdiction to waive, suspend, or modify the payment of the costs “at the time of sentencing or at any time thereafter.” R.C. 2947.23(C). A trial court may waive court costs - but it is not required - if a defendant is indigent. *Mack*, citing *State v. Hawkins*, 4th Dist. Gallia No. 13CA3, 2014-Ohio-1224, ¶ 18; *State v. Walker*, 8th Dist. Cuyahoga No. 101213, 2014-Ohio-4841, ¶ 9.

*State v. Blair*, *supra*, at ¶ 60.

{¶10} Importantly, this Court has observed that R.C. 2947.23(C) “ ‘provides no explicit criteria that a court should use in deciding whether to waive \* \* \* costs.’ ” *Stewart* at ¶ 38, quoting *Taylor* at ¶ 8. “ ‘[A] trial court is not required to consider the defendant's ability to pay in assessing a motion to waive \* \* \* court costs under R.C. 2947.23(C), though it is permitted to do so.’ ” *Stewart* at 38, quoting *Taylor* at ¶ 16. “ ‘ “[W]aiver of costs is permitted—but not required—if the defendant is indigent.” ’ ” *Stewart* at ¶ 38, quoting *Taylor* at ¶ 7, in turn quoting *State v. White*, 2004-Ohio-5989, ¶ 14.

{¶11} We first address the State’s argument that appellant has suffered no prejudice because R.C. 2947.23(C) does not foreclose appellant from filing a request for waiver of costs at a later time. Under some of our previous decisions, we would have found no merit in appellant's assertion that he received ineffective assistance of counsel because R.C. 2947.23(C) provides the ability to seek waiver of costs at any time, including after sentencing. However, the Supreme Court of Ohio has since addressed this question and rejected it. *State v. Davis*, 2020-Ohio-

309, ¶ 14. More specifically, the Court stated that “[a]n appellate court’s reliance on the fact that a defendant may move for a waiver of costs at a later time under R.C. 2947.23(C) in its prejudice analysis is improper[.]” because “[w]hether the defendant may move for a waiver of court costs at a later time has little or no bearing on whether the trial court would have granted a motion to waive court costs at the time of sentencing.” *Id.* Therefore, based upon the reasoning set forth in *Davis, supra*, we reject the State’s suggestion that appellant cannot demonstrate prejudice because he can still move for waiver of the imposed court costs under R.C. 2947.23(C).

{¶12} We now move on to address appellant’s argument that her trial court was ineffective for failing to request the court waive costs. In *State v. Davis*, the Court held that when an indigent defendant makes an ineffective-assistance-of-counsel claim based upon counsel’s failure to request a waiver of court costs, a court must objectively consider the facts and circumstances to determine whether the defendant established the necessary prejudice sufficient to support that claim (i.e., but for counsel’s deficient performance, a reasonable probability exists that the result of the proceeding would have been different). *Id.* at ¶ 15. The Court also pointed out that a determination of indigency alone does not rise to the level of creating a reasonable probability that the trial court would have waived costs had defense counsel requested the court to do so. *Id.* at ¶ 15. Finally, the Court stated

that when considering the question of whether counsel was ineffective for failing to request the waiver of court costs, reviewing courts must apply the test set forth in *State v. Bradley*, 42 Ohio St.3d 136, 141-142 (1989), “which adopted the standard that had been announced in *Strickland*[.]” *Id.* at ¶ 1.

{¶13} Appellant’s arguments are solely grounded on the fact that she was indigent and that because she was indigent and because the trial court did not impose fines, the trial court likely would have waived costs had it been asked to do so. There is no other evidence that appellant points to in support of her argument, nor does the record contain any such evidence. For instance, there is no evidence in the record regarding her work history, abilities or disabilities, or education (other than the fact that she completed school through the ninth grade per the sentencing hearing transcript). As set forth above, indigency alone is not dispositive on the issue of whether court costs should be waived and although the trial court was required to consider her future ability to pay in determining whether to waive the imposition of fines, there is no such requirement when determining whether to waive the imposition of costs. Stated another way, these factors, while pertinent to a determination of whether a defendant is entitled to have financial sanctions/fines waived, are relevant but not dispositive on the issue of whether a court should waive the imposition of court costs.



{¶14} What the record does demonstrate is that the trial court was fully aware that appellant was indigent, the trial court waived the imposition of fines, but imposed costs as statutorily required, and did not thereafter set them aside, though vested with the authority to do so. Based on the record before us, we find appellant has not set forth circumstances establishing the prejudice necessary to support her claim of ineffective of counsel. More specifically, we find that her arguments do not demonstrate prejudice in light of the fact that 1) the Supreme Court of Ohio has clearly stated that indigency status alone is not determinative of whether costs should be waived; and 2) although a consideration of her future ability to pay led the trial court to withhold imposition of fines, ability to pay has no bearing on whether a trial should also waive imposition of costs.

{¶15} In light of the foregoing, we find no merit in the arguments raised under appellant's sole assignment of error. Accordingly, the judgment of the trial court is affirmed.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Common Pleas Court to carry this judgment into execution.

**IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT**, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

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Jason P. Smith  
Presiding Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**