

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     27521

Appellee

v.

NICHOLAS A. SATURDAY

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.    CR 2014 05 1430

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 3, 2015

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WHITMORE, Judge.

{¶1} Appellant, Nicholas Saturday, appeals from the judgment of the Summit County Court of Common Pleas. This Court reverses.

I

{¶2} Saturday pled guilty to (1) identity fraud against a disabled person and (2) telecommunications harassment. The trial court imposed a two-year sentence for the identity fraud conviction and a 180-day sentence for the telecommunications harassment conviction, to be served concurrently. There was no mention of court costs at Saturday’s sentencing hearing. Nonetheless, in the sentencing entry, Saturday was ordered to “pay the costs of this prosecution.”

In addition, the sentencing entry states:

If the [d]efendant fails to pay either the judgment for costs or fails to make timely payments toward the costs, under a payment schedule approved by the [c]ourt, the [c]ourt may order the [d]efendant to perform community service in an amount of not more than forty hours per month until the judgment for costs are paid or until the [c]ourt is satisfied that [d]efendant is in compliance with the approved schedule. If the [c]ourt orders the [d]efendant to perform the community service,

the [d]efendant will receive credit, upon the judgment for costs, 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.

{¶3} Saturday appeals raising one assignment of error for our review.

## II

### Assignment of Error

THE TRIAL COURT COMMITTED REVERSIBLE AND PLAIN ERROR IN ASSESSING COURT COSTS AGAINST SATURDAY WITHOUT IMPOSITION OF THOSE COSTS AT SENTENCING, AND WITHOUT COMPLYING WITH R.C. 2947.23(A)(1)(a).

{¶4} In his sole assignment of error, Saturday argues that the trial court erred by ordering him to “pay the costs of this prosecution” in its sentencing entry when it had not addressed costs at the sentencing hearing. Saturday further argues that the trial court failed to inform him, at the sentencing hearing, that he could be ordered to perform community service if he failed to pay the costs. The State concedes error. We agree in part.

{¶5} R.C. 2947.23(A)(1)(a) 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. *If the judge or magistrate imposes a community control sanction or other nonresidential sanction*, the judge or magistrate, when imposing the sanction, shall notify the defendant of both of the following:

(i) 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 until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

(ii) 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.).

{¶6} Saturday was not sentenced to a community control sanction or another nonresidential sanction. Therefore, the court was not required to inform him about the possibility of community service if he failed to pay the costs. *See State v. Lewis*, 9th Dist. Summit No. 27222, 2014-Ohio-4559, ¶ 28. To the extent that Saturday argues it was error not to inform him at his sentencing hearing of the possibility of community service, his assignment of error is overruled.

{¶7} Saturday also argues it was error for the court to impose court costs in the sentencing entry when it had failed to do so at the sentencing hearing. The Ohio Supreme Court has found “[w]hile the imposition of court costs is mandatory, the court’s waiver of payment remains discretionary.” *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, ¶ 18.<sup>1</sup> The failure of a court to notify a defendant at the sentencing hearing that it is imposing court costs denies the defendant “the opportunity to claim indigency and to seek a waiver of the payment of court costs.” *Id.* at ¶ 22. The remedy for such an error is a limited remand to allow the defendant to move for a waiver of the payment of court costs. *Id.* at ¶ 23.

{¶8} In the instant matter, Saturday was not informed at the sentencing hearing that the court was imposing court costs. Accordingly, this case must be remanded for resentencing on the court costs in order to allow Saturday the opportunity to seek a waiver of those costs if he is indigent. To this extent, Saturday’s assignment of error is sustained.

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<sup>1</sup> The Supreme Court was analyzing former R.C. 2947.23, which contained similar language to current R.C. 2947.23(A). “[F]ormer R.C. 2947.23 provided: ‘In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs. If a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs, which shall be paid to the public treasury from which the jurors were paid.’” *Joseph* at ¶ 9-10, quoting 1953 H.B. No. 1.

## III

{¶9} Saturday's assignment of error is sustained to the extent stated above. The judgment of the Summit County Court of Common Pleas is reversed, and the matter is remanded for the limited purpose of allowing Saturday the opportunity to seek a waiver of court costs.

Judgment reversed  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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BETH WHITMORE  
FOR THE COURT

CARR, P. J.  
MOORE, J.  
CONCUR.

APPEARANCES:

STACY L. MCGOWAN, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prsoecuting Attorney, for Appellee.