

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

State of Ohio

Court of Appeals No. WD-09-049

Appellee

Trial Court No. 08 CR 399

v.

Keenan Stokes

DECISION AND JUDGMENT

Appellant

Decided: June 18, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebbers, Assistant Prosecuting Attorney, for appellee.

John Potts, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from the imposition of a fine by the Wood County Court of Common Pleas, following appellant's conviction of one count of aggravated trafficking in drugs, a violation of R.C. 2925.03(A)(1) & (C)(1)(c), and possession of cocaine, a violation of R.C. 2925.11(A) & (C)(4)(a), felonies of the third degree. A mandatory fine

in the amount of \$5,000 was imposed on the trafficking count. For reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Keenan Stokes, sets forth the following single assignment of error:

{¶ 3} "ASSIGNMENT OF ERROR. It constituted error to impose a mandatory fine upon defendant-appellant who is indigent."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. At sentencing, appellant submitted an affidavit claiming legal indigency in an effort to avoid imposition of fines. Appellant attested to his lack of present employment given his incarceration and lack of fungible assets. In further support of his claimed indigency, appellant noted his 11th grade education level and hearing disability.

{¶ 5} R.C. section 2929.18(B)(1) provides:

{¶ 6} "If the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender."

{¶ 7} In conjunction with this, it should be noted that the pertinent consideration of the trial court in reaching indigency determinations encompasses both the defendant's present and future ability to pay. *State v. Riley*, 6th Dist. No. WD-08-025, 2009-Ohio-3227, ¶ 33.

{¶ 8} In weighing appellant's claim of indigency, the trial court found appellant to be young, in good health, and employable so as to be able to pay the fine upon release

from incarceration. We note that "an appellate court cannot modify a financial sanction unless it finds by clear and convincing evidence that it is not supported by the record or is contrary to law." *State v. Brooks*, 8th Dist. No. 83668, 2005-Ohio-3567, ¶ 81.

{¶ 9} The record reveals that appellant previously held gainful employment at Inverness Country Club and Jeep. Appellant's own testimony affirms that he possesses the necessary skills to perform such jobs. The trial court reasonably determined that appellant possesses the future capacity to pay the fine upon release and re-employment. Wherefore, we hold appellant's assignment of error not well-taken.

{¶ 10} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of 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.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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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