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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000606-DG

PAULINE WRIGHT

APPELLANT

ON DISCRETIONARY REVIEW FROM CRITTENDEN CIRCUIT COURT
v. HONORABLE C. RENÉ WILLIAMS, JUDGE
ACTION NO. 09-XX-00002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

** ** * ** * ** *

BEFORE: DIXON, LAMBERT AND VANMETER, JUDGES.

VANMETER, JUDGE: Pauline Wright appeals from the Crittenden Circuit Court's order affirming the Crittenden District Court's order which assessed court costs and fines against her. For the following reasons, we affirm in part, reverse in part, and remand.

Wright was convicted of various misdemeanor charges in December 2009. The jury assessed Wright fines totaling \$400 and court costs in the amount of \$313. A \$500 cash bond was posted on Wright's behalf by a surety and the district court applied the bond money toward the fines and court costs owed. Wright was declared indigent as to the remaining \$213 due, leaving her with a zero balance.

Wright appealed to the Crittenden Circuit Court, claiming that since she was found to be indigent and received the representation of a public defender, the district court erred by assessing fines and court costs against her. Likewise, Wright claimed that the bond posted on her behalf should not have been applied toward any fines and court costs assessed. The circuit court found no error in the assessment of fines and court costs or in application of the bond money toward the amount due. The circuit court emphasized that the surety on the bond had signed a bond release form agreeing to allow any bond posted by her to be used for fines/costs, restitution, public defender fees and/or jail processing fees. Considering Wright's financial circumstances, including the availability of bond money, the court found that Wright was not a "poor person" as defined in KRS¹ 453.190(2) with respect to court costs and that payment of fines should be viewed in the same light as payment of court costs, *i.e.*, the ability to pay or the ability to pay in the future. Wright petitioned this court for discretionary review, which we granted.

¹ Kentucky Revised Statutes.

Wright now argues that because she was recognized as indigent, the circuit court erred by assessing fines and court costs against her. We agree that the assessment of fines against indigent defendants is prohibited under Kentucky law, but affirm the court's assessment of court costs against Wright.²

For many years courts have found it to be palpable error to impose court costs and fines on indigent defendants. *See Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987). However, the Kentucky Supreme Court recently held that the language of KRS 31.110(1)(b), which provides for the waiver of costs for indigent defendants, no longer controlled over KRS 23A.205(2), which affords the trial court discretion in imposing court costs. *See Maynes v. Commonwealth*, 361 S.W.3d 922 (Ky. 2012). Thus, a court has discretion to impose costs on an indigent defendant “unless the court finds that the defendant is a poor person as defined by KRS 453.190(2) and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future.” KRS 23A.205(2). The court costs statute, KRS 23A.205, adopts the following “poor person” definition contained in KRS 453.190(2): “[a] ‘poor person’ means a person who is unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the necessities of life, including food, shelter, or clothing.” The *Maynes* Court held,

² The Commonwealth maintains that Wright lacks standing to bring this appeal since the real party in interest is the surety on the bond. However, the Kentucky Supreme Court has held that “lack of standing is a defense which must be timely raised or else will be deemed waived.” *Harrison v. Leach*, 323 S.W.3d 702 (Ky. 2010). Here, the Commonwealth failed to raise the issue of standing below and thus is precluded from raising it for the first time now.

the “poor person” standard in KRS 23A.205 is distinguishable from the “needy person” standard in KRS 31.100 because the latter focuses only on the inability “to provide for the payment of an attorney and all other necessary expenses of representation.” . . . KRS 23A.205(2) directs the court to consider both the defendant’s ability to pay at present and in “the foreseeable future.”

. . .

If, at the time of the initial application or subsequently, there is substantial reason to believe that the defendant, although in need of counsel, has the ability to contribute financially to his defense or to pay court costs, the appointment of counsel does not preclude an order requiring the defendant to pay according to his ability to do so. Upon a defendant’s conviction, however, KRS 23A.205 requires imposition of court costs unless the defendant qualifies as a “poor person” and thus is unable to pay the costs presently or within the foreseeable future without depriving himself and his dependents of the basic necessities of life.

Id. at 929, 933.

In the case at bar, while Wright was initially deemed “needy” and appointed a public defender, a \$500 bond was posted on her behalf and upon her conviction she was released from custody on probation and restored to freedom and the ability to work. The circuit court considered Wright’s circumstances and the \$500 bond posted on her behalf in deciding whether costs should be waived and did not err by applying the bond money toward the \$313 in costs assessed. Wright has failed to show that the assessment of costs and application of the bond money towards costs assessed deprived her or her dependents of the basic necessities of life.

However, we believe the circuit court did err by affirming the assessment of fines against Wright. KRS 534.040, which concerns fines for misdemeanors, provides that “[f]ines required by this section shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31.” KRS 534.040(4). *See also Travis v. Commonwealth*, 327 S.W.3d 456, 459 (Ky. 2010); *Simpson v. Commonwealth*, 889 S.W.2d 781, 784 (Ky. 1994). Our review of the *Maynes* case discloses that it addresses the imposition of court costs on indigent defendants, not fines, and thus we reverse the portion of the circuit court’s order imposing \$400 in fines on Wright and applying bond money in satisfaction thereof.

The order of the Crittenden Circuit Court is affirmed in part, reversed in part and this case is remanded for further proceedings.

ALL CONCUR.

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