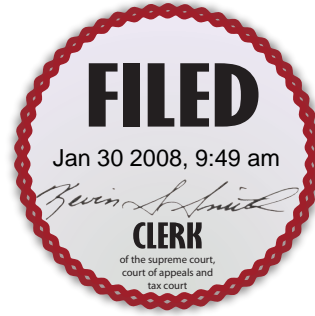


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

KURTIS G. FOUTS
Delphi, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

LAWRENCE GOLLADAY,)

Appellant-Defendant,)

vs.)

No. 08A02-0701-CR-93

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE CARROLL CIRCUIT COURT
The Honorable Robert W. Thacker, Special Judge
Cause No. 08C01-0504-FC-10

January 30, 2008

MOTION FOR CLARIFICATION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

In *Golladay v. State*, 875 N.E.2d 389 (Ind. Ct. App. 2007), this court reversed Golladay's conviction for home improvement fraud. Upon petition for clarification, Golladay asks this court to review the trial court's denial of his motion to appoint pauper appellate counsel.

The decision whether to appoint counsel at public expense is committed to the trial court's discretion. The trial court does not have the discretion to deny counsel to an indigent defendant. *Lamonte v. State*, 839 N.E.2d 172 (Ind. Ct. App. 2005). It is impossible to set specific guidelines for determining indigency. *Id.* "The determination of indigency must be based on a thorough examination of the defendant's 'total financial picture as is practical,' and not on 'a superficial examination of income and ownership of property.'" *Id.* at 176-77 (quoting *Moore v. State*, 401 N.E.2d 676, 679 (Ind. Ct. App. 1980)). "The record must show that the determination of ability to pay includes a balancing of assets against liabilities and a consideration of the amount of defendant's disposable income or other resources reasonably available to him after the payment of his fixed or certain obligations." *Id.* at 177 (quoting *Moore v. State*, 401 N.E.2d at 679).

In the instant case, after considering Golladay's claims regarding his and his live-in girlfriend's respective incomes, the trial court determined that the couple and his children could live and indeed did live on his and his girlfriend's combined incomes. The court further noted that Golladay's contribution was based solely on his "junking" endeavors. Ultimately, the court concluded that it would be unfair to make taxpayer's fund his appeal when he had been able to retain private counsel for trial and his family's

income was sufficient to meet its financial obligations without need for public assistance. Moreover, the court clearly was of the opinion that Golladay was capable of earning more than he did. Finally, the court noted that Golladay had not researched the cost of appellate representation or attempted to make arrangements to finance an appeal. In fact, the court told Golladay that if he did those things and still believed he was unable to afford appellate counsel, the trial court was willing to revisit the matter at that point. Under those circumstances, the trial court did not abuse its discretion in denying Golladay's motion for appointment of pauper appellate counsel.

BAKER, C.J., and CRONE, J., concur.