

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000834-MR

CHARLES J. GILBERT

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE ROBERT COSTANZO, JUDGE
ACTION NO. 09-CR-00260

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: TAYLOR, CHIEF JUDGE; CLAYTON, JUDGE; LAMBERT,¹
SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Charles J. Gilbert brings this appeal from an April 7,
2010, judgment of imprisonment of the Bell Circuit Court which imposed court
costs of \$151 upon him. We reverse and remand.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

After a jury trial, appellant was found guilty of operating a motor vehicle under the influence of alcohol and possession of marijuana. In the judgment of imprisonment, the circuit court sentenced appellant to a total of twelve-months' imprisonment and imposed \$151 in court costs. This appeal follows.

Appellant contends that the circuit court erred by imposing court costs as he qualified as indigent. For the following reasons, we agree.

The record reveals that the circuit court found appellant to be a pauper and appointed him trial counsel. Additionally, the circuit court granted appellant's motion to proceed *in forma pauperis* on appeal. In light of the recent Supreme Court's decision in *Travis v. Commonwealth*, 327 S.W.3d 456 (Ky. 2010), the Commonwealth concedes error in its appellee's brief. In *Travis*, the Supreme Court held that court costs may not be assessed against an indigent defendant. *Id.* As appellant clearly qualifies as indigent, the circuit court erred by assessing court costs upon him. We, thus, reverse the circuit court's imposition of \$151 in court costs upon appellant.

For the foregoing reasons, the order of the Bell Circuit Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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