

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FRANCISCO DEMETRIO CARRILLO,)
DOC # Y18540,)
)
Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
Appellee.)
_____)

Case No. 2D15-5112

Opinion filed April 26, 2017.

Appeal from the Circuit Court for Collier
County; Lauren L. Brodie, Judge.

Howard L. Dimmig, II, Public Defender, and
Timothy J. Ferreri, Assistant Public
Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Bilal A. Faruqi, Assistant
Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Francisco Demetrio Carrillo appeals a final judgment and sentence. We
have jurisdiction. See Fla. R. App. P. 9.140(b)(1)(A), (F).

Mr. Carrillo's counsel filed an Anders¹ brief stating that there was no issue of arguable merit aside from a minor issue concerning costs. We do not find any issue with Mr. Carrillo's conviction and forty-year sentence for second-degree murder. We affirm as to those matters. However, the trial court improperly imposed two costs. We reverse and remand as to those issues.

Mr. Carrillo's written judgment and sentence includes a \$15,400 public defender fee and a \$7920 fee for investigation costs. Mr. Carrillo moved to correct the sentencing error as to those costs. The trial court rendered no order. Mr. Carrillo preserved these issues for appeal. See White v. State, 32 So. 3d 132, 132-33 (Fla. 2d DCA 2010) ("The trial court did not rule on the motion within sixty days, and thus it is deemed denied." (citing Webster v. State, 998 So. 2d 655, 656 (Fla. 2d DCA 2009))).

The State concedes error as to the imposition of the public defender fee; the trial court did not inform Mr. Carrillo of his right to object to the amount. However, although it concedes that it presented no evidence in the trial court, the State argues that Mr. Carrillo waived his right to appeal the investigation costs because he did not object during sentencing. But, without any evidence of the investigation costs incurred by the State, Mr. Carrillo had nothing to which he could object. See Phillips v. State, 942 So. 2d 1042, 1044 (Fla. 2d DCA 2006).

Because Mr. Carrillo was not informed of his right to object to the public defender fee, he shall have thirty days upon remand in which to file an objection pursuant to section 938.29(5), Florida Statutes (2009). If he does so, the trial court shall conduct a hearing. See White, 32 So. 3d at 133. Additionally, we reverse the

¹Anders v. California, 386 U.S. 738 (1967).

imposition of the investigation costs because there is no supporting evidence from the State. See Phillips, 942 So. 2d at 1044 ("Because the trial court was without evidence of any amount of investigative costs, it erred by entering an order imposing an award of those costs upon [the defendant]"). Should the State wish to seek such costs, it too, shall, within thirty days of remand, provide a proper and supportable request to the trial court. See Howard v. State, 920 So. 2d 764, 765 (Fla. 2d DCA 2006).

Affirmed, in part, reversed, in part, and remanded.

KELLY and BADALAMENTI, JJ., Concur.