IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

WILLIAM CHARLES KETELA, JR.,

Appellant,

v. Case No. 5D19-1484

STATE OF FLORIDA,

Appellee.

_____/

Decision filed October 25, 2019

Appeal from the Circuit Court
for Putnam County,
Howard O. McGillin, Jr., Judge.

David Maldonado, of The Maldonado Law Firm, P.A., Lakeland, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Kristen L. Davenport, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

ORFINGER and WALLIS, JJ., concur.
LAMBERT, J., concurs, in part, and dissents, in part, with opinion.

Pursuant to a plea agreement, William Charles Ketela, Jr., was adjudicated guilty of being a principal to the manufacture of methamphetamine and was sentenced by the trial court to serve eighteen months in prison, with appropriate jail credit awarded. Ketela appealed, and in the instant appeal, his court-appointed counsel filed what is commonly referred to as an *Anders*[1] Brief, representing to this court that after a careful review of the record on appeal and the relevant statutes and case law, he could find no meritorious argument to warrant reversal. I concur with affirming the judgment and sentence imposed, albeit with one exception.

During the plea colloquy, the trial court advised Ketela as follows:

> The court is *required* to assess certain fees and costs as part of the sentence, including $100 cost of investigation. If you wish to, you can have a hearing on whether that $100 amount is correct or you can accept the $100 amount. Do you want to waive the hearing and have me adjudicate the $100 cost of investigation amount?

Ketela agreed to "accept" the $100 charge, and the trial court imposed the $100 investigative costs against Ketela and in favor of the Putnam County Sheriff's Office.

The trial court was incorrect when it stated that it was *required* to impose a $100 costs of investigation charge. While under section 938.27(8), Florida Statutes (2018), the court must impose a minimum $100 assessment against a defendant for the costs of prosecution for a felony offense, no similar $100 minimum investigative costs charge exists under this statute. Instead, the statute reads, in pertinent part:

> (1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the

[1] *Anders v. California*, 386 U.S. 738 (1967).

> costs . . . including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, *if requested by such agencies*.

§ 938.27(1), Fla. Stat. (2018) (emphasis added).

Here, there is no indication in our record that the Putnam County Sheriff's Office requested investigative costs. Nor, for that matter, did the prosecutor include this $100 investigative cost as part of the written plea agreement presented to and ultimately signed by Ketela or otherwise orally request this cost on behalf of the Sheriff's Office at the change of plea hearing. With no request for investigative costs from the law enforcement agency, or evidence of the amount of these costs, the trial court should not have sua sponte advised Ketela that it was required to assess this $100 investigative cost. *See Jackson v. State*, 137 So. 3d 470, 472 (Fla. 4th DCA 2014) (recognizing that section 938.27(1) requires that convicted criminals are liable for investigative costs if requested by the investigating agency but that the court cannot impose such investigative costs without evidence of the amount of the costs). This error was not ameliorated when the court then placed Ketela in the untenable position of either agreeing to the court's improper offer to accept the $100 charge, or attending a hearing to determine whether this $100 cost was "correct."

This cost should be stricken without prejudice, *see Foulkes v. State*, 221 So. 3d 789, 790 (Fla. 5th DCA 2017); or, at the very least, we should strike the *Anders* Brief and allow Ketela's appellate counsel the opportunity to file a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) to address the imposition of these investigative costs. *See* Fla. R. App. P. 9.140(g)(2)(B). Accordingly, I dissent from the summary affirmance

of the $100 investigative costs charge assessed in favor of the Putnam County Sheriff's Office.[2]

Finally, I make two other observations. First, our court is now seeing some of the circuit courts within our jurisdiction impose a set predetermined amount for investigative costs in cases where there has been no record request for these costs from the appropriate law enforcement agency and no evidence presented as to the actual amount of the investigative costs. Alternatively, these investigative costs are being improperly summarily included in the written sentencing documents without a concomitant oral pronouncement imposing them by the court. To the extent that there is either an unwritten practice or an administrative order in these circuits that provides for a predetermined amount to be assessed against each defendant for investigative costs, irrespective of whether a request has been made by a law enforcement agency for such costs as is plainly required by the statute, the statute obviously controls. *See Gincley v. State*, 267 So. 3d 444, 445 (Fla. 4th DCA 2019) (quashing that portion of the circuit court's local administrative order that expressly conflicts with a statute).

Second, and while not done in the instant case, when we have raised in other *Anders* cases whether there has been a possible improper imposition of the investigative costs by the trial court and thereafter allowed the appellant's counsel to file either a

[2] The fact that Ketela did not file a motion to withdraw his plea would not prevent this court from striking the improper $100 charge for costs of investigation or from allowing Ketela to challenge the $100 charge in a rule 3.800(b)(2) motion because the filing of a motion to withdraw one's plea is not required to preserve this issue for appellate review. *See James v. State*, 898 So. 2d 1161, 1162–63 (Fla. 2d DCA 2005) (noting that the defendant in that case had not filed a motion to withdraw his plea, but nevertheless striking the trial court's erroneous imposition of costs of investigation because no agency had requested such costs and no evidence supported them).

supplemental brief or a rule 3.800(b)(2) motion, we have received briefs from court-appointed counsel in which they question what they believe to be our less than pragmatic approach in directing them to address a relatively small costs of investigation charge against a client who may be serving many years in prison. While I acknowledge counsels' chagrin, nevertheless, our clear duty in *Anders* cases is to conduct an independent review of the record following the filing of counsel's *Anders* Brief and, if an arguable issue is apparent to us on the face of the record, to direct further briefing or the filing of a motion. *See Hubbard v. State*, 248 So. 3d 177, 178 (Fla. 2d DCA 2018) (citing *In re Anders Briefs*, 581 So. 2d 149, 151 (Fla. 1991)). To the extent that counsel is frustrated either by our diligence or the perceived cost inefficiency to them or their clients, their recourse would appear to lie with the Florida Legislature amending section 938.27(1) to provide that trial courts are to assess some specific minimum amount for investigative costs in every felony case, regardless of whether such costs were actually incurred by the law enforcement agency or the other entities described in the statute. The Legislature has the sole prerogative to amend this statute to achieve this result, and it is more than capable of doing so, if that is the result that it finds to be appropriate.