

RENDERED: FEBRUARY 18, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000422-MR

YOULANDA FLOWERS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 08-CR-003105

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; DIXON, JUDGE; ISAAC,¹ SENIOR
JUDGE.

TAYLOR, CHIEF JUDGE: Youlanda Flowers brings this appeal from a February
3, 2010, judgment of the Jefferson Circuit Court sentencing appellant to five years'
imprisonment probated for a period of five years and imposing court costs and
fines. We reverse and remand.

¹ Senior Judge Sheila Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The material facts giving rise to this appeal are rather straightforward. Pursuant to a plea agreement with the Commonwealth, appellant pleaded guilty to obtaining or attempting to obtain a controlled substance by fraud or deceit. By judgment entered February 3, 2010, the circuit court sentenced appellant to five years' imprisonment and probated same for a period of five years. The court also imposed court costs in the amount of \$125 and \$1,000 felony fine under Kentucky Revised Statutes (KRS) 534.030(1). Thereafter, appellant filed a motion to reconsider the imposition of court costs and the fine. While appellant acknowledged that the plea agreement was silent upon imposition of court costs and fine, appellant argued that she was indigent and that imposition of same upon an indigent person is improper. The circuit court denied the motion. This appeal follows.

Appellant contends that the circuit court erred by imposing court costs of \$125 and a felony fine of \$1,000 upon her. In support thereof, appellant points out that she is indigent and that such costs and fine may not be imposed upon an indigent person. The Commonwealth has submitted a brief consisting of one paragraph. Therein, the Commonwealth essentially concedes that the circuit court erred and specifically states:

The Commonwealth also notes that the recent case of *McClanahan v. Commonwealth*, 308 S.W.3d 694 (Ky. 2010) also appears to support Appellant's argument. *McClanahan* holds that "[a] sentence that lies outside the statutory limits is an illegal sentence, and the imposing of

an illegal sentence is inherently an abuse of discretion.”
Id. at 702.

It is well-established that a trial court may not impose court costs upon an indigent defendant. KRS 31.110; *Edmonson v. Com.*, 725 S.W.2d 595 (Ky. 1987). Likewise, KRS 534.040(4) clearly provides that a felony fine “shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31.”

In the case *sub judice*, the record indicates that appellant was represented by a public defender in the proceedings below and that the circuit court granted appellant’s motion to proceed *in forma pauperis*. Thus, it appears that appellant qualified as an indigent person. *See Travis v. Com.*, 327 S.W.3d 456 (Ky. 2010). As such, we conclude that the circuit court erred by imposing \$125 in court costs and a \$1,000 felony fine against appellant. Accordingly, we reverse the February 3, 2010, judgment solely as to imposition of said court costs and felony fine and remand for entry of an order consistent with this opinion.

For the forgoing reasons, the Judgment Granting Probation of the Jefferson Circuit Court is reversed as to the imposition of court costs and felony fine only and remanded for entry of an order consistent with this opinion.

DIXON, JUDGE, CONCURS.

ISAAC, SENIOR JUDGE, CONCURS IN RESULT AND FILES
SEPARATE OPINION.

ISAAC, SENIOR JUDGE, CONCURRING: KRS 23A.205(2) states that costs are mandatory except when a defendant is a poor person, (statutorily

defined as someone who would deprive himself or dependents of food, clothing and shelter by paying costs) **and** who would be unable to pay court costs in the foreseeable future. Chapter 31 defines “indigency” for purposes of defining persons entitled to appointed legal representation, as:

A person eighteen (18) years of age or older . . .
who at the time his or her need is determined, is unable to
provide for the payment of an attorney and all other
necessary expenses of representation. [KRS 31.100(3)(a)]

Although the definitions of “poor person” and “indigent” are entirely different and a reading of the statutes would indicate that court costs would be mandatory for all but the most impoverished persons, we are constrained by the holding in *Travis v. Commonwealth*, 327 S.W.3d 456 (Ky. 2010) which states,

Nor may court costs be levied upon defendants found to be indigent. KRS 23A.205(2). At the time of trial, both Travis and Dawson were receiving the services of a public defender, and were granted the right to appeal in *forma pauperis*. They were clearly indigent. Thus, the trial court clearly erred in imposing a fine and court costs upon the Appellants.

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