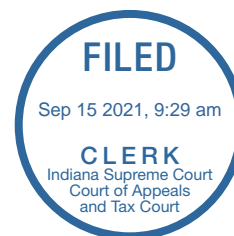


MEMORANDUM DECISION

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

Victoria Bailey Casanova
Casanova Legal Services, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney L. Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Cody Morrison,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 15, 2021

Court of Appeals Case No.
21A-CR-706

Appeal from the Noble Superior
Court

The Honorable Robert E. Kirsch,
Judge

Trial Court Cause No.
57D01-1912-F6-396

Bradford, Chief Judge.

Case Summary

- [1] Cody Morrison was sentenced to an aggregate four-year sentence after he pled guilty to three counts of Level 6 felony nonsupport of a dependent. Prior to entering his guilty plea, Morrison had to be extradited to Indiana on two separate occasions. As part of his sentence, the trial court ordered Morrison to pay \$749.19 to the Noble County Extradition Fund. Morrison challenges this part of his sentence on appeal, arguing that it reflects an improper order of restitution. Because we conclude that the payment qualifies as a proper reimbursement fee rather than restitution, we affirm.

Facts and Procedural History

- [2] On January 30, 2017, Morrison was ordered to pay child support for his three children. Despite this order, Morrison failed to pay any support from January 30, 2017 to July 17, 2019. In light of Morrison’s failure to pay child support, on December 20, 2019, the State charged Morrison with three counts of Level 6 felony nonsupport of a dependent child. On March 12, 2021, Morrison pled guilty to all three charges.
- [3] During the course of the proceedings, Morrison was extradited to Indiana on two separate occasions. At sentencing, the State sought reimbursement for extradition costs, informing the trial court that “there have been two extraditions that have happened in this case,” costing a total of \$749.19. Tr.

Vol. II p. 33. Morrison did not contest either that he had twice been extradited to Indiana or the costs associated with the extraditions.

- [4] The trial court accepted Morrison’s guilty plea and, on April 6, 2021, sentenced him to an aggregate four-year term with two years executed and two years suspended to probation. The trial court also ordered Morrison to pay \$749.19 to the Noble County Extradition Fund.

Discussion and Decision

- [5] In sentencing a convicted person, the trial court’s judgment must include the amount of fines, fees, or costs assessed. *See* Ind. Code § 35-38-3-2(b)(3). “[S]entencing decisions, including decisions to impose restitution, fines, costs, or fees, are generally left to the trial court’s discretion.” *Kimbrough v. State*, 911 N.E.2d 621, 636 (Ind. Ct. App. 2009). “An abuse of discretion occurs if the 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.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007) (internal quotation omitted).
- [6] The General Assembly has established an extradition fund in each Indiana county for the purpose of providing “funding to offset the costs of extraditing criminal defendants.” Ind. Code § 35-33-14-2(1). In *Vestal v. State*, 745 N.E.2d 249, 253 (Ind. Ct. App. 2001), *aff’d in relevant part*, 773 N.E.2d 805, 807 (Ind. 2002), Vestal argued that the trial court erred in ordering him to pay extradition

costs to the Clay County Extradition Fund. Noting that the trial court referred to the payment of extradition costs as restitution in its oral sentencing statement, Vestal argued that under Indiana Code section 35-50-5-3, which outlines who may receive restitution, the county was not a proper recipient of restitution. *Id.* In affirming the trial court, we stated that while “we would agree with Vestal if the order to pay Clay County for his extradition costs were indeed a restitution cost.” *Id.* However, given the existence of the County’s Extradition Fund coupled with the presumption that money from the Fund “was used to offset the costs of extraditing Vestal to Indiana,” we concluded that the extradition fees ordered to be paid by Vestal qualified as reimbursement fees, not restitution. *See id.*

[7] In this case, Morrison raises a similar argument to that raised by the defendant in *Vestal*, asserting that the Noble County Extradition Fund was not a proper recipient of restitution under Indiana Code section 35-50-5-3. Indiana Code section 35-50-5-3 provides that a trial court may order a convicted individual “to make restitution to the victim of the crime, the victim’s estate, or the family of a victim who is deceased.” As we noted in *Vestal*, we agree that it would be improper to order Morrison to pay restitution to the Noble County Extradition Fund because the Fund was not the victim of Morrison’s criminal offenses. Also as in *Vestal*, however, we conclude that the extradition fees ordered to be paid by Morrison qualified as reimbursement fees, not restitution.

[8] In its oral sentencing statement, the trial court ordered Morrison “to pay restitution to the Noble County Extradition Fund in the amount of \$749.19.”

Tr. Vol. II p. 40. However, the trial court did not refer to the \$749.19 payment as restitution in its written sentencing order, simply stating that “Defendant is ordered to pay to the Noble County Extradition Fund the amount of \$749.19.” Appellant’s App. Vol. II p. 48. Similar to in *Vestal*, we presume that money from the Noble County Extradition Fund was used to offset the costs of extraditing Morrison to Indiana and conclude that the trial court’s order that Morrison pay \$749.19 to the Noble County Extradition Fund represents a permissible reimbursement fee rather than an award of restitution. *See Vestal*, 745 N.E.2d at 253 (finding the payment of extradition fees to be a reimbursement of costs rather than restitution despite the trial court referring to the payment as restitution in its oral sentencing statement). Furthermore, we agree with the State that although it was error for the trial court to refer to the \$749.19 reimbursement fee as restitution during its oral sentencing statement, such error was harmless as it did not prejudice Morrison’s substantial rights¹ and “[r]emanding this case back to the trial court would serve no purpose other than to call Morrison back into the courtroom so that the trial court can use the correct legal term.” Appellee’s Br. pp. 9–10.

[9] The judgment of the trial court is affirmed.

Robb, J., and Altice, J., concur.

¹ “An error is harmless when it results in no prejudice to the ‘substantial rights’ of a party.” *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018).