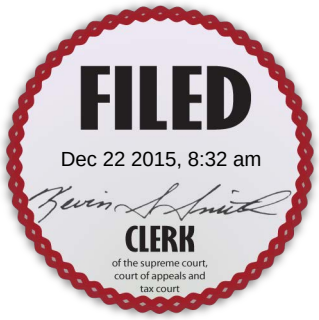
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Lucille Lewis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 22, 2015

Court of Appeals Case No. 49A02-1503-CR-177

Appeal from the Marion Superior Court

The Honorable Linda E. Brown, Judge

Cause No. 49G10-1501-CM-337

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Lucille Lewis (Lewis), appeals her conviction for battery, a Class B misdemeanor, Ind. Code § 35-42-2-1(b)(1), and disorderly conduct, a Class B misdemeanor, I.C. § 35-45-1-3(a)(2).

[2] We remand.

ISSUES

[3] Lewis raises two issues on appeal, which we restate as:

(1) Whether the trial court already conducted an indigency hearing to determine Lewis' ability to pay probation fees; and
(2) Whether remand is appropriate to rectify a clerical error.

FACTS AND PROCEDURAL HISTORY

[4] On January 4, 2015, Lewis lived with her adult daughter, Courtney Lewis (Courtney), Courtney's infant daughter, and Lewis' two other minor daughters in Indianapolis, Indiana. When Lewis arrived home that evening, she turned a light on inside the residence and opened the door. Courtney asked Lewis to switch off the light because she had to go to work at 5:00 the next morning and to shut the door because the baby required a breathing treatment. Lewis refused, telling Courtney "I ain't got to close—this is my house, and when you start paying bills, then that's when you can tell me to turn off the light and close the door." (Transcript pp. 45-46). Courtney and Lewis started arguing and

Lewis' younger daughter called the police because she "was scared that they was going to fight." (Tr. p. 46).

[5] Officers Jeffrey Scott (Officer Scott) and Jonathan Schultz (Officer Schultz) of the Indianapolis Metropolitan Police Department responded to the call. Arriving at the residence around midnight, the officers found Courtney and Lewis arguing through the open front door. Officer Schultz noticed that Lewis was intoxicated. When the officers approached, Lewis screamed at them that she wanted Courtney and her infant daughter removed from the house. Officer Schultz informed her that "it was silly to remove a child at midnight from a residence." (Tr. pp. 34-35). Lewis continued to argue with the officers. Meanwhile, the baby was crying, Lewis' minor daughter was attempting to calm Lewis down, and two dogs in a back room were barking. Lewis yelled that the officers could not arrest her in her own home. She then became "physical" and "tried to slam the door in the police'[s] face." (Tr. p. 48). The officers put their foot in the door to prevent it from closing, but Lewis "just kept on going crazy, and just kept on yelling." (Tr. p. 48). Courtney eventually offered to call her brother and have him pick up her and her infant daughter.

[6] Lewis, however, walked up to the front door, grabbed the baby's medical supplies from a shelf near the door, and attempted to throw these items out of the residence. Courtney walked over to block Lewis, but Lewis tried to push her way past Courtney. As Lewis retreated inside the house, she flipped a coffee table onto its top, and threw the portable baby crib in the air, also turning

it onto its top. Courtney pled with her mother to stop; instead, Lewis struck Courtney in the face "with an open hand." (Tr. p. 36).

[7] At that point, the officers, who were standing in the doorway directly outside the residence, decided to arrest Lewis. As the officers approached, Lewis became "very angry, [] pulled her hands up and put them in a fighting stance and yelled 'hammer time.'" Declining this invitation to dance, Officer Scott arrested Lewis. As the officers escorted her outside, Lewis continued screaming obscenities.

[8] On January 4, 2015, the State filed an Information, charging Lewis with battery, a Class B misdemeanor, and disorderly conduct, a Class B misdemeanor. On March 3, 2015, following a bench trial, the trial court found Lewis guilty as charged. That same day, the trial court imposed concurrent sentences of 180 days with 178 days suspended. After the imposition of sentence, the following colloquy occurred:

> [TRIAL COURT]: Are you working, ma'am?
>
> [LEWIS]: No.
>
> [TRIAL COURT]: How do you support yourself?
>
> [LEWIS]: I babysit all the grandbabies.
>
> [TRIAL COURT]: I'll find her indigent to costs and fines.
>
> [LEWIS' ATTORNEY]: Could she also be found indigent or at least be placed on a sliding fee scale for [p]robation?
>
> [TRIAL COURT]: I'll put her on a sliding fee scale for [p]robation.

(Tr. p. 65).

[9] Lewis now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Indigency Hearing*

[10] Lewis contends that instead of conducting an indigency hearing before imposing probation user's fees, the trial court merely ordered a "sliding fee scale for [p]robation." (Tr. p. 65). Therefore, she wants this cause remanded for an indigency hearing to determine her ability to pay probation fees and to recalculate her fees.

[11] Sentencing decisions include decisions to impose fees and costs. *Berry v. State*, 950 N.E.2d 798, 799 (Ind. Ct. App. 2011). A trial court's sentencing decision is reviewed under an abuse of discretion standard. *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). "An abuse of discretion has occurred when the sentencing decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" *Id*. at 588.

[12] When a person is convicted of a felony and placed on probation, the trial court must impose probation user's fees. *See* I.C. § 35-38-2-1(b). However, when, as here, a person is convicted of a misdemeanor, it's within the trial court's discretion to impose probation fees. *See* I.C. § 35-38-2-1(b). As such, the trial court may

> In addition to any other conditions of probation, [] order each person convicted of a misdemeanor to pay:
>
> (1) not more than a fifty dollar ($50) initial probation user's fee;

(2) a monthly probation user's fee of not less than ten dollars ($10) nor more than twenty dollars ($20) for each month that the person remains on probation;

* * *

(4) an administrative fee of fifty dollars ($50).

I.C. § 35-38-2-1(e).

[13] Although the trial court imposed a sliding fee scale on probation fees, a breakdown of the actual probation fees imposed on Lewis establishes that the probation department imposed the maximum user's fee of $20 per month, in addition to the initial fee, the administrative fee, and an alcohol/drug services program user fee, for a grand total of $470. After the trial court granted the probation department's request to extend Lewis' probation for four more months to allow her to successfully complete treatment, the probation department alerted its intent to assess an additional $80 in fees. As of September 1, 2015, Lewis had only paid $20 towards her outstanding balance.

[14] We find that the case before us mimicks the factual scenario in this court's recent decision of *Johnson v. State*, 27 N.E.3d 793 (Ind. Ct. App. 2015). In *Johnson*, the defendant was convicted of a Class A misdemeanor and a Class C misdemeanor. *Id*. at 794. During the imposition of the sentence, the trial court found Johnson to be indigent for court costs and other fees. *Id*. He was ordered to pay a probation administration fee of $50 and a probation user fee of $290. *Id*. The trial court ordered a sliding fee scale for the probation fees but delayed making an indigency determination until more information regarding Johnson's financial information came to light. *Id*. Based on these facts, we

concluded that "if a trial court imposes costs on a defendant, a trial court is required to conduct an indigency hearing." *Id*. However, "[a] trial court acts within its authority when it chooses to wait and see if a defendant can pay probation fees before it finds the defendant indigent." *Id.* (citing I.C. Ch. 35-38-2). As such, we determined that "[a]t the latest, an indigency hearing for probation fees should be held at the time a defendant completes his sentence" and we ordered the trial court to conduct an indigency hearing to assess Johnson's ability to pay probation fees at the completion of his sentence "whereupon the trial court shall also recalculate the amount of probation fees owed, if any." *Id.*

[15] Although Lewis was found indigent, it was clear that the trial court—as in *Johnson*—only determined indigency as "to costs and fines." (Tr. p. 65). Contrary to the State's assertion, it is also clear that the parties interpreted this finding of indigency to be limited to costs and fines as Lewis' attorney expressly requested the trial court, "[c]ould she also be found indigent **or** at least be placed on a sliding fee scale for [p]robation?" (Tr. p. 65) (emphasis added). The trial court placed Lewis on a "sliding fee scale for [p]robation." (Tr. p. 65). Even though the probation department charged the maximum amount of probation fees possible, "the trial court has a duty to conduct an indigency hearing at some point in time." *See* I.C. § 33-37-2-3. Accordingly, as in *Johnson*, we remand to the trial court to conduct an indigency hearing on the completion of Lewis' sentence, at which time, the trial court shall determine the

amount of probation fees owed to correspond with the probation time Lewis actually served.

II. *Clerical Error*

[16] Lewis contends, and the State agrees, that the trial court made a clerical error that requires rectification. Initially, on January 4, 2015, the State charged Lewis with battery as a Class A misdemeanor. Later that same day, the State filed a motion to amend the charging information, stating that it "inadvertently filed Count I as [b]attery, [as a Class A misdemeanor], which "was a clerical error." (Appellant's App. p. 17). The trial court granted the State's motion. During closing argument, the trial court clarified that the proper charge was battery as a Class B misdemeanor. When the trial court declared Lewis guilty, it expressly found for a Class B misdemeanor. The chronological case summary and sentencing order, however, both list Lewis' conviction of battery, as a Class A misdemeanor.

[17] "When oral and written sentencing statements conflict, we examine them together to discern the intent of the sentencing court." *Walker v. State*, 932 N.E.2d 733, 738 (Ind. Ct. App. 2010), *reh'g denied*. We may remand the case for correction of clerical errors if the trial court's intent is unambiguous. *Id*. Based on the unambiguous nature of the trial court's oral sentencing pronouncement and the parties' agreement that Lewis was charged with and convicted of a Class B misdemeanor, we conclude that the chronological case

summary and sentencing order contain a clerical error and we remand for correction of this error.

CONCLUSION

[18] Based on the foregoing, we remand to the trial court to conduct an indigency hearing on the completion of Lewis' sentence, at which time, the trial court shall also determine the amount of probation fees owed to correspond with the probation time Lewis actually served and for correction of the clerical error.

[19] Remanded.

[20] Brown, J. and Altice, J. concur