

RENDERED: DECEMBER 21, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000246-MR

REGINA MAYES

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 11-CR-00876

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** *

BEFORE: ACREE, CHIEF JUDGE; DIXON AND VANMETER, JUDGES.

DIXON, JUDGE: Regina Mayes appeals from a final judgment of the Fayette Circuit Court, which ordered her to pay court costs of \$155.00. The record reflects that the circuit court imposed costs on Mayes without first making a determination as to whether she was exempt from paying costs as a “poor person” pursuant to KRS 23A.205(2). We reverse the portion of the judgment imposing court costs

and remand for a determination of whether Mayes satisfies the criteria set forth in KRS 23A.205(2). As this issue is the sole basis for appeal, in all other respects, we affirm Mayes's conviction.

The facts underlying this appeal are not in dispute. Mayes pled guilty to amended charges of criminal attempt to possess a controlled substance, possession of marijuana, and possession of drug paraphernalia. Mayes, an indigent person, was represented by a public advocate during the proceedings. Mayes ultimately received a twelve-month sentence, probated for two years, and she was ordered to pay court costs of \$155.00.

Although Mayes did not preserve this issue for appellate review, an alleged sentencing error is jurisdictional and may be raised for the first time on appeal. *Travis v. Commonwealth*, 327 S.W.3d 456, 459 (Ky. 2010).

In *Maynes v. Commonwealth*, 361 S.W.3d 922 (Ky. 2012), the Kentucky Supreme Court departed from its long-standing rule that indigent defendants are exempt from paying court costs. *Id.* at 929-30. The Court explained that an indigent person who qualifies for the services of a public advocate pursuant to KRS 31.110 may nevertheless be able to afford to pay court costs imposed at final sentencing pursuant to KRS 23A.205. *Id.* at 929. The Court concluded,

Upon a defendant's conviction . . . 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 933. In sum, following the decision in *Maynes*, “[t]he proper inquiry for assessing court costs is not whether a defendant is ‘indigent’ as defined in KRS 31.110(1)(b), but whether, pursuant to KRS 23A.205(2), he is a ‘poor person’ as defined in KRS 453.190(2).” *Smith v. Commonwealth*, 370 S.W.3d 871, 882 (Ky. 2012).

In the case at bar, the trial court erred by imposing court costs without making a finding as to whether Mayes is “a poor person as defined by KRS 453.190(2) and that . . . she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future.” KRS 23A.205(2).

As a result, we reverse the portion of the judgment imposing court costs, and we remand this case to the trial court for a determination of whether Mayes meets the criteria of KRS 23A.205 and KRS 453.190(2). In all other respects, the conviction and sentence are affirmed.

For the reasons stated herein, the judgment of the Fayette Circuit Court is affirmed in part, reversed in part, and remanded.

ALL CONCUR.

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