

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

Daniel Ross Lytle, Jr.,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

December 9, 2022

Court of Appeals Case No.
22A-CR-756

Appeal from the Noble Superior
Court

The Honorable Steven C. Hagen,
Judge

Trial Court Cause No.
57D02-2008-CM-482

Mathias, Judge.

- [1] Daniel Ross Lytle, Jr. appeals the Noble Superior Court's order that he pay a \$50 public-defender fee. Lytle raises a single issue for our review, namely,

whether the trial court abused its discretion when it ordered him to pay the fee. We reverse.

Facts and Procedural History

- [2] On August 11, 2020, the State charged Lytle with Class A misdemeanor invasion of privacy. At an initial hearing, Lytle asserted that he wished to proceed *pro se*; however, he later requested the appointment of counsel. At a pretrial hearing on that request, Lytle stated that he currently made “probably two hundred bucks” per week. Supp. Tr. Vol. 2, p. 4. The court appointed a public defender to represent Lytle in this and other pending causes.
- [3] Following a trial, a jury found Lytle guilty of the Class A misdemeanor invasion of privacy charge. At an ensuing sentencing hearing, the court stated:

I want to, first of all, talk with you about probation . . . [b]ecause I’m going to include probation. . . . [Y]ou have the ability to, uh, there’s some costs associated with probation. You have to pay a \$50 one-time initial fee to be on probation. You also have a \$50 one-time administrative fee that you have to pay to be on probation. . . . I am going to impose court costs on you of [\$185], a public defender fee of fifty dollars, and I’m going to fin[e] you ten dollars. . . .

* * *

. . . I am going to find the Defendant is indigent, and I’m going to direct that your fin[e]s and costs be paid . . . so that means you can’t be jailed as a result of your failure to pay your fines and costs. However, those fin[e]s and costs can be paid in 180 days of your . . . release from jail. . . . If you’re financially unable to

employ an attorney, the Court will appoint counsel for you at public expense

Tr. Vol. 2, pp. 185, 187. In its written sentencing order, the court clarified: “The Court finds the Defendant indigent *at this time* and [he] shall not be imprisoned for failure to pay fines and costs.” Appellant’s App. Vol. 2, p. 85 (emphasis added; bold font removed). The court appointed a public defender to represent Lytle on appeal, and this appeal ensued.

Discussion and Decision

- [4] Lytle asserts that the trial court abused its discretion when it ordered him to pay the \$50 public-defender fee even though the court found him to be indigent. Lytle does not appeal the court’s order that he pay any other fees, fines, or costs. We review the trial court’s imposition of costs or fees for an abuse of discretion. *Jackson v. State*, 968 N.E.2d 328, 333 (Ind. Ct. App. 2012). If the trial court imposes fees within statutory limits, there is no abuse of discretion. *Id.*
- [5] The trial court imposed the \$50 public-defender fee under [Indiana Code section 35-33-7-6 \(2021\)](#),¹ which states in relevant part as follows:

(a) Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent under section 6.5 of this chapter. If the person

¹ In its written sentencing order, the trial court identified the wrong statute for the imposition of the \$50 public-defender fee. *See* Appellant’s App. Vol. 2, p. 85.

is found to be indigent, the judicial officer shall assign counsel to the person.

* * *

(c) 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 the following:

(1) For a felony action, a fee of one hundred dollars (\$100).

(2) For a misdemeanor action, a fee of fifty dollars (\$50).

If the court orders the person to pay an amount described in subdivision (1) or (2), the court shall inquire at sentencing whether the person has paid the required amount

(d) The court may review the finding of indigency at any time during the proceedings

[6] Lytle asserts that, under [Indiana Code section 35-33-7-6](#), the trial court could not find both that he was indigent and that he had an ability to pay the \$50 public-defender fee without an additional finding, which the trial court did not make, that Lytle could pay some part of the cost of his appointed counsel. The State responds that Lytle's ability to pay the \$50 fee is implied in the court's order for him to pay it, and that that implication is supported by Lytle's representations to the court at the initial hearing that he earned \$200 per week as income.

[7] We are obliged to agree with Lytle. Where [Indiana Code section 35-33-7-6](#) applies, “a court must explicitly find a defendant can pay the fees imposed.” *Banks v. State*, 847 N.E.2d 1050, 1052 (Ind. Ct. App. 2006), *trans. denied*. Not only did that not happen, instead, here, in its written sentencing order, the trial court expressly found that Lytle *did not* have a present ability to pay the \$50 public-defender fee. Indeed, in its written order, the trial court clarified that Lytle was unable to pay the court-ordered fees and costs and, thus, directed that he could not be imprisoned for his failure to pay them.

[8] The court’s language in its written sentencing order suggests that it intended to later determine Lytle’s ability to pay the \$50 public-defender fee, which would make the absence of that finding not ripe for this appeal. However, we have held that “the determination of unripeness” in other circumstances regarding a defendant’s ability to pay cannot “be reasonably extended to [\[s\]ection 35-33-7-6](#)” because that statute “does not require an additional hearing, only a finding of ability to pay.” *Berry v. State*, 950 N.E.2d 798, 802 (Ind. Ct. App. 2011). As we explained in *Berry*:

[Section 35-33-7-6](#) permits the trial court to assess the public defender fee at the initial hearing or indeed at any time during the proceedings when the trial court finds a defendant indigent and appoints a public defender. If [case law] required the assessment of all public defender fees and costs to be deferred until all sentences were served, the deprivation of these monies would deleteriously impact the public defender fund.

Id.

[9] Accordingly, we conclude that Lytle's \$50 public-defender fee was imposed pursuant to [Indiana Code section 35-33-7-6](#). That statute, in turn, requires an explicit finding of the defendant's ability to pay; here, however, the trial court expressly found that Lytle had no present ability to pay that fee. We therefore reverse the trial court's order for Lytle to pay the \$50 public-defender fee.

[10] Reversed.

Robb, J., and Foley, J., concur.