

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-08-078

Appellee

Trial Court No. 2008CR0314

v.

Andrew Lenhart

DECISION AND JUDGMENT

Appellant

Decided: October 9, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and Gwen Howe-Gebers and Jacqueline M. Kirian, Assistant Prosecuting Attorneys, for appellee.

Scott t. Coon, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the imposition of a \$10,000 statutory fine, following his conviction on two counts of complicity in drug trafficking. For the reasons that follow, we affirm.

{¶ 2} In May 2008, Wood County Sheriff's deputies initiated an investigation of a group of people suspected of selling heroin. During the course of the investigation, through a police informant, investigators arranged several purchases of heroin, including two incidents in which a total of 18 grams of heroin were delivered to an informant by appellant, Andrew M. Lenhart.

{¶ 3} Eventually, appellant and six others would be arrested. On June 19, 2008, appellant was named in a three count indictment, charging him with two counts of complicity in drug trafficking, both third degree felonies, and one count of engaging in a pattern of corrupt activity, a first degree felony.

{¶ 4} At arraignment, appellant was found indigent, appointed counsel and entered an initial plea of not guilty to all counts. Following negotiations, however, appellant withdrew his not guilty pleas and pled guilty to two counts of complicity. The corrupt activity charge was dismissed. The trial court accepted the plea, found appellant guilty and ordered a presentence investigation.

{¶ 5} Prior to sentencing, appellant filed an affidavit of indigency with the court. At the sentencing hearing, appellant argued that he was without means to pay the \$10,000 fine mandated by R.C. 2929.18(A)(3)(c) and (B)(1). The court rejected appellant's affidavit of indigency, fined him \$10,000 and sentenced him to concurrent two-year terms of incarceration on each count.

{¶ 6} From this judgment of conviction, appellant now brings this appeal and asserts the following assignment of error:

{¶ 7} "I. The trial court erred in failing to consider the appellant's present and future ability to pay the \$10,000.00 mandatory fine imposed by the court."

{¶ 8} In his only assignment of error, appellant contends that the court erred in imposing a \$10,000.00 fine without considering his present and future ability to pay the fine. The decision to impose or waive a fine rests within the sound discretion of the court and will not be reversed on appeal absent an abuse of that discretion. See *State v. Kessler*, 6th Dist. No. WD-08-055, 2009-Ohio-3918, ¶7, citing *State v. Kruse*, 6th Dist. No. WD-05-001, 2006-Ohio-3179, ¶49, citing *State v. Gipson* (1998), 80 Ohio St. 3d 626, 634.

{¶ 9} R.C. 2929.18(B)(1), "clearly requires that a sentencing court shall impose a mandatory fine upon an offender unless (1) the offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine, and (2) the court determines that the offender is in fact an indigent person and is unable to pay the mandatory fine." *Gipson* at 631. The burden is on the offender to affirmatively demonstrate that he is indigent and unable to pay the mandatory fine. *Gipson* at 635. The trial court does not have to make an "affirmative finding that an offender is able to pay a mandatory fine." *Gipson* at 634.

{¶ 10} There are no express factors that the court must take into consideration, nor any findings in regards to the offender's ability to pay that must be made on the record. *State v. Martin* (2000), 140 Ohio App.3d 326. See also, *State v. Smith*, 3d Dist. No. 2-06-37, 2007-Ohio-3129, ¶31, citing *State v. Wells*, 3d. Dist. No. 13-02-17, 2002-Ohio-5318, ¶8. Moreover, a trial court need not hold a separate hearing to determine a defendant's

present and future ability to pay a mandatory fine. See *State v. Foreman*, 3d. Dist. No. 5-07-17, 2008-Ohio-4408, ¶12, citing *State v. Felder*, 3d Dist. No. 9-04-51, 2005-Ohio-546, ¶8. Rather, where it can be shown that a sentencing court has considered a presentence investigation report containing details of the offender's financial situation, the court is deemed to have complied with the requirement of considering the defendant's present and future ability to pay. *State v. Ellis*, 4th Dist. No. 06CA3071, 2007-Ohio-2177, ¶32.

{¶ 11} Here, in imposing the \$10,000 fine, the court acknowledged that appellant had filed an affidavit of indigency. Furthermore, the trial court considered the presentence investigation report, which detailed appellant's employment, financial, and education history. Specifically, the report shows that appellant had previously held a bank account, been employed, had a high school diploma, and had taken some college courses. Additionally, he was living with his parents at the time of the offense and did not suffer from any significant health problems. Appellant also reported that he wanted to become a productive person. Based on this information, the trial court could have determined appellant's present and future ability to pay the mandatory fine. In particular, the trial court could have determined that upon being released from prison, appellant would be in his twenties, able to work and pursue productivity and, therefore, would be able to pay the imposed sanction.

{¶ 12} Accordingly, we conclude that the trial court did not abuse its discretion by determining that appellant was not indigent and was able to pay the fine. Appellant's assignment of error is found not well-taken.

{¶ 13} On consideration, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal, pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Charles D. Abood, J.
CONCUR.

JUDGE

Judge Charles D. Abood, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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