

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001452-MR

JAMES MOODY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 09-CR-003216

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS AND LAMBERT, JUDGES; ISAAC,¹ SENIOR JUDGE.

COMBS, JUDGE: James Moody appeals from an order of the Jefferson Circuit Court entered on July 6, 2010, that denied his motion to waive court costs and a felony fine ordinarily required by the provisions of Kentucky Revised

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

Statute[s] (KRS) 534.030. After our review, we vacate the court's imposition of the fine and its assessment of court costs.

In October 2009, Moody was indicted on the charge of criminal possession of a forged instrument in the second degree. At his arraignment, counsel was appointed to represent him.

On April 19, 2010, Moody pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). In exchange for his guilty plea, the Commonwealth recommended a sentence of three-years' imprisonment. At Moody's sentencing, the trial court denied his request for probation but sentenced him in accordance with the Commonwealth's recommendation. The court also ordered Moody to pay court costs and a felony fine of \$1,000.00. It denied Moody's subsequent motion to waive the fine and costs. This appeal followed.

Moody contends that the trial court's imposition of the felony fine and the assessment of court costs were improper because he was indigent at the time of sentencing. KRS 534.030(4) provides that fines "shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31. . . ." Additionally, the Supreme Court of Kentucky in *Travis v. Commonwealth*, 327 S.W.3d 456 (Ky. 2010), clearly reiterated that statutory provision. The Commonwealth candidly concedes the issue in light of the statutory provision and case law.

Accordingly, we vacate that portion of the order of the Jefferson Circuit Court which imposed court costs and a fine upon the defendant, and we remand for entry of an order consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Annie O'Connell
Assistant Public Defender
Louisville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

M. Brandon Roberts
Assistant Attorney General
Frankfort, Kentucky