

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-03-1039
L-03-1040

Appellee

Trial Court Nos. CR-02-2729
CR-02-3001

v.

Jason Hartsell

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 19, 2004

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for
appellee.

Carol L. Damrauer, for appellant.

* * * * *

KNEPPER, J.

{¶1} This is a consolidated appeal from two judgments of the Lucas County Court of Common Pleas. Pursuant to 6th Dist.Loc.App.R. 12(C), we hereby assign this case to our accelerated calendar.

{¶2} On December 2, 2002, appellant, Jason Hartsell, entered pleas of no contest to one charge of attempted burglary, a fifth degree felony (case no. CR-02-2729), and a

separate charge of intimidation of a witness, a third degree felony (case no. CR-02-3001). The trial court accepted appellant's pleas and found him guilty of both crimes. On January 14, 2003, in separate judgment entries, the trial court sentenced appellant to serve concurrent prison terms of six months and four years, respectively. In addition, the trial court ordered appellant "to pay all prosecution costs and any fees permitted pursuant to R.C. 2929.18(A)(4)" in case no. CR-02-2729, and "to pay any restitution, all prosecution costs and any fees permitted pursuant to R.C. 2929.18(A)(4)" in case no. CR-02-3001. A timely notice of appeal was taken from both judgment entries, and the cases were consolidated for purposes of this appeal.

{¶3} On appeal, appellant sets forth the following as his sole assignment of error:

{¶4} "The trial court erred when it ordered the defendant-appellant to pay unspecified court costs, fees, and to make an unspecified, unsubstantiated sum of restitution."

{¶5} R.C. 2953.08(A)(4) permits an appeal from a judgment of sentencing on grounds that the sentence is contrary to law. Accordingly, our review in this case is de novo.

{¶6} In support of his assignment of error, appellant first argues that he should not have to pay the costs of prosecution because he is indigent. In support thereof, appellant relies on *State v. Ramirez*, (2003), 153 Ohio App.3d 477, 2003-Ohio-4107.

{¶7} R.C. 2947.23 mandates that "[i]n all criminal cases *** the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs." The trial court is not required to hold a hearing or otherwise determine an offender's ability to pay before ordering him to pay such costs. *State v. Fisher*, 12th Dist. No. CA98-09-190, 2002-Ohio-2069, ¶32; *State v. Scott*, 6th Dist. No. L-01-1337, 2003-Ohio-1868, ¶7.

{¶8} In *Ramirez*, the 4th District Court of Appeals held that the trial court's finding that an offender is indigent is a sufficient basis in every case to waive court costs imposed pursuant to R.C. 2947.23. That court based its reasoning on R.C. 2949.14, which sets forth the procedure for collecting of costs against "nonindigent" persons. *Id.* at 479-480; ¶8.

{¶9} However, other Ohio courts of appeal have reasoned that R.C. 2949.14 was intended only to provide a method for collection of costs from "nonindigent" offenders, not to provide immunity from collection of such costs to all indigent offenders. See *State v. Glavic*, 11th Dist. Nos. 2001-L-177 and 2001-L-179; 2003-Ohio-6961, ¶48-49, citing *State v. White*, 5th Dist. No. 02CA23, 2003-Ohio-2289, ¶9; *State v. Satta*, 3rd Dist. No. 9-01-38, 2002-Ohio-5049, ¶64; *State v. Barlow*, 2nd Dist. No. 19628, 2003-Ohio-6530, ¶5-6. Cf., *State v. Tighe*, 8th Dist. Nos. 81767 and 81795, 2003-Ohio-1845, in which the appellate court distinguished between a finding of indigency for purposes of obtaining appointed counsel and a finding of indigency that might, in some circumstances, justify a waiver of court costs. *Id.* at ¶14, n. 3-4.

{¶10} Upon consideration of the foregoing, we decline to follow the reasoning expressed in *Ramirez* and find that, in this case, the trial court did not err by ordering appellant to pay the costs of prosecution pursuant to R.C. 2947.23. Appellant's assignment of error is not well-taken in part.

{¶11} Appellant next argues that the trial court erred by ordering him to pay restitution and other financial sanctions without holding a hearing or otherwise considering the amount of such sanctions and his ability to pay.

{¶12} R.C. 2929.18 states, in relevant part:

{¶13} "(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section ***."

{¶14} R.C. 2929.18(A)(1) permits the trial court to sentence an offender to pay restitution. The statute further states that, "[a]t sentencing, the court shall determine the amount of restitution to be made by the offender." *Id.* Pursuant to R.C. 2929.18(A) and (B), the trial court may impose additional financial sanctions, including mandatory fines and certain costs of confinement.

{¶15} R.C. 2929.19(B)(6) provides that, "[b]efore 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." Pursuant to R.C. 2929.18(E), if necessary, the trial court may hold a hearing for the purpose of

determining whether the offender is able to pay the sanction or is likely in the future to be able pay. However, a hearing is not strictly required by R.C. 2929.18(A) and (E), so long as the record contains evidence that the trial court considered the offender's present and future ability to pay before imposing the sanction of restitution. *Scott*, supra, at ¶9.

{¶16} It is undisputed in this case that the record contains no evidence that the trial court either determined the amount of restitution or any other financial sanctions assessed against appellant pursuant to R.C. 2929.18(A)(4), or considered his future ability to pay any of the court-imposed sanctions. The record does show that the trial court twice found appellant to be indigent; however, that determination was made in the context of appellant's right to appointed counsel, not as part of a determination of his present or future ability to pay financial sanctions.

{¶17} This court has reviewed the entire record in this case and, upon consideration thereof and the law, finds that the trial court erred as a matter of law to the extent that it ordered appellant "to pay *** any fees permitted pursuant to R.C.2929.18(A)(4) in case no. CR-02-2729, and "to pay restitution, *** and any fees permitted pursuant to R.C. 2929.18(A)(4)" in case no. CR-02-3001 without determining the amount of the financial sanctions or considering appellant's ability to pay. Accordingly, appellant's assignment of error is well-taken in part.

{¶18} The judgment of the Lucas County Court of Common Pleas is affirmed in part and reversed in part. Pursuant to App.R. 12(B), we hereby modify the judgments rendered by the Lucas County Court of Common Pleas in case nos. CR-02-2729 and CR-

02-3001 by striking from them those provisions in which appellant was ordered to pay restitution and fees pursuant to R.C. 2929.18. Court costs of these proceedings are assessed to appellee, the state of Ohio.

JUDGMENT AFFIRMED IN PART
AND REVERSED IN PART.

Peter M. Handwork, P.J.

JUDGE

Richard W. Knepper, J.

JUDGE

Judith Ann Lanzinger, J.
CONCUR.

JUDGE