

[Cite as *State v. Nutter*, 2009-Ohio-2964.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BROWN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-10-009
- vs -	:	<u>OPINION</u> 6/22/2009
KENNETH NUTTER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS  
Case No. 2006-2196

Jessica A. Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, OH 45121, for plaintiff-appellee

Timothy Young, Ohio Public Defender, Katherine A. Szudy, Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, OH 43215, for defendant-appellant

**POWELL, J.**

{¶1} Defendant-appellant, Kenneth Nutter, appeals the judgment of the Brown County Court of Common Pleas sentencing him to three years in prison and ordering him to pay court costs, following his conviction for felonious assault. As detailed below, we find appellant's arguments are not ripe for review at this time.

{¶2} On August 28, 2008, appellant was convicted of one second-degree felony

count of felonious assault, in violation of R.C. 2903.11(A)(2). The trial court subsequently held a sentencing hearing on September 4, 2008, during which the court indicated that appellant would be sentenced to three years in prison, and ordered to pay a public defender reimbursement fee as well as the costs of prosecution. The trial court's entry was filed October 3, 2008, sentencing appellant accordingly. Neither during the sentencing hearing nor in its sentencing entry, however, did the court notify appellant that he may be ordered to perform community service if he fails to pay the requisite court costs. Appellant now appeals the trial court's judgment, challenging only the court's imposition of court costs. Appellant advances three assignments of error concerning the matter, which shall be addressed together.

{¶13} Assignment of Error No. 1:

{¶14} "THE TRIAL COURT ERRED BY IMPOSING COURT COSTS WITHOUT NOTIFYING [APPELLANT] THAT HIS FAILURE TO PAY SUCH COSTS MAY RESULT IN THE COURT'S ORDERING HIM TO PERFORM COMMUNITY SERVICE."

{¶15} Assignment of Error No. 2:

{¶16} "TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE, IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION, FOR FAILING TO OBJECT TO THE TRIAL COURT'S IMPOSITION OF COURT COSTS, AS THE TRIAL COURT DID NOT NOTIFY [APPELLANT] THAT HIS FAILURE TO PAY COURT COSTS MAY RESULT IN THE COURT'S ORDERING HIM TO PERFORM COMMUNITY SERVICE."

{¶17} Assignment of Error No. 3:

**{¶18}** "THE TRIAL COURT COMMITTED PLAIN ERROR AND DENIED [APPELLANT] DUE PROCESS OF LAW WHEN IT IMPOSED COURT COSTS WITHOUT THE PROPER NOTIFICATION THAT [APPELLANT'S] FAILURE TO PAY COURT COSTS MAY RESULT IN THE COURT'S ORDERING HIM TO PERFORM COMMUNITY SERVICE."

**{¶19}** All three of appellant's assignments of error concern the trial court's alleged failure to notify him that he may be ordered to perform community service if he fails to pay the court costs that were imposed as part of his sentence. R.C. 2947.23(A)(1) provides that "[i]n 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:

**{¶110}** "(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.

**{¶111}** "(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."

**{¶112}** It is undisputed in this case that the trial court imposed court costs as part

of appellant's sentence, but failed to notify appellant that he may be ordered to perform community service if he fails to pay such costs. Appellant contends that such failure requires reversal to enable the trial court to resentence appellant in compliance with R.C. 2947.23(A)(1)(a). There is no indication in the record, however, that appellant has failed to pay such costs, or that the trial court has ordered appellant to perform community service as a sanction for such failure. Moreover, should appellant fail to pay the requisite court costs, R.C. 2947.23(B) requires the trial court to hold a hearing on the matter, and provides that the court may, *in its discretion*, order community service. Such events have not occurred, and might not occur. As a result, we find appellant's arguments as to this issue are not ripe for review at this time. *State v. Boice*, Washington App. No. 08CA24, 2009-Ohio-1755, ¶11; *State v. Slonaker*, Washington App. No. 08CA21, 2008-Ohio-7009, ¶7. See, also, *State v. McCarty*, Butler App. No. CA2006-04-093, 2007-Ohio-2290, ¶15, 16.

{¶13} Appellant's assignments of error are therefore overruled, and the judgment of the trial court is hereby affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.