

RENDERED: OCTOBER 2, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001306-MR

CHRISTOPHER HOSAFLOOK

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 12-CR-003369

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING IN PART
AND REMANDING

** ** * ** * ** *

BEFORE: DIXON, D. LAMBERT, AND THOMPSON, JUDGES.

DIXON, JUDGE: Christopher Hosaflook appeals from an order of the Jefferson Circuit Court imposing upon him a fine of \$1,000.00 as a condition of shock probation. It is undisputed that Appellant was indigent during the proceedings below; consequently, the court was without authority to impose a fine. We vacate

the portion of the order imposing a fine and remand for entry of a new order consistent with this opinion.

Appellant, represented by a public defender, pled guilty to amended charges of theft by unlawful taking over \$500.00 and receiving stolen property over \$500.00. Appellant was sentenced to five-years' imprisonment. In a subsequent order granting Appellant's motion for shock probation, the court imposed numerous conditions upon Appellant, including the payment of a \$1,000.00 felony fine.¹ Appellant then filed a motion to set aside the fine due to his indigent status, which was denied by the trial court. This appeal followed.

The Commonwealth concedes it was erroneous to impose a fine upon Appellant due to his indigency. KRS 534.030(4) prohibits a trial court from imposing a fine "upon any person determined by the court to be indigent pursuant to KRS Chapter 31." KRS 31.120(1)(b) states, in relevant part, "nothing shall prevent appointment of counsel at the earliest necessary proceeding at which the person is entitled to counsel, upon declaration by the person that he or she is needy under the terms of this chapter." Where, as here, an appellant was represented by a public defender at sentencing, "we may assume that the trial judge had already

¹ The court's final judgment did not impose a fine upon Appellant; consequently, as an alternative argument, he contends the court lacked jurisdiction to impose a fine in its order granting shock probation. *See Stallworth v. Commonwealth*, 102 S.W.3d 918, 923-24 (Ky. 2003) ("Appellant's motion for shock probation granted the trial court limited jurisdiction over the judgment for the purpose of determining whether to suspend further execution of the prison sentence, but did not give the trial court the ability to make other substantive changes to its final judgment."). We need not reach this issue, as we are satisfied the imposition of the fine was clearly erroneous due to Appellant's indigent status.

determined that the appellant was indigent.” *Simpson v. Commonwealth*, 889 S.W.2d 781, 784, (Ky. 1994).

For the foregoing reasons, we vacate the portion of the order imposing a fine upon Appellant and remand this case for entry of a new order consistent with this opinion.

D. LAMBERT, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

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