

RENDERED: OCTOBER 15, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-002251-MR

JERRY MARTIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE FREDERIC J. COWAN, JUDGE  
ACTION NO. 09-CR-000740

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART,  
AND VACATING IN PART

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BEFORE: KELLER, MOORE AND STUMBO, JUDGES.

STUMBO, JUDGE: Jerry Martin appeals from a judgment of conviction and sentence in which the trial court imposed court costs and a fine. Martin argues he is indigent and should not have to pay the court costs and fine. We agree and vacate that part of the sentence imposing court costs and fines.

In March of 2009, Martin was indicted in Jefferson Circuit Court on a number of drug and traffic related charges. Martin was represented by a public defender and ultimately agreed to a plea agreement. He was sentenced to one year in prison. The trial court, on its own, also imposed court costs of \$130 and a \$1,000 felony fine. Defense counsel moved to waive the costs and the fine because Martin was indigent. The trial court denied the motion and this appeal followed.

Kentucky Revised Statute (KRS) 23A.205(2) states that court costs are mandatory unless the defendant is a poor person. Also, KRS 31.110(1)(b) states that a “needy person” is entitled to “be provided with the necessary services and facilities of representation . . . The courts in which the defendant is tried shall waive all costs.” Finally, KRS 534.030(4) states that fines for felonies “shall not be imposed” upon any indigent person.

In the case at hand, Martin was deemed indigent and assigned a public defender. He was also allowed to proceed *in forma pauperis* on appeal. The three statutes cited above make it mandatory for a court to waive costs and fines for indigent defendants and the trial court erred by not doing so. *Simpson v. Commonwealth*, 889 S.W.2d 781 (Ky. 1994).

We therefore affirm the conviction and sentence except for that part which imposed the court costs and fine, which is vacated.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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