

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
GALLIA COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Case No. 09CA2  
 :  
 v. :  
 :  
 ANTHONY MICHAEL MOORE, : DECISION AND JUDGMENT ENTRY  
 :  
 Defendant-Appellant. : **Released 10/21/09**

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APPEARANCES:

Timothy Young, State Public Defender, and Jeremy J. Masters, Assistant State Public Defender, Columbus, Ohio, for appellant.

C. Jeffrey Adkins, Gallia County Prosecuting Attorney, and Eric R. Mulford, Gallia County Assistant Prosecuting Attorney, Gallipolis, Ohio, for appellee.

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PER CURIAM.

{¶1} Anthony Moore was tried and convicted of failing to verify his address as required by R.C. 2950.06(F), which requires periodic verification of a current address by certain sex offenders. The trial court sentenced him to incarceration and ordered him to pay court costs. Moore appeals the portion of the court's sentence that imposed court costs because the trial court did not explain to him that failure to pay court costs could result in the court ordering him to perform community service. We agree that the trial court failed to follow R.C. 2947.23(A)(1), which requires a sentencing judge to notify the defendant of the court's power to order community service if the defendant does not pay court costs. But because Moore remains incarcerated and has not yet been ordered to

perform community service, this appeal is not ripe for adjudication. Accordingly, we dismiss.

{¶2} In late 2008, the trial judge sentenced Moore to 17 months in a state penal facility for failure to verify his address as required by the statute. Because he was on post-release control when he was charged with failure to verify, the court sentenced Moore to an additional 643 days of incarceration as a judicial sanction. The court also ordered Moore to pay court costs. But at sentencing the court did not inform Moore that it had the power to order him to perform community service if he failed to pay court costs. And the subsequent judgment entry imposed court costs without reference to the contingencies involved in non-payment. After the State generated a bill to Moore for \$1,562.41 in court costs he filed this appeal.

{¶3} Moore's sole assignment of error states:

The trial court erred by imposing court costs without notifying Mr. Moore that failure to pay court costs may result in the court's ordering him to perform community service. (December 19, 2008 Transcript, p. 301; December 29, 2008 Judgment Entry, p. 3).

{¶4} Under the Supreme Court of Ohio's decision in *State v. Kalish* (2008), 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, appellate review of felony sentencing requires a two-step approach. First, we must ensure that the sentencing court has adhered to all applicable rules and statutes in imposing the sentence. This purely legal question is subject to review only to determine whether it is clearly and convincingly contrary to the law. *Id.* at ¶14. If the trial court has followed the proper procedure and applied the appropriate statutory analysis, we review the trial court's decision under an abuse of discretion standard. *Id.* at ¶4.

{¶15} R.C. 2947.23(A)(1) provides: In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under section 2947.231 of the Revised Code, and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the *judge or magistrate shall notify the defendant of both of the following*: (a) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule. (b) If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount. (Emphasis added).

{¶16} We have held that trial courts must provide this information. See *State v. Welch*, Washington App. No. 08CA29, 2009-Ohio-2655; *State v. Boice*, Washington App. No. 08CA24, 2009-Ohio-1755; *State v. Burns*, Gallia App. No. 08CA1-3, 2009-Ohio-878; *State v. Slonaker*, Washington App No. 08CA21, 2008-Ohio-7009; *State v. Ward*, 168 Ohio App.3d 701, 2006-Ohio-4847. We find no indication that Moore was provided such notice.

{¶17} But at the time of the filing of this appeal, Moore remained incarcerated. He has not yet been ordered to perform community service for failure to pay court costs. Consistent with our previous rulings on this matter, we hold that Moore's assignment of

error is not ripe for review. See *Welch*, 2009-Ohio-2655 at ¶14; *Boice*, 2009-Ohio-1755 at ¶11; *Slonaker*, 2008-Ohio-7009 at ¶7. Moore has suffered no prejudice from the trial court's failure to inform him that it may, in the future, require him to perform community service to fulfill his obligation to pay costs. Thus, we conclude that the issue is not ripe for adjudication.

APPEAL DISMISSED.

HARSHA, J., Dissenting:

{¶8} Consistent with my dissents in *Welch*, *Slonaker*, and *Boice*, supra, I would hold that Moore cannot be ordered to perform community service if he fails to pay the court costs.

**JUDGMENT ENTRY**

It is ordered that the APPEAL BE DISMISSED and that the Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Kline, P.J. & McFarland, J.: Concur in Judgment and Opinion.  
Harsha, J.: Dissents with Attached Dissenting Opinion.

For the Court

BY: \_\_\_\_\_  
Roger L. Kline, Presiding Judge

BY: \_\_\_\_\_  
William H. Harsha, Judge

BY: \_\_\_\_\_  
Matthew W. McFarland, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**