MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

Virgil Curtis Halbert, Jr.,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

May 8, 2024

Court of Appeals Case No.
23A-CR-2420

Appeal from the Noble Superior Court

The Honorable Steven T. Clouse, Judge

Trial Court Cause No.
57D01-2207-F1-2

Memorandum Decision by Judge Foley
Judges Riley and Brown concur.

Foley, Judge.

[1] Virgil Curtis Halbert, Jr. ("Halbert"),[1] who the trial court found to be indigent, pleaded guilty to Level 4 felony child molesting[2] and Level 4 felony sexual misconduct with a minor.[3] As mandated by the plea agreement, the court imposed a split sentence, with a portion of the sentence executed at the Indiana Department of Correction ("the DOC") and time suspended to probation. Exercising its discretion under the plea agreement, the court also ordered Halbert to pay a $5,000.00 fine in connection with each count. Halbert now appeals. Halbert claims the trial court imposed the aggregate fine of $10,000.00 for an improper reason—"to send a message"—and, therefore, the court abused its sentencing discretion. Appellant's Br. p. 8. We discern no improper basis for imposing the fine. However, applying recent guidance from our Supreme Court in *Spells v. State*, 225 N.E.3d 767 (Ind. 2024), we address whether the trial court's order is consistent with provisions of the Indiana Code related to indigency hearings, including provisions bearing on the trial court's authority to fine a person who is indigent at the time of sentencing.

[2] Based on the court's remark that "[f]ines, costs[,] and fees [were] to be paid during the term of . . . [p]robation," we conclude that the fine complied with

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[1] The record does not consistently refer to Halbert with the "Jr." suffix. However, the charging information contained this suffix, *see* Appellant's App. Vol. 2 pp. 25–29, and the trial court's order on the initial hearing reflected that Halbert "stated [that] the defendant's name is spelled correctly in the information," *id.* at 41.

[2] Ind. Code § 35-42-4-3(b).

[3] I.C. § 35-42-4-9(a)(1).

Indiana law. Tr. Vol. 2 p. 44. That is, the court suspended payment of the fine and, therefore, could impose the fine regardless of Halbert's present indigency status. *See* I.C. § 35-38-1-18(b) ("If the court suspends payment of the fine, the court shall conduct a hearing at the time the fine is due to determine whether the convicted person is indigent."). However, because the written sentencing order did not indicate that the fine was suspended, we remand for clarification of the order to reflect that the fine was suspended until Halbert is on probation.

Facts and Procedural History

[3] In July 2022, the State filed a five-count information against Halbert, charging him with Level 1 felony child molesting;[4] Level 4 felony child molesting; two counts of Level 4 felony sexual misconduct with a minor; and Level 5 felony sexual misconduct with a minor.[5] At Halbert's initial hearing, the trial court determined that Halbert was indigent and appointed him a public defender.

[4] In August 2023, Halbert entered into a plea agreement calling for a fixed-length sentence. That is, Halbert would plead guilty to Level 4 felony child molesting and receive a sentence of twelve years executed in the DOC. Halbert would also plead guilty to Level 4 felony sexual misconduct with a minor and receive twelve years in the DOC with seven years executed and five years suspended to

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[4] I.C. § 35-42-4-3(a)(1).

[5] I.C. § 35-42-4-9(b)(1).

supervised probation. The sentences would run consecutively, and the other counts would be dismissed.

[5] In September 2023, Halbert pleaded guilty pursuant to the plea agreement. In pleading guilty, Halbert received several advisements. One advisement stated:

> The crimes [you are] pleading guilty to are each Level 4 felonies. In Indiana, a Level 4 felony is punishable by a range of two years, as a minimum, in prison, up to twelve years, as a maximum. The advisory sentence is six years. A fine may be added [to] each, not to exceed $10,000.00.

Tr. Vol. 2 pp. 30–31. Halbert indicated that he understood the penalties. The trial court then took the plea under advisement and held a sentencing hearing.

[6] At the sentencing hearing, there was evidence that Halbert was the adoptive father of the victim, O.H., having adopted O.H. when she was about eight years old. Halbert began fondling O.H. when she was thirteen years old, and the abuse escalated to sexual intercourse when O.H. was between the ages of fourteen and fifteen. Halbert was thirty-seven years old when he began abusing O.H. The sentencing hearing included a statement from O.H.'s grandmother, who said that Halbert "infected [O.H.] with an STD, which she will have to live with for the rest of her life." *Id.* at 37. There was also a statement from O.H.'s biological father, who said that he had trusted Halbert "to adopt [O.H.], to be a father, to protect her[,] and to . . . guide her," but Halbert had done "the exact opposite of that." *Id.* at 38. O.H.'s biological father directly addressed Halbert, stating: "[Y]ou manipulated me and my family and O.H. and her family. . . .

[W]e trusted you and you completely ripped that out." *Id.* O.H.'s biological father asked the court to "[t]ake into consideration that . . . [O.H.'s] entire life will be impacted[.]" *Id.* at 39. Later, Halbert gave a statement in allocution. Halbert admitted he "was put in the place of a care provider" and that he had not only "busted that trust," but also "destroyed [his] whole family." *Id.* at 41. In a written statement to the court, Halbert referred to his familial relationship with O.H. At one point, he wrote: "I know [O.H.] loves me and misses our [f]ather/daughter relationship[,] as I do very much so." Appellant's App. Vol. 2 p. 126. Later, he wrote: "I miss our father/daughter relationship." *Id.* at 128.

[7] The trial court spoke to Halbert before discussing the terms of the plea, stating:

> [O]ne thing struck me . . . that I need to address, make it very plain to you. You kept talking about your father[/]daughter relationship with her. You did not have a father[/]daughter relationship with this young girl, . . . Halbert, you had a predator[/]victim relationship. You groomed her and you offended her for your own personal satisfaction. That's what you did. So this . . . [characterization] that you think that she longs for this father[/]daughter relationship[—]she never had it with you. Don't consider that for one minute to have occurred. You were her predator.

Tr. Vol. 2 pp. 41–42. The court then discussed the plea agreement, stating:

> I struggled with [accepting] it[,] but I'm not really sure that . . . anybody could have presented me with an option that I wouldn't have struggled with today, quite honestly. There's not . . . a sentencing range available to [the court] that I would have felt really, really [provided] the justice that this young lady deserves. That's . . . the problem that I'm stuck with[,] but . . . I believe the

> parties have worked, in good faith, to negotiate this agreement and it has . . . the support of the family, apparently. . . . [Y]ou've, no doubt, all given careful consideration to . . . balancing the [e]ffect of going through a trial . . . [against] the guaranteed outcomes and the penalties that . . . Halbert, himself, ha[s] agreed to[.] [S]o, with all the work that's gone into this and understanding the limitations of my sentencing ability, I will accept the [p]lea [a]greement[.]

Id. at 42–43. The trial court ultimately accepted the plea agreement, entered a judgment of conviction upon each Level 4 felony, and imposed the consecutive sentences set forth in the plea agreement. The court also said it was ordering Halbert to pay a fine of $5,000.00 for child molesting and "an additional $5,000.00 fine" for sexual misconduct with a minor. *Id.* at 43. The court made the following remarks regarding its decision to impose $10,000.00 in fines:

> I'm not a fool, . . . Halbert[;] I know there's little or no chance that you will ever pay $10,000.00 worth of fines, and I know that you cannot be incarcerated for [the] failure to pay any fines and fees, due to your indigent status. However, if by some stroke of God's good grace . . . you['re] blessed with a bunch of money, I think you should pay it as a fine to the State of Indiana, and not keep it for your own benefit.

Id. Regarding fines, the trial court stated: "Fines, costs[,] and fees are to be paid during the term of your [p]robation." *Id.* at 44. The trial court later issued a written sentencing order. Although the sentencing order refers to fines for each count, the sentencing order does not specify that the fines were suspended. Rather, the sentencing order states: "[T]he Defendant, being indigent, shall not

be imprisoned for failure to pay fine[s] or costs, but they will be entered of record in the . . . docket." Appellant's App. Vol. 2 p. 150. Halbert appeals.

Discussion and Decision

I. Reasoning for Imposing the Fine

[8] Halbert contends that the trial court abused its discretion in imposing the aggregate fine of $10,000.00. On appeal, Halbert does not dispute that the trial court generally had the authority to impose a fine as part of his sentence. Rather, Halbert focuses on the trial court's remarks at sentencing and claims that the trial court abused its discretion by fining him for an improper reason.

[9] "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). Moreover, "[s]entencing decisions include the imposition of fines, costs, and fees[.]" *Meunier-Short v. State*, 52 N.E.3d 927, 930 (Ind. Ct. App. 2016). The trial court abuses its sentencing discretion "if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Anglemyer*, 868 N.E.2d at 490 (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)). Further, "because our legislature is responsible for fixing criminal penalties, a trial court's sentencing discretion must not exceed the limits prescribed by statute." *Fix v. State*, 186 N.E.3d 1134, 1143 (Ind. 2022).

[10] Here, Halbert was convicted of two Level 4 felonies. Our legislature established penalties specific to a Level 4 felony in Indiana Code Section 35-50-2-5.5,

which provides as follows: “A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years. In addition, the person may be fined not more than ten thousand dollars ($10,000[.00]).” In *Anglemyer*, our Supreme Court explained that the trial court must inform the appellate court of the “reasons for imposing the sentence.” 868 N.E.2d at 490 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). Doing so ensures that appellate courts “carry out [the] function of reviewing the trial court’s exercise of discretion in sentencing[.]” *Id.* (quoting *Page*, 424 N.E.2d at 1023). Thus, at a minimum, the trial court must provide “a statement of facts, in some detail, [that] are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions.” *Id.* (quoting *Page*, 424 N.E.2d at 1023). Moreover, “such facts must have support in the record.” *Id.* (quoting *Page*, 424 N.E.2d at 1023). A trial court abuses its sentencing discretion by “failing to enter a sentencing statement at all.” *Id.* at 490. A trial court also abuses its sentencing discretion if the court “enter[s] a sentencing statement that explains reasons for imposing a sentence” but “the reasons given are improper as a matter of law.” *Id.* at 490–91.

[11] Here, Halbert claims that the trial court gave an improper reason for imposing a $5,000.00 fine upon each Level 4 felony conviction. Halbert focuses on the trial court’s remarks at sentencing, including the following statement: “[I]f by some stroke of God’s good grace . . . you[’re] blessed with a bunch of money, I think you should pay it as a fine to the State of Indiana, and not keep it for your own

benefit." Tr. Vol. 2 p. 43. Halbert asserts that, "[i]n imposing the $10,000[.00] aggregate fine on [him], the trial court sought to send a message – specifically, that . . . Halbert is the sort of person who deserves to be deprived of financial resources to the benefit of the State." Appellant's Br. p. 8. He further argues:

> Despite the trial court's opinions about [Halbert's] crimes or character, any money he can earn once released from custody should first be used for the care and support of his family – specifically, his children – and not given over to the State. . . . Halbert is poor and will remain so. The $10,000[.00] fine imposed by the trial court was an abuse of the trial court's discretion.

Id. at 9. Halbert directs us to the Indiana Supreme Court's decision in *Scheckel v. State*, 655 N.E.2d 506 (Ind. 1995). In that case, our Supreme Court stated that it is improper for a trial court judge "to use the sentencing process as a method of sending a personal philosophical or political message." *Scheckel*, 655 N.E.2d at 510 (quoting *Beno v. State*, 581 N.E.2d 922, 924 (Ind. 1991)). The Court went on to note that "[a] trial judge's desire to send a message is not a proper reason to aggravate a sentence." *Id.* (quoting *Beno*, 581 N.E.2d at 924).

[12] The State contends that "the trial court properly aggravated Halbert's sentence by imposing a fine" because "[a]buse of a trusting relationship is properly considered an aggravating factor[.]" Appellee's Br. p. 8; *cf., e.g.*, I.C. § 35-38-1-7.1 (setting forth a non-exhaustive list of potential aggravating factors, among them, where the defendant "was in a position having care, custody, or control of the victim of the offense"). The State argues that the sentencing decision was

not designed to send a message, but instead to punish Halbert for his specific conduct. Regarding the rationale for the fines, the State points out that the trial court specifically "addressed the evidence presented by Halbert and the victim's biological father regarding [Halbert's] abuse of the fatherly relationship Halbert had with the victim[,] in addition to addressing Halbert's lack of criminal history and his indigent status." Appellee's Br. pp. 6–7.

[13] We agree with the State that the trial court did not abuse its discretion in imposing the fine. Having reviewed the court's remarks, we are unpersuaded that the trial court was "us[ing] the sentencing process as a method of sending a personal philosophical or political message." *Scheckel*, 655 N.E.2d at 510 (quoting *Beno*, 581 N.E.2d at 924). Rather, the trial court began its discussion of the fine by reflecting on the practical effect of its sentencing order. The court acknowledged it was unlikely that Halbert would ever have the resources to pay the fine, in that he was indigent and subject to a long period of incarceration. *See* Tr. Vol. 2 p. 43. However, the court indicated that it was inclined to impose a fine regardless of Halbert's present financial status. *See id.* That way, if Halbert later obtained the financial resources, the sentence would not result in a financial windfall to Halbert. *See id.* Furthermore, as the State noted, the trial court reflected on Halbert's specific conduct—including his abuse of a position of trust—when selecting a penalty within the parameters of the plea agreement.

[14] All in all, Halbert has not demonstrated that the trial court abused its discretion in its reasoning for imposing the aggregate fine of $10,000.00. However, in

light of recent guidance from the Indiana Supreme Court, we proceed to address whether the imposition of the fine complied with statutory mandates.

II. Suspended Status of the Fine

[15] While this appeal was pending, our Supreme Court provided clarification regarding the imposition of fines, costs, and fees. *See Spells*, 225 N.E.3d at 775–780. In *Spells*, the Court specifically highlighted the statutory procedures in Indiana Code sections 35-38-1-18 and 35-33-7-6.5, including those bearing on the trial court's authority to fine a person who may be indigent. *See Spells*, 225 N.E.3d at 775–780. Notably, before ordering the payment of a fine, the trial court generally must conduct an indigency hearing. *See* I.C. § 35-38-1-18(a), (b). At that hearing, the trial court must consider statutory factors related to the person's ability to pay. *See* I.C. § 35-33-7-6.5(a).[6] As to the foregoing statutory procedures, the *Spells* Court went on to articulate and apply a "newly clarified standard" in appeals involving the imposition of fines. *Spells*, 225 N.E.3d at 779. Under this standard, "[t]he record must reflect evidence of the defendant's ability to pay the expenses imposed." *Spells*, 225 N.E.3d at 779. If "the record discloses a reasonable inquiry into the mandatory factors," we "will defer to the sound discretion of a trial court" in the imposition of the fines. *Id.* However, if

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[6] This statute was amended in our recent legislative session, effective July 1, 2024. *See* P.L. 111-2024, § 17. In the future, trial courts will receive a "uniform form, prescribed by the office of judicial administration, to assist the court in determining whether the person is indigent." *Id.*

the trial court's indigency inquiry was incomplete or "unreasonably superficial, it may be appropriate [for us] to vacate and remand for another hearing." *Id.*

[16] In this case, the trial court did not conduct a "fresh indigency hearing" when sentencing Halbert. *Id.* at 777. Still, the trial court orally identified Halbert as indigent and elected to impose a fine. *See* Tr. Vol. 2; Appellant's App. Vol. 2 p. 150. Had the trial court ordered Halbert to immediately pay the fine, the sentencing order would have been contrary to statute. That is because Indiana Code Section 35-38-1-18 prevents a court from ordering an indigent person to immediately pay a fine. *See* I.C. § 35-38-1-18(a) (setting forth ways in which the trial court can impose a fine "[i]f the person is *not* indigent" (emphasis added)).[7] Critically, however, Indiana Code section 35-38-1-18 authorizes a trial court to "impose a fine and suspend payment of all or part of the fine until the convicted person has completed all or part of the sentence." I.C. § 35-38-1-18(b). When suspending payment, the trial court does not conduct the indigency hearing at the time of sentencing. *See id.* Rather, the court "shall conduct a hearing at the time the fine is due to determine whether the convicted person is indigent." *Id.*

[17] At Halbert's sentencing hearing, the court remarked that "[f]ines, costs[,] and fees are to be paid during the term of [Halbert's] [p]robation." Tr. Vol. 2 p. 44. It is therefore apparent that the trial court intended to suspend payment of the fine, obviating the need for an indigency hearing at that point in time. Yet, the

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[7] This is so, even though an indigent person "may not be imprisoned for failure to pay . . . fines or costs." *Whedon v. State*, 765 N.E.2d 1276, 1279 (Ind. 2002).

written sentencing order did not reflect that the court suspended the fine, stating only: "The Defendant, being indigent, shall not be imprisoned for failure to pay fine[s] or costs, but they will be entered of record in the . . . docket." Appellant's App. Vol. 2 p. 150. Furthermore, although the trial court orally indicated that Halbert must pay the fine "during the term of [his] probation," Tr. Vol. 2 p. 44, the court did not definitively state that the fine was suspended until Halbert was placed on probation (at which point Halbert would be entitled to an indigency hearing to examine his ability to pay, *see* I.C. § 35-38-1-18(b)).

[18] We conclude that remand is warranted to clarify the written sentencing order, which should reflect that the fine is suspended until Halbert is put on probation.

Conclusion

[19] Halbert has not identified an abuse of discretion in the reasoning for imposing an aggregate fine of $10,000.00. However, in light of recent guidance from our Supreme Court, we remand for clarification of the written sentencing order, which should reflect that the fine is suspended until Halbert is put on probation.

[20] Affirmed and remanded.

Riley, J., and Brown, J., concur.

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