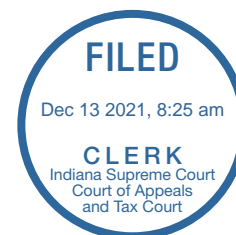


## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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Matthew Adam Tawdul,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 13, 2021

Court of Appeals Case No.  
21A-CR-1408

Appeal from the Steuben Circuit  
Court

The Honorable Allen N. Wheat,  
Judge

Trial Court Cause No.  
76C01-2007-CM-545

**Altice, Judge.**

## Case Summary

- [1] Matthew Tawdul pled guilty to driving while suspended with a prior conviction as a Class A misdemeanor. The trial court sentenced him to ninety days in custody, one year of probation, and ordered him to pay a \$100 public defender fee. On appeal, Tawdul argues that the trial court abused its discretion by ordering him to pay the \$100 fee.
- [2] We reverse and remand.

## Facts & Procedural History

- [3] On July 8, 2020, Tawdul was charged with driving while suspended with a prior conviction as a Class A misdemeanor. At the July 20, 2020 initial hearing, the trial court appointed counsel to represent Tawdul, although it did not inquire on the record about Tawdul's income, assets, or expenses.<sup>1</sup> On June 7, 2021, Tawdul pled guilty to the charged misdemeanor, and the trial court sentenced him to ninety days of incarceration and one year of probation. It also ordered Tawdul to pay a \$1.00 fine, court costs, and “[o]ne hundred dollars payable into the PD Trust Fund.” *Transcript* at 38. In its written sentencing order, the court determined that Tawdul “is indigent at this time for purposes of payment of monetary obligations” and ordered him to pay, among other things, the \$100 public defender fee. *Appellant’s Appendix* at 39.

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<sup>1</sup> Any request for appointment of public defender form that Tawdul may have completed, and which might have contained financial information such as income and expenses, is not in the record before us.

## Discussion and Decision

- [4] A trial court may impose fees as part of a criminal defendant's sentence. *Jackson v. State*, 968 N.E.2d 328, 333 (Ind. Ct. App. 2012). If the fees imposed by the trial court fall within the parameters provided by statute, we will not find an abuse of discretion. *Langdon v. State*, 71 N.E.3d 1162, 1164 (Ind. Ct. App. 2017). Tawdul argues, and the State concedes, that the court abused its discretion when it ordered him to pay the \$100 fee.
- [5] There are three statutes that address the imposition of public defender fees, and a trial court may order payment under one or more of the three. *Id.* Specifically, Indiana Code § 35-33-7-6 provides, in part, that “[p]rior to the completion of the initial hearing,” the court shall determine whether a person who requests assigned counsel is indigent and, if so, appoint counsel. I.C. § 35-33-7-6(a). It continues, “If the court *finds that the person is able to pay part of the cost of representation by the assigned counsel*, the court shall order the person to pay” a fee of \$100 for a felony action and a fee of \$50 for a misdemeanor action.<sup>2</sup> I.C. § 35-33-7-6(c) (emphasis added). The two other statutes that allow a court to order the defendant to pay costs of representation are Indiana Code §

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<sup>2</sup> “Although referring to the initial hearing, [I.C. § 35-33-7-6] has been interpreted not to prohibit the imposition of fees later in the proceedings.” *Jackson v. State*, 968 N.E.2d 328, 333 (Ind. Ct. App. 2012).

33-40-3-6 and Indiana Code § 33-37-2-3(a), and each – like I.C. § 35-33-7-6 – requires the court to make a finding of a defendant’s ability to pay.<sup>3</sup>

[6] Here, although the trial court’s sentencing order does not identify under what statute it ordered the public defender fee, it is likely that the court intended to order the fee pursuant to I.C. § 35-33-7-6 given that it ordered a “\$100 Public Defender Fee,” which is a specific amount used in the statute for order of a “fee” associated with “assigned counsel.” See *Cleveland v. State*, 129 N.E.3d 227, 238 (Ind. Ct. App. 2019) (finding that, where trial court did not specify under which statute it ordered defendant to pay public defender fee, it was “more than likely” that the trial court imposed the \$50 fee pursuant to I.C. § 35-33-7-6), *trans. denied*. However, Tawdul was convicted of a misdemeanor, for which the fee is \$50. Thus, to the extent that the trial court in fact intended to order the fee pursuant to I.C. § 35-33-7-6, the amount was erroneous. Moreover, even if the trial court intended to order the fee pursuant to one of the other statutes, each requires that the court make a finding that the defendant has the ability to pay part of the costs of his representation before imposing the fee, which did not occur in this case.

[7] Because none of the three statutory provisions support the imposition of the \$100 fee, the trial court abused its discretion by ordering it. We reverse the trial

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<sup>3</sup> I.C. § 33-37-2-3(e) expressly requires a hearing to determine if the convicted person is indigent before it orders the person to pay costs including the cost of defense services but, under the other two statutes, “the trial court simply has to make a finding on whether the defendant can pay for part or all of his representation from a public defender.” *Cleveland v. State*, 129 N.E.3d 227, 237 (Ind. Ct. App. 2019), *trans. denied*.

court's imposition of the \$100 fee and remand for further proceedings consistent with this opinion, which may include holding a hearing.<sup>4</sup> *See Holder v. State*, 119 N.E.3d 621, 626 (Ind. Ct. App. 2019) (reversing imposition of \$100 public defender fee, where defendant was convicted of misdemeanor charges only and the record "lack[ed] any determination regarding defendant's ability to pay the fees imposed," and remanding for hearing on defendant's ability to pay fees imposed).

[8] Judgment reversed and remanded.

Bailey, J. and Mathias, J., concur.

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<sup>4</sup> Although the court found that Tawdul was indigent, we have recognized that there are "degrees of indigency," and "one may be indigent for purposes of paying private counsel . . . but still be able to pay a nominal amount to partially reimburse the costs of his appointed counsel." *Wooden v. State*, 757 N.E.2d 212, 218 n.4 (Ind. Ct. App. 2011), *trans. denied*.